

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
SANDRA G. MANZELLA, both individually and
derivatively on behalf of KESTE GROUP, LLC

Plaintiff,

-against-

ROBERTO CAPORUSCIO and SANDRO PATERNO,

Defendants.

and


KESTE GROUP, LLC

Nominal Defendant.
----- X

TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorneys an answer to the Complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty days after the service is complete if this summons is not personally delivered to you within the State of New York), and in case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
April 25, 2013


Douglas R. Hirsch, Esq.
Jennifer Rossan, Esq.
Paulina Stamatelos, Esq.
SADIS & GOLDBERG LLP

Index No.

SUMMONS

Plaintiff Designates New
York County as the Place
of Trial.

The Basis of Venue is
Defendant's Place of
Business.

Attorneys for Plaintiff
551 Fifth Avenue, 21st Floor
New York, NY 10176
(212) 947-3793

To: Sandro Paterno
Sandro Paterno Law Offices
225 Broadway, Suite 39
New York, NY 10007
(212) 732-2086

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

----- X

**SANDRA G. MANZELLA, both individually and
derivatively on behalf of KESTE GROUP, LLC**

Plaintiff,

Index No.

-against-

COMPLAINT

ROBERTO CAPORUSCIO and SANDRO PATERNO,

Defendants.

and

KESTE GROUP, LLC

Nominal Defendant.

----- X

Plaintiff, **SANDRA G. MANZELLA** ("Manzella") both individually and derivatively on behalf of **KESTE GROUP, LLC**, as and for its complaint against the above named defendants **ROBERTO CAPORUSCIO** ("Caporuscio") and **SANDRO PATERNO** ("Paterno") (collectively "Defendants") alleges as follows:

PARTIES

1. Plaintiff Sandra Manzella is a natural person residing in Harrison, New York.
2. Manzella is a member of Keste Group, LLC (the "Company"), a New York limited liability company.
3. Caporuscio is a natural person who resides, upon information and belief, in the State of New York, New York County.
4. Caporuscio is a member of the Company.

5. Paterno is a natural person who resides, upon information and belief, in the State of New Jersey, Monmouth County.

6. Paterno is an attorney admitted to practice in New York who maintains his principal place of business at 225 Broadway, Suite 39, New York, New York, 10007.

JURISDICTION

7. This is an action for direct and derivative claims.

8. The Supreme Court is the appropriate venue for this matter because Plaintiff seeks relief which includes monetary damages in excess of \$25,000, as well as injunctive relief.

9. The Company is a New York limited liability company, formed pursuant to the provisions of the New York Limited Liability Company Act (the "Act").

10. Upon information and belief, Caporuscio is a natural person who resides in the State of New York, New York County and thus jurisdiction is proper pursuant to CPLR § 301.

11. Upon information and belief, Paterno is a natural person who maintains his principal place of business in New York City and thus jurisdiction is proper pursuant to CPLR § 301.

12. The causes of action herein arise from Defendants' business activities in New York, including the formation and day-to-day operations of the Company.

13. Venue is proper in this County pursuant to CPLR § 503(a) and § 503(c).

BACKGROUND

14. The business at issue is Keste Group LLC (the "Company"), a New York limited liability company. A copy of the Company's Operating Agreement is annexed as Exhibit A.

15. Plaintiff is a 45% member and Defendant Caporuscio is a 55% member of the Company.

16. Since 2009, the Company has operated a pizza restaurant called Keste Pizza & Vino ("Keste Pizza"), at 271 Bleecker Street, New York, New York, 10014.

17. The Company is very successful, earning gross profits of \$ 1,638,575 in 2010, \$1,476,144 in 2011, and \$ 1,498,077 in 2012.

18. Since 2009, Plaintiff received a monthly distribution from the Company. Since September of 2012, that distribution has been approximately \$20,000 a month and Caporuscio has received approximately \$25,000 a month.

19. From 2010 to the present, in addition to Plaintiff's monthly distribution, Plaintiff also received a gross salary of \$840.00 per week for services she performs for the Company, which include, but are not limited to, overseeing the books and records of the Company.

