

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

TRUMP OLD POST OFFICE, LLC,)	Civil Action No: 2015 CA 006624 B
)	
Plaintiff,)	
)	Judge: Michael O’Keefe
v.)	Next Event: Initial Conference
)	12/11/15 at 9:30 a.m.
TOPO ATRIO, LLC, <i>et al.</i> ,)	
)	
Defendants.)	
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ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS

Defendants Topo Atrio LLC (“Topo Atrio”) and ThinkFoodGroup LLC (“ThinkFoodGroup,” and collectively “Defendants”), by and through undersigned counsel, answer the allegations of Plaintiff Trump Old Post Office, LLC’s (“Trump LLC”) Complaint as set forth below. Defendants deny all allegations not expressly admitted.

JURISDICTION AND VENUE

1. Defendants admit the allegations in Paragraph 1.
2. Defendants admit the allegations in Paragraph 2.
3. Defendants admit the allegations in Paragraph 3.

PARTIES

4. Defendants are without sufficient information to form a belief as to the truth of the allegations in Paragraph 4, and therefore deny them.
5. Defendants admit the allegations in Paragraph 5 except that they deny the Topo Atrio has Washington, D.C. members.
6. Defendants admit the allegations in Paragraph 6.

FACTS

7. Defendants are without sufficient information to form a belief as to the truth of the allegations in Paragraph 7, and therefore deny them.

8. In response to Paragraph 8, Defendants admit that Trump LLC has been working to renovate the Old Post Office to turn it into a Trump International Hotel. Defendants are without sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 8, and therefore deny them.

9. In response to the first sentence of Paragraph 9, Defendants admit that on or about November 19, 2014, Topo Atrio and Trump LLC entered into a sublease (as amended, the “Sublease”), the language of which speaks for itself. Defendants deny the remaining allegations in the first sentence of Paragraph 9. The second sentence of Paragraph 9 contains a definitional statement to which no response is necessary. To the extent a response is necessary, Defendants deny the allegations in that sentence.

10. Defendants admit the allegations of Paragraph 10.

11. To the extent that the allegations in Paragraph 11 state a legal conclusion, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 11 except as expressly admitted as follows. Defendants admit that, on or about November 19, 2014, ThinkFoodGroup executed a guaranty (“Guaranty”), the language of which speaks for itself.

12. To the extent that the allegations in Paragraph 12 state a legal conclusion, no response is required. To the extent that a response is required, Defendants state that the language of the Sublease speaks for itself, and Defendants deny the remaining allegations in Paragraph 12, including Trump LLC’s characterization of the Sublease.

13. Defendants admit that Paragraph 13 of the Complaint quotes out of context a portion of the Sublease, the language of which speaks for itself. Defendants deny the remaining allegations of Paragraph 13.

14. To the extent that the allegations in Paragraph 14 state a legal conclusion, no response is required. To the extent that a response is required, Defendants state that the language of the Sublease speaks for itself, and Defendants deny the remaining allegations in Paragraph 14, including Trump LLC's characterization of the Sublease.

15. Defendants admit that Paragraph 15 of the Complaint quotes out of context a portion of the Sublease, the language of which speaks for itself. Defendants deny the remaining allegations of Paragraph 15.

16. Defendants admit that Paragraph 16 of the Complaint quotes out of context a portion of the Sublease, the language of which speaks for itself. Defendants deny the remaining allegations of Paragraph 16.

17. To the extent that the allegations in Paragraph 17 state a legal conclusion, no response is required. To the extent that a response is required, Defendants state that the language of the Sublease speaks for itself, and Defendants deny the remaining allegations in Paragraph 17, including Trump LLC's characterization of the Sublease.

18. Defendants admit that Paragraph 18 of the Complaint quotes out of context a portion of the Sublease, the language of which speaks for itself. Defendants deny the remaining allegations of Paragraph 18.

