

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HOME INSTEAD, INC.,

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Plaintiff,

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v.

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§

CIVIL ACTION NO. _____

Q&A HEALTH SERVICES, L.L.C., DFW
COMMUNITY CONNECT, L.L.C., 1ST
DFW COMMUNITY CONNECTION,
INC., 1ST Q&A HEALTH SERVICES,
INC., REGENIA H. BUTLER f/k/a
REGENIA H. ARMSTRONG, and
CHRISTY HAFFORD,

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Defendants.

PLAINTIFF’S COMPLAINT

Home Instead, Inc. files this Complaint, complaining of Q&A Health Services, L.L.C., DFW Community Connect, L.L.C., 1st DFW Community Connection, Inc., 1st Q&A Health Services, Inc., Regenia H. Butler f/k/a Regenia H. Armstrong, and Christy Hafford.

JURISDICTION, PARTIES, VENUE

1. Home Instead, Inc. (“Home Instead”) is a Nebraska corporation with its principal place of business in Omaha, Nebraska and is, therefore, a citizen of the State of Nebraska.
2. Defendant Q&A Health Service, L.L.C. (“Q&A”) is a Texas limited liability company. All members of Q&A are citizens of the State of Texas.
3. Defendant DFW Community Connect, L.L.C. (“DFW”) is a Texas limited liability company. All members of DFW are citizens of State of the Texas.

4. Defendant 1st DFW Community Connection, Inc. ("1st DFW") is a Texas corporation with its principal place of business in Texas and is, therefore, a citizen of the State of Texas.

5. Defendant 1st Q&A Health Services, Inc. ("1st Q&A") is a Texas corporation with its principal place of business in Texas and is, therefore, a citizen of the State of Texas.

6. Defendant Regenia H. Butler f/k/a Regenia H. Armstrong ("Butler") is a citizen of the State of Texas, who currently resides in Grand Prairie, Texas. Upon information and belief, Butler is a member manager of Q&A and DFW, and is an owner of 1st DFW and 1st Q&A.

7. Defendant Christy L. Hafford ("Hafford") is a citizen of the State of Texas, who currently resides in Glenn Heights, Texas. Upon information and belief, Hafford is an owner of 1st DFW.

8. This Court has subject matter jurisdiction over this case pursuant to: (a) 28 U.S.C. § 1332(a)(1) because the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs and is entirely between citizens of different states; and (b) 28 U.S.C. § 1331 and 28 U.S.C. §1338(a) because Home Instead has asserted a cause of action against Defendants for violations of the Federal Lanham Act, 15 U.S.C. § 1125(a).

9. This Court has personal jurisdiction over Defendants because they are all citizens of Texas.

10. Venue is proper pursuant to 28 U.S.C. § 1391(a)(3) because all Defendants are residents of Texas and one or more of the Defendants reside within this judicial district.

ALLEGATIONS COMMON TO ALL COUNTS

Home Instead's Trade Secrets

11. Established in 1994, Home Instead is engaged in the business of providing non-

medical companionship and domestic care services for senior citizens. Home Instead has more than 900 independently owned and operated franchises worldwide, and its franchise network employs nearly 65,000 trained CAREGiverssm. CAREGiverssm are the franchisees' employees who work in clients' homes and actually provide services for the clients.

12. Home Instead has acquired and developed a unique management and business system for non-medical companionship and domestic care services for senior citizens known as the HOME INSTEAD SENIOR CARE[®] system ("System").

13. The System is the result of significant expenditure of time, effort, and resources by Home Instead, and was perfected over time through much trial and error.

14. Home Instead identifies the System by means of certain valid and legally protected federal trademarks, service marks, logos, and other commercial symbols, including, but not limited to, HOME INSTEAD[®] and HOME INSTEAD SENIOR CARE[®] ("Licensed Marks").

15. Home Instead operates pursuant to certain confidential information ("Confidential Information"), including, but not limited to, the methods, techniques, formats, specifications, procedures, plans, information, systems, operations manuals, training programs, customer lists, and knowledge of and experience in the operation and franchising of Home Instead businesses.

16. Home Instead's Confidential Information is the result of significant expenditure of time, effort, and resources by Home Instead, and was perfected over time through much trial and error.

