

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

WHITE MANAGEMENT CORP., M & W FOODS, INC., LOG JAM OF GLENS FALLS, INC., BOUNTIFUL BREAD, INC., PLATTSBURGH TACO INC., KODIAK CREAMERY, INC., NORPCO RESTAURANT, INC., ALBANY-PLATTSBURGH UNITED CORP., CCB REALTY LLC and DAVID R. WHITE,

Plaintiffs,

-against-

RAY E. ALEY, III,

Defendant.

**AFFIDAVIT OF  
RAY E. ALEY**

Index No. 904783-20

RJI No. 01-20-136144

Hon. Richard Platkin, A.J.S.C.

STATE OF COLORADO:

: ss.:

COUNTY OF LARIMER:

**RAY E. ALEY**, being duly sworn, deposes and says:

1. I am the Defendant in this action. I submit this affidavit in support of my motion for summary judgment to dismiss the complaint in its entirety. This affidavit is based on my own personal knowledge.<sup>1</sup>

Exhibits

- 2. The following exhibits are attached to this affidavit:
  - a. **Exhibit A:** Copy of February 17, 2019 email from Bob Evans to me, enclosing a spreadsheet entitled “12/31/18 Debt schedule”;
  - b. **Exhibit B:** Copies of examples of emails sent to Ever Santana disclosing

<sup>1</sup> Capitalized terms set forth herein have the same meaning and effect as defined within Defendant’s Statement of Material Facts and memorandum of law.

information pertaining to the White Companies in furtherance of a potential transaction for Santana's purchase of 18 Dunkin Donuts Stores owned by M&W and ARM, including emails disclosing weekly and monthly sales reports and other data;

- c. **Exhibit C:** Copy of a June 16, 2019 email I sent to Santana, in which I inquired whether Santana was "still interested in the 7 Dunkins wholly owned by Cheryl and I" through ARM;
- d. **Exhibit D:** Copy of a June 18, 2019 email I sent to Santana, together with its spreadsheet attachment, entitled "2018 ARM Debt.xls";
- e. **Exhibit E:** Copy of a June 18, 2019 email I sent to Santana, together with a spreadsheet attachment showing budgeted management expenses for, among other things, ARM;
- f. **Exhibit F:** Copy of a June 24, 2019 email I sent to Santana, together with spreadsheet attachment entitled "Weekly06-22";
- g. **Exhibit G:** Copy of a July 1, 2019 email I sent to Santana, together with attachment entitled "Weekly 06-29.xlsx";
- h. **Exhibit H:** Copy of a July 22, 2019 email I sent to Santana, together with attachment entitled "Weekly 07-20";
- i. **Exhibit I:** Copies of White Management Corp. Employee Handbook;
- j. **Exhibit J:** Copies of my W-2 and K-1 employment forms with M&W and Plattsburgh Taco, Inc.;<sup>2</sup>
- k. **Exhibit K:** Copy of my pay detail for M&W from 2019;
- l. **Exhibit L:** Copy of an email exchange with Andrew Hirshon, dated April 22, 2019 and April 30, 2019;
- m. **Exhibit M:** Listing Agreement with H&H Properties & Franchises LLC, for the listing of the Dunkin Network, comprising M&W's eleven Dunkin Donuts restaurants and ARM's seven Dunkin Donuts restaurants;
- n. **Exhibit N:** Copies of email exchanges I shared with Santana after this litigation was commenced, asking him to forward copies of prior emails I sent to him in 2019;

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<sup>2</sup> These documents have been redacted to remove personal confidential information.

- o. **Exhibit O:** Copy of Stock Purchase Agreement, dated September 20, 2019;
- p. **Exhibit P:** Deferred Compensation Agreement, dated September 20, 2019;
- q. **Exhibit Q:** Copies of checks received under Deferred Compensation Agreement, in the total amount of \$500,000;<sup>3</sup>
- r. **Exhibit R:** Plattsburgh Taco stock certificates;
- s. **Exhibit S:** Copies of third-party weekly sales report listserv recipients and examples of weekly sales reports emails to third parties;
- t. **Exhibit T:** Documents comprising purported irrevocable proxy, granting David White the controlling vote in M&W;
- u. **Exhibit U:** Correspondence with Andrew Hirshon dated July 2, 2022.