19. To the extent that the allegations in Paragraph 19 state a legal conclusion, no response is required. To the extent that a response is required, Defendants state that the language of the Sublease speaks for itself, and Defendants deny the remaining allegations in Paragraph 19,

including Trump LLC's characterization of the Sublease. Defendants specifically note that Paragraph 19 incorrectly presents a sentence fragment from Section 22 of the Sublease as an entire sentence.

20. To the extent that the allegations in Paragraph 20 state a legal conclusion, no response is required. To the extent that a response is required, Defendants state that the language of the Sublease speaks for itself, and Defendants deny the remaining allegations in Paragraph 20, including Trump LLC's characterization of the Sublease.

21. To the extent that the allegations in Paragraph 21 state a legal conclusion, no response is required. To the extent that a response is required, Defendants state that the language of the Sublease speaks for itself, and Defendants deny the remaining allegations in Paragraph 21, including Trump LLC's characterization of the Sublease.

22. To the extent that the allegations in Paragraph 22 state a legal conclusion, no response is required. To the extent that a response is required, Defendants state that the language of the Sublease speaks for itself, and Defendants deny the remaining allegations in Paragraph 22, including Trump LLC's characterization of the Sublease.

23. To the extent that the allegations in Paragraph 23 state a legal conclusion, no response is required. To the extent that a response is required, Defendants state that the language of the Sublease speaks for itself, and Defendants deny the remaining allegations in Paragraph 23, including Trump LLC's characterization of the Sublease.

24. To the extent that the allegations in Paragraph 24 state a legal conclusion, no response is required. To the extent that a response is required, Defendants state that the language of the Sublease speaks for itself, and Defendants deny the remaining allegations in Paragraph 24, including Trump LLC's characterization of the Sublease.

25. To the extent that the allegations in Paragraph 25 state a legal conclusion, no response is required. To the extent that a response is required, Defendants state that the language of the Sublease speaks for itself, and Defendants deny the remaining allegations in Paragraph 25, including Trump LLC's characterization of the Sublease.

26. To the extent that the allegations in Paragraph 26 state a legal conclusion, no response is required. To the extent that a response is required, Defendants state that the language of the Guaranty speaks for itself, and Defendants deny the remaining allegations in Paragraph 26, including Trump LLC's characterization of the Guaranty.

27. To the extent that the allegations in Paragraph 27 state a legal conclusion, no response is required. To the extent that a response is required, Defendants state that the language of the Guaranty speaks for itself, and Defendants deny the remaining allegations in Paragraph 27, including Trump LLC's characterization of the Guaranty.

28. To the extent that the allegations in Paragraph 28 state a legal conclusion, no response is required. To the extent that a response is required, Defendants state that the language of the Guaranty speaks for itself, and Defendants deny the remaining allegations in Paragraph 28, including Trump LLC's characterization of the Guaranty.

29. To the extent that the allegations in Paragraph 29 state a legal conclusion, no response is required. To the extent that a response is required, Defendants state that the language of the Guaranty speaks for itself, and Defendants deny the remaining allegations in Paragraph 29, including Trump LLC's characterization of the Guaranty.

30. To the extent that the allegations in the first sentence of Paragraph 30 state a legal conclusion, no response is required. To the extent a response is required, Defendants state that the Sublease speaks for itself, deny the remaining allegations in that sentence, and specifically

note that the parties postponed the deadline for the “90% Completed Construction Documents” to a date after June 29, 2015. With respect to the second sentence of Paragraph 30, Defendants admit that, as the deadline was not June 29, 2015, Topo Atrio did not deliver the “90% Completed Construction Documents” to Trump LLC by that date. Further, by June 29, 2015, Trump LLC was in breach of the Sublease and, pending cure of the breach, had forfeited its rights thereunder.

31. In response to the first sentence of Paragraph 31, Defendants admit that a July 8, 2015 Washington Post article quoted Mr. Andrés as saying that Trump’s statements disparaging immigrants made it impossible for Mr. Andrés and his company to move forward with opening a successful Spanish restaurant. Defendants deny the remaining allegations in that sentence. The second sentence of Paragraph 31 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in that sentence.