17. Home Instead has continually operated and developed the System and Confidential Information for approximately eighteen (18) years.

18. Because of their value, Home Instead keeps the System and Confidential Information secret from competitors and expends significant effort to ensure that the System and Confidential Information do not become publically known.

19. The System and Confidential Information are not publically available and do not appear on any Home Instead materials, brochures, or internet websites.

20. Due to the competitive advantages the System and the Confidential Information provide Home Instead and its franchisees, the System and Confidential Information derive independent economic value, actual as well as potential, from not being generally known, and not being readily ascertainable, by a person who might gain value from their disclosure or use.

21. To that end, Home Instead employs reasonable safeguards to maintain the confidentiality and secrecy of its System and Confidential Information so that it is not disclosed to the general public or to competitors. These precautions include, but are not limited to, specifically including in the franchise agreements a duty not to disclose any confidential or proprietary information or other trade secrets. The terms of the franchise agreements, including the non-disclosure covenant, are binding on each franchisee as well as its principals and guarantors.

22. Additionally, Home Instead requires that its franchisees adopt and implement procedures prescribed by Home Instead to prevent unauthorized use or disclosure of the Confidential Information, including restrictions on disclosure to employees of the Franchised Business and the use of non-disclosure, non-solicitation, and non-competition clauses in employment agreements with employees who have access to the System and/or Confidential Information.

Home Instead's Agreement with Boyce Enterprises and the Boyces

23. In May of 1999, Home Instead entered into a written franchise agreement (“Initial Agreement”) with Boyce Enterprises, Inc. (“Boyce Enterprises”). At all relevant times, Boyce Enterprises has been owned and operated by Merle and Charles Boyce (collectively, the “Boyces”).

24. The Initial Agreement granted Boyce Enterprises the exclusive right to own and operate a HOME INSTEAD SENIOR CARE[®] franchise within a specified geographic area of Texas for a period of ten (10) years (“Franchised Business”).

25. Based on its understanding that Franchisee had substantially complied with all material provisions of the Initial Agreement, and would continue to comply with the material provisions of a new agreement, on or about May 17, 2009, Home Instead and Boyce Enterprises entered into a renewal franchise agreement (the “Renewal Agreement” and collectively with the Initial Franchise Agreement, the “Agreements”) whereby Boyce Enterprises was granted the exclusive right to continue owning and operating the Franchised Business for an additional ten (10) years.

26. The Boyces personally guaranteed the Agreements. *See* Initial Agreement at p. 36-37; Renewal Agreement at pg. 48-49.

27. The Agreements contain express covenants prohibiting the disclosure of Home Instead's Confidential Information or use of the Confidential Information in any other business. *See* ¶ 7 of the Initial Agreement; ¶ 6 of the Renewal Agreement.

28. The Agreements also contain in-term non-competition covenants. For example, the in-term non-competition covenant in the Renewal Agreement expressly states that during the term of the Renewal Agreement, Franchisee shall not:

(1) Divert, or attempt to convert any business or customer of any Franchised Business to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the good will associated with the Licensed Marks and the System:

....

(3) Own, maintain, operate, engage in, or have any financial or beneficial interest (including any type of interest in corporations, partnerships, limited liability companies, trusts, unincorporated associations, joint ventures or entities) or advise, assist or make loans to any Competitive Business (as defined below). For the purposes of this Franchise Agreement, a “Competitive Business” is defined as one that is of a character and concept that looks like, copies, imitates, or operates in any manner like a HOME INSTEAD SENIOR CARE Business, including but not limited to, a business that provides similar companionship and domestic care services as a HOME INSTEAD SENIOR CARE Business, which may include, but are not limited to, one or more of the following: light housekeeping, meal preparation, errands, incidental transportation, assistance in laundry, reminders to take medications (both prescription and over-the-counter), assistance in grooming, bathing, personal hygiene, assistance with problems such as incontinence and other personal care services and other similar activities for the benefit of the customer as may be further defined by Franchisor during the Term of this Franchise Agreement.

See ¶ 6 of the Renewal Agreement. See also ¶ 7 of the Initial Agreement.

