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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In Re:**

**JAMES BRADLEY LAGER AND  
JBL HOSE SERVICE, LLC D/B/A TEXAS  
HOSE PRO,**

**Case No. 22-30072-11  
Chapter 11  
Jointly Administered**

**Debtors.**

\_\_\_\_\_/

**PIRTEK USA, LLC,**

**Plaintiff,**

**v.**

**JAMES BRADLEY LAGER AND  
JBL HOSE SERVICE, LLC D/B/A TEXAS  
HOSE PRO,**

**Adversary No. 22-03042-mvl**

**Defendants.**

\_\_\_\_\_/

**MOTION FOR LEAVE TO FILE SUPPLEMENTAL EVIDENCE IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE Michelle V. Larson, United States Bankruptcy Judge:

Plaintiff PIRTEK USA, LLC (“PIRTEK”), by and through its undersigned counsel and pursuant to Local Bankruptcy Rule 7056-1(g) hereby files its Motion for Leave to File Supplemental Evidence in Support of Motion for Summary Judgment (ECF 38) and states as follows:

### **BACKGROUND**

1. This adversary was initiated when PIRTEK filed a complaint for breach of contract, injunctive relief and for a finding that Defendant Lager’s debt was non-dischargeable, alleging that Defendants breached the non-disparagement and confidentiality provisions in the parties’ second settlement agreement (the “Second Settlement”) (ECF 14).

2. On January 20, 2023, PIRTEK filed its Motion for Summary Judgment (ECF 38). In addition to seeking the entry of a judgment awarding PIRTEK damages, PIRTEK also sought a permanent injunction to prevent Lager from posting or making any further derogatory comments about PIRTEK and its representatives. PIRTEK’s requested relief is based upon a settlement agreement by which Defendants expressly agreed not to disparage PIRTEK or its officers and directors. Despite that clear contractual commitment, Defendants directly, and through a marketing agreement with IdeaFarm, a company owned by Sean Kelly (“Kelly”) who controls a website located at [www.unhappyfranchisee.com](http://www.unhappyfranchisee.com) (the “Unhappy Franchisee Website”), engaged in a defamatory campaign falsely accusing PIRTEK and its officers of racism and unscrupulous business practices, all outlined in PIRTEK’s Motion for Summary Judgment.

3. In their opposition brief, Defendants argued that a permanent injunction should not be entered in PIRTEK’s favor because PIRTEK had not moved for a preliminary injunction during the pendency of this matter (ECF 45, at ¶ 74).

4. In its Reply, PIRTEK argued that even if “delay” could be considered as grounds for denying a permanent injunction (rather than a preliminary injunction), Defendants’ argument failed because PIRTEK had a good explanation for not previously seeking a preliminary injunction (ECF 52, at pp. 18-19).

5. Specifically, PIRTEK explained that it did not seek a preliminary injunction “because on May 24, 2022, this Court issued a clear warning to Defendants to stop violating the Second Settlement and, as Defendants admitted, that warning was sufficient (at least for the time being) to get them to stop disparaging PIRTEK and disclosing the existence of the Second Settlement.” *Id.* This Court’s admonition to Defendants was as follows:

Despite this ruling, the Court wishes to admonish the parties, especially the debtor, given his penchant for writing on the subject, that this ruling is not *carte blanche* to drag the adversary through the mud publicly . . . ***The Court warns the parties that it will have little patience for gamesmanship and further public statements outside of this Court’s direct line of sight.*** In other words, the Court is sending the parties back tot heir corners asking for a fair fight.

(*Id.* at p. 19 (quoting ECF 17, Transcript at 8:2-16)).

6. Defendants admitted that after this Court instructed them to stop defaming PIRTEK, Defendant Lager told Kelly, the owner of the Unhappy Franchisee Website, to stop posting about PIRTEK (ECF 38-2, at App. 614, 257:2-13).

7. Importantly, Defendants have paid, and continue to pay, Kelly, through his company IdeaFarm<sup>1</sup> \$5,000.00 per month for “marketing services.” (ECF 36, at p. 20; ECF 186-1, at pp. 9, 27 and 32; ECF 38-2, App. 102, at 36:2-21). Indeed, JBL’s monthly operating reports reflect that Defendants continue to pay Kelly, through IdeaFarm, the sum of \$5,000.00 per month (ECF No. 182-1, p. 9 of 38; ECF 182-1, p. 14 of 38).

---

<sup>1</sup> In Debtor JBL Hose’s Summary of Assets and Liabilities, JBL House listed IdeaFarm as a creditor, and the filing listed Kelly as IdeaFarm’s point of contact (ECF 36, at p. 20).

8. From May 24, 2022, through June 1, 2023, Defendants and Kelly abided by this Court's instruction to refrain from disparaging PIRTEK.