32. Defendants deny the allegations in Paragraph 32.

33. In response to Paragraph 33, Defendants admit that in January 2015 Trump LLC issued a press release announcing the partnership with Mr. Andrés, and admit that Paragraph 33 quotes a portion of the press release drafted by Trump LLC. Defendants further state that the press release speaks for itself, deny the remaining allegations in Paragraph 33, and specifically deny Trump LLC’s characterization of that document.

34. In response to Paragraph 34, Defendants admit that Trump LLC sent Defendants a document titled “Notice of Default” and that such notice was dated July 17, 2015. Defendants further state that the “Notice of Default” speaks for itself, and deny the remaining allegations in Paragraph 34. Defendants further state that they did not receive the “Notice of Default” until on

or about July 20, 2015, and specifically deny that Topo Atrio was actually in default at the time of receipt.

35. In response to Paragraph 35, Defendants admit that, on July 17, 2015, a representative of Defendants sent Trump LLC a notice of default. Defendants further respond that the notice of default speaks for itself, and deny the remaining allegations in Paragraph 35.

36. In response to Paragraph 36, Defendants state that the July 17, 2015 notice of default sent to Trump LLC speaks for itself, and deny the remaining allegations in Paragraph 36.

37. In response to the first sentence of Paragraph 37, Defendants state that the notice of default speaks for itself, and deny the remaining allegations in that sentence. The second and third sentences of Paragraph 37 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in those sentences.

38. The first sentence of Paragraph 38 states a legal conclusion to which no response is required. To the extent that a response is required, Defendants deny the allegations in that sentence as well as those in the second sentence of Paragraph 38 on grounds that, as set forth below, the Sublease forbade Trump from prejudicing Topo Atrio's ability to receive the benefits of the agreement. The third sentence of Paragraph 38 states a legal conclusion to which no response is necessary. To the extent a response is necessary, Defendants state that the Sublease speaks for itself, and deny the remaining allegations in that sentence.

39. In response to Paragraph 39, Defendants admit that, on or about July 20, 2015, they received a letter from Trump LLC that purportedly rejected their default notice. Defendants further state that the letter speaks for itself, and they deny the remaining allegations in that Paragraph.

40. In response to Paragraph 40, Defendants admit that, on July 28, 2015, a representative of Topo Atrio sent a letter to Trump LLC, and admit that Paragraph 40 quotes out of context a portion of that letter. Defendants further state that the letter speaks for itself, and deny the remaining allegations in Paragraph 40.

41. In response to Paragraph 41, Defendants admit that, on or about July 28, 2015, they received a letter from Trump LLC, and admit that Paragraph 41 quotes out of context a portion of that letter. Defendants further state that the letter speaks for itself, and they deny the remaining allegations in Paragraph 41.

42. Defendants deny the allegations of Paragraph 42 of the Complaint.

43. In response to Paragraph 43 of the Complaint, Defendants admit that, on or about July 31, 2015, ThinkFoodGroup received a letter from Trump LLC titled “Landlord’s Cancellation Notice.” Defendants further state that the letter speaks for itself, and they deny the remaining allegations in Paragraph 43, including the suggestion that Topo Atrio was in default.

44. Defendants deny the allegations in the first sentence of Paragraph 44, and specifically deny the suggestion that Mr. Andrés acted improperly in this matter. Defendants lack information sufficient to form a belief as to the remaining allegations of Paragraph 44, and therefore deny them.

45. Defendants deny the allegations in Paragraph 45.

46. Defendants deny the allegations in Paragraph 46.

COUNT I
(Breach of Sublease)

47. In response to Paragraph 47, Defendants restate and incorporate by reference its responses to the allegations in Paragraphs 1-46 as if fully set forth herein.

