

1 Philippe Martinet, Esq. SBN 025613
2 *Board Certified Real Estate Law Specialist*
3 **MARTINET LAW**
4 7377 E. Doubletree Ranch Rd.
5 Scottsdale, Arizona 85258
6 Telephone (602) 277-4398
7 Facsimile (602) 595-2264
8 E-mail: philippe@martinetlaw.com
9 *Attorney for Defendant / Counter-Plaintiff*

10
11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 John Dorsey and Dorsey Family
14 Holdings, LLC,
15
16 Plaintiffs,

Case No. CV2022-012769

17 vs.

18 Dennis Gile, a married man,
19
20 Defendant.

**DEFENDANT DENNIS GILE'S
ANSWER, AND AFFIRMATIVE
DEFENSES**

21 Dennis Gile, a married man,
22
23 Counter-Plaintiff,

24 vs.

**DENNIS GILE'S
COUNTER-CLAIMS**

25 John Dorsey, a married man; Dorsey
Family Holdings, LLC,
Counter-Defendant.

[Jury Trial Demand]

Defendant Dennis Gile (“Defendant”), by and through undersigned counsel, files this Answer and Affirmative Defense in response to the Complaint of John Dorsey and Dorsey Family Holdings, LLC (Plaintiffs) filed on September 28, 2022. Defendant denies all allegations within said Complaint, not herein expressly admitted, or to which Defendant

1 does not make any affirmative defense. Furthermore, Defendant responds to the
2 individually enumerated paragraphs of the Complaint as follows:

3 **ANSWER AND AFFIRMATIVE DEFENSES**

4 1. Defendant admits the allegations in paragraph 1 of the Complaint.

5 2. Defendant admits the allegations in paragraph 2 of the Complaint.

6 3. Defendant admits the allegations in paragraph 3 of the Complaint.

7 4. Defendant admits the allegations in paragraph 4 of the Complaint.

8 5. Defendant denies the allegations in paragraph 5 of the Complaint.

9
10 6. Defendant admits the allegations in paragraph 6 of the Complaint but denies the
11 allegations in paragraph 6 of the Complaint insofar as Defendant did not receive the full
12 amount promised from Plaintiff Dorsey Family Holdings, LLC.

13 7. Defendant denies the allegations in paragraph 7 of the Complaint.

14 8. Defendant denies the allegation in paragraph 8 of the Complaint.

15
16 9. Defendant admits the allegations in paragraph 9 of the Complaint insofar as he
17 received a letter from Plaintiffs' counsel dated May 16, 2022 and denies the remaining
18 allegations in paragraph 9 of the Complaint.

19
20 10. Defendant admits the allegations in paragraph 10 of the Complaint insofar as the
21 parties discussed alternative payment arrangements but denies the remaining allegations in
22 paragraph 10 of the Complaint and states that paragraph 15 of the Security Agreement
23 prohibits oral modifications to the Security Agreement. In addition, John Dorsey is not a
24 party to the Security Agreement.
25

1 11. Defendant admits the allegations in paragraph 11 of the Complaint insofar as he
2 paid \$100,000 to Plaintiff Dorsey Family Holdings, LLC in partial satisfaction of the loan
3 but denies the remaining allegations in paragraph 11.

4 12. Defendant admits the allegations in paragraph 12 insofar as he received a letter
5 from Plaintiffs' counsel dated August 26, 2022 but denies the remaining allegations in
6 paragraph 12 of the Complaint.

7 13. Defendant denies the allegations in paragraph 13 of the Complaint.

8 14. Defendant denies the allegations in paragraph 14 of the Complaint.

9
10 **COUNT ONE - BREACH OF CONTRACT**

11 15. Defendant denies the allegations in paragraph 15 of the Complaint.

12 16. Defendant denies the allegations in paragraph 16 of the Complaint.

13 17. Defendant denies the allegations in paragraph 17 of the Complaint.

14 18. Defendant denies the allegations in paragraph 18 of the Complaint.

15 19. Defendant denies the allegations in paragraph 19 of the Complaint.

16 20. Defendant denies the allegations in paragraph 20 of the Complaint regarding the
17 amount owed under the Security Agreement but admits certain sums have not been paid to
18 date.
19

20
21 **COUNT TWO – BREACH OF CONTRACT**

22 21. Defendant denies the allegations in paragraph 21 of the Complaint.

23 22. Defendant denies the allegations in paragraph 22 of the Complaint and refers the
24 Court to its Affirmative Defenses.

25 23. Defendant denies the allegations in paragraph 23 of the Complaint.