20. Based on Plaintiff's background and degree in business administration and management, Caporuscio and Plaintiff agreed in June 2011 that she would be responsible for the business operations of the Company.

21. Plaintiff had control of the Company's checkbook and her responsibilities included, but were not limited to: overseeing payroll; maintaining QuickBooks records for daily sales, cash payouts and payroll; reconciling bank records; reviewing all credit card payments and receipts and working with companies to resolve any discrepancies; interfacing with all government licensing agencies including the Department of Health, the State Liquor Authority, the Board of Health and the Internal Revenue; ensuring the accuracy of all data entered into the

electronic POS system; payment of vendors; compiling inventory list for wine and beer; responding to all customer inquiries; and handling all insurance-related issues for employees.

22. However, on or about April 19, 2013, Caporuscio unilaterally decided to: (i) terminate Plaintiff from her managerial position and prohibit her from managing and participating in the day-to-day operations of the business; (ii) cease paying Plaintiff's salary, and (iii) cease paying Plaintiff any further distributions.

23. Caporuscio took these unlawful acts to retaliate against Plaintiff, who has challenged Caporuscio's misuse of the Company's funds and assets to the detriment of the Company and for his own personal benefit.

24. In furtherance of his attempts to take complete control of the business, Caporuscio has been transferring all monies from the Company's checking and savings accounts into a bank account that he controls, and has made unauthorized payments to himself, including, but not limited to, a payment in the amount of \$25,000.

THE OPERATING AGREEMENT

25. In March of 2012, Plaintiff and Caporuscio bought out two former members of the Company (the "buy-out"), making them the two remaining members of the Company.

26. To effectuate the buy-out, Plaintiff and Caporuscio used a Small Business Association loan ("SBA loan") in the amount of \$457,000, for which Plaintiff personally guaranteed the full amount.

27. In addition to the loan proceeds, Plaintiff contributed \$25,000 and Caporuscio contributed \$125,000 to complete the buy-out.

28. On March 20, 2012, Plaintiff also personally guaranteed the Company's lease, which does not expire until December 31, 2018.

29. Plaintiff's name is on the Company's liquor license and Plaintiff is liable to the State Liquor Authority for any violations that occur at the business. Consequently, Plaintiff must be able to access and inspect the premises.

30. In 2009, Plaintiff made her original contribution of \$80,000 for her membership in the Company. At that time, Caporuscio contributed nothing but his pizza-making skills.

31. Pursuant to the buy-out, Plaintiff and Caporuscio entered into the Operating Agreement.

32. Defendant Sandro Paterno is a lawyer who represented both Plaintiff and Defendant Caporuscio in connection with negotiating the Operating Agreement.

33. Paterno drafted the Operating Agreement.

34. Paterno has been a close friend of Defendant Caporuscio for many years and has also acted as Caporuscio's immigration lawyer.

35. At no time during negotiations concerning the Operating Agreement did Paterno advise Plaintiff of any conflicts of interest or have Plaintiff sign a conflict waiver.

36. Before signing the Operating Agreement, Plaintiff advised Paterno that she needed to make a living from the business and that it was essential that she have equal managerial control over the business with Caporuscio.

37. Paterno advised Plaintiff that he would draft the Operating Agreement to reflect the fact that Plaintiff would have equal managerial control and to ensure that Caporuscio could not unilaterally remove Plaintiff from the business.

CAPORUSCIO'S BREACH OF THE OPERATING AGREEMENT

38. Section 4.1 of the Operating Agreement provides:

Management by Members. The Company shall be managed and controlled by its Members by the affirmative vote of a majority in interest of the Members (unless otherwise provided herein) and shall not have any Managers within the meaning of the Act. Notwithstanding anything to the contrary contained in the provisions of this Agreement, the Members agree that Caporuscio and Manzella shall have primary responsibility for running the day-to-day operations of the Company.

39. But despite that the "Notwithstanding" language states that it trumps any other provision in the Operating Agreement and gives Plaintiff co-managerial power over the business, Caporuscio has improperly interpreted this language to mean that he can unilaterally terminate Plaintiff's managerial position because he owns 55% and Plaintiff owns 45%.