48. In response to Paragraph 48, Defendants admit that the Sublease was supported by consideration and negotiated at arm's length. As detailed below, Trump LLP's actions have breached the Sublease, rendering it unenforceable or rendered it unenforceable under principles of equity.

49. To the extent that the allegations in Paragraph 49 state a legal conclusion, no response is required. To the extent that a response is required, Defendants state that the language of the Sublease speaks for itself, and Defendants deny the remaining allegations in Paragraph 49, including Trump LLC's characterization of the Sublease.

50. Defendants deny the allegations in Paragraph 50.

51. Defendants deny the allegations in Paragraph 51.

COUNT II
(Action on Guarantee)

52. In response to Paragraph 52, Defendants restate and incorporate by reference its responses to the allegations in Paragraphs 1-51 as if fully set forth herein.

53. In response to Paragraph 53, Defendants admit that the Guaranty is an enforceable contract, supported by consideration, and negotiated at arm's length. Defendants deny the remaining allegations in Paragraph 53.

54. Defendants deny the allegations in Paragraph 54, and specifically deny the suggestion that Topo Atrio acted improperly in this matter.

55. Defendants deny the allegations in Paragraph 55 of the Complaint.

COUNT III
(Attorneys' Fees)

56. In response to Paragraph 56, Defendants restate and incorporate by reference its responses to the allegations in Paragraphs 1-55 as if fully set forth herein.

57. Defendants admit that Paragraph 57 of the Complaint quotes out of context a portion of the Sublease, the language of which speaks for itself.

58. To the extent that the allegations in Paragraph 58 state a legal conclusion, no response is required. To the extent that a response is required, Defendants state that the language of the Guaranty speaks for itself, and Defendants deny the remaining allegations in Paragraph 58, including Trump LLC's characterization of the Guaranty.

59. Defendants are without sufficient information to form a belief as to the truth of the allegations in Paragraph 59, and therefore deny them.

60. Defendants admit that Trump LLC has sought a monetary judgment for its reasonable attorneys' fees and other costs incurred in this action. Defendants deny the remaining allegations in Paragraph 60, and specifically deny the suggestion that Trump LLC is entitled to any relief in this action.

RESPONSE TO PRAYER FOR RELIEF

Although a response to the Prayer for Relief is not required, Defendants deny that Trump LLC is entitled to any of the relief requested, including damages, attorneys' fees, costs, or any other relief of any kind.

RESERVATION OF RIGHTS

The responses in this Answer and the Affirmative Defenses and Counterclaims set forth below are based on the information currently known to Defendants. Defendants reserve the right to amend this Answer and its Affirmative Defenses and Counterclaims to the extent they learn of new or additional information during discovery or otherwise. Any allegation in Trump LLC's Complaint that is not expressly admitted is denied.

AFFIRMATIVE DEFENSES

Further answering the Complaint, pursuant to SCR Civil 8(c), Defendants assert the following affirmative defenses, and in asserting such defenses do not concede that they bear the burden of proof as to any of them. Defendants reserve the right to supplement or amend this Answer, if necessary, after further investigation and as more information becomes known regarding Trump LLC's claims.

First Affirmative Defense
(Plaintiff Materially Breached the Agreement)

1. Trump LLC's claims are barred, in whole or in part, because it has materially breached the Sublease with Topo Atrio and therefore cannot bring an action enforcing that agreement. Trump LLC breached the Sublease in that (a) Mr. Donald Trump made inflammatory statements regarding illegal immigration that undermined the purposes underlying the Sublease, (b) Trump LLC and Mr. Trump refused to take steps to undo or limit the fallout from those statements, and (c) before terminating the Sublease, Trump LLC seized the proceeds of Topo Atrio's letter of credit and announced its interest in seeking a new tenant.

Second Affirmative Defense
(Frustration of Purpose)

2. Trump LLC's claims are barred, in whole or in part, because Mr. Trump's recent inflammatory comments regarding illegal immigration have frustrated the Sublease's underlying goal of facilitating the establishment and operation of a successful, high-end Spanish-themed restaurant.