#### Background

3. David White, my father-in-law, commenced this lawsuit against me, together with a number of corporate entities that he owns.

4. In 1996, I married David's daughter, Cheryl Aley.

5. Prior to marrying Cheryl, I had vast experience in the food service and distribution industry, as the owner, manager and operator of various food and vending distribution businesses.

6. In 1997, David asked if I would be interested in joining the White family business by taking over management of restaurants owned and operated by M&W Foods, Inc.

7. M&W primarily operated Dunkin Donuts and Kentucky Fried Chicken restaurants throughout New York State.

8. I took him up on his offer and became the Vice President of Operations of M&W around the year 2000 after David fired his brother in-law, James Mathis. In my capacity as Vice

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<sup>3</sup> These check images have been redacted to protect personal banking information.

President of Operations, I was primarily responsible for managing the Dunkin Donuts and KFC restaurants in M&W's portfolio.

9. I have been employed by only two of the White Companies: M&W and Plattsburgh Taco (*see* Ex. J).<sup>4</sup>

10. With respect to Plattsburgh Taco, my job responsibilities included overseeing and managing Taco Bell in Plattsburgh, NY

11. In 2019, I was a minority shareholder in M&W and Plattsburgh Taco. I owned 2.33% of M&W's shares, while David White owned 48.5% and Cheryl Aley owned 49.17% of the Company's shares, respectively (*see* Ex. O [reciting ownership interests in M&W]). I also owned 31 of Plattsburgh Taco's shares, constituting 25% of total shares. David owned the remaining 75% of Plattsburgh Taco's shares.

12. As David testified in his deposition, I have never been employed by White Management Corp., which for all intents and purposes is a payroll company that manages the payroll for the various restaurants owned and operated by the corporate Plaintiffs in the complaint. Nor have I owned shares in White Management Corp.

13. I am familiar with White Management Corp.'s employee handbook, which contains a section relating to the confidentiality of certain White Management Corp. records, as well as an acknowledgment form for White Management Corp. employees to sign. As Plaintiffs have admitted in this litigation, I never signed the acknowledgment form agreeing to the handbook's confidentiality provisions because I was never employed by White Management Corp.

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<sup>4</sup> I served as a restaurant manager for Albany Plattsburgh-Taco United Corp. for less than a year, between July 1997 and June 1998.

14. In 2005, Cheryl and I formed Aley Restaurant Management, LLC (referred to as “ARM”). Since its inception, ARM was exclusively owned by Cheryl and me. We were the only members in the LLC and the only owners of the units within the LLC.

15. ARM owned and operated seven Dunkin Donuts restaurants throughout New York State.

16. Neither David, nor any of the White Companies, ever had an ownership interest in ARM. David was also never employed by ARM in any capacity.

17. Over the years, I managed all Dunkin Donuts restaurants, including the eleven owned by M&W and the seven owned by ARM. ARM and M&W also shared certain employees, including, but not limited to, Tawnya Hanson, who served as the Director of Operations of M&W, ARM and Plattsburgh Taco.

18. ARM, Plattsburgh Taco and M&W’s financial information was compiled and listed within the same spreadsheets over the years. These spreadsheets commingled financial data pertaining to the debt held by the companies, weekly sales reports for the companies’ restaurants, expense data for the companies’ restaurants, employment compensation and salary.

19. David and I never discussed, much less agreed, to the manner in which ARM, Plattsburgh Taco and M&W’s information could be shared or disclosed by the owners of the respective business entities to which the information belonged.

20. As I testified in my deposition, I never made an oral agreement with David of any kind in relation to the confidentiality of any of the White Companies’ records (Ray Aley Dep. , p. 189).

21. In or around 2017, Cheryl and I decided that it would be within the best interests of

our family to move to Colorado. Knowing that I could no longer actively manage ARM or M&W's Dunkin Donuts restaurants while living out of state, I decided that it would also be in our best interests, and the best interests of the restaurants, if I left my role in the Dunkin Donuts owned by M&W and sold ARM's assets.

22. Thereafter, Cheryl, David and I listed the 18 Dunkin Donuts restaurants collectively owned by ARM and M&W for sale. The broker for the transaction was Andrew Hirshon. The only interested buyer for this Dunkin Network was Ever Santana.