29. The Agreements contain post-termination covenants providing, among other things, that Franchisee must: (a) “immediately and permanently cease to use, in any manner whatsoever, any confidential methods, computer software, procedures and techniques association with the System”; (b) “immediately deliver to [Home Instead] all Operating Manuals, software licensed by Franchisor, records, files, instructions, correspondence, all materials related to operating the [Franchised Business], including, without limitation, agreements, invoices, and any and all other materials relating to the operation of the [Franchised Business] in [Franchisee’s] possession or control and all copies (all of which are acknowledged to be [Home Instead’s] property), and must not retain any copy or record of any of the foregoing”, (c) comply with the restrictions on disclosure of Confidential Information contained in the Agreements, as described

above; and (d) comply with the non-competition covenants contained in the Agreements. *See* ¶ 17 of the Agreements.

30. The Agreements also contain post-term non-competition covenants that survive the expiration, termination, or sale of the Franchised Business. The post-term non-competition covenant in the Renewal Agreement provides, among other things, that for a period of two (2) years following the expiration, termination, or transfer of Franchisee's interest in the Renewal Agreement, Franchisee cannot:

Own, maintain, operate, engage in, or have any financial or beneficial interest (including the interest in corporations, partnerships, limited liability companies, trusts, unincorporated association or joint ventures) advise, assist or make loans to any Competitive Business ... that is located within or that is intended to be located within the Exclusive Area granted Franchisee or within the Exclusive Area granted a franchisee within the System or within a seventy-five (75) mile radius of the premises of the Franchised Business granted by this Franchise Agreement or within a seventy-five (75) mile radius of the location of any existing HOME INSTEAD SENIOR CARE franchise, any HOME INSTEAD SENIOR CARE franchise under construction or any planned HOME INSTEAD SENIOR CARE franchise where land has been purchased or a lease has been executed by Franchisor, its affiliate or any franchisee.

See Renewal Agreement, ¶ 17(c). *See also* Initial Agreement, ¶ 17(c).

31. In 2010, Franchisee requested authorization from Home Instead to sell the Franchised Business and transfer their interest in the Renewal Agreement.

32. Home Instead approved the transfer based on, among other things, its understanding that Franchisee was in full compliance with the Renewal Agreement, including the non-disclosure and non-competition covenants.

33. Home Instead also required that certain conditions be met before or concurrently with the effective date of any sale. Included among the conditions was a requirement that Franchisee execute a general release in a form satisfactory to Home Instead.

34. Effective October 15, 2010, Boyce Enterprises sold the Franchised Business to a third-party.

35. In connection with the sale of the Franchised Business, the Boyces signed a document entitled "General Release," both in their capacity as Guarantors and on behalf of Boyce Enterprises. The General Release incorporated the post-termination covenants from the Renewal Agreement and also contains a non-competition covenant.

Defendants' Relationship with the Boyces

36. Merle Boyce, Butler, and Hafford are sisters.

37. In December 2010, approximately two months after Franchisee sold the Franchised Business, Home Instead received a report that the Boyces were involved with businesses that offered non-medical services similar to those offered by Home Instead franchisees in violation of their non-competition covenants with Home Instead.

38. Upon receipt of the report, Home Instead began investigating the Boyces' activities. Home Instead discovered that the Boyces have the following beneficial and/or financial interest in Defendants Q&A, DFW, 1st DFW, and 1st Q&A, all of which were formed during the time period when the Boyces owned and operated their Home Instead Franchised Business:

- a. Q&A: According to the Articles of Organization, which were filed in November 2000, Merle Boyce is the organizer and one of two member managers of Q&A. Butler is the registered agent and other member manager.
- b. DFW: According to the Articles of Organization, which were filed in May 2004, Merle Boyce is the organizer and registered agent, and the Boyces, Butler, and Gregory Davis were the initial member managers for DFW.
- c. 1st DFW: According to the Articles of Incorporation, which were filed in May 2009, approximately one week before the Boyces executed the Renewal Agreement, Merle Boyce is the registered agent; and the Boyces,

Butler, and Hafford were the initial owners and members of the board of directors.