Third Affirmative Defense
(Commercial Impracticability)

3. Trump LLC's claims are barred, in whole or in part, because Mr. Trump's recent inflammatory comments regarding illegal immigration have rendered Defendants' performance commercially impracticable.

Fourth Affirmative Defense
(Impossibility)

4. Trump LLC's claims are barred, in whole or in part, because Mr. Trump's recent inflammatory comments regarding illegal immigration have rendered Defendants' performance impossible.

Fifth Affirmative Defense
(Doctrine of Prevention)

1. Trump LLC's claims are barred, in whole or in part, because Mr. Trump's recent inflammatory comments regarding illegal immigration have prevented and hindered Topo Atrio's efforts to develop a successful, high-end Spanish-themed restaurant.

Sixth Affirmative Defense
(Estoppel, Waiver, and Other Equitable Principles)

2. Trump LLC's claims are barred, in whole or in part, by the doctrines of estoppel, waiver, and other equitable principles. Among other things, Trump LLC has waived, or is estopped to deny, that it agreed to postpone the Sublease's June 29, 2015 delivery date for the "90% Completed Construction Documents."

Seventh Affirmative Defense
(Election of Remedies)

3. Trump LLC's claims are barred, in whole or in part, by the doctrine of election of remedies to the extent Trump LLC seeks inconsistent remedies or remedies that would result in a double recovery for Trump LLC.

Eighth Affirmative Defense
(Defendants' Compliance)

4. Trump LLC's claims are barred, in whole or in part, because Defendants fully complied with their obligations to Trump LLC.

Ninth Affirmative Defense
(Failure to Mitigate Damages)

5. Trump LLC's claims are barred, in whole or in part, to the extent that it has failed to reasonably mitigate its alleged damages.

Tenth Affirmative Defense
(Unilateral Mistake)

6. Trump LLC's claims are barred, in whole or in part, by the doctrine of unilateral mistake. At the time Topo Atrio entered into the Sublease, it did not expect and did not assume the risk that Mr. Trump would make inflammatory statements that would materially undermine the goal of developing a successful, high-end Spanish-themed restaurant.

COUNTERCLAIMS

Further answering the Complaint, pursuant to SCR Civil 13, Defendants/Counter-Plaintiffs Topo Atrio, LLC ("Topo Atrio") and ThinkFoodGroup LLC ("ThinkFoodGroup," and together with Topo Atrio, "Defendants/Counter-Plaintiffs") assert the following counterclaims seeking damages against Plaintiff/Counter-Defendant Trump Old Post Office LLC ("Trump LLC"). Defendants/Counter-Plaintiffs reserve the right to supplement or amend these Counterclaims, if necessary, after further investigation and as more information becomes known regarding Trump LLC's claims.

In support of their Counterclaims, Defendants/Counter-Plaintiffs aver as follows:

1. The Court has jurisdiction over this Counterclaim pursuant to D.C. Code § 11-921.
2. Trump LLC is the plaintiff in this case and has purposefully availed itself of the benefits of this forum.

3. Topo Atrio is a Delaware limited liability company doing business in the District of Columbia.

4. ThinkFoodGroup is a Delaware limited liability company doing business in the District of Columbia.

5. On November 19, 2014, Topo Atrio entered into an Agreement of Sublease (as amended, the “Sublease”) with Trump LLC.

6. Under the Sublease, Topo Atrio subleased approximately 9,018 square feet for a “fine-dining Spanish restaurant” inside what will be known as the Trump International Hotel, The Old Post Office.

7. As noted in para. 57 of the Complaint, the Sublease includes a provision stating that, in any action to enforce or interpret it, the substantially prevailing party is entitled to its reasonable attorneys’ fees and other out-of-pocket costs.