9. Perhaps in anticipation of a ruling from this Court on PIRTEK's Motion for Summary Judgment, or an ultimate trial of this matter, the Debtor's marketing agent, Kelly, resumed posting disparaging content about PIRTEK and its representatives on the Unhappy Franchisee Website (Ex. A, Declaration of Aaron Blynn ("Blynn Decl."), at ¶ 4; Exhibit 1 to Blynn Decl.).

10. On June 1, 2023, Kelly added a post entitled "PIRTEK USA v. Lager Series: DISCLAIMER & Clarification" which purports to address this Court directly and claims that Defendants had nothing to do with Kelly's spontaneous decision to resume his campaign to harass PIRTEK. However, Kelly's company is being paid by Defendants \$5,000.00 per month and Defendants have testified that they paid Kelly's company to write articles about his "battle" against PIRTEK. (ECF 38-2, App. 107, at 56:15-25). Further, Defendants testified that they had some control over what Kelly posts on his Unhappy Franchisee Website, admitting that when Defendants would ask that Kelly refrain from posting about PIRTEK on the Unhappy Franchisee Website, Kelly would comply with the request (*Id.* at p. 194, at 212:6-18).

11. Next, on June 3, 2023, Kelly added a post to the Unhappy Franchisee Website entitled "Did PIRTEK CEO Kim Gubera Lie Under Penalty of Perjury, in Her Sworn Declaration." (Ex. A, Blynn Decl. at ¶ 5; Exhibit 2 to Blynn Decl.).

12. Also on June 3, 2023, Kelly added a post entitled "PIRTEK USA v Jim Lager Series: The Perils of Franchising." (Ex. A, Blynn Decl. at ¶ 6; Exhibit 3 to Blynn Decl.).

13. On June 9, 2023, Kelly added a post to the Unhappy Franchisee Website entitled “AAA Franchise Arbitrator Kaufmann Flaunts Pro-Franchisor Bias” which makes derogatory references to PIRTEK (Ex. A, Blynn Decl. at ¶ 7; Exhibit 4 to Blynn Decl.).<sup>2</sup>

### ARGUMENT

14. “Local Rule 7056-1(g) permits parties to file supplemental materials, including additional evidence, with permission of the Court.” *In re ProvideRx of Grapevine, LLC*, 507 B.R. 132, 149 (Bankr. N.D. Tex. 2014). Indeed, “both the local and federal rules permit this Court to exercise its discretion to consider evidence filed as a supplement.” *Id.*; *Tremont, LLC v. Halliburton Energy Svs., Inc.*, 696 F. Supp. 2d 741, 790 (S.D. Tex. 2010) (finding that both Rule 56(e) and the local rules permit a court to exercise discretion in considering supplemental evidence).

15. Here, PIRTEK seeks leave to file the New Unhappy Franchisee Posts so that they are part of the summary judgment record that this Court may consider in connection with PIRTEK’s pending Motion for Summary Judgment (ECF 38). Given that the New Unhappy Franchisee Posts did not exist at the time PIRTEK filed its Motion for Summary Judgment, PIRTEK could not have possibly included them in the summary judgment record before now. The New Unhappy Franchisee Posts further exemplify Defendants breach of the Second Settlement and support the entry of the permanent injunction requested by PIRTEK.

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<sup>2</sup> The four (4) posts in June of 2023 shall be referred to collectively as the “New Unhappy Franchisee Posts.”

WHEREFORE, Plaintiff PIRTEK USA, LLC respectfully requests that this Court grant PIRTEK leave to file the New Unhappy Franchisee Posts as supplemental evidence in support of PIRTEK's Motion for Summary Judgment (ECF 38), along with any additional and further relief as this Court deems just and proper.

**CERTIFICATE OF CONFERRAL PURSUANT TO L.B.R. 7007-1(B)**

I hereby certify that on June 15, 2023, counsel for the Parties conferred and Defendants oppose the relief sought in this motion.

/s/ Kristen L. Perry

KRISTEN L. PERRY

State Bar No. 24090015

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Michael D. Joblove (*pro hac vice*)

Glenn D. Moses (*pro hac vice*)

Aaron S. Blynn (*pro hac vice*)

*Counsel for Pirtek USA, LLC*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was served *via electronic mail* upon: Melissa S. Hayward, Esq. and James S. Brouner, Esq. Hayward PLLC, 10501 North Central Expressway, Suite 106, Dallas, Texas 75231 ([MHayward@HaywardFirm.com](mailto:MHayward@HaywardFirm.com); [JBrouner@HaywardFirm.com](mailto:JBrouner@HaywardFirm.com)) this 15th day of June, 2023.