- d. 1st Q&A: According to the Articles of Incorporation, which were filed on the same date as those for 1st DFW, Merle Boyce is the registered agent, and the Boyces and Butler were the initial owners and members of the board of directors.

39. A business operating under the name Q&A Health Services has been owned and operated by Q&A and/or 1st Q&A since approximately 2002 to present. Prior to that time, Q&A Health Services was owned and operated by Butler doing business as Q&A Health Services.

40. A business operating under the name Community Connection Home Health (“CCHH”) has been owned and operated by 1st DFW and/or DFW since approximately December 2009. Prior to that time, CCHH was owned and operated by Christy Hafford doing business as CCHH.

41. Like Home Instead, Q&A Health Services and CCHH provide non-medical companionship and home care services for senior citizens such as meal preparation, laundry assistance, light housekeeping, errands, and medication reminders.

42. Both Q&A Health Services and CCHH are operated within seventy-five (75) miles from where the Franchised Business was located and within seventy-five (75) miles of a HOME INSTEAD SENIOR CARE® franchisee.

43. Butler, Hafford, and Merle Boyce are actively involved in the day-to-day operation of Q&A Health Services and CCHH.

44. The Boyces have advertised for Q&A Health Services on their personal vehicles, and Charles Boyce leased a personal vehicle to Q&A for a minimum of \$12,000.

45. From 2004 through 2011, Q&A Health Services and CCHH paid the Boyces \$752,234.26 in wages.

46. Since March 1, 2011, the offices for Q&A Health Services and CCHH have been maintained in commercial property located at 1615 Osprey, Desoto, Texas, 75115. Boyce Enterprises is the owner of this commercial property.

Diversion of Clients from the Franchised Business to Q&A Health Services

47. The Texas Department of Aging and Disability Services (“DADS”) provides various long-term services and support for the aging, and for people with intellectual and developmental disabilities. DADS also licenses and regulates providers of these services. Included among the many services offered by DADS is the Primary Home Care (“PHC”) and Family Care (“FC”) programs.

48. The PHC program is a nontechnical, medically related personal care service provided to adults whose health problems cause them to be functionally limited in performing activities of daily living, according to a statement of medical need.

49. The FC program provides nonskilled, nontechnical attendant care services for eligible adults who are functionally limited in performing activities of daily living. PHC provider agencies have the option of providing these services.

50. Services provided under the PHC/FC programs include home management such as housekeeping, laundering, and shopping, and personal care such as meal preparation, grooming, and dressing.

51. To become a PHC/FC provider, an entity must obtain a Home and Community Support Services Agency (“HCSSA”) license to provide personal assistance services.

52. During the term of the Initial Agreement, Boyce Enterprises, 1st DFW, and Q&A each obtained HCSSA licenses to perform, among other things, personal care services.

53. During the term of the Initial Agreement, Boyce Enterprises, 1st DFW, and Q&A each executed contracts with DADS to perform PHC/FC services.

54. In approximately April 2007, Franchisee transferred to Q&A service of fourteen (14) clients who had been receiving services from the Franchisee under Boyce Enterprises PHC/FC contract with DADS.

55. Boyce Enterprises then voluntarily terminated its contract with DADS.

56. Q&A Health Services also provided services to eleven (11) other clients who had obtained services from the Franchised Business.

57. The services Q&A provided to these diverted clients fit within Home Instead's definition of authorized "non-medical" services.

Defendants' Use of the Franchised Businesses' Employees and Home Instead's Trade Secrets to Operate Q&A Health Services and CCHH

58. At all times material to this dispute, Home Instead required its franchisees to maintain certain information and records on a proprietary database called the Business Operating System Software ("B.O.S.S.").

59. Among other things, franchisees used B.O.S.S. to schedule CAREGiverssm and clients, record CAREGiversm hours, and maintain logs to track communications with or concerning its CAREGiverssm.

60. Home Instead also requires that each CAREGiversm successfully complete certain proprietary training.

61. Defendants used at least seventeen (17) of Franchisee's CAREGiverssm to provide services for clients of CCHH and forty-nine (49) of Franchisee's CAREGiverssm to provide services for clients of Q&A Health Services from 2008 through 2010.

62. From June 1999 through October 2010, almost the entire duration of the Agreements, Butler was an employee of the Franchised Business.

