

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
CESAR RAMIREZ and ADRIANA RODRIGUEZ,  
individually and on behalf of themselves and as  
stockholders of MANHATTAN FARE CORP., and  
in the right of MANHATTAN FARE CORP.,

Index No.: 521206/2023

Plaintiffs,

v.

MONEER ISSA, MANHATTAN FARE CORP.,  
and 431 FOOD MARKET CORP.,

Defendants.

-----X

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT  
OF THE MOTION TO DISMISS THE AFFIRMATIVE  
DEFENSES AND COUNTERCLAIMS OF THE DEFENDANTS**

Jack S. Dweck  
Rourke T. Feinberg  
On this brief.

**THE DWECK LAW FIRM, LLP**  
1 ROCKEFELLER PLAZA  
NEW YORK, NEW YORK 10020  
T: (212) 687-8200

**TABLE OF CONTENTS**

PRELIMINARY STATEMENT.....2

STANDARD ON A MOTION TO DISMISS.....4

    (a) The Counterclaims should be dismissed pursuant to Rule 3211(a)(1).....5

    (b) The Counterclaims are barred by CPLR 3211(a)(5).....5

    (c) Pursuant to Rule 3211(a)(6), the Counterclaims may not properly be interposed.....6

    (d) Pursuant to Rule 3211(a)(7), the Counterclaims fail to state a cause of action.....6

    (e) The Affirmative Defenses must be dismissed pursuant to Rule 3211(b).....7

ARGUMENT

    A. THE AFFIRMATIVE DEFENSES MUST BE DISMISSED.....7

        1. The First Affirmative Defense for Failure to State a Claim  
           must be Dismissed pursuant to two Decision and Orders of this Court.....7

        2. The Second Affirmative Defense based upon the Statute of  
           Limitations must be dismissed.....8

        3. The Third Affirmative Defense is barred by the Stockholder’s Agreement.....8

        4. The Fourth Affirmative Defense for Equitable Estoppel/Waiver is barred.....8

        5. The Fifth Affirmative Defense for Unclean Hands is barred.....9

        6. The Sixth Affirmative Defense for Failure to Mitigate Damages  
           is barred by the Mitigating Acts of the Plaintiffs.....10

        7. The Seventh Affirmative Defense for Breach of Contract  
           must be dismissed.....10

        8. The Eighth Affirmative Defense under the Faithless Servant Doctrine  
           must be Dismissed as a Matter of Law.....11

B. THE COUNTERCLAIMS OF THE DEFENDANTS MUST BE DISMISSED...11

1. The First Counterclaim for Fraudulent Inducement must be dismissed.....11

2. The Second Counterclaim for Breach of Fiduciary Duty must be dismissed....12

3. The Third Counterclaim for Conversion must be dismissed.....13

4. The Fourth Counterclaim pursuant to the Faithless  
 Servant Doctrine must be dismissed.....14

5. The Fifth Counterclaim for Breach of Good Faith/Fair Dealing  
 must be dismissed.....15

6. The Sixth Counterclaim for Misappropriation of  
 Trade Secrets must be dismissed.....16

7. The Seventh Counterclaim for Unfair Competition must be dismissed.....17

8. The Eighth Counterclaim under the CFAA must be dismissed.....17

9. The Ninth Counterclaim for Trespass against Chattel must be dismissed.....20

10. The Tenth Counterclaim for Defamation must be dismissed.....21

C. INJUNCTIVE RELIEF IS UNNECESSARY AND INAPPROPRIATE.....22

CONCLUSION.....23

**TABLE OF AUTHORITIES**

Cases:

106 N. Broadway, LLC v. Lawrence, 189 A.D.3d 733 (1st Dept. 2020).....12

150 Broadway N.Y. Assocs., L.P. v. Bodner, 14 A.D.3d 1 (1st Dept. 2004).....5

Babbitt v. Koepfel Nissan, Inc., 2020 WL 3183895 (E.D.N.Y. 2020).....15

Bank of America, N.A. v. 414 Midland Ave. Assocs., LLC,  
78 A.D.3d 746 (2nd Dept. 2010).....7, 8, 9

Bell v. Alden Owners, Inc., 299 A.D.2d 207 (1st Dept. 2002).....21

BHRAC, LLC v. Regency Car Rentals, LLC, 2015 WL 3561671 (C.D.Cal. 2015).....20

Brown Jordan Int’l, Inc. v. Carmicle, 846 F.3d 1167 (11th Cir. 2017).....20

Buffolino v. Long Island Sav. Bank, FSB, 126 A.D.2d 508 (2nd Dept. 1987).....21, 22

Carvel Corp. v. Noonan, 350 F.3d 6 (2d Cir. 2003).....22

Clark-Fitzpatrick Inc. v. LIRR Co., 70 N.Y.2d 382 (1987).....17

Compone v. Panos, 142 A.D.3d 1126 (2nd Dept. 2016).....5

Dalessio v. Kressler, 6 A.D.3d 57 (2nd Dept. 2004).....11

Diaz v. 297 Schaefer Street Realty Corp., 195 A.D.3d 794 (2nd Dept. 2021).....7, 10

Dorset Industries, Inc. v. Unified Grocers, Inc., 893 F.Supp.2d 395 (E.D.N.Y. 2012).....17

E.J. Brooks Company v. Cambridge Security Seals, 31 N.Y.3d 441 (2018).....17

Ehrenkranz v. 58 MHR, LLC, 47 Misc.3d 1226(A) (N.Y. Sup. Ct. 2015).....18

Family-Friendly Media, Inc. v. Recorder Television Network,  
2010 WL 9072168 (2nd Dept. 2010).....23

Fischkoff v. Iovance Biotherapeutics, Inc., 339 F.Supp.3d 408 (S.D.N.Y. 2018).....14, 18, 20

Friedland Realty, Inc. v. 416 W, LLC, 120 A.D.3d 1185 (2nd Dept. 2014).....10

Garber v. Bd. of Tr. of State Univ. of N.Y., 38 A.D.3d 833 (2nd Dept. 2007).....6

Garland–Sash v. Lewis, 2011 WL 6188712 (S.D.N.Y. 2011).....6

Gill v. Pathmark Stores, 237 A.D.2d 563 (2nd Dept. 1997).....20

Goshen v. Mutual Life Ins. Co. of New York, 98 N.Y.2d 314 (2002).....6

Greco v. Christoffersen, 70 A.D.3d 769 (2nd Dept. 2010).....9

Harris v. Provident Life & Acc. Ins. Co., 310 F.3d 73 (2d Cir.2002).....15

Hecht v. Components International, Inc., 22 Misc.3d 360 (Sup. Ct. 2008).....20

Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v. Matthew Bender & Company, Inc., 37 N.Y.3d 169 (2021).....20