23. I negotiated extensively with Santana for over a year. During that time, information pertaining to M&W and ARM was shared with Santana, including, but not limited to weekly sales reports for the restaurants, profit and loss statements and expense information. Because all information for the companies was jointly maintained within the same documents and spreadsheet, Santana also received information pertaining to Plattsburgh Taco and other White Companies.

24. The transaction with Santana fell through because David (who had the controlling vote in M&W by way of an irrevocable proxy) refused to support it after months of negotiations.

25. At some point in the spring of 2019, family hostilities dramatically increased in the White family. Cheryl and I have never been certain as to the cause of this, but the tension could be cut with a knife.

26. In April 2019, after using his irrevocable proxy to stop the deal with Santana, David demanded that Cheryl and I sell our shares in M&W to him. David also proposed that M&W acquire the Dunkin Donuts restaurants owned and operated by ARM.

27. Our family's move to Colorado was imminent at that time. We knew it would not be feasible to operate the Dunkin Donut restaurants out-of-state. We were out of time. Backed

into a corner, we felt we had no choice but to sell to David.

My Communications with Santana in June and July of 2019

28. I was not optimistic that the deal with David would work. There were several reasons for this. To start, family hostilities were still on the rise, and David in particular was hot-headed and aggressive, fueled by what seemed like bitterness over our move to Colorado. David repeatedly moved the goalposts as we negotiated. Although he initially proposed the sale of our shares in M&W only, he then pressured us into giving up our interests in Taco Bell and KFC restaurants owned by M&W Foods and Plattsburgh Taco. Cheryl and I felt that he was doing so on unfair terms. To put it as simply as possible, after years of running successful restaurants, we were being bullied to give them up for much less than they were worth. Finally, and most importantly, I felt that David was ill-equipped to run a Dunkin Donuts restaurant. He wasn't even remotely involved in the operation of any of the Dunkin franchise restaurants. In light of this, I was skeptical as to whether David would obtain the necessary franchisor approval from Dunkin Donuts Corporate to run the restaurants, including those wholly owned by ARM.

29. Fearing that we would be down the creek with respect to ARM if I didn't have a backup plan, I reached out to Santana via email on June 16.

30. In my June 16 email to Santana, I wrote: “[a]re you still interested in the 7 Dunkins wholly owned by Cheryl and me?” (*see* Ex. C). I further explained, “[i]n confidence please, things have gotten so bad with David White that he is disinherit his daughter (you met Cheryl) and not a single person on her side of the family even texted or called my daughter yesterday to congratulate her (she graduated HS yesterday)” (Ex. C [emphasis added]).

31. In that same email, I proposed, generally, that a potential deal could consist of

Santana becoming a minority partner in ARM only (Ex. C). This was to ensure that Santana would obtain Dunkin franchise approval to own and operate ARM's franchisee restaurant.

32. I never proposed that Santana purchase M&W's eleven Dunkin Donuts restaurants and had no intention of ever doing so. David had already quashed that option with his irrevocable proxy. Instead, my communications with Santana were solely limited to ARM and ARM's seven Dunkin restaurants. This is also confirmed in correspondence with Andrew Hirshon around the same time (*see* Ex. U).

33. Nor did I ever propose that Santana purchase our shares in M&W. In fact, we never discussed M&W at all.

34. After I sent the June 16 email to Santana, on or about June 18, Santana and I had a very brief zoom conference, during which we generally discussed my proposal for Santana to take over my ARM Dunkin restaurants. During that zoom conference, and to the best of my recollection, I believe I agreed to provide Santana with information pertaining to ARM that would be useful to him in determining whether he would be interested in becoming a partner of ARM solely for the purpose of acquiring ARM's Dunkin Donuts restaurants.

35. Following the zoom conference, I attempted to send Santana ARM's debt information, which I had saved on my computer in the form of an excel spreadsheet.

36. When David and the White Companies initially sued me, they claimed that I improperly took the debt spreadsheet from the "White Network," a computer where information pertaining to the White Companies and ARM was stored. But that was untrue. The excel spreadsheet, entitled "2018 12/31/18 debt" was sent to me by Bob Evans, the CFO of White Management, on or about February 17, 2019, with no confidentiality warning or directives (*see*



Ex. A). After Bob sent it to me, I saved it to my own computer drive.