63. While employed by Franchisee, Butler had administrative responsibility, served as a CAREGiversm for multiple clients, including a client that was transferred to Q&A, and had access to Home Instead's trade secrets including, without limitation, client information, the operations manual, training materials, and B.O.S.S.

64. Franchisee and Defendants also used the Franchised Business' office staff and Home Instead's proprietary software, B.O.S.S., to track CAREGiverssm that were also working for Q&A.

65. At the same time as Butler was employed by Franchisee, she, the Boyces, and Hafford owned and operated Q&A Health Services and CCHH in direct competition with the Franchised Business.

66. Upon information and belief, Defendants kept a copy of Home Instead's proprietary and confidential Operations Manual, or certain sections of the Operations Manual, to use in connection with Q&A Health Services and/or CCHH.

FIRST CLAIM FOR RELIEF

Civil Conspiracy

67. Home Instead incorporates paragraphs 1 through 66 as if set out in their entirety herein.

68. Defendants are aware, or reasonably should have been aware, of the existence and terms of the Agreements, Guaranty, and General Release, and the Franchisee's franchise relationship with Home Instead because of the familial relationship between the Boyces, Butler, and Hafford; the Boyces, Butler, and Hafford owned and operated Q&A Health Services and

CCHH; Butler was employed by Franchisee at the same time that she, Hafford, and the Boyces owned and operated Q&A Health Services and CCHH; and the Boyces were employees of Q&A Health Services and CCHH at the same time that the Boyces owned and operated the Franchised Business and the Boyces, Butler, and Hafford owned and operated Q&A Health Services and CCHH.

69. Defendants developed a scheme to compete with Home Instead's franchised businesses, misappropriate Home Instead's trade secrets, and assist Franchisee to evade Franchisee's contractual obligations to Home Instead.

70. Defendants' actions were undertaken in secret, pursuant to a conspiracy to unjustly enrich themselves and deprive Home Instead of the benefit of the Agreements, Guaranty, General Release, and the use and enjoyment of the benefits of its System and Confidential Information.

71. As a result of Defendants' actions, Home Instead has sustained damages in an amount to be proved at trial.

WHEREFORE, Home Instead requests that the Court grant the relief requested in the Prayer for Relief below.

SECOND CLAIM FOR RELIEF

Tortious Interference

72. Home Instead incorporates paragraphs 1 through 66 as if set out in their entirety herein.

73. Franchisees are parties to written contracts with Home Instead in the form of the Agreements, Guaranty, and General Release.

74. Defendants are aware, or reasonably should have been aware, of the existence and terms of the Agreements, Guaranty, and General Release, and the Franchisee's franchise relationship with Home Instead because of the familial relationship between the Boyces, Butler, and Hafford; the Boyces, Butler, and Hafford owned and operated Q&A Health Services and CCHH; Butler was employed by Franchisee at the same time that she, Hafford, and the Boyces owned and operated Q&A Health Services and CCHH; and the Boyces were employees of Q&A Health Services and CCHH at the same time that the Boyces owned and operated the Franchised Business and the Boyces, Butler, and Hafford owned and operated Q&A Health Services and CCHH.

75. Defendants are tortiously interfering with Home Instead's contractual relationship with Franchisee by owning and operating competing businesses along with the Franchisees and using Home Instead's trade secrets, which were wrongfully disclosed by Franchisee, with the intent to evade and interfere with Home Instead's rights under the terms of the Agreements, Guaranty, and General Release.

76. Defendants' tortious interference with Home Instead's contractual rights is without justification.

77. As a result of Defendants' tortious interference with Home Instead's contractual rights, Home Instead has been damaged and will continue to suffer damages.

WHEREFORE, Home Instead requests that the Court grant the relief requested in the Prayer for Relief below.

THIRD CLAIM FOR RELIEF

Aiding and Abetting

78. Home Instead incorporates paragraphs 1 through 66 as if set out in their entirety herein.

79. Through the actions described above, Defendants aided and abetted Franchisee to breach the Agreements, Guaranty, and General Release, which has proximately caused damage to Home Instead.