1 24. Defendant lacks sufficient information to form a belief as to the truth of the allegations
2 in paragraph 24 of the Complaint and, therefore, denies it.

3 25. Defendant denies the allegations in paragraph 25 of the Complaint.

4 26. Defendant denies the allegations in paragraph 26 of the Complaint.

5 27. Defendant denies the allegations in paragraph 27 of the Complaint.

6
7 **COUNT THREE - BREACH OF CONTRACT**

8 28. Defendant denies the allegations in paragraph 28 of the Complaint and states that
9 paragraph 15 of the Security Agreement prohibits oral modifications to the Security
10 Agreement and that John Dorsey individually is not a party to the Security Agreement.

11 29. Defendant denies the allegations in paragraph 29 of the Complaint.

12 30. Defendant denies the allegations in paragraph 30 of the Complaint.

13
14 **AFFIRMATIVE DEFENSES**

15 **1. The Contract Contains an Unconscionable Provision**

16 Under A.R.S. § 47-2302 the Security Agreement's provisions for repayment of the
17 principal and interest, as well as, obtaining the collateral upon default was unconscionable
18 at the time the parties entered into the Security Agreement. In light of those facts, the Court
19 should refuse to enforce the contract or, alternatively, enforce the remainder of the contract
20 without the unconscionable clause, or limit the application of the unconscionable clause as
21 to avoid any unconscionable result.
22

23 //

24 ///
25

1 **2. Plaintiff John Dorsey Lack’s Standing to Sue Under the Security Agreement**

2 Plaintiff John Dorsey lacks standing under the Security Agreement. Dorsey Family
3 Holdings, LLC and Dennis Gile are the true parties to the Security Agreement. John
4 Dorsey cannot maintain an action under the Security Agreement in his individual capacity.

5 **3. The Security Agreement Contains an Illegal Penalty**

6 In the event of default, the Security Agreement allows Plaintiff Dorsey Family
7 Holdings, LLC, the secured party, to receive repayment of the loan with interest and to also
8 obtain the collateral. Under A.R.S. 47-2718, damages for breach by either party may be
9 liquidated in the agreement, with one caveat, namely, that the amount of the liquidated
10 damages be reasonable in the light of the anticipated or actual harm caused by the breach,
11 the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise
12 obtaining an adequate remedy. A term fixing unreasonably large, liquidated damages, as
13 provided in the Security Agreement, is void as a penalty.
14
15

16 **4. Other Affirmative Defenses**

17 The Complaint fails to state a claim against Defendant, upon which relief can be
18 granted under Rule 12(b)(6), Arizona Rules of Civil Procedure. Future discovery may
19 reveal additional facts which will support affirmative defenses available to, but unknown
20 by, Defendant. That being said, Defendant alleges all of the other affirmative defenses
21 contained in Rules 8 and 12 of the Arizona Rules of Civil Procedure.
22

23 //

24 ///

25 ////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COUNTERCLAIMS

For his counterclaims against Plaintiffs / Counter-Defendants, John Dorsey (hereinafter “Dorsey”) and Dorsey Family Holdings, LLC (hereinafter “DFH”), Defendant / Counter-Claimant, Dennis Gile (hereinafter “Gile”) alleges as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. Gile is and was a resident of Maricopa County, Arizona at all times relevant to this Counterclaim.

2. Dorsey is, and was at all times relevant to this Counterclaim, a resident of Maricopa County, Arizona.

3. The Dorsey Family Holdings, LLC, is an Arizona Limited Liability Company in good standing and authorized to transact in Arizona, at all times relevant to this Complaint.

4. The acts out of which Gile’s claims arise, occurred in Maricopa County, Arizona.

5. This Counterclaim exclusively asserts Arizona State common law claims and Arizona Revised Statutory counts. Venue is proper in Maricopa County pursuant to Ariz. Rev. Statutes Section 12-401.

II. ALLEGATIONS COMMONS TO ALL COUNTS

6. Gile is a former football player from the National Football League, having played for teams, such as, the New England Patriots, as well as, in the Canadian Football League, where Gile resumed his career.

//

///

1 7. During his career as a professional football player, Gile benefitted from a vast
2 network of scouts, college football administrations around the country, as well as, NFL and
3 Canadian League professionals and dignitaries.

4 8. After retiring from professional sports, Gile decided to make his contribution to the
5 world of sports in a different, and improved way.