37. I had requested that Bob send me the spreadsheet because I needed to review the information to submit my personal financial statements. Cheryl and I personally guaranteed all loans in favor of M&W and ARM. Thus, the debt did not just belong to M&W and ARM. It belonged to Cheryl and I as well. I had to have access to the companies' debt information in order to submit personal financial statements.

38. The excel spreadsheet did not just contain the debt information relating to ARM and M&W. It also contained tabs reflecting the debt information of the White Companies named in the complaint. As I explained previously, ARM's information was jointly compiled, and regularly maintained, with the White Companies' information.

39. I attempted to scrub the spreadsheet of all debt information pertaining to the White Companies, as that information was irrelevant to my discussions with Santana. First, I changed the information on the first tab of the spreadsheet in an attempt to reflect only ARM's information. Thus, upon comparison, the first page of the spreadsheet that Bob sent me is different from the first page of the spreadsheet I sent to Santana (*compare Ex. A with Ex. D*).

40. I then attempted to delete the other tabs in the spreadsheet, so that it reflected ARM's information only. Believing I did so, I then re-saved the spreadsheet as "2018 ARM debt."

41. By email dated June 18, 2019, I sent the ARM 2018 debt spreadsheet to Santana (*see Ex. D*).

42. On the same day, I accessed another spreadsheet saved to my computer called "M&W Budgeted MGMT Expense 2019" (*see Ex. C*). The spreadsheet depicted weekly and monthly salary and expense information for ARM and M&W's employees, the above store leaders

(District Managers) who worked for both companies. It included my own salary information. I recalled this type of information being sent to Santana when we were originally negotiating the potential deal for all 18 Dunkin Donut restaurants.

43. I emailed the M&W Budgeted MGMT Expense 2019 spreadsheet to Santana by email dated June 18, 2019 (*see* Ex. C). I sent the spreadsheet solely for the purpose of sharing ARM's expense and salary information with Santana. I believed at the time that Santana had already seen the information contained in the spreadsheet, and did not think I was sending Santana anything new. Because of that, I perceived no threat – and certainly intended no harm – to M&W when I sent the spreadsheet. During Santana's deposition in this case, Santana testified that he had, in fact, already received the information I sent to him in the budgeted expense spreadsheet while we were negotiating his potential purchase of the M&W and ARM Dunkin Donuts (Santana Dep., pp. 94-99).

44. I was in a rush when I sent the June 18 emails. We were scheduled to board a flight to bring my daughter to her college orientation at 5:00 a.m. the next morning, and we were behind in packing. I do not recall checking the email once it was sent. I never received a response from Santana.

45. I later sent three other emails to Santana on June 24, July 1 and July 22. Each email contained spreadsheets reflecting weekly sales reports for my seven ARM Dunkin Donuts restaurants, which included: DD Peru, DD Route 9, DD Akwesasne, DD Bark's, DD Good Guys, DD Chateaugay and DD Potsdam 2 (*see* Ex. F, G, H). The weekly sales reports also contained the weekly sales for the eleven Dunkin Donuts restaurants owned by M&W, as well as a KFC restaurant located in Potsdam that was owned by ARM.

46. Like the June 18 emails, I sent the weekly sales report emails to Santana solely for the purpose of determining whether he wanted to acquire my ARM Dunkin Donuts restaurants.

47. I obtained the weekly sales reports from emails previously sent to me by Tawnya Hanson, an ARM/M&W employee. The weekly sales reports were created by Tawnya Hanson and regularly sent to a listserv via email. The listserv contained individuals who worked for the White Companies and ARM, as well as third parties who were not employed by the White Companies or ARM. For instance, the listserv included landlords of Dunkin Donuts restaurants (who separately owned competing fast foods restaurants), advertising agencies, and representatives from the KFC, Taco Bell and Dunkin Donuts franchises (*see* Ex. S). Examples of emails sent to the listserv and the third parties contained on it is also included in Exhibit S. For instance, Exhibit S shows that the weekly sales reports for Dunkin Donuts were shared with individuals like Denise Springer, a field representative for KFC, and LevLane (*Id.*).

48. The weekly sales reports were not anything Santana hadn't already seen before. For almost a year, I sent Santana numerous weekly sales reports containing ARM, M&W and KFC restaurant information while we were negotiating the prior deal for the 18 Dunkin Donuts restaurants, which David eventually quashed.