In re Rice, 105 A.D.3d 962 (2nd Dept. 2013).....23

Jet One Group, Inc. v. Halcyon Jet Holdings, Inc., 2009 WL 2524864 (E.D.N.Y. 2009).....23

Kermanshah v. Kermanshah, 580 F.Supp.2d 247 (S.D.N.Y. 2008).....15

Kliebert v. McKoan, 228 A.D.2d 232 (1st Dept. 1996).....6

Leary v. Al-Mubarak, 2019 WL 4805849 (S.D.N.Y. 2019).....15

Leon v. Martinez, 84 N.Y.2d 83 (1994).....5

LivePerson, Inc. v. 24/7 Customer, Inc., 83 F.Supp.3d 501 (S.D.N.Y. 2015).....18

Mansion Joho Ctr. Co., Ltd. V. Mansion Joho Ctr., Inc., 24 A.D.3d 189 (1st Dept. 2005).....9

Mar v. Liquid Management Partners, LLC, 62 A.D.3d 762 (2nd Dept. 2009).....22

Marketing Tech. Solutions, Inc. v. Medizine LLC, 2010 WL 2034404 (S.D.N.Y. 2010).....20

Matter of Sud v. Sud, 211 A.D.2d 423 (1st Dept. 1995).....7

Moran Enterprises, Inc. v. Hurst, 96 A.D.3d 914 (2nd Dept. 2012).....7

Mount v. PulsePoint, Inc., 2016 WL 5080131 (S.D.N.Y.2016).....19

MSCI Inc. v. Jacob, 96 A.D.3d 637 (1st Dept. 2012).....19

Nexans Wires S.A. v. Sark–USA, Inc., 166 Fed.Appx. 559 (2d Cir. 2006).....19

Obeid v. Mack, 2017 WL 1215753 (S.D.N.Y. 2017).....19

Orbit One Commc'ns, Inc. v. Numerex Corp., 692 F.Supp.2d 373 (S.D.N.Y. 2010).....19

Ott v. Automatic Connector, 193 A.D.2d 657 (2nd Dept. 1993).....22

Regini v. Board of Managers of Loft Space Condominium, 107 A.D.3d 496 (1st Dept. 2013).....23

Reis, Inc. v. Lennar Corp., 2016 WL 3702736 (S.D.N.Y. 2016).....19

Salvatore v. Kumar, 45 A.D.3d 560 (2nd Dept. 2007).....21

Scott v. Fields, 85 A.D.3d 756 (2nd Dept. 2011).....13

Sewell v. Bernardin, 795 F.3d 337 (2d Cir. 2015).....17

Shaw Creations Inc. v. Galleria Enterprises, Inc., 29 Misc.3d 1213[A] (N.Y. County 2010).....16

Smallwood v. Lupoli, 107 A.D.3d 782 (2nd Dept. 2013).....13

Tri-Star Lighting Corp. v. Goldstein, 151 A.D.3d 1102 (2nd Dept. 2017).....16

Twin Securities, Inc. v. Advocate & Lichtenstein, LLP, 113 A.D.3d 565 (1st Dept. 2014).....20

Two Rivers Entities, LLC v. Sandoval, 192 A.D.3d 528 (1st Dept. 2021).....14

University Sports Publs. Co. v. Playmakers Media Co.,  
725 F.Supp.2d 378 (S.D.N.Y. 2010).....18

Statutes:

CPLR 213.....8

CPLR 214.....6

CPLR 3211.....2, 4, 5, 6, 7, 8, 14, 18

CPLR 3016.....11, 12, 14, 21, 22

18 U.S.C. § 1030.....17, 18, 19

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
CESAR RAMIREZ and ADRIANA RODRIGUEZ,  
individually and on behalf of themselves and as  
stockholders of MANHATTAN FARE CORP., and  
in the right of MANHATTAN FARE CORP.,

Index No.: 521206/2023

Plaintiffs,

v.

MONEEER ISSA, MANHATTAN FARE CORP.,  
and 431 FOOD MARKET CORP.,

Defendants.

-----X

The Plaintiffs Cesar Ramirez and Adriana Rodriguez (the “Plaintiffs”) respectfully submit this Memorandum in Support of their Motion to Dismiss the Affirmative Defenses and Counterclaims of Defendants Moneer Issa, Manhattan Fare Corp., and 431 Food Market Corp. (collectively the “Defendants”) pursuant to Rule 3211 of the New York Civil Practice Law and Rules (“CPLR”). Based upon the arguments herein, the Court should grant the Motion and dismiss the Defenses and Counterclaims in their entirety and with prejudice.

**PRELIMINARY STATEMENT**

The monomaniacal conduct of Defendant Moneer Issa in harassing the Plaintiffs Ramirez and his wife Adriana has resulted in an unprosecuted arrest of Mr. Ramirez where the District Attorney has refused to prosecute him and closed the bogus complaint by Issa. The Defendant Issa has exploited the legal system including the New York Police Department by filing a false police report against Ramirez, burying the financial records of the Company claiming they are confidential despite the issuance of a lawful subpoena, disregarding and flouting the Order of this Court, and the 50% ownership of the Plaintiffs, embezzling over \$400,000.00 in company funds by diverting the monies to his other entities, refusing to pay the wages owed to the Plaintiffs of

over \$800,000.00, and publishing false statements to the media which defame the Plaintiffs and harm reputation of Chef Ramirez. Now, Issa improperly asserts multiple counterclaims to retaliate against the Plaintiffs.

The Defendant, Moneer Issa, attempted to wrest control of the joint ownership of the formerly profitable restaurant Chef's Table and keep one hundred percent of the profits to the exclusion of the Plaintiffs. Issa has levelled accusations and jointly published with his attorney, Andrew Glenn, slanderous and libelous statements that the Plaintiff, Cesar Ramirez, was guilty of "theft of company property" and of "having stolen kitchen equipment and supplies." These statements were proved to be false when the Plaintiff furnished hundreds of receipts and invoices which conclusively demonstrated that Mr. Ramirez owned and paid for the property he is accused of having stolen. Documentary evidence filed with this Court includes invoices and receipts for hundreds of purchases of luxury accoutrements utilized at the restaurant by the Plaintiff, Cesar Ramirez, and on loan from him.