WHEREFORE, Home Instead requests that the Court grant the relief requested in the Prayer for Relief below.

FOURTH CLAIM FOR RELIEF

Misappropriation of Trade Secrets

80. Home Instead incorporates paragraphs 1 through 66 as if set out in their entirety herein.

81. Home Instead shared its System and Confidential Information with Franchisee from 1999 through 2010 while Franchisee was engaged in a position of trust and confidence, solely to enable Franchisee to operate the Franchised Business.

82. The System and Confidential Information constitute trade secrets because they derive independent economic value from not being generally available or known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use. The System and Confidential Information are and have been the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

83. Home Instead has a right to use and enjoy the benefits of the System and Confidential Information by reason of Home Instead's development and ownership of the same.

84. Franchisee had a duty, and continues to have a duty, to maintain the secrecy of Home Instead's trade secrets, including the System and Confidential Information.

85. In 2011, Home Instead first discovered that Franchisee disclosed Home Instead's trade secrets to Defendants.

86. At the time Franchisee disclosed Home Instead's trade secrets to Defendants, Defendants knew or had reason to know that Franchisee had a duty to maintain the secrecy of Home Instead's trade secrets, and that the circumstances under which Home Instead disclosed the trade secrets to Franchisee made it inequitable and unjust for Franchisee to disclose them to a competitor or to use them to Home Instead's prejudice.

87. Defendants have misappropriated Home Instead's trade secrets in that Defendants have relied upon and used, or inevitably will rely upon or use, them in connection with the operation of Q&A Health Services and/or CCHH, both of which are competitive businesses.

88. Defendants' conduct, unless enjoined, will cause Home Instead irreparable injury, including but not limited to, the loss of the benefits of developing and maintaining its System and Confidential Information. Defendants should not be permitted to improperly use Home Instead's trade secrets for the benefit of themselves.

89. Home Instead has no adequate remedy at law to redress Defendants' ongoing misappropriation of its trade secrets, and is entitled to injunctive relief to prevent future misappropriation of Home Instead's trade secrets.

90. Additionally, as a direct and proximate result of each of the wrongful actions described herein, Defendants have been unjustly enriched and Home Instead has suffered actual damage to its business, including loss of goodwill, loss of client relationships, and diminution of its competitive position in the marketplace, as well as other damages that cannot be presently

determined and/or cannot be fully qualified. Home Instead therefore is entitled to damages including Home Instead's actual loss, any unjust enrichment caused by Defendants' misappropriation, or imposition of a reasonable royalty for Defendants' unauthorized use of Home Instead's trade secrets.

91. Upon information and belief, Defendants' conduct is willful, and because of their reckless indifference to Home Instead's rights, punitive or exemplary damages against Defendants are appropriate.

WHEREFORE, Home Instead requests that the Court grant the relief requested in the Prayer for Relief below.

FIFTH CLAIM FOR RELIEF

Unfair Competition and/or Deceptive Trade Practices

92. Home Instead incorporates by reference the allegations contained in Paragraphs 1 through 66 as if fully set forth herein.

93. Defendants have gained an unfair competitive advantage in the non-medical companionship and domestic care services market by utilizing Home Instead's unique System in connection with competitive businesses, using Home Instead's trade secrets in connection with competitive businesses, using the good will associated with Home Instead to attract clients, who they then diverted to Q&A Health Services, and/or by passing off its services as those of Home Instead or causing a likelihood of confusion or misunderstanding as to the source of services.

94. By engaging in the conduct described above, Defendants have violated, *inter alia*, the common law and/or the Nebraska Uniform Deceptive Trade Practices Act, NEB. REV. STAT. § 87-301, *et seq.*

95. Defendants' willful and deceptive acts and conduct, as alleged above, has damaged and will continue to damage Home Instead and has resulted, or will result, in losses to Home Instead and an illicit gain of profit to Defendants in an amount which is unknown at the present time. Home Instead is therefore entitled to injunctive relief and an award of attorneys fees.

WHEREFORE, Home Instead requests that the Court grant the relief requested in the Prayer for Relief below.