49. For these reasons, I perceived no threat or potential adverse impact, and intended none, to M&W when I sent Santana the weekly sales reports. I knew that Santana had already received this information for a year (including through the spring of 2019) and that this information was regularly distributed to third parties in the past.

50. Further, I was aware that Santana had signed a nondisclosure agreement with Andrew Hirshon, requiring him to treat the information he received confidentially.

51. Santana never responded to any of the emails I sent him in June and July of 2019. Beyond the zoom conference on June 18, I do not recall speaking to him again about potentially acquiring ARM's Dunkin Donuts restaurants. Instead, Cheryl and I continued negotiations with David.

52. At some point in the summer of 2019, Cheryl informed me that David accused me of sending tons of "confidential" debt information pertaining to the White Companies to Santana. Still operating under the assumption that I deleted the debt spreadsheet of all information pertaining to the White Companies, I immediately told Cheryl that wasn't true.

53. I did not have the opportunity to review the email containing the debt spreadsheet again until this litigation was commenced, because David locked me out of my White Management Outlook and email account that I used to send Santana the debt spreadsheet.

54. After this litigation was commenced, I asked Santana to forward me the June 18 email. He forwarded it, but I was unable to open the attachment. By the looks of the title of the attachment, however, I remarked that "based on the title, I redacted it!" (*see* Ex. N).

55. Only after discovery was exchanged in this case, and I reviewed the native email file, did I realize that I was unsuccessful in scrubbing the excel spreadsheet of the information pertaining to the White Companies. Although I intended to delete that information, and renamed the spreadsheet accordingly as "ARM's debt," debt information pertaining to the White Companies was still on it.

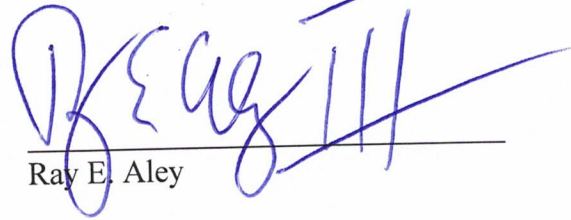
56. As I explained in my deposition, I never believed that I sent the White Companies' debt information to Santana. It was simply an accident and unintentional on my part (Ray Aley Dep., pp. 118-127).

57. David and his son, Brian White, continue to claim that I acted deviously and with ill-intent when I sent the emails to Santana in June and July 2019. That is simply not true. The last thing I wanted was more family drama. There was enough to go around as it was. I was simply trying to get a back-up plan in place for *my own company*, and *my own restaurants*, in the event the deal with David fell through. In the end, though, we sold our M&W shares and ARM's restaurants to *David*.

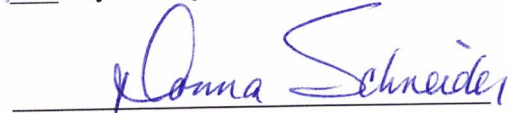
58. I understand that David has admitted that neither he, nor the White Companies, have sustained any financial loss as a result of my emails to Santana. It is also my understanding that David nonetheless claims that I should be forced to forfeit, among other things, \$21,690 in wages I received in 2019 as an employee of M&W and Plattsburgh Taco. To clarify, and as my payment detail reflects, the majority of those wages – \$15,190.88 – constituted bonus pay I earned for the first quarter of 2019, from January 1 through March 31, 2019, as an employee of Plattsburgh Taco (*see Ex. K*).

59. For the reasons, I respectfully request that the Court grant my motion for summary judgment in its entirety.

[Signature Page to Follow]

  
Ray E. Aley

Sworn to before me this  
19<sup>th</sup> day of July, 2022



Notary Public  
State of Colorado

**DONNA SCHNEIDER  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20144009466  
MY COMMISSION EXPIRES FEB 27, 2026**

**CERTIFICATION OF COMPLIANCE WITH UNIFORM CIVIL RULE 202.8-b**

I hereby certify the foregoing Affidavit of Ray E. Aley, exclusive of caption and signature block, comprises 3,574 words, and thus complies with Uniform Civil Rule 202.8-b.

*William S. Nolan*

Dated: July 19, 2022

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WILLIAM S. NOLAN