

**IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION**

JANINE LITMAN and TIMOTHY
MASTROIANNI, individually and
jointly,

CASE NO. 2012-8149

Plaintiffs,

v.

CANNERY CASINO RESORTS, LLC, a
Nevada limited liability company,
WASHINGTON TROTTING
ASSOCIATION, INC., a Delaware
corporation, WTA ACQUISITION CORP., a
Delaware corporation, CANNERY CASINO
RESORTS, LLC, CANNERY CASINO
RESORTS and WASHINGTON TROTTING
ASSOCIATION, INC., t/d/b/a THE
MEADOWS RACETRACK & CASINO, an
unincorporated association, CANNERY
CASINO RESORTS, an unincorporated
association consisting of one or more yet
unidentified natural and/or legal persons,
individually and jointly,

Defendants.

**BRIEF IN SUPPORT OF DEFENDANTS'
PRELIMINARY OBJECTIONS TO
PLAINTIFFS' REPLY TO NEW MATTER**

Filed on behalf of Defendants,
Cannery Casino Resorts, LLC, Washington
Trotting Association, Inc., and WTA
Acquisition Corp.

Counsel of Record for these Parties:

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unidentified natural and/or legal persons,
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Defendants.

**BRIEF IN SUPPORT OF DEFENDANTS' PRELIMINARY OBJECTIONS
TO PLAINTIFFS' REPLY TO NEW MATTER**

Defendants, Cannery Casino Resorts, LLC ("Cannery"), Washington Trotting
Association, Inc. ("WTA"), and WTA Acquisition Corp. ("WTA Acquisition") (collectively,

¹ Defendants, Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. (collectively, "Defendants") deny that Cannery Casino Resorts exists as a business organization apart from Cannery Casino Resorts, LLC. Defendants further deny that Cannery Casino Resorts, LLC and/or Washington Trotting Association, Inc. participate in unincorporated associations, and further deny that an unincorporated association can sue as a party. Accordingly, Defendants object to the caption to the extent that it purports to state claims against any entity other than Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. individually.

“Defendants”), by their attorneys, FOX ROTHSCHILD LLP, file the following Brief in Support of their Preliminary Objections to Plaintiffs’ Reply to New Matter, stating as follows:

I. FACTUAL BACKGROUND

On January 16, 2014, Defendants filed Defendants’ Answer and New Matter to Plaintiffs’ Third Amended Complaint, a copy of which is attached to Defendants’ Preliminary Objections to Plaintiffs’ Reply to New Matter at Exhibit 1. In response to Defendants’ New Matter, Plaintiffs Janine Litman and Timothy Mastroianni (collectively, “Plaintiffs”) filed a Reply to New Matter, a copy of which is attached to Defendants’ Preliminary Objections at Exhibit 2.

Plaintiffs denied all 26 paragraphs of Defendants’ New Matter without pleading any facts to dispute Defendants’ allegations:

- a. Plaintiffs’ responses to paragraphs 2, 18, 20, 21, 22, 23, 24, 25, and 26 of Defendants’ New Matter are bare denials;
- b. Plaintiffs deny paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 17 of Defendants’ New Matter by generally incorporating the averments of Plaintiffs’ Third Amended Complaint without reference to any particular facts or paragraphs;
- c. Plaintiffs deny paragraphs 1, 14, 15, and 16 of Defendants’ New Matter by generally referencing the Court’s prior orders; and
- d. In response to paragraph 19 of Defendants’ New Matter, Plaintiffs vaguely admit “the averments in the Complaint as made,” but nonetheless deny the averments as stated.

II. LEGAL ARGUMENT

Plaintiffs’ Reply to New Matter violates Pennsylvania Rule of Civil Procedure 1029, which requires an answering party to specifically deny each allegation of a pleading. Pa.R.Civ.P. 1029(b). “[G]enerally, for a denial to be specific, it must deny what is averred and then must affirmatively aver what did occur in place of the facts that are denied.” 5 STANDARD PENNSYLVANIA PRACTICE 2D § 26:41, *quoting Lewis v. Spitler*, 69 Pa. D & C.2d 259, 560

(Lebanon Cty. 1975); *Sincavage v. Howells*, 8 Pa. D.&C.2d 515, 517 (Luzerne Cty. 1957) (same).

Simply stating that an allegation is “denied” violates Rule 1029(b). *Swift v. Milner*, 538 A.2d 28, 31 (Pa. Super. Ct. 1988); *Ritchie Bldg. & Loan Ass’n No. 2 v. Armstrong*, 157 A. 371, 372 (Pa. Super. Ct. 1931) (“In the affidavit there is no answer whatever to the averments of the statement, except the word ‘denied,’ which, of course, is inadequate.”). Likewise, “[a] denial is not a specific denial...which states that ‘it is denied that’ and then repeats word for word the averments of the opposing pleading.” *Sincavage*, 8 Pa. D.&C.2d at 517.

In no instance did Plaintiffs plead affirmative facts disputing the allegations in Defendants’ New Matter. Plaintiffs’ Reply consists solely of general denials and, pursuant to Pennsylvania Rule of Civil Procedure 1029(c), should be deemed an admission of the allegations set forth in Defendants’ New Matter. Defendants require Plaintiffs’ specific denials to key factual averments to prepare their defense. Accordingly, Defendants have agreed to limit the Preliminary Objections to those paragraphs of the New Matter that are strictly factual in nature, *i.e.*, paragraphs 2 through 13, 17, 19, 20, 21, 22, and 24. An amended Proposed Order reflecting this limitation is attached.

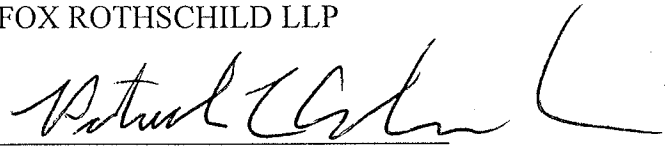
III. CONCLUSION

WHEREFORE, Defendants request that this Court sustain their Preliminary Objections to Plaintiffs’ Reply to New Matter, deem the matters averred in Defendants’ New Matter admitted,

and grant any and all such other relief this Court deems just.

FOX ROTHSCHILD LLP

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[AMENDED] [PROPOSED] ORDER

AND NOW, this _____ day of _____, 2014, upon consideration of
Defendants' Preliminary Objections to Plaintiffs' Reply to New Matter, and any response
thereto, it is hereby ORDERED, ADJUDGED and DECREED that Defendants' Preliminary
Objections are SUSTAINED as to Plaintiffs' answers to paragraphs 2 through 13, 17, 19, 20, 21,
22, and 24 of Defendants' New Matter. It is FURTHER ORDERED that the matters averred in

paragraphs 2 through 13, 17, 19, 20, 21, 22, and 24 of Defendants' New Matter are deemed admitted pursuant to Pennsylvania Rule of Civil Procedure 1029(b).

BY THE COURT:

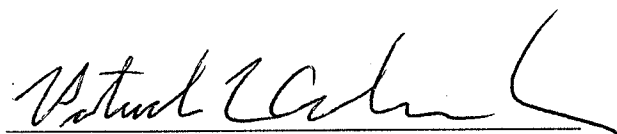
_____ J.

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March, 2014, a true and correct copy of the foregoing Brief in Support of Defendants' Preliminary Objections to Plaintiffs' Reply to New matter was served upon the following counsel of record via facsimile, e-mail, and United States mail, First Class, postage prepaid:

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