



NAILAH K. BYRD
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Cleveland, Ohio 44113

Court of Common Pleas

ANSWERS Electronically Filed:
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By: RONALD D. HOLMAN 0036776

Confirmation Nbr. 479714

ELLIOTT GRAISER

CV 14 828880

vrs.

Judge:

VISIONWORKS OF AMERICA, INC.

PAMELA A. BARKER

Pages Filed: 8

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

| | | |
|------------------------------|---|---------------------------|
| ELLIOTT GRAISER |) | CASE NO. CV-14-828880 |
| |) | |
| Plaintiff, |) | JUDGE PAMELA A. BARKER |
| |) | |
| v. |) | DEFENDANT VISIONWORKS OF |
| |) | AMERICA, INC.'S ANSWER TO |
| VISIONWORKS OF AMERICA, INC. |) | AMENDED COMPLAINT |
| |) | |
| Defendant. |) | |

For its answer to the amended complaint filed by Plaintiff Elliott Graiser,
Defendant Visionworks of America, Inc. states as follows:

FIRST DEFENSE

PREAMBLE: The Preamble to the amended complaint contains no
allegations to which a response is required.

1. Paragraph 1 of the amended complaint states legal conclusions and
quotes a portion of Ohio Administrative Code § 109:4-3-04, and therefore no
response is required.

2. Paragraph 2 of the amended complaint states a legal conclusion, and
therefore no response is required.

3. In response to paragraph 3 of the amended complaint, Visionworks
admits that some of its advertisements have used the word "free" and that it has
offered a "buy one, get one free" promotion. Visionworks denies all other
allegations in Paragraph 3 of the amended complaint.

4. Visionworks denies the allegations in paragraph 4 of the amended

complaint.

5. Paragraph 5 of the amended complaint states plaintiff's intentions, and therefore no response is required. To the extent a response is required, Visionworks denies the allegations in paragraph 5 of the amended complaint.

6. Visionworks denies the allegations in paragraph 6 of the amended complaint for lack of knowledge sufficient to form a belief as to the truth of the matter asserted.

7. Visionworks admits the allegations in paragraph 7 of the amended complaint.

8. In response to paragraph 8 of the amended complaint, Visionworks admits that on or about April 30, 2014, it was offering a "buy one, get one free" promotion. Visionworks denies all other allegations in paragraph 8 of the amended complaint for lack of knowledge sufficient to form a belief as to the truth of the matter asserted.

9. In response to paragraph 9 of the amended complaint, Visionworks admits that on or about April 30, 2014, an Elliott Graiser purchased a single pair of eyeglasses for \$245.95 (\$265.63 with tax). Visionworks denies all other allegations in paragraph 9 of the amended complaint for lack of knowledge sufficient to form a belief as to the truth of the matter asserted.

10. Visionworks denies the allegations in paragraph 10 of the amended complaint.

11. Visionworks denies the allegations in paragraph 11 of the amended complaint.

12. Visionworks denies the allegations in paragraph 12 of the amended complaint.

13. Paragraph 13 of the amended complaint states plaintiff's intentions, and therefore no response is required. To the extent a response is required, Visionworks denies the allegations in paragraph 13 of the amended complaint and avers that class certification is not appropriate for this matter.

14. Visionworks denies the allegations in paragraph 14 of the amended complaint.

15. Visionworks denies the allegations in paragraph 15 of the amended complaint.

16. Visionworks denies the allegations in paragraph 16 of the amended complaint.

17. Visionworks denies the allegations in paragraph 17 of the amended complaint.

18. Paragraph 18 of the amended complaint states plaintiff's intentions, and therefore no response is required. To the extent paragraph 18 of the amended complaint incorporates allegations from other paragraphs in the amended complaint, Visionworks incorporates its responses contained in other paragraphs of this answer.

19. Paragraph 19 of the amended complaint states a legal conclusion, and therefore no response is required.
20. Visionworks denies the allegations in paragraph 20 of the amended complaint.
21. Visionworks denies the allegations in paragraph 21 of the amended complaint.
22. Visionworks denies the allegations in paragraph 22 of the amended complaint.
23. Visionworks denies the allegations in paragraph 23 of the amended complaint.
24. Visionworks denies the allegations in paragraph 24 of the amended complaint.
25. Paragraphs 25 - 29 of the amended complaint state allegations related to a cause of action that the Court has dismissed, and therefore no response is required. To the extent a response is required, Visionworks denies the allegations in paragraphs 25 - 29 of the amended complaint.
26. Visionworks denies all allegations in the amended complaint not expressly admitted herein, including all allegations in the Prayer for Relief.

SECOND DEFENSE

The amended complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

Plaintiff has not suffered any actual damages and therefore lacks standing to pursue any claim as a class action under R.C. 1345.09.

FOURTH DEFENSE

The amended complaint is barred in whole or in part because Plaintiff lacks standing to assert some or all of the claims alleged in his complaint.

FIFTH DEFENSE

Any recovery to which plaintiff might otherwise be entitled is barred by the doctrines of waiver, release, and/or estoppel.

SIXTH DEFENSE

Any recovery to which plaintiff might otherwise be entitled is barred by the doctrines of accord and satisfaction or compromise and settlement.

SEVENTH DEFENSE

Plaintiff has failed to mitigate his damages, if any.

EIGHTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

NINTH DEFENSE

Plaintiff's claims are barred by the doctrine of acceptance.

TENTH DEFENSE

Plaintiff's claims fail because Visionworks' business practices are fair, honest, and lawful.

ELEVENTH DEFENSE

Plaintiff's action is unsuitable for class treatment under Civ.R. 23 and R.C. 1345.09.

TWELFTH DEFENSE

Visionworks reserves the right to assert additional defenses that arise or become apparent from discovery.

WHEREFORE, Defendant Visionworks of America, Inc. denies that Plaintiff Elliott Graiser and the proposed class are entitled to any of the relief requested in the amended complaint and requests (1) that judgment be entered for Visionworks and the amended complaint be dismissed with prejudice; (2) that Visionworks be awarded its costs and attorneys' fees incurred in this matter; and (3) that Visionworks be awarded such other further legal or equitable relief that this Court deems just and proper.

Dated: June 30, 2015

Respectfully submitted,

/s/ Ronald D. Holman, II

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2015, the foregoing was served upon the following parties via electronic mail under Ohio Civil Rule 5(B)(2)(f):

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