On Saturday, July 1, 2023, at approximately 6:00 P.M., Defendant Issa, unilaterally terminated and ousted Cesar Ramirez from his employment as Head Chef at the Chef's Table restaurant and closed the place down. The accusations of theft were contrived. On the next business day after unilaterally shutting down the restaurant, Issa wrote a check for, and transferred \$400,000.00 from the Manhattan Fare operating account and diverted the money his other entities. This was documented by the Plaintiffs in a filing with this Court.

The machinations of Moneer Issa have continued unabated. Thus, when Ramirez brought this action to compel Issa to account for the arbitrary closing of the restaurant and the replacement of the missing \$400,000.00, Issa retaliated by having his attorney publish another accusation accusing Ramirez again of stealing company property. Issa and his attorney had Ramirez arrested

based upon a falsified complaint with the New York Police Department. A search warrant to enter Mr. Ramirez’ home was then issued whereby the Police seized Mr. Ramirez’s property. These pre-meditated efforts yielded nothing of value or any consequence and Mr. Ramirez was subsequently released.

This action continues with the injunction issued by this Court that Mr. Issa can only pay the expenses of Manhattan Fare incurred in the ordinary course of business. However, the wholesale embezzlement by Issa amounts to a crime. His actions since July 2023 remain buried as to date Issa has blocked the release of any company information to the Plaintiffs including the financial and banking records of the Company. The practical effect is that despite the Plaintiffs’ ownership of half of the company, the Plaintiffs have not been given access to any of the Manhattan Fare business since July 2023.

With their Answer, the Defendants have counterclaimed with multiple deficiencies in pleading. There is no *bona fide* basis for any of the claims and, as such, this Court should dismiss the Counterclaims, and grant summary judgment to the Plaintiffs which is fully warranted based upon the absence of any issues of fact.

**STANDARD ON A MOTION TO DISMISS**

CPLR 3211 provides:

“(a) Motion to dismiss cause of action. A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

1. a defense is founded upon documentary evidence; or . . .
5. the cause of action may not be maintained because of . . . payment, . . . statute of limitations, or statute of frauds; or
6. with respect to a counterclaim, it may not properly be interposed in the action; or
7. the pleading fails to state a cause of action . . .; or . . .

(b) Motion to dismiss defense. A party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit.”

Based upon CPLR 3211, the Court should dismiss each of the Counterclaims and Affirmative Defenses with prejudice.

**(a) The Counterclaims should be dismissed pursuant to Rule 3211(a)(1).**

The Court of Appeals has held that claims must be dismissed when the proffered documents “utterly refute” the allegations in the pleadings, “conclusively establishing a defense as a matter of law.” Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v. Matthew Bender & Company, Inc., 37 N.Y.3d 169, 175 (2021)(dismissing claims where express written document clearly and utterly refuted allegations as pleaded and not relying on affidavits in opposition); *see also* 150 Broadway N.Y. Assocs., L.P. v. Bodner, 14 A.D.3d 1, 5 (1st Dept. 2004)(dismissal warranted “where the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law”)(Leon v. Martinez, 84 N.Y.2d 83 (1994)).

As shown by the exhibits annexed to the Affirmation of Jack S. Dweck dated February 7, 2024 and the Affidavit of Adriana Rodriguez sworn to February 7, 2024, the Stockholders Agreement along with the receipts proving payment and ownership of all the subject property are dispositive of the allegations within the Counterclaims.

**(b) The Counterclaims are barred by CPLR 3211(a)(5).**

CPLR 3211(a)(5) states the grounds to dismiss the Counterclaims because the statute of limitations and the statute of frauds.

“To dismiss a cause of action pursuant to CPLR 3211(a)(5), [the movant] bears the initial burden of demonstrating, *prima facie*, that the time within which to commence the action has expired.” Compone v. Panos, 142 A.D.3d 1126, 1127 (2nd Dept. 2016). “If the [movant] satisfies this burden, the burden shifts to the [defendant] to raise a question of fact as to whether the statute

of limitations was tolled or otherwise inapplicable, or whether [they] actually commenced the action within the applicable limitations period.” *Id.*

Here, the Counterclaims are subject to the three-year limitation imposed by CPLR 214 because the claims are based solely upon allegations of property damage. Further, each of the allegedly “stolen” items have been purchased and paid for by Plaintiffs. The receipts have been filed with the Court which constitute irrefutable proof of ownership by Ramirez.

As for the claims of “alleged deals” between Ramirez and Issa outside of the Shareholders Agreement, they are barred by the Statute of Frauds as none are in writing, are for amounts that exceed \$500, and cannot be completed within one year.

**(c) Pursuant to Rule 3211(a)(6), the Counterclaims may not properly be interposed.**

The Counterclaims may not properly be interposed because the claims are based upon different facts and legal issues than those in the Plaintiffs’ Amended Complaint. None of the Counterclaims are related to the issues being litigated in this action. The Defendants are attempting to sue the Plaintiffs in a completely different capacity with the claims that are outside the scope in which Plaintiffs originally brought this action.

**(d) Pursuant to Rule 3211(a)(7), the Counterclaims fail to state a cause of action.**

“Allegations consisting of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence . . .” should not be accepted as true. Kliebert v. McKoan, 228 A.D.2d 232 (1st Dept. 1996); Garber v. Bd. of Tr. of State Univ. of N.Y., 38 A.D.3d 833, 834 (2nd Dept. 2007)(internal citations omitted)(affirming dismissal on ground that conclusory allegations were proven false by documentary evidence); *see also* Goshen v. Mutual Life Ins. Co. of New York, 98 N.Y.2d 314, 326 (2002).

While “the facts pleaded are [generally] presumed to be true and accorded every favorable inference, . . . allegations consisting of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, are not entitled to such consideration.” Matter of Sud v. Sud, 211 A.D.2d 423, 424 (1st Dept. 1995).

**(e) The Affirmative Defenses must be dismissed pursuant to Rule 3211(b).**

Rule 3211(b) authorizes a plaintiff to move to dismiss affirmative defenses on the ground that they are without merit or lack supporting facts. Diaz v. 297 Schaefer Street Realty Corp., 195 A.D.3d 794 (2nd Dept. 2021)(court should have dismissed affirmative defenses). “Where affirmative defenses ‘merely plead conclusions of law without any supporting facts,’ the affirmative defenses should be dismissed pursuant to CPLR 3211(b).” *Id.*; Bank of America, N.A. v. 414 Midland Ave. Assocs., LLC, 78 A.D.3d 746, 748 (2nd Dept. 2010).