/s/ Kristen L. Perry  
KRISTEN L. PERRY

# EXHIBIT A



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**Adversary No. 22-03042-mvl**

**Defendants.**

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**DECLARATION OF AARON S. BLYNN IN SUPPORT OF PIRTEK USA, LLC'S  
MOTION FOR LEAVE TO FILE SUPPLEMENTAL EVIDENCE**

I, Aaron S. Blynn, declare as follows:

1. This declaration is made upon my personal knowledge and if called as a witness I could testify to the matters set forth herein.

2. I am over the age of 18 and am presently employed by Venable LLP as an attorney. I am one of the attorneys representing Plaintiff PIRTEK USA, LLC in this matter.

3. On June 12, 2023, I visited a website located at [www.unhappyfranchisee.com](http://www.unhappyfranchisee.com) (the “Unhappy Franchisee Website”).

4. Attached hereto as Exhibit “1” is a true and correct copy of a post I reviewed on and printed from the Unhappy Franchisee Website on June 12, 2023 entitled “PIRTEK USA v. Lager Series: DISCLAIMER & Clarification.”

5. Attached hereto as Exhibit “2” is a true and correct copy of a post I reviewed on and printed from the Unhappy Franchisee Website on June 12, 2023 entitled “Did PIRTEK CEO Kim Gubera Lie Under Penalty of Perjury in Her Sworn Declaration.”

6. Attached hereto as Exhibit “3” is a true and correct copy of a post I reviewed on and printed from the Unhappy Franchisee Website on June 12, 2023 entitled “PIRTEK USA v Jim Lager Series: The Perils of Franchising.”

7. Attached hereto as Exhibit “4” is a true and correct copy of a post I reviewed on and printed from the Unhappy Franchisee Website on June 12, 2023 entitled “AAA Franchise Arbitrator Kaufmann Flaunts Pro-Franchisor Bias.”

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 15, 2023.

  
\_\_\_\_\_  
AARON S. BLYNN

# EXHIBIT 1

# Unhappy Franchisee

No-Nonsense Hype-Free Franchise Issues & Discussion Site

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[PIRTEK USA](#)

## PIRTEK USA v. Lager Series: DISCLAIMER & Clarification

📅 June 1, 2023 👤 ADMIN 💬 0 Comments 🔖 Faegre Drinker, franchise bankruptcy, franchise litigation, Glenn Duncan, jim lager, Joblove Battista, Kim Gubera, Peter Duncan, Pirtek franchise, Pirtek USA, sean kelly, Venable

**NOTE TO THE HONORABLE Michelle V. Larson, United States Bankruptcy Judge:**



I plan to write a series of posts based on the public documents of *PIRTEK USA v. Lager* available on PACER.

I am not a party to this litigation, but Plaintiffs have referenced my name, website and writing hundreds, if not thousands, of times in the 1000+ pages submitted to your court.

Many of these references contain misrepresentations, innuendos and outright lies about my writing, my motives, and my professional relationships with Mr. Lager, which changed during different periods in the last 10 years.

As Plaintiffs will likely copy, paste, submit & decry every word I write in an effort to unfairly weaponize them against the former franchisee they are bent on destroying, I felt it necessary to provide this clarification & disclaimer:

**1. Neither Jim Lager nor his attorneys requested, sanctioned nor participated in the drafting these posts.**

To the contrary, I am jeopardizing my relationship with my friend & colleague, who is already under stress, by posting on this matter. However, I feel compelled to continue my coverage of this dispute because it uniquely illustrates the significant problems regarding private mediation/arbitration, confidentiality agreements, lack of franchisee control over ownership changes and general lack of franchise industry oversight and enforcement.

**2. I have no intention (or illusion) of influencing or affecting your proceedings**

Plaintiff's counsel will likely try to characterize my upcoming articles as a violation of your directive for Plaintiff & Defendant to refrain from publicly communicating. They have tried to characterize me as an attack dog and/or puppet rather than the independent, self-determined journalist I have been for the past 20 years.

Each post I have made regarding PIRTEK USA has come with an invitation for them to provide corrections, clarifications, rebuttals or statements of opinion. They have declined to engage or participate in the Court of Public Information & Opinion, which is the court I'm focused on. I'm merely an interested observer of your court & legal proceedings

Did PIRTEK CEO Kim Gubera Lie, Under Penalty of Perjury, in Her Sworn Declaration?

PIRTEK USA v. Lager Series: DISCLAIMER & Clarification

Does Spadea Lignana Bully & Silence Military Veterans?

**3. I have no desire to influence PIRTEK USA’s behavior by disclosing negative information**

If ever I thought there was a possibility that PIRTEK USA, Glenn Duncan, Kim Gubera, Michael Joblove, arbitrator David Kauffman or any others might be shamed into acting more ethically or compassionately, that time is long past. It’s clear that their only interest in my writing is how they can deceptively attribute it to or spin it against Mr. Lager. Questions or valid points I raise are simply ignored.