6 9. More specifically, Gile, with the assistance of a team of professionals including, but
7 not limited to, computer programmers, website designers, marketing analysts, scouts,
8 coaches, among others, created a new forum for young athletes (high school and college
9 level) to present themselves directly to potential colleges and/or scouts through an online
10 portal.
11

12 10. This portal, enables young athletes to, independently, publish game statistics,
13 highlight reels, among other material, necessary to be considered a true candidate for a
14 position as a player.
15

16 11. In turn, Gile's new system levels the playing field for young athletes, who are often
17 vulnerable as a result of the, often, overbearing influence of sports agents, scouts and/or
18 coaches.
19

20 12. Gile spent several years developing this forum, investing a substantial amount of
21 his own personal time and money.

22 13. Yet another key to Gile's business plan was utilizing his vast network of
23 professionals, or former professionals, in the professional athletic world.

24 **14. Dorsey, on the other hand, has little to no ties to that world.**
25

1 **15. Rather, Dorsey appears to have made his living by capitalizing on start-up**
2 **entrepreneurs, such as Gile, who have sound business plans and who are looking for**
3 **start-up capital.**

4 16. At some point in the last few years, the parties to this case met and conferred about
5 Dorsey and his “investors” providing some capital for Gile’s business.

6 17. More importantly, Dorsey committed to helping Gile take his business to new
7 fronts, by way of an Initial Public Offering in the New York Stock Exchange (hereinafter
8 the “IPO”).

9 18. Dorsey also promised to bring an amount in start-up capital of approximately \$6
10 million dollars, before the company conducted its initial public offering.

11 19. Dorsey never delivered on his promise.

12 20. Rather, Dorsey offered a much lower amount, namely, \$700,000 dollars.

13 21. In exchange for Dorsey’s investment in Gile’s business, Gile agreed to convey a
14 specific amount of shares to Dorsey.

15 22. This agreement was put in writing by Dorsey and presented to Gile.

16 23. Although Gile expressed he wished to have the agreement reviewed by counsel,
17 Dorsey went through great lengths to convince Gile not to do so.

18 24. Gile, again, reasonably trusting that this individual was acting in good faith, signed
19 the agreement.

20 25. As it turns out, the agreement contained dubious terms, which were later explained
21 to Gile by legal counsel.

1 26. Once the agreement was executed, Dorsey began devising a plan to undermine Gile,
2 the very founder of the business.

3 **Dorsey's Plan to Remove Gile**
4 **From the CEO Position in the Company**

5 27. After the agreement was signed, Dorsey set out to devise a plan to remove Gile from
6 the Management structure of the business.

7 28. As an initial step, Dorsey expressed to Gile that it was necessary for Gile to step
8 down as Chief Executive Officer of the business.

9 29. To that same affect, Dorsey expressed that, based on his vast experience, removal
10 of a company's founder from the management structure was a norm for businesses that are
11 going public.
12

13 30. Dorsey being senior to Gile by at several decades, and having higher and richer
14 experience in the business world, Gile trusted Dorsey.

15 31. Having gained favor and trust from Gile, Dorsey then suggested to Gile that Dorsey
16 and some of his associates (e.g. Todd Davis), step into the Management structure of the
17 business, to replace Gile as CEO of the business.
18

19 32. Gile reasonably relied on Dorsey's advice and followed Dorsey's suggestion.

20 33. As it turns out, Dorsey's proposal for Gile to remove himself was grounded in
21 Dorsey's plan to strengthen Dorsey's control over the company, while weakening Gile's
22 relative position in the same.
23

24 34. As the new CEO, Dorsey began mismanaging company funds, leading the company
25 to financial vulnerability.

1 35. Equally noteworthy is that Dorsey failed to deliver the \$700,000 payment,
2 previously promised to Gile.

3 36. Luckily for Gile, the company's Board of Directors gave Gile back his seat as CEO
4 and removed Dorsey from the management of the company.

5 37. Despite Dorsey's actionable conduct against Gile, never did Gile, nor anyone else
6 in the business deny the existence and validity of Dorsey's shares, as memorialized in the
7 agreement, subject to this lawsuit.
8

9 38. Yet, during 2022, Dorsey sent out a demand letter, threatening to file suit against
10 Gile, unless Gile (1) paid Dorsey back the amount tendered to Gile and (2) deliver
11 documentation to Dorsey showing Dorsey's ownership over the shares promised to Dorsey
12 under the agreement, subject of this matter.

13 39. Gile sought to meet and confer with Dorsey, though their respective legal counsels.
14

15 40. Seeking to avoid any issues with the business' public offering, Gile paid Dorsey
16 \$100,000 dollars, toward the amount that Dorsey had previously tendered to Gile.