8. ThinkFoodGroup is the parent company of Topo Atrio and provided a Guaranty as part of the Sublease.

9. The president of Trump LLC, both at the time the Sublease was executed and currently, is Donald J. Trump.

10. Mr. Trump is a public face of Trump LLC. He is its most important officer and spokesperson. Mr. Trump personally signed the Sublease.

11. On June 16, 2015, Mr. Trump announced his candidacy for President of the United States. In his announcement on national television, he made illegal immigration from Latin America through Mexico a central issue in his campaign. In doing so, he used language that large numbers of Hispanics and other Americans found offensive.

12. Specifically, Mr. Trump said in his June 16, 2015 campaign announcement:

The U.S. has become a dumping ground for everybody else's problems. It's true. And these aren't the best and the finest. When Mexico sends its people, they're not sending their best. . . . They're sending people that have lots of problems and they're bringing those problems with us. They're bringing drugs, they're bringing crime, they're rapists, and some I assume are good people. But I speak to border guards and they tell us what we're getting. And it only makes common sense, it only makes common sense. They're sending us not the right people. It's coming from more than Mexico. It's coming from all over South and Latin America and it's coming probably, probably, from the Middle East. . . .”

13. Thereafter, Mr. Trump made numerous additional statements confirming the substance of these statements.

14. On July 6, 2015, for example, Mr. Trump made further campaign statements on immigration:

What can be simpler or more accurately stated? The Mexican Government is forcing their most unwanted people into the United States. They are, in many cases, criminals, drug dealers, rapists, etc. . . . Likewise, tremendous infectious disease is pouring in across the border. The United States has become a dumping ground for Mexico.

15. Mr. Trump's statements triggered an adverse reaction from large segments of the public, particularly Hispanic Americans. National Hispanic organizations, including the National Hispanic Leadership Agenda and the Hispanic Association on Corporate Responsibility, began boycotts against Mr. Trump's businesses.

16. In addition, many companies terminated their relationships with Mr. Trump because of his June 16 and post-June 16 statements. Among the companies that terminated their relationships with him or his companies were Univision, Macy's Inc., and NBCUniversal.

17. Mr. Trump has himself admitted that his statements have had an adverse effect on businesses associated with him. On June 28, 2015, he told MSNBC, “I'm giving up hundreds of millions of dollars to do this. I'm giving up a prime-time television show . . . I'm in it to win it.”

And, on July 6, 2015, he told Fox News that his presidential campaign was “bad for my brand. . . . I lose customers; I lose people.”

18. Mr. Trump’s statements had a direct adverse effect on the planned fine-dining Spanish restaurant in the Trump International Hotel, The Old Post Office. The perception that Mr. Trump’s statements were anti-Hispanic made it very difficult to recruit appropriate staff for a Hispanic restaurant, to attract the requisite number of Hispanic food patrons for a profitable enterprise, and to raise capital for what was now an extraordinarily risky Spanish restaurant.

19. Topo Atrio communicated with Trump LLC requesting remedial action to retrieve the situation, but Trump LLC and Mr. Trump declined to do so.

20. Finally, on July 17, 2015, Topo Atrio sent Trump LLC a Notice of Default, informing Trump LLC that it was in default for materially breaching the Sublease and providing Trump LLC with an opportunity to cure within the Sublease’s cure period.

21. Trump LLC responded to Topo Atrio’s Notice of Default on July 20, 2015, refusing to cure or even attempt to cure the default.

22. On July 28, 2015, following the completion of the ten-day period allotted to cure the default, Topo Atrio sent a Notice of Termination and Cancellation to Trump LLC, terminating the Sublease due to Trump LLC’s default.

23. To obtain the funds from the Letter of Credit, Trump LLC certified to the issuer of the Letter that Topo Atrio had breached the Sublease and made other false accusations.

24. On information and belief, on or about July 31, 2015, Trump LLC drew upon the \$258,171 Letter of Credit that had been posted by Topo Atrio.

25. On July 31, 2015, Topo Atrio wrote to Trump LLC demanding return of the \$258,171 Letter of Credit amount, which Trump LLC was not entitled to withdraw.