As you said, the toothpaste is out of the tube. And Plaintiff’s attorneys are the ones, ultimately, who did the squeezing.

**4. I never received a request to give a deposition. I never made ANY attempt to evade service.**

In *Doc 38-3 Filed 01/20/23 Appendix ISO MSJ – Part 2*, a Mr. Blynn states that Plaintiff’s counsel had tried, unsuccessfully, to serve me with a subpoena. (“*Q. He’s aware that they tried to serve him with a subpoena?*”). There are deposition pages and a referenced exhibit missing that I could not find.

To be clear: Plaintiff’s counsel is either being disingenuous about their attempt to serve me or they somehow found the world’s worst process server.

I work from home. I live on a busy, public road. I typically spend at least an hour per day outside, working in the yard and tending my chickens (yes, literally).

I’m a gigging musician and my performance schedule is posted publicly .

I’m puzzled by their claim that I could not be served.

If they did indeed want my input on their claims, on my writing, on the timing of my publications – or if they need clarification on my opinions – I will do my best to oblige them in the series to come.

Respectfully,

Sean Kelly

Publisher, UnhappyFranchisee.Com



Founder & Owner, Relentless, Inc.

[← Does Spadea Lignana Bully & Silence Military Veterans?](#)

[Did PIRTEK CEO Kim Gubera Lie, Under Penalty of Perjury, in Her Sworn Declaration? →](#)



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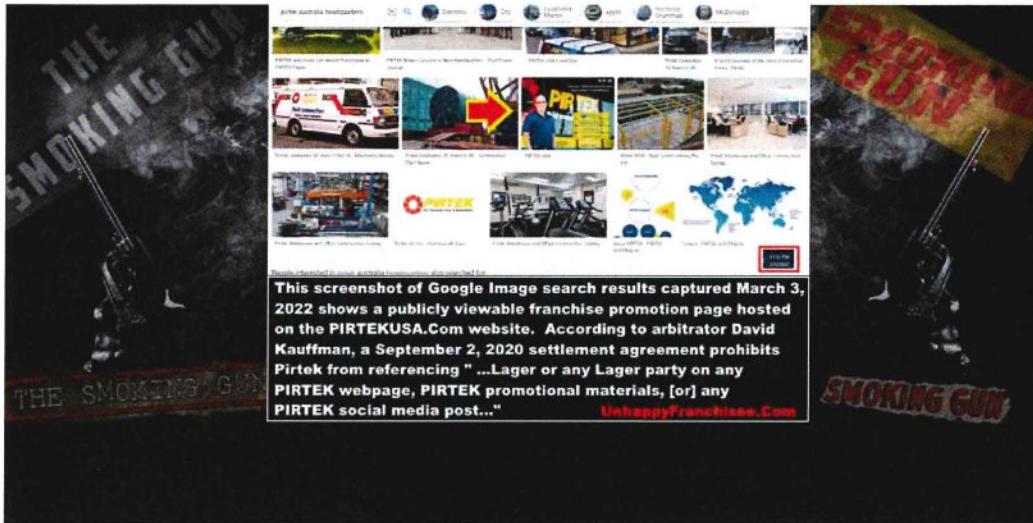
# EXHIBIT 2

# Unhappy Franchisee

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## Did PIRTEK CEO Kim Gubera Lie, Under Penalty of Perjury, in Her Sworn Declaration?

📅 June 3, 2023 👤 ADMIN 💬 0 Comments 🏷️ Faegre Drinker, franchise bankruptcy, franchise litigation, Glenn Duncan, jim lager, Joblove Battista, Kim Gubera, Peter Duncan, Pirtek franchise, Pirtek USA, sean kelly, Venable

***Is it a lie if someone very cleverly and intentionally creates a false impression in order to mislead? If so, is that perjury? You got me. But I do know this: it ain't honest. by Sean Kelly***

*This post is part of an ongoing series. I am not a party to this lawsuit and am solely responsible for my words and opinions. To the Honorable Judge Larson, I've posted a [Series Disclaimer & Clarification](#).*

(UnhappyFranchisee.Com)

The case is being heard in the UNITED STATES BANKRUPTCY COURT, NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION, the Honorable Michelle V. Larson, presiding.

After driving their former top franchisee and franchise brochure cover boy into bankruptcy, PIRTEK USA is suing to try to get their previous, private arbitration demand exempted from Jim Lager's bankruptcy protection.



Did PIRTEK CEO Kim Gubera Lie, Under Penalty of Perjury, in Her Sworn Declaration?

PIRTEK USA v. Lager Series: DISCLAIMER & Clarification

Does Spadea Lignana Bully & Silence Military Veterans?