17 41. While Gile attempted, in good faith, to resolve this matter short of Dorsey following
18 through with his threat to file a lawsuit, Dorsey persisted in demanding both the initial
19 capital investment **plus** the previously promised shares.
20

21 42. This perplexed Gile, who was under the impression that the money Dorsey
22 previously promised to pay Gile (\$700,000), was the consideration for the shares that Gile
23 previously promised to convey to Dorsey.

24 43. The timing of Dorsey's demand and lawsuit was also noteworthy, to the extent that
25 Gile's business was only a few months away from finalizing its initial public offering.

1 44. Dorsey's plan, in a nutshell, was to find a promising business, anchor himself to
2 said business, and seek ways to solidify his stake in the company by inserting himself in
3 the management structure.

4 45. Once Dorsey was removed from the company's management, Dorsey sought to
5 regain leveraging power, by way of filing this lawsuit shortly before the IPO.

6 46. Dorsey did this despite the fact that Dorsey has shares in the company.

7 47. More importantly, Dorsey's greed and thirst for power have now placed Gile's
8 company at risk of an unsuccessful initial public offering, as a result of this pending civil
9 lawsuit on the founder's history.
10

11 48. In the event this matter continues past the initial public offering, damages are likely
12 to increase by colossal figures.

13 **III. CAUSES OF ACTION**

14 **[COUNT 1]**
15 **BREACH OF CONTRACT AND**
16 **THE DUTY OF GOOD FAITH AND FAIR DEALING**
17 **(Dorsey Family Holdings, LLC)**

18 49. Gile incorporates each and every allegation contained in the foregoing paragraphs
19 as though fully set forth herein.

20 50. "Arizona law implies a covenant of good faith and fair dealing in every contract."
21 *Wells Fargo Bank v. Ariz. Laborers*, 201 Ariz. 474, 490, 38 P.3d 12, 28 (2002).

22 51. "The implied covenant of good faith and fair dealing prohibits a party from doing
23 anything to prevent other parties to the contract from receiving the benefits and
24 entitlements of the agreement," and allows recovery in both tort and contract. *Id.*
25

1 52. Dorsey Family Holdings, LLC (“DFH”) breached the agreement by failing to
2 tender the funds that Dorsey had previously promised to Gile under the agreement
3 (\$700,000 dollars).

4 53. Breach of the inherent duty of good faith and fair dealing occurred when Dorsey
5 (DFH’s own Manager) devised a plan to undermine the business’ very founder, Gile, for
6 Dorsey’s own self-interest and the interest of DFH.

7 54. By the same token, Dorsey’s decision to threaten to file a lawsuit shortly before the
8 IPO, which was a goal pursued not only by the entire company, but also by Dorsey, also
9 qualifies as a breach of said duty of good faith, in that said decision was self-serving and
10 deceitful in nature.
11

12 55. DFH is vicariously liable for Dorsey’s actions under the legal theory of *respondeat*
13 *superior*.
14

15 56. Damages for said breaches have accrued to an amount exceeding the jurisdictional
16 threshold for this Court.
17

18 **[COUNT 2]**
19 **MISREPRESENTATION /**
20 **NEGLIGENT MISREPRESENTATIONS**
21 **(Dorsey)**

22 57. Gile incorporates each and every allegation contained in the foregoing paragraphs
23 as though fully set forth herein.
24

25 58. Arizona recognizes the tort of negligent misrepresentation. *See Van Buren v. Pima*
Community College District Bd., 113 Ariz. 85, 546 P.2d 821 (1976); *Arizona Title Ins.*
Trust Co. v. O'Malley Lumber Co., 14 Ariz. App. 486, 484 P.2d 639 (1971).

1 59. The tort is defined by *Restatement (Second) of Torts* § 552: "[o]ne who in the course
2 of his business or profession supplies information for the guidance of others in their
3 business transactions is subject to liability for harm caused to them by their reliance upon
4 the information if (a) he fails to exercise that care and competence in obtaining and
5 communicating the information which its recipient is justified in expecting, and (b) the
6 harm is suffered: (i) by the person or one of the class of persons for whose guidance the
7 information was supplied, and (ii) because of his justifiable reliance upon it in a transaction
8 in which it was intended to influence his conduct or in a transaction substantially identical
9 therewith."
10

11 60. Dorsey made several representations to Gile, aimed at undermining Gile's position
12 in the company.
13

14 61. Dorsey, being senior to Gile by several decades, and having higher and richer
15 experience in the business world than Gile, Gile justifiably trusted and relied on Dorsey's
16 advice.
17