26. To date, Trump LLC has not returned the \$258,171 Letter of Credit.

COUNT I

(Breach of Contract—Breach of Duty of Good Faith and Fair Dealing)

27. Defendants/Counter-Plaintiffs repeat and reallege each and every allegation as if fully set forth at length herein.

28. Implied in the Sublease between Defendant Topo Atrio and Trump LLC is a covenant of good faith and fair dealing. That covenant implies that Trump LLC and its officers and agents would not take actions that would injure Defendants/Counter-Plaintiffs' rights and ability to create a successful fine-dining Spanish restaurant.

29. Mr. Trump's statements on immigration interfered with Defendants/Counter-Plaintiffs' ability to perform by alienating investors, employees, and customers.

30. Mr. Trump's conduct was arbitrary and capricious and demonstrated disregard for the Sublease that he signed to create a successful restaurant.

31. Mr. Trump's conduct injured Defendants/Counter-Plaintiffs by interfering with their ability to receive the fruits of the Sublease.

32. Trump LLC and Mr. Trump have refused to take steps to attempt to limit the negative effects of Mr. Trump's statements.

33. Consequently, Defendants/Counter-Plaintiffs have suffered and will continue to suffer damages in an amount to be determined at trial but estimated to be not less than \$8 million, including but not limited to the expenses incurred in developing the restaurant, all payments made to Trump LLC, lost profits, and interest.

COUNT II

(Breach of Contract—Breach of Express Covenant of Quiet Enjoyment)

34. Defendants/Counter-Plaintiffs repeat and reallege each and every allegation as if fully set forth at length herein.

35. The Sublease contains an express covenant of quiet enjoyment:

Landlord covenants and agrees with Tenant that, upon Tenant paying the Base Rent and Additional Rent and observing and performing all the terms, covenants and conditions on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the Demised premises, subject, nevertheless, to the terms and conditions of this Sublease.

Sublease ¶ 31.

36. As of July 17, 2015, when Topo Atrio sent Trump LLC its Notice of Default, Topo Atrio had paid all Base Rent and Additional Rent due as of that date and had observed and performed all the terms, covenants and conditions on its part to be observed and performed as of that date.

37. Mr. Trump's inflammatory statements regarding immigration breached the express covenant of quiet enjoyment, as alleged herein.

38. Mr. Trump's statements on immigration created a disturbance in Defendants/Counter-Plaintiffs' enjoyment of the sub-leased premises.

39. Trump LLC and Mr. Trump have refused to take steps to attempt to limit the negative effects of Mr. Trump's statements.

40. Mr. Trump knew or should have known that his statements on immigration would have an adverse impact on the development of a Spanish fine-dining restaurant in a Trump-affiliated building. Nonetheless, Mr. Trump and Trump LLC refused to cure the default.

41. As a direct and proximate result of Mr. Trump's acts and omissions, the covenant of quiet enjoyment was breached, and the value of the leasehold held by Defendant Topo Atrio was materially diminished.

42. Consequently, Defendant Topo Atrio has been damaged in an amount to be established at trial but estimated to be not less than \$8 million, including but not limited to the expenses incurred in developing the restaurant, all payments made to Trump LLC, lost profits, and interest.

COUNT III

(Breach of Contract—Breach of Implied Covenant of Quiet Enjoyment)

43. Defendants/Counter-Plaintiffs repeat and reallege each and every allegation as if fully set forth at length herein.

44. Implied in the Sublease between Defendant Topo Atrio and Trump LLC is a covenant that Trump LLC and Mr. Trump would not and will not interfere with Topo Atrio's quiet enjoyment of the property during the term of its tenancy.

45. Mr. Trump breached the implied covenant of quiet enjoyment, as alleged herein, by making inflammatory statements regarding immigration.

46. Mr. Trump's statements on immigration created a disturbance in Defendants/Counter-Plaintiffs' enjoyment of the sub-leased premises.