**ARGUMENT**

**A. THE AFFIRMATIVE DEFENSES MUST BE DISMISSED.**

**1. The First Affirmative Defense for Failure to State a Claim must be Dismissed pursuant to two Decisions and Orders of this Court.**

This Defense must be dismissed pursuant to two previous Decisions of this Court dated October 16, 2023 (NYSCEF Doc. #152) and January 2, 2024 (NYSCEF Doc. #212).

Defendants have previously moved under CPLR 3211(a)(7) to dismiss the Verified Complaint and Amended Verified Complaint arguing that the Plaintiffs failed to state a claim. Twice this Court considered and denied such relief, rendering two full-length decisions addressing the lack of merit to this defense and sustaining the majority of the Plaintiffs’ claims. As these issues have already been adjudicated, the Decisions of this Court constitute law of the case thereby barring this Affirmative Defense. Moran Enterprises, Inc. v. Hurst, 96 A.D.3d 914, 915-916 (2nd Dept. 2012)(dismissing defense raised in pre-answer motion as barred by law of the case).

**2. The Second Affirmative Defense based upon the Statute of Limitations must be dismissed.**

First, Defendants failed to raise this defense in either of their previous Motions to Dismiss. (NYSCEF Doc. #50, 179). Pursuant to CPLR 3211(e), this defense is waived.

Further, this defense is inapplicable as Plaintiffs brought suit well within the required time under CPLR 213. CPLR 213 lists actions to be commenced within six years including breach of contract, stockholder actions, fraud, and claims which are not explicitly named by Article 2.

Each of the Plaintiffs' claims fall within the six-year limitation under CPLR 213 as this lawsuit was filed within one month of the unlawful conduct of the Defendants on July 1, 2023. As such, this Affirmative Defense should be dismissed on the law.

**3. The Third Affirmative Defense is barred by the Stockholder's Agreement.**

Defendants assert that the Plaintiffs' claims are barred by the statute of frauds. The Court is respectfully referred to the *written* Stockholders Agreement (NYSCEF Doc. #6) signed by the parties and which expressly sets forth the obligations of the parties. The material breaches of the Stockholders Agreement by the Defendant Issa in failing to pay the wages and profit distributions owed to the Plaintiffs, along with his unilateral actions which required the unanimous consent of the Stockholders, are all supported by the written language contained within the Stockholders Agreement as signed by the parties. This defense is inapplicable to this action.

**4. The Fourth Affirmative Defense for Equitable Estoppel/Waiver is barred.**

The defense of equitable estoppel or waiver requires a plaintiff to "inexcusably" delay in asserting a claim, knowing that the "opposing party has changed his position to his irreversible detriment". *Bank of America, supra* at 750. Equitable estoppel only arises when a plaintiff stands by without objection, while an opposing party acts and incurs expense in reliance upon the act. *Id.*

The Defendants fail to allege any supporting facts. There is no allegation that the Plaintiffs failed to act upon discovery of Defendants' conduct. Nor do they state any supporting facts for waiver, defined as the voluntary and intentional abandonment of a known right which may not be inferred from mere silence or inaction. *Id.*

To the contrary, the Plaintiffs brought this action and requested an injunction within days of discovery of Defendants' illegal actions. The Defendant Issa barred the Plaintiffs from the restaurant on July 1, 2023 and restricted all access to the financial and bank records of the Company to which the Plaintiffs had an absolute right to access. Upon the failure to Issa to remedy the damages his unlawful actions caused to the Plaintiffs, this action was commenced, and this Court immediately issued an injunction against the Defendants. The Plaintiffs have pursued their claims vigorously and within days of having been unilaterally fired from their employment. Accordingly, Defendants failed to allege the necessary elements of the defense of estoppel/waiver.

**5. The Fifth Affirmative Defense for Unclean Hands is barred.**

The Defendants' Fifth Affirmative Defense of unclean hands is woefully insufficient under the pleading standards for affirmative defenses (Bank of America, supra). The Defendants have failed to allege any supporting facts.

Further, "the doctrine of unclean hands is an equitable defense that is unavailable where, as here, the action is exclusively for damages." Greco v. Christoffersen, 70 A.D.3d 769, 771 (2nd Dept. 2010)(court should have dismissed defense of unclean hands where the action is for damages) *citing* Manshion Joho Ctr. Co., Ltd. V. Manshion Joho Ctr., Inc., 24 A.D.3d 189 (1st Dept. 2005).

Here, the Defendants are exclusively seeking monetary damages. The Defendants also fail to address any of the actions by which the Plaintiffs engaged in conduct subject to the doctrine.

The Defendants do not deny that the Stockholders Agreement was in effect during the time period of the allegations, nor do they deny the validity of the invoices and receipts showing the payments made by the Plaintiffs for the subject property. Their own pleadings bar reliance on the doctrine of unclean hands as an equitable defense.

**6. The Sixth Affirmative Defense for Failure to Mitigate Damages is barred by the Mitigating Acts of the Plaintiffs.**

As stated in the Affirmation of Jack S. Dweck and the Affidavit of Adriana Rodriguez sworn to February 7, 2024, the Plaintiffs have spent the last seven months prosecuting this action. The Defendants have failed to allege any facts to support the defense of the Plaintiff having failed to mitigate his damages.

In view of the absence to plead supporting facts as required by Diaz v. 297 Schaefer Street Realty Corp., *supra*, the Sixth Defense must be dismissed.

**7. The Seventh Affirmative Defense for Breach of Contract must be dismissed.**

Defendants claim “Plaintiffs’ claims are barred in whole or in part because plaintiffs materially breached their employment agreements with Manhattan Fare, which material breaches excused and/or justified Manhattan Fare’s nonperformance, if any.” However, the Defendants fail to allege any supporting facts (Diaz, supra.) and their pleading is devoid of any statements that the Plaintiffs were in breach of the written agreement. *See generally, Friedland Realty, Inc. v. 416 W, LLC*, 120 A.D.3d 1185 (2nd Dept. 2014)(defendant’s counterclaim and affirmative defense did not describe the terms of the contract but were wholly conclusory); Hurst, supra at \*917 (dismissing defenses since they merely pleaded conclusions of law without supporting facts).