### In February, 2020 Notified Kim Gubera of a Full-page Franchise Promotion Featuring Jim Lager on PIRTEK USA's Web Page

In the arbitration proceeding that forced PIRTEK USA's former top franchisee to seek bankruptcy protection, arbitrator David J. Kauffman stated that the settlement agreement between the parties prohibited PIRTEK USA from referencing Lager anywhere on, among other things, its website. Writes Kauffman:

“

Importantly, Section 5(f) of the parties' September 2, 2020 Settlement Agreement prohibits Pirtek from referencing " ...Lager or any Lager party on any PIRTEK webpage, PIRTEK promotional materials, any PIRTEK social media post (including but not limited to on PIRTEK's website... or any other online media) or in PIRTEK print media."

On February 6, 2020, at 11:20 am, I put the search term "Pirtek Headquarters Australia" into Google Image Search.

Although many images of Jim Lager, PIRTEK USA's unpaid franchisee poster boy, were displayed, one in particular appeared to be a clear violation of the September 2, 2020 agreement.



It was a full-screen promotional webpage featuring an image of Jim Lager with the caption:

“ Jim Lager, Owner  
“ PIRTEK Love Field &  
“ PIRTEK Meacham  
“ Dallas, Texas

## **PIRTEK USA Immediately Deleted the Prohibited Web Page**

After I publicly posted a screenshot & link, notifying them that their violation had been exposed and documented, PIRTEK USA immediately deleted the webpage.

On February 22, 2022, I emailed Kim Gubera (also Glenn Duncan, Michael Joblove, David Kauffman) the following:

“ On February, 7 I posted the link to the full page Lager photo on the PirtekUSA.com website, here:  
<https://www.unhappyfranchisee.com/jim-lager-on-pirtek-website/>

“ I assume that PIRTEK found this posting helpful, as the image was removed within 24 hours!

“ Request for comment from attorney Joblove & arbitrator Kaufmann: Were you aware that Jim Lager’s full-page image was still posted on the PIRTEK USA.com franchise promotional website and could have been removed at any time? Had Mr. Joblove instructed PIRTEK to remove such content? Does Mr. Kaufmann still content PIRTEK was fully compliant?

“ To help Ms. Gubera, who has expressed her urgency in protecting the PIRTEK brand from being publicly associated with Jim Lager, I thought I would share the URLs of 5 PIRTEK-initiated & controlled press releases

posted from the PIRTEK USA admin account on Thomas.net.

“

I actually signed up for an account to be sure that Users like PIRTEK post and can delete their own content (they can).

“

In fact, PIRTEK USA posted press releases as recently as last year when they celebrated opening the 100th franchise.

“

Does Ms. Gubera, Mr. Joblove & Mr. Kaufmann still maintain that this site is a 3rd party site beyond the control of PIRTEK USA? As a franchise sales and marketing professional for 3 decades, I can assure you that the PIRTEK account, profile and press release content is under PIRTEK's full control.

“

If Ms. Gubera is truly concerned about PIRTEK's association with Jim Lager, isn't it reasonable to assume these press releases will be deleted immediately?

Ms. Gubera, Glenn Duncan, attorney Michael Joblove and arbitrator David Kauffman all received the link to the full-page franchise page that was indexed in Google, was displayed publicly in Google search results, and was obviously not password-protected.

## **In Her Sworn Declaration, Gaslighting Kim Gubera Omits**

### **PIRTEK's Blatant Settlement Breach**

On March 20, 2023, PIRTEK's attorneys submitted the document **DECLARATION OF KIM GUBERA IN SUPPORT OF PIRTEK USA, LLC'S MOTION FOR SUMMARY JUDGMENT** in support of its motion for summary judgement.

“

Given Lager's personal issues... PIRTEK does not wish to be affiliated with Lager in any way and, despite having no obligation to do so, has taken steps to remove any references to Lager from any PIRTEK materials which existed prior to the Second Settlement... [emphasis mine]

Lager's complaints had been PIRTEK USA's continued display of his success story, military record and endorsement of PIRTEK USA posted on their website and pages they posted and controlled from the time *before* the ownership change to present. As far as I know, he had never claimed PIRTEK had posted anything about him after Glenn Duncan took control of the company. Gubera evades the real issue:



Additionally, at no time after the September 2, 2020 settlement has PIRTEK included Lager's image, or any reference to Lager in any of PIRTEK promotional materials, webpage, website, print media or social media created after the Second Settlement was entered... [emphasis mine]

Then she refers to an article of little relevance that supposedly resided on a password-protected intranet. *Huh?*

*If this isn't a red herring, it sure smells like one.*



29. At some point, PIRTEK discovered that there existed on its intranet, but not its public webpage, an article from Fluid Magazine (an internal PIRTEK newsletter that can only be accessed from PIRTEK's intranet) from nearly ten years ago in which a few franchisees are described as receiving awards. One of the franchisees was Lager. That article is not available to be viewed by the public and could only be accessed by someone who has a username and password to access PIRTEK's intranet.