SIXTH CLAIM FOR RELIEF

*Violations of Lanham Act
False Designation of Origin by "Passing Off"*

96. Home Instead incorporates paragraphs 1 through 66 as if set out in their entirety herein.

97. Home Instead is the owner of certain valid and legally protected Licensed Marks.

98. Defendants had actual notice of Home Instead's Licensed Marks.

99. The Lanham Act, 15 U.S.C. § 1125(a)(1), creates civil liability to any person:

who, on or in connection with any ... services ... uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which ... is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person.

100. During the term of the Agreements, Franchisee entered into contracts as a HOME INSTEAD SENIOR CARE[®] business with its clients, whereby they represented to clients that they would receive services from HOME INSTEAD SENIOR CARE[®].

101. In 2007, Franchisee transferred services for fourteen (14) of the Franchised Business' clients to Q&A.

102. Additionally, Franchisee diverted service of at least eleven (11) other clients to Q&A who had previously received services from Franchisee or who were simultaneously receiving services from Franchisee and Q&A.

103. Q&A and Butler knowingly agreed to provide services, and did provide services, to the clients that were transferred and diverted from the Franchised Business.

104. Upon information and belief, the clients received the same or similar services from Q&A as they had been receiving from Franchisee.

105. Additionally, many of the clients continued to receive services from the same CAREGiversm after the transfer to Q&A.

106. Upon information and belief, Q&A and Butler did not inform the clients that they were no longer receiving services from the HOME INSTEAD SENIOR CARE[®] business but were, instead, receiving services from Q&A.

107. By failing to inform the clients that the services would no longer be provided by the HOME INSTEAD SENIOR CARE[®] business, and by continuing to provide the same or similar services, often through the same CAREGiverssm from whom the clients had previously received services through the HOME INSTEAD SENIOR CARE[®] business, Q&A and Butler caused a likelihood of confusion as to the origin of the services in violation of 15 U.S.C. § 1125(a)(1).

108. Pursuant to 15 U.S.C. § 1117(a), Home Instead is entitled to recover, at a minimum, (1) Q&A's profits, (2) damages sustained by Home Instead, and (3) the costs of the action.

109. Additionally, because Q&A and Butler intentionally and willfully passed off Q&A's services as those provided by a Home Instead Senior Care business, which is an internationally recognized provider of non-medical companionship and domestic care services, this is the type of "exceptional" case that justifies awarding Home Instead its reasonable attorney fees. *See* 25 U.S.C. § 1117.

WHEREFORE, Home Instead requests that the Court grant the relief requested in the Prayer for Relief below.

PRAYER FOR RELIEF

WHEREFORE Home Instead prays for the following relief:

I. Preliminary and permanent injunctions against Defendants and all other persons or entities acting in concert or participation with them to: (a) prevent further interference in the contractual relationship between Franchisee and Home Instead; (b) permanently enjoin Defendants from misappropriating Home Instead's trade secrets; and (c) require Defendants to return to Home Instead all copies, in whatever form, of any confidential and proprietary information and trade secrets of Home Instead that are in their possession, custody, or control;

II. A judgment in favor of Home Instead and against Defendants, awarding: (a) compensatory, exemplary, punitive, and/or all other damages to which Home Instead is entitled, the exact amount of which to be proved at trial; (b) divesting Defendants of all profits, gains, and unjust enrichment caused by their wrongdoing as herein alleged; and/or (c) imposing a reasonable royalty for Defendants' unauthorized use of Home Instead's trade secrets;

III. A judgment in favor of Home Instead and against Q&A and Butler, awarding Home Instead all profits wrongfully earned in violation of the Lanham Act, damages sustained by Home Instead, the costs of this action, and reasonable attorney's fees.

IV. For the purposes of determining amounts due and owing to Home Instead, an accounting of Defendants' revenue, earnings, and profits from their operation of Q&A Health Services and CCHH;

V. A judgment awarding Home Instead costs, disbursements, costs of investigation, all interest provided by law, and attorneys' fees incurred in this action; and

VI. Any and all other relief this Court deems just, equitable and proper.

JURY DEMAND AND PLACE OF TRIAL

Home Instead hereby demands a jury trial on all issues triable to a jury and further requests that the trial take place in Dallas, Texas.

Dated: August 6, 2012

Respectfully submitted,

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