The Defendants do not allege any conduct by the Plaintiffs that would constitute a breach of the employment contract outside the allegation that the Plaintiffs allegedly converted company property. However, that allegation has been refuted by the receipts and invoices filed with this

Court. Even if the Defendants alleged that Plaintiffs violated the Stockholders Agreement, that would not excuse them from paying the Plaintiffs' wages pursuant to the New York Labor Law.

**8. The Eighth Affirmative Defense under the Faithless Servant Doctrine must be Dismissed as a Matter of Law.**

This defense must be stated under the heightened pleading standard pursuant to CPLR 3016(b) which states "where a cause of action or defense is based upon misrepresentation, fraud, mistake, wilful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail."

Defendants have not alleged any facts with particularity. Defendants have not stated when the alleged conduct occurred, how the contract was breached, the terms of the contract allegedly breached, any false statements or omissions made by Plaintiffs in negotiations, any damages or how the alleged statements or omissions caused any damages. There is nothing here to suggest that the faithless servant doctrine would apply.

The Court should grant the Plaintiffs' Motion and dismiss each of the Affirmative Defenses with prejudice for lack of merit and failure to allege supporting facts or the required particularity as mandated by CPLR 3016.

**B. THE COUNTERCLAIMS OF THE DEFENDANTS MUST BE DISMISSED.**

**1. The First Counterclaim for Fraudulent Inducement must be dismissed.**

The fraudulent inducement elements are "representation of a material existing fact, falsity, *scienter*, deception and injury." Dalessio v. Kressler, 6 A.D.3d 57, 61 (2nd Dept. 2004)(injunction should have been denied and fraudulent inducement claim dismissed). "Essential to a cause of action sounding in fraudulent inducement based upon a false promise is that the defendant had no intention to perform the promise at the time it was made." *Id.* Fraudulent inducement must be pleaded with specificity. CPLR 3016(b).

Defendants claim Ramirez made “false statements and omissions” with an alleged “intent to deceive and defraud”. There is no mention of specific statements or omissions, or the alleged intent of Plaintiff as required by CPLR 3016(b).

There is no allegation of specific “materially false statements and omissions”. Nowhere within the Counterclaims do the Defendants allege the specific words or acts of the Plaintiff Ramirez which induced the Defendant to enter into an agreement with him. To the contract, Issa was fully aware of the talents of Plaintiff Ramirez and engaged his services in order to create a profitable restaurant. Not only was the restaurant extremely popular, but the restaurant was making profits extending into the millions of dollars of which the parties were to split evenly as equal Stockholders in the Company.

Moreover, this Counterclaim is duplicative of the contract claim, which is not permitted as this Court has stated in its Decision dated January 2, 2024 (“In any event, the substance of the cause of action is adequately represented in other causes of action, specifically, breach of contract. Moreover, many of the allegations contained herein could be the subject of other causes of action if properly pleaded.”)(NYSCEF Doc. #212 at \*4). This Counterclaim should be dismissed.

**2. The Second Counterclaim for Breach of Fiduciary Duty must be dismissed.**

Defendants’ Second Counterclaim must be dismissed because they cannot satisfy the requirements to sustain a claim for breach of fiduciary duty. There is no restrictive covenant within the Shareholders Agreement. This is a complete defense under the law.

The elements are: (1) the existence of a fiduciary relationship, (2) misconduct by defendant, and (3) damages directly caused by defendant’s misconduct. 106 N. Broadway, LLC v. Lawrence, 189 A.D.3d 733 (1st Dept. 2020). Under CPLR 3016(b), a claim for breach of fiduciary duty must

be pleaded with particularity and will be dismissed upon the basis of documentary evidence that conclusively establishes a defense to the asserted claims as a matter of law. *Id.*

Here, Defendants failed to plead with particularity and have not pleaded the elements of breach of fiduciary duty. The Plaintiffs did not announce that they would be opening a new restaurant until *after* they were unilaterally terminated by Defendant Issa. Once the relationship between the parties had terminated, the Plaintiffs had no fiduciary duty to the Defendants. The Plaintiffs are not precluded from engaging in an independent business venture or seeking new employment. Defendants have failed to show the existence of any restrictive covenant or that there is any contractual duty of the Plaintiffs. Defendants have not alleged the existence of a fiduciary relationship between the Plaintiffs and the Defendants when the alleged conduct occurred. Defendants have not asserted any fiduciary misconduct by the Plaintiffs, or any actual damages suffered as a direct result of the Plaintiffs' conduct. The Defendants hired two new chefs and are operating the restaurant. Based upon the lack of a restrictive covenant, or any actual damages, the Second Counterclaim should be dismissed.

**3. The Third Counterclaim for Conversion must be dismissed.**

“In order to establish a cause of action to recover damages for conversion, the plaintiff must show legal ownership, or an immediate superior right of possession to a specific identifiable thing, and must show that the defendant exercised an unauthorized dominion over the thing in question . . . to the exclusion of the plaintiff's rights.” Smallwood v. Lupoli, 107 A.D.3d 782, 784-85 (2nd Dept. 2013); Scott v. Fields, 85 A.D.3d 756, 757 (2nd Dept. 2011).

The Counterclaim does not properly plead the elements of conversion. Defendants fail to allege any legal ownership, or right of possession to the items allegedly converted by the Plaintiffs. Defendants allege unsupported conclusory statements that they are entitled to the property. They

have not set forth any specifics of identifiable items or property. Defendants do not even contest the validity of the invoices and receipts submitted by the Plaintiffs which show the ownership of the property subject of this action.

Similarly, the Defendants' claim that the Plaintiffs "converted" the client-list cannot survive as pure access or copying of electronic files, without more, does not satisfy the elements of conversion. Fischkoff v. Iovance Biotherapeutics, Inc., 339 F.Supp.3d 408, 414 (S.D.N.Y. 2018). There is no allegation of how or when the alleged conversion of the client list took place, and the Defendants have submitted no documentary evidence to support the same. The Counterclaim for conversion must be dismissed.

**4. The Fourth Counterclaim pursuant to the Faithless Servant Doctrine must be dismissed.**

First, the Faithless Servant Doctrine may not be properly interposed as it does not apply to the Plaintiffs Ramirez and Rodriguez who were not just employees but were 50% owners of the Company pursuant to the Stockholders Agreement. This claim cannot be asserted by one shareholder against another. *See Two Rivers Entities, LLC v. Sandoval*, 192 A.D.3d 528, 529 (1st Dept. 2021)(affirming dismissal of claim for faithless servant doctrine where defendant was a nonmanaging member of plaintiff company and he had acquired ownership in another company); see also CPLR 3211(a)(6).