## **Kim Gubera: Is This Perjury? Perjury Adjacent? Or Just an Expertly Crafted Lie?**

This is the kind of tradecraft that earns Michael Joblove and the associates at Venable & Faegre Drinker the big bucks.

“

Let's have Kim Gubera shout **AT NO TIME DID WE REFERENCE JIM LAGER** (in materials created after September 2, 2020).

“

Then refer to a herring-scented straw man Fluid Magazine article that can be easily refuted as only accessible “by someone who has a username and password.”

“

Then, a couple of paragraphs later, drop in the names of two former PIRTEK employees who were witnesses on Jim Lager's behalf.

“

People might think: Wait a minute... they would have usernames & passwords! Could THEY have screenshotted 10-year-old award pictures?

*(Admittedly, I could be giving them too much credit...)*

But the truth is that Kim Gubera & company knew that they had a full-page franchise promotion of Jim Lager on their publicly viewable website.

I know because I found it using a basic Google image search. I documented it and notified them.

They must've realized that it was clear proof that they had breached the settlement – even David Kauffman would have to admit that.

They scrambled and removed it immediately.


Then they decided to spin a narrative, under penalty of perjury, as if it never existed... and dump it and hundreds of other pages on a busy court, assuming no one will call them out on their deception.

**Ms. Gubera: Your Response is Once Again Invited by the Court of Public Information & Opinion (CPIO)**

Once again, Kim Gubera, PIRTEK USA and their legal minions are invited to provide corrections, clarifications, rebuttals and their alternative viewpoint.

You'll find the Court of Public Information & Opinion much less expensive and more expeditious than your preferred system of private arbitration, but you might find that transparency and public debate will result in becoming better people running a better company.

Truth might be a tough pill to swallow, but why not give it a try?

*\* In my opinion. All of this is my opinion. Everything I say or write is my opinion, except verifiable fact, and therefore non-actionable as defamation. Not that that will stop them  Winking smile*

See all [PIRTEK USA Posts](#).

See posts in the *PIRTEK USA v. Lager Franchise Perils Series*

***The words and opinions expressed here are solely the opinions of Sean Kelly, who invites corrections, rebuttals and respectful debate. Sean Kelly is an independent investigative journalist with 35 years of franchise industry experience. Since founding [UnhappyFranchisee.Com](#) in 2006, his reporting has exposed & shut down several predatory franchise & investment schemes. Sean Kelly is a franchise watchdog who prompted and aided the FBI investigation that shut down the 165-victim multi-million-dollar NY Bagel franchise scam and landed perpetrators Dennis Mason & Joseph Smith in federal prison. Sean was featured in the ABC Four Corners expose of 7-Eleven wage theft in Australia and has served as an advisor to Dateline NBC. He has withstood bullying, intimidation & frivolous lawsuits as high as \$35M and never lost. His crack editorial staff and fact checkers include Chick, Gem, Red, Pru & Joanie the Rescue Chicken.***

**Contact the author at [UnhappyFranchisee\[at\]Gmail\[dot\]com](mailto:UnhappyFranchisee[at]Gmail[dot]com)**

TAGS: PIRTEK, PIRTEK USA franchise, PIRTEK australia, Kim Gubera, Glenn Duncan, Peter Duncan, Michael Joblove, Venable, Faegre Drinker, David Kauffman, Kauffman Gildin & Robbins, Jim Lager, Sean Kelly, Franchise litigation, franchise arbitration, Franchise NDAs, Franchise gag orders



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## PIRTEK USA v Jim Lager Series: The Perils of Franchising

📅 June 3, 2023   👤 ADMIN   💬 0 Comments   🔖 David Kauffman, Faegre Drinker, franchise arbitration, Franchise gag orders, franchise litigation, Franchise NDAs, Glenn Duncan, jim lager, Kauffman Gildin & Robbins, Kim Gubera, Michael Joblove, Peter Duncan, PIRTEK, PIRTEK australia, Pirtek USA franchise, sean kelly, Venable

Welcome to the PIRTEK USA v Jim Lager Series: The Perils of Franchising.

This page will serve as an index to posts and updates, links to prior posts and reference documents.

### **PIRTEK USA v. Lager Series: DISCLAIMER & Clarification**

### **Did PIRTEK CEO Kim Gubera Lie, Under Penalty of Perjury, in Her Sworn Declaration?**

### **AAA Arbitrator David Kaufmann:**

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## AAA Franchise Arbitrator Kaufmann Flaunts Pro-Franchisor Bias

📅 June 9, 2023 👤 ADMIN 💬 0 Comments 🗑️ AAA, American Arbitration Association, arbitration, attorney David Kauffman, attorney Michael Joblove, CEO Kim Gubera, David Kaufmann, Federal Trade Commission, Franchise attorney David Kaufmann, franchise legislation, Franchise NDAs, franchisee Jim Lager, FTC, Glenn Duncan, jim lager, mediator David Kaufmann, NASAA, PIRTEK, Pirtek USA, Texas Hose Pro, the Franchise Rule

**David J. Kaufmann, the self-appointed franchisor-biased arbitrator in the PIRTEK USA litigation against its former top franchisee, Jim Lager, claims there are no problems in franchising.**

**But there IS a problem in franchising: That franchisor-biased David J. Kaufmann arbitrates franchisee vs. franchisor disputes.** by Sean



Kelly, publisher, UnhappyFranchisee.Com.