47. Trump LLC and Mr. Trump have refused to take steps to attempt to limit the negative effects of Mr. Trump's statements.

48. Mr. Trump knew or should have known that his statements on immigration would have an adverse impact on the development of a Spanish fine-dining restaurant in a Trump-affiliated building, but he and Trump LLC refused to cure the default.

49. As a direct and proximate result of Mr. Trump's actions, the covenant of quiet enjoyment was breached, and the value of the leasehold held by Defendant Topo Atrio was materially diminished.

50. Consequently, Defendant Topo Atrio has been damaged in an amount to be established at trial but estimated to be not less than \$8 million, including but not limited to the expenses incurred in developing the restaurant, all payments made to Trump LLC, lost profits, and interest.

COUNT IV

(Breach of Contract—Doctrine of Prevention)

51. Defendants/Counter-Plaintiffs repeat and reallege each and every allegation as if fully set forth at length herein.

52. Mr. Trump's inflammatory statements on immigration alienated prospective customers, employees and investors who are critical to the success of a high-end, fine-dining Spanish restaurant. This created an adverse environment.

53. Mr. Trump's statements rendered Defendants/Counter-Plaintiffs' performance futile, and any non-performance by Defendants is thus excused.

54. Consequently, Defendants/Counter-Plaintiffs have suffered and will continue to suffer damages in an amount to be determined at trial but estimated to be not less than \$ 8 million, including but not limited to the expenses incurred in developing the restaurant, all payments made to Trump LLC, lost profits, and interest.

COUNT V

(Breach of Contract—Letter of Credit)

55. Defendants/Counter-Plaintiffs repeat and reallege each and every allegation as if fully set forth at length herein.

56. The Sublease provided for Topo Atrio to provide a Letter of Credit in the amount of \$258,171. The Sublease provided that Trump LLC would be entitled to draw upon the Letter of Credit in the event of a default, or other claims, damages, or other amounts outstanding. Sublease ¶ 26.

57. In accordance with the terms of the Sublease, Topo Atrio obtained from a bank a Letter of Credit worth \$258,171.

58. On information and belief, on July 31, 2015, Trump LLC, through representations made by Mr. Trump, told the bank that it was entitled to collect the \$258,171 amount, and the bank transferred the funds to Trump LLC.

59. Defendant/Counter-Plaintiff Topo Atrio was not in default on July 31, 2015.

60. On July 31, 2015, Trump LLC did not have any legitimate claims, damages, or other amounts outstanding against Defendant/Counter-Plaintiff Topo Atrio.

61. Trump LLC was itself in breach of the Sublease and not entitled to the proceeds of the Letter of Credit.

62. Consequently, Defendants/Counter-Plaintiffs have suffered and will continue to suffer damages in an amount equal to \$258,171 plus interest from July 31, 2015, plus attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Topo Atrio and ThinkFoodGroup pray for the following relief:

1. That Trump LLC take nothing by way of its Complaint;
2. That the Court enter judgment in favor of Topo Atrio and ThinkFoodGroup and against Trump LLC, and dismiss Trump LLC's Complaint with prejudice;

3. That the Court find Trump LLC liable to Topo Atrio and ThinkFoodGroup for damages, to be proven at trial but currently estimated in excess of \$8 million, including but not limited to the expenses incurred in developing the restaurant, all payments made to Trump LLC, lost profits, the letter of credit amount of \$258,171, plus interest on all of the foregoing amounts;

4. That Topo Atrio and ThinkFoodGroup be awarded reasonable litigation expenses, attorneys' fees, and costs incurred in this litigation, including pursuant to language in the Sublease providing for an award of such in favor of a substantially prevailing party; and

5. That Topo Atrio and ThinkFoodGroup be awarded such further relief as the Court deems just, proper, and equitable.

Dated: October 7, 2015

Respectfully submitted,

/s/ Brigida Benitez

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