Second, the heightened pleading standard applies to a claim under the faithless servant doctrine. CPLR 3016(b).

Defendants' claim is premised on the same factual allegations as the fiduciary duty claim. Defendants fail to provide any detail beyond conclusory allegations such as "both Ramirez and Rodriguez materially breached their employment agreements with Manhattan Fare." (NYSCEF Doc. #218; Paragraph 55). There has been no showing of misconduct that "rises to the level of a

breach of loyalty or good faith.” Babbitt v. Koepfel Nissan, Inc., 2020 WL 3183895 at \*6 (E.D.N.Y. 2020)(dismissing claim for faithless servant where only conclusory allegations were pleaded); Leary v. Al-Mubarak, 2019 WL 4805849 at \*3 (S.D.N.Y. 2019). To the contrary, the Plaintiff Ramirez exercised his culinary skill to the great success of the Company. The restaurant was bringing in profits in the millions of dollars along with earning three coveted Michelin Stars.

Since the doctrine of faithless servant may not be interposed against a shareholder, the claim must be dismissed.

**5. The Fifth Counterclaim for Breach of Good Faith/Fair Dealing must be dismissed.**

“In New York, it is well-settled that the common law duty of good faith and fair dealing exists solely as an implicitly contractual right; any breach of this duty is therefore considered a breach of the underlying contract.” Kermanshah v. Kermanshah, 580 F.Sup..2d 247, 272 (S.D.N.Y. 2008); *E.g.*, Harris v. Provident Life & Acc. Ins. Co., 310 F.3d 73, 83 (2d Cir.2002) (“New York law ... does not recognize a separate cause of action for breach of the implied covenant of good faith and fair dealing when a breach of contract claim, based upon the same facts, is also pled.”).

Here, the Counterclaim is based exclusively on the written agreement between the parties. The Defendants explicitly rely on “their respective employment agreements”. (NYSCEF Doc. #218; Paragraph 61). Not only is this a duplication of the breach of contract claim, but the allegation that the Plaintiffs’ “wrongful conduct and false statements and omissions” are never pleaded. Nowhere within the pleading are there any allegations that the Plaintiffs engaged in conduct that constituted a breach of good faith within the scope or obligations of the Stockholders Agreement.

**6. The Sixth Counterclaim for Misappropriation of Trade Secrets must be dismissed.**

The Sixth Counterclaim must be dismissed because the customer list is not a trade secret, and Defendants fail to allege the Plaintiff was in possession of such a list, or that the Plaintiff used or improperly used its customer list.

“A plaintiff claiming misappropriation of a trade secret must prove: (1) it possessed a trade secret, and (2) defendant is using that trade secret in breach of an agreement, confidence, or duty, or as a result of discovery by improper means.” E.J. Brooks Company v. Cambridge Security Seals, 31 N.Y.3d 441, 453 (2018) *citing* Shaw Creations Inc. v. Galleria Enterprises, Inc., 29 Misc.3d 1213[A], 2010 WL 4156452 (N.Y. County 2010). “An essential prerequisite to legal protection against the misappropriation of a trade secret is the element of secrecy.” Tri-Star Lighting Corp. v. Goldstein, 151 A.D.3d 1102 (2nd Dept. 2017)(internal citations omitted). “Generally, where the customers are readily ascertainable outside the employer’s business as prospective users or consumers of the employer’s service or products, trade secret protection will not attach and courts will not enjoin the employee from soliciting his employer’s customers.” *Id.* at 1106 (plaintiff did not allege that it attempted to keep customer list confidential or that information was not generally known outside of its business).

The Defendants only allege that the Plaintiffs are in possession of a list of customers. They do not allege that the Plaintiffs are using a trade secret nor do the Defendants state any services, products, or information that could be considered trade secrets. Like in Tri-Star Lighting Corp. v. Goldstein, *supra*, the restaurant customers’ contact information is easily attainable outside of its business and there is no allegation that the list was kept in a confidential manner. Because the Counterclaim does not allege that the Plaintiffs are improperly using any information that constitutes trade secrets, the Sixth Counterclaim must be dismissed.

**7. The Seventh Counterclaim for Unfair Competition must be dismissed.**

The Seventh Counterclaim is duplicative of the breach of contract claim.

“Where the plaintiff and defendant are parties to a contract, and the plaintiff seeks to hold the defendant liable in tort, the plaintiff must prove that the defendant breached a duty ‘independent’ of its duties under the contract; otherwise plaintiff is limited to an action in contract.” Carvel Corp. v. Noonan, 350 F.3d 6, 16 (2d Cir. 2003) *citing* Clark-Fitzpatrick Inc. v. LIRR Co., 70 N.Y.2d 382 (1987). “This concept is equally applicable where, as here, the unfair competition claim is also premised on the same factual allegations underlying a claim for breach of the duty of good faith and fair dealing.” Dorset Industries, Inc. v. Unified Grocers, Inc., 893 F.Supp.2d 395, 416 (E.D.N.Y. 2012).

Here, the Defendants allege that the Plaintiffs have engaged in unfair competition based upon their assertion that Plaintiffs are engaged in the creation of a new restaurant in violation of the Stockholders Agreement. Not only is there no restrictive covenant in the Stockholders Agreement, but this is just a re-hashing of their contract claim. Thus, Defendants have not pleaded an “alternative theory” under which it could recover separate and apart from the contract claim.

**8. The Eighth Counterclaim under the CFAA must be dismissed.**

The Eighth Counterclaim for violation of the Computer Fraud and Abuse Act must be dismissed for failure to state a claim.

“The CFAA criminalizes, inter alia, ‘intentionally accessing a computer without authorization or exceeding authorized access, and thereby obtaining . . . information from any protected computer,’ 18 U.S.C. § 1030(a)(2)(C), and ‘intentionally acceding a protected computer without authorization, and as a result of such conduct, causing damage and loss’”. Sewell v. Bernardin, 795 F.3d 337, 339-340 (2d Cir. 2015).

Defendants do not allege that the Plaintiffs accessed their computers; rather that Plaintiffs accessed protected information (i.e. Instagram followers) belonging to the Defendants. Defendants go on to assert that such information was improperly used by the Plaintiffs. However, Defendants fail to state that the Plaintiffs are 50% owners of Manhattan Fare Corp. Ehrenkranz v. 58 MHR, LLC, 47 Misc.3d 1226(A) at \*13 (N.Y. Sup. Ct. 2015)(dismissing CFAA claim pursuant to CPLR 3211(a)(7)).