**This post is part of the series: PIRTEK USA v Jim Lager Series: The Perils of Franchising. Read: PIRTEK USA v. Lager Series: DISCLAIMER & Clarification**

(UnhappyFranchisee.Com) The arbitrator in PIRTEK USA's continued campaign to destroy its former top franchisee, David J. Kaufmann, has left no doubt that **he should NEVER have been in a position to arbitrate franchisee vs. franchisee disputes.**

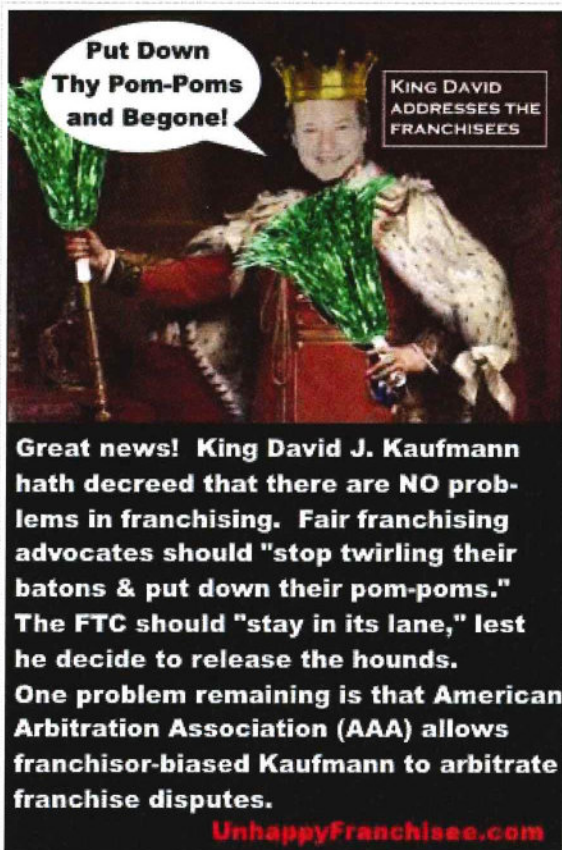
His latest New York Law Journal article, **Is the FTC Cracking Down – Or Cracking Up?** the amusingly pompous King David makes no effort to hide his contempt for franchisees, franchisee advocates, the Federal Trade Commission (FTC) and The Franchise Rule.

Kaufmann's latest proclamation is a condescending response to a previous column in the NYLR authored by his "colleague and good friend," [I bet],

respected franchisee attorney Ronald Gardner ("**The Giant Has Awoken: Franchisors in FTC's Crosshairs**").

Kaufmann pronounces that there is no evidence of any problems in franchising, and no ""growing concern around unfair and deceptive practices in the franchise industry."

He condescendingly tells advocates of fair franchising to "stop twirling their batons and put down their pom-poms."



David J. Kaufmann

Did PIRTEK CEO Kim Gubera Lie, Under Penalty of Perjury, in Her Sworn Declaration?

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David Kaufmann’s article oozes contempt for the Federal Trade Commission (FTC), which he acknowledges is “the primary federal agency governing franchise sales activity.”

At one point, David Kaufmann states “perhaps the FTC wants to reacquaint itself with the Lanham Act.”

King David even threatens the FTC to “to stay in its lane,” or risk the public embarrassment of a legislative defeat promulgated by him and his big-money franchisor lobbyists.

David J. Kaufmann’s overly demeaning chest-thumping and condescension seems to be for the benefit of his true audience: The big money franchisors whose interest he serves.

I believe that the true, underlying message of this exaggerated and ridiculous article is:

“

Your money’s been well spent.

“

We are in control and that’s not going to change.

“

You are free to continue to do whatever you want to whomever you want, and no one will hear about it.

## How Franchisor-Biased David Kaufmann Silences Franchisee Dissent

Despite his dedication to serving only franchisors in his law practice at Kaufmann Gildin & Robbins, Kaufmann is somehow allowed to mediate and arbitrate franchisor-franchisee disputes for the American Arbitration Association (AAA).

How is it that one who has represented the best interests of franchisors for decades & openly expresses contempt for franchisees, franchisee advocates & the FTC would be allowed to arbitrate franchisor vs. franchisee disputes.