18 62. During their interactions with one another, Dorsey expressed to Gile that it was
19 necessary for Gile to step down as Chief Executive Officer of the business.
20

21 63. Dorsey elaborated that it was the norm for business that are going public to have
22 their founders step down before the company goes public.
23

24 64. Gile's reliance on Dorsey's untruthful statements ultimately led to Dorsey gaining
25 control of the CEO position in Gile's company.
26

27 65. Dorsey grossly mismanaged the company, wasting substantial amounts of time and
28 money invested by Gile and others, into the company.
29

1 66. Damages for Dorsey's misrepresentation have accrued to an amount exceeding the
2 jurisdictional threshold for this Court.

3 **[COUNT 3]**
4 **DECLARATORY JUDGMENT**
5 **(All Defendants)**

6 15. Pleading alternatively, Gile incorporates each and every allegation contained in the
7 foregoing paragraphs as though fully set forth herein.

8 16. An actual and justiciable controversy between the parties exists regarding the rights,
9 liabilities and duties of the parties with respect to one another.

10 17. The parties are, therefore, entitled to declaratory relief declaring among other things:
11 ownership rights, if any, of the parties over the funds previously tendered by Gile
12 (\$100,000) and Dorsey (\$600,000); whether Dorsey unduly influenced Gile to execute the
13 agreement, subject of this matter; and whether Dorsey received an improper benefit, when
14 he received and accepted the \$100,000 tendered to Dorsey by Gile.
15

16 **WHEREFORE**, having fully answered each and every claim and allegation
17 contained in the Complaint, Gile (Defendant/Counter-Plaintiff) respectfully demands
18 judgment against Dorsey and DFH (Plaintiffs/Counter-Defendants) as follows:
19

20 (a) That the Complaint be dismissed with prejudice and that the Plaintiffs take
21 nothing thereby;

22 (b) That judgment be entered in favor of Gile on all claims raised in the Complaint
23 and Counterclaims;

24 (c) For Gile's reasonable attorneys' fees and costs pursuant to A.R.S. §§ 12-341,
25 and 12-349(A) and paragraph 13 of the Security Agreement; and

1 (d) That Gile be granted such other and further relief as this Court deems just and
2 proper in this matter.

3 **RESPECTFULLY SUBMITTED** this 21st day of October, 2022.

4 **MARTINET LAW**

5 /s/ Philippe Martinet

6 Philippe Martinet, Esq.

7 *Attorney for Defendant Dennis Gile*

8 **ORIGINAL** of the foregoing e-filed with the
Clerk of the Superior Court on the above date:

9 Clerk of the Maricopa County Superior Court
10 201 West Jefferson Street
Phoenix, Arizona 85003

11 **COPY** of the foregoing e-mailed
12 on the above date to:

13 Jennifer Lee-Cota (State Bar No. 033190)

14 Bruce Samuels (State Bar No. 015996)

15 **Pipette Samuels Weiss McKirgan LLP**

16 Scottsdale Quarter

17 15169 North Scottsdale Road, Ste. 205

18 Scottsdale, AZ 85254

19 Direct Dial: 480.800.3530

20 Email: bsamuels@PSWMLaw.com

21 Direct Dial: 480.800.3528

22 Email: jleecota@PSWMLaw.com

23 *Attorneys for Plaintiffs*

24
25
By: /s/ Philippe Martinet, Esq.

Verification

I, Dennis Gile, upon penalty of perjury, depose and say:

That I am the Defendant in the above entitled cause; that I make this Verification upon my own and personal knowledge; that I have read the foregoing Answer to Complaint and know the contents thereof; that the same is true of my own knowledge, except for those matters stated on information and belief; as to those matters, I do believe them to be true.

DATED this 21st day of October, 2022.

Dennis Gile

Dennis Gile _____

Signature Certificate

Reference number: BUBIM-FKGGJ-VEBID-5YFAU

Signer	Timestamp	Signature
Dennis Gile Email: dennis.gile@yahoo.com Sent: 22 Oct 2022 00:18:30 UTC Viewed: 22 Oct 2022 00:27:05 UTC Signed: 22 Oct 2022 00:27:33 UTC		
Recipient Verification: ✓Email verified	22 Oct 2022 00:27:05 UTC	IP address: 166.194.154.104 Location: Charlotte, United States

Document completed by all parties on:
22 Oct 2022 00:27:33 UTC

Page 1 of 1



Signed with PandaDoc

PandaDoc is a document workflow and certified eSignature solution trusted by 30,000+ companies worldwide.