“CFAA does not encompass [Plaintiffs’ alleged] misappropriation of information that he lawfully accessed while working for [Defendants] or misuse of work computers”. MSCI Inc. v. Jacob, 96 A.D.3d 637 (1st Dept. 2012)(“The court properly determined that plaintiffs failed to state a cause of action under the CFAA where access was lawfully accessed and there was an employer-employee relationship); *see also* University Sports Publs. Co. v. Playmakers Media Co., 725 F.Supp.2d 378, 385 (S.D.N.Y. 2010). Taking the allegations as true, Defendants have failed to allege facts that fit within the confines of the CFAA. Fischkoff, supra. at \*418 (CFAA claim dismissed due to employer-employee relationship).

Additionally, this Court need not reach the issue of the first two elements because Defendants have failed to plead any damages recoverable within the meaning of the statute. Causing a “loss” in excess of \$5,000 (*see* LivePerson, Inc. v. 24/7 Customer, Inc., 83 F.Supp.3d 501, 511 (S.D.N.Y. 2015)) is the requisite third element of a CFAA claim. The losses set forth in the Eighth Counterclaim – unfair competition losses due to the alleged poaching of Instagram followers – are not recoverable under the CFAA!

Loss is defined in § 1030(e)(11) to mean “any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or

other consequential damages incurred because of interruption of service.” “Damages” is defined in § 1030(e)(8) as “any impairment to the integrity or availability of data, a program, a system, or information.”

Based on these definitions, courts in the Second Circuit have consistently held that the damages recoverable on a CFAA claim are limited to recovery for harm to the computer system that was accessed without authorization. Damages for unfair competition injuries, such as those pleaded by the Defendants in this case, are not recoverable under the CFAA. *See Reis, Inc. v. Lennar Corp.*, 2016 WL 3702736, at \*5 (S.D.N.Y. 2016)(collecting cases); *Orbit One Commc'ns, Inc. v. Numerex Corp.*, 692 F.Supp.2d 373, 386 (S.D.N.Y. 2010) (Second Circuit “denies CFAA claimants a remedy for competitive harm suffered as a result of misuse or misappropriation.”), *citing Nexans Wires S.A. v. Sark-USA, Inc.*, 166 Fed.Appx. 559, 562 (2d Cir. 2006); *see also Jet One Group, Inc. v. Halcyon Jet Holdings, Inc.*, 2009 WL 2524864, at \*6 (E.D.N.Y. 2009) (“the Second Circuit affirmed a well-reasoned decision by [Judge] Cederbaum recognizing that—at least with respect to damages—the CFAA says exactly what it means. Specifically, the Second Circuit held that a plaintiff cannot recover ‘lost revenue’ under the CFAA unless that lost revenue derives from an ‘interruption of service.’ In so doing, the Second Circuit affirmed Judge Cederbaum's holding that a plaintiff cannot recover revenue lost ‘as a result of defendants' ability to unfairly compete for business' due to the misappropriated proprietary information.”) (citations omitted).

This Court should follow the consensus among District Courts and the Second Circuit's decision in *Nexans*, which hold that recovery of unfair competition damages under the CFAA is not permitted. *See Obeid v. Mack*, 2017 WL 1215753, at \*8 (S.D.N.Y. 2017) (“Any recoverable damage or loss under the CFAA must be directly caused by computer impairment or damage.”); *Mount v. PulsePoint, Inc.*, 2016 WL 5080131, at \*8 (S.D.N.Y.2016), *aff'd* on other

grounds, 684 Fed.Appx. 32, 2017 WL 1147191 (2d Cir. 2017); Garland–Sash v. Lewis, 2011 WL 6188712, at \*3–4 (S.D.N.Y. 2011); Marketing Tech. Solutions, Inc. v. Medizine LLC, 2010 WL 2034404, at \*7 (S.D.N.Y. 2010); *see also* Brown Jordan Int'l, Inc. v. Carmicle, 846 F.3d 1167, 1174 (11th Cir. 2017); BHRAC, LLC v. Regency Car Rentals, LLC, 2015 WL 3561671, at \*3 (C.D.Cal. 2015) (“The only injury Plaintiff alleges as a result of the theft the Information is the loss of business from [defendant] poaching its customers. As other courts have observed, that is not the sort of injury for which the CFAA provides a remedy.”).

Since unfair competition damages are the only damages pleaded, and the Defendants have failed to allege that the Plaintiffs improperly accessed or damaged a *computer*, the CFAA claim must be dismissed with prejudice.

**9. The Ninth Counterclaim for Trespass against Chattel must be dismissed.**

Here the Defendants claim that their reservation system and the Instagram account were chattels and that the Plaintiffs trespassed upon them. These allegations are insufficient.

“Trespass to chattel occurs when a party intentionally damages or interferes with the use of property belonging to another.” Fischkoff, supra at \*416; Hecht v. Components International, Inc., 22 Misc.3d 360, 370 (Sup. Ct. 2008)(dismissing trespass against chattel claim where electronic files were stored in Outlook folder, and deletion of the files was nothing “other than harmless intermeddling with the computer system”).

In Twin Securities, Inc. v. Advocate & Lichtenstein, LLP, 113 A.D.3d 565 (1st Dept. 2014), the claim for trespass to chattel was dismissed where the defendant accessed the hard drive which the plaintiffs alleged contained trade secrets. However, the plaintiffs failed to sufficiently allege any indication that the condition, quality or value of the computer, its hard drive, or any of the information on the computer was diminished as a result. *Id.*

Here, the Instagram account was not the property of the Defendants. Plaintiffs own the account as shown by the documentation annexed to the Affidavit of Adriana Rodriguez.

Second, Defendants conclusively state that the Plaintiffs somehow “hacked” the computer system and caused it to malfunction in making reservations. However, there is no allegation of any harm to the physical computer, the computer system itself, or the business or revenue of the Company. Defendants have not even alleged when any of this took place or how the Plaintiffs allegedly hacked into the computer system. As such, the Defendants have not alleged facts which support a claim for trespass to chattel.

**10. The Tenth Counterclaim for Defamation must be dismissed.**

Once again, the Defendants violate CPLR 3016(a) for failing to plead with specificity.