As made public in unsealed documents submitted by PIRTEK USA attorneys in their attempt to get their arbitration claims exempted from Lager’s bankruptcy, Kaufmann’s bias and double-standard applied the franchisor and against franchisee Lager seems apparent:

- Jim Lager was a top-selling, award-winning franchisee of PIRTEK USA, was a mentor to other franchisees and was prominently featured in PIRTEK USA franchisee recruitment programs
- PIRTEK USA was sold to new owners, who refused to renew Jim Lager's franchise agreements without adequate justification
- In 2020, Kaufmann oversaw mediation that resulted in a settlement agreement between franchisor PIRTEK USA & a top franchisee, Jim Lager.
- The Franchisor & Franchisee mutually agreed to remove all Internet content referring to their prior relationship.
- Franchisee Lager was required to remove content with his complaints about his treatment as a franchisee & PIRTEK's franchise practices.
- PIRTEK USA was required to stop using Lager's likeness, success story & military service to promote & sell PIRTEK franchises.
- Franchisee Lager complied and removed his content, as agreed, including a series of posts on a 3rd party website.
- PIRTEK USA did not comply, & continued to promote Lager's success story via previously placed stories. At least one of the promotional placements included Lager's 1st & 2nd year sales as a PIRTEK franchisee which allegedly constitutes an illegal "earnings claim" in violation of the FTC Franchise Rule.
- Lager's attorneys repeatedly appealed to Kaufmann to have PIRTEK remove the non-compliant content from the Internet.
- Kaufmann repeatedly refused, claiming the franchisor is under no obligation to comply with removing content on 3rd party sites (even though Lager was required to do so).
- Lager's franchisee attorneys provide irrefutable evidence, including affidavits from 2 former PIRTEK employees, that the franchisor has the power to remove the content from the Internet.
- **Kaufmann refused to require (or even suggest) that PIRTEK to remove Lager's PIRTEK success story & earnings claim content from the Internet – even from promotions residing on PIRTEK USA's own webpage and on marketing accounts PIRTEK controlled.**
- **Yet Kaufmann forbade franchisee Jim Lager from submitting his opinions or participating in the open comment invitations by the Federal Trade Commission (FTC) in 2020 and the National Association of (NASAA) in 2021, even though neither submission referred to PIRTEK by name.**
- In fact, David Kaufmann issued a Temporary Restraining Order (TRO) prohibiting Jim Lager from submitting his opinions to state administrators.
- **Kaufmann justified prohibiting Lager from sharing opinions (that didn't mention PIRTEK USA) by referring to the very content he refused to make PIRTEK USA remove(!)**
- Kaufmann stated that although Jim Lager's letters did not name PIRTEK, "anyone with Google can figure out the company he's referring to."
- Franchisee Jim Lager reached his limit with Kaufmann's alleged coddling of the franchisor while simultaneously cudgeling his rights.

He rejected the legitimacy of the proceedings and Kaufmann as mediator/arbitrator and is speaking out publicly.

***That's right: Kaufmann defended the right of franchisor PIRTEK USA to continue to promote its relationship with Jim Lager on the Internet, but denied Jim Lager's right to participate in public proceedings because PIRTEK USA self-identifies through illegal and non-compliant content.***

## **David Kaufmann Issued a Temporary Restraining Order (TRO) to Keep Franchisee Complaints From State**

### **Administrators**

An abundance of credible complaints and ideas were submitted to the FTC despite King David's exhortations:

### **Public Comments on Provisions of Franchise Agreements and Franchisor Business Practices**

David J. Kaufmann's article provides his big franchisor base with conspiracy-theory, election-denier-level deflection of the public complaints submitted to the FTC:



...the FTC will receive hundreds (if not thousands) of coordinated identical letters advancing complaints against franchisors...

Unfortunately, Kaufmann and his cohorts have suppressed the experiences and opinions of innumerable franchisees through forced arbitration, NDAs, confidentiality and non-disparagement clauses, bullying and intimidation.

Hopefully, enough will have leaked through to awaken the Giant that the FTC could truly be – but so far has not been.

**Also read:**

### **Franchise Arbitrator David Kaufmann's Credibility on Trial After Kangaroo Court Hearing**



## Arbitration on Trial: How Franchisor Attorneys Undermine the FTC Franchise Rule

### Franchise Attorney, Mediator David Kaufmann Ethics Accusations

### NASAA Advisor Forbids Franchisee Participation in NASAA Public Comments

WHAT DO YOU THINK? ARE YOU FAMILIAR WITH THE ARBITRATION PROCESS? WHAT WAS YOUR EXPERIENCE? PLEASE SHARE YOUR OPINION BELOW OR EMAIL US AT UNHAPPYFRANCHISEE [at] GMAIL [dot] COM

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