The elements of defamation are (1) a false and defamatory statement about the party, (2) publication by the defendant to a third party, and (3) special harm or defamation *per se*. Salvatore v. Kumar, 45 A.D.3d 560, 563 (2nd Dept. 2007); Buffolino v. Long Island Sav. Bank, FSB, 126 A.D.2d 508, 510 (2nd Dept. 1987)(dismissing claim where “allegations, premised upon speculation and conjecture, wholly fail to comply with the specificity requirements for pleading a cause of action in defamation as they do not describe the nature of any alleged defamatory statement nor do they provide the time, place, and manner of the purported defamation”); Bell v. Alden Owners, Inc., 299 A.D.2d 207, 208 (1st Dept. 2002)(holding that claim for defamation is properly dismissed when “dates, times and places are left unspecified”).

Here, Defendants allege that Plaintiff Ramirez made “false” accusations regarding Defendant Issa’s nonpayment of wages and profits to the Plaintiffs. Without any other allegations, this is legally insufficient. The documentation filed with this Court that the Defendants failed to pay the wages and profits owed to Plaintiffs preclude any claim for defamation.

Second, the allegations do not state with specificity to whom the purported defamatory statements were published, do not state the time, the date, the place, or the manner in which it was published. Nor can the Defendants skirt the fact that the Plaintiffs were never paid the monies owed to them by the Defendants. The claim must be dismissed. Gill v. Pathmark Stores, 237 A.D.2d 563, 564 (2nd Dept. 1997)(affirming dismissal where “plaintiff did not set forth the actual words complained of, nor did he specify the persons to whom Pathmark or its agents published the alleged comments”); Ott v. Automatic Connector, 193 A.D.2d 657, 658 (2nd Dept. 1993)(“the alleged defamatory statements were not pleaded with the specificity required by CPLR 3016(a) because the plaintiff’s papers failed to specify to whom the statements were published”); Buffolino, supra.

**C. INJUNCTIVE RELIEF IS UNNECESSARY AND INAPPROPRIATE.**

Inasmuch as the Defendants seek injunctive relief within their ad damnum clause, the Court should dismiss that claim because injunctive relief is inappropriate when the party has also asserted claims for monetary damages.

“Where the [party] can be fully compensated by a monetary award, an injunction will not issue because no irreparable harm will be sustained in the absence of such relief.” Mar v. Liquid Management Partners, LLC, 62 A.D.3d 762 (2nd Dept. 2009)(“in their complaint, they seek nothing more than monetary damages. Accordingly, the plaintiffs have effectively acknowledged that they will be fully compensated by obtaining such damages, and thus are not entitled to a preliminary injunction.”).

Defendants failed to establish any of the three elements required for injunctive relief. They seek monetary damages, i.e. the Defendants admit that monetary damages will fully compensate them in the prayer for relief.

The Second Department has consistently enforced the denial of injunctive remedies where the movants concede that they have an adequate remedy at law by seeking money damages. In re Rice, 105 A.D.3d 962 (2nd Dept. 2013) is dispositive:

“Economic loss, which is compensable by money damages, does not constitute irreparable harm . . . Here, in both the first and fifth causes of action, as well as all of the causes of action in the complaint, the plaintiff seeks money damages . . . Where, as here, a litigant can fully be recompensed by a monetary award, a preliminary injunction will not issue.”

Rice, supra; accord Family-Friendly Media, Inc. v. Recorder Television Network, 2010 WL 9072168 \*3 (2nd Dept. 2010)(“indeed, [plaintiff’s] own complaint proves it has an adequate legal remedy since it seeks money damages”); *see also Regini v. Board of Managers of Loft Space Condominium*, 107 A.D.3d 496, 497 (1st Dept. 2013)(injunction denied “since, as evidenced by [plaintiff’s] claims for damages, he has an adequate remedy at law”).

Here, every Counterclaim demands monetary damages. These demands are based on the same facts pleaded in the request for an injunction. By their own Counterclaims, Defendants acknowledge they have an adequate remedy at law. Under Rice, supra, Family-Friendly Media, supra, and Regini, supra, any injunction must be denied.

### CONCLUSION

**BASED UPON THE FOREGOING, THE COURT SHOULD DISMISS THE COUNTERCLAIMS AND THE AFFIRMATIVE DEFENSES IN THEIR ENTIRETY AND WITH PREJUDICE.**

Respectfully submitted,

**THE DWECK LAW FIRM, LLP**  
*Attorneys for the Plaintiffs*

By: \_\_\_\_\_

Jack S. Dweck  
Rourke T. Feinberg

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
CESAR RAMIREZ and ADRIANA RODRIGUEZ,  
individually and on behalf of themselves and as  
stockholders of MANHATTAN FARE CORP., and  
in the right of MANHATTAN FARE CORP.,

Plaintiffs,

Index No.: 521206/2023

v.

**CERTIFICATION PURSUANT  
TO UNIFORM RULE 202.8-b**

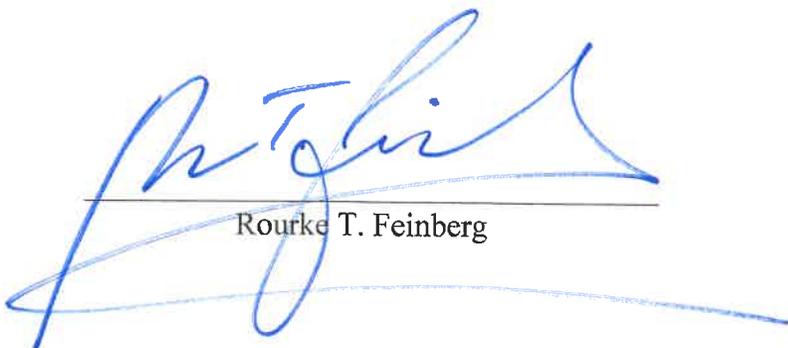
MONNEER ISSA, MANHATTAN FARE CORP.,  
and 431 FOOD MARKET CORP.,

Defendants.

-----X

**ROURKE T. FEINBERG**, counsel for Plaintiffs Cesar Ramirez and Adriana Rodriguez, hereby certifies pursuant to Uniform Rule 202.8-b of the Supreme Court, that the word count for the foregoing Memorandum of Law in Support of the Motion to Dismiss the Affirmative Defenses and Counterclaims of the Defendants, is 6510. This document complies with Uniform Rule 202.8-b, which limits the word count on submissions to 7,000. I further certify that this document was prepared on Microsoft Word, which generated the word count.

Dated: New York, New York  
February 7, 2024

  
\_\_\_\_\_  
Rourke T. Feinberg