40. Nothing in the Operating Agreement provides Caporuscio with such authority—the "Notwithstanding" language means that the provision trumps all other provisions in the Operating Agreement.

41. However, Caporuscio has violated the terms of the Operating Agreement by unilaterally terminating Plaintiff's managerial authority and salary, locking Plaintiff out of the business, and refusing to pay Plaintiff her distribution.

CAPORUSCIO'S BREACH OF THE DON ANTONIO CONTRACT WITH PLAINTIFF

42. One year prior to the buyout, Caporuscio advised Plaintiff that he was interested in opening up another restaurant in New York City. Caporuscio told Plaintiff that he, an individual named Dan Antonio, and Plaintiff would together own a 33% membership interest in the new restaurant, which was to be called Don Antonio.

43. Plaintiff and Caporuscio verbally agreed that Caporuscio would work at both restaurants, and would split his time evenly between Keste Pizza and Don Antonio.

44. Plaintiff agreed to this arrangement because Plaintiff understood and believed based on Caporuscio's representations that she would have a membership interest in Don Antonio.

45. However, rather than split his time evenly between Keste Pizza and Don Antonio, over the last year and four months, Caporuscio worked just a total of thirteen days at Keste Pizza: eleven days in 2012 and two days in 2013.

46. Caporuscio provided Plaintiff with a letter dated January 26, 2012, (the "Don Antonio Agreement") which memorialized their verbal agreement, whereby Plaintiff would receive a portion of the net profit distribution of Don Antonio, equal to 3% of the total distribution.

47. Don Antonio opened in February 2012, but to date Plaintiff has received no profit distribution from Don Antonio.

CAPORUSCIO'S BREACH OF HIS FIDUCIARY DUTIES TO THE COMPANY

48. Over the course of the last year, Caporuscio engaged in many financial transactions in connection with the business that Plaintiff either objected to or questioned because they were detrimental to the Company.

49. Examples of the improper financial transactions that Caporuscio engaged in that Plaintiff either objected to or questioned are set forth below.

Caporuscio's unauthorized pizza school

50. In May 2012, Plaintiff became aware that Caporuscio was offering a pizza-making course at Keste Pizza.

51. Caporuscio did not consult with Plaintiff or obtain Plaintiff's permission before he began offering the course. Each course lasted ten days and cost \$4500 per person. There were between three and four students in each course.

52. To conduct the course, Caporuscio used the Company's space, equipment and supplies, without reimbursing the Company. Caporuscio retained all of the income derived from the course and has never reimbursed the Company for any costs.

53. Over Plaintiff's objection, Caporuscio has conducted nine courses during the period of May 2012 through February 4, 2012, and earned approximately \$121,500 in income.

Caporuscio's misuse of Company funds for his personal use

54. Caporuscio has also misappropriated the Company's funds for his own personal use and for use at another restaurant he owns, and jeopardizes the financial well-being of the Company by continuing to pay employees and other workers in a manner that does not comport with federal, state and local tax laws.

55. Caporuscio has made cash payments to himself from Company funds for his personal use, to pay for, *inter alia*, cab fares, items purchased at the Apple store and an i-phone charger. Caporuscio has failed to reimburse the Company for these funds.

56. Caporuscio withdraws Company funds to pay for services never rendered and for which he cannot produce a receipt. For example, he claims to have paid \$1,700 for

extermination services but is unable to provide a receipt and upon information and belief, no extermination services were provided to Keste Pizza.

57. On September 7, 2012, Plaintiff noticed that Caporuscio transferred \$2,060 from the Company's account to his personal account and used the funds to pay his rent and Time Warner Cable bill. Caporuscio did not repay the funds until Plaintiff confronted him.

58. On July 16, 2012, Caporuscio transferred \$2,000 to his personal account, denied having made the transfer and refused to repay it. On October 11, 2012, Plaintiff had no choice but to deduct the money from his request for reimbursement for expenses.

59. Caporuscio requested reimbursement from the Company for amounts in excess of what he paid. For example, Caporuscio was reimbursed \$984 for a payment made to Fiacco Pork when the actual amount paid was \$384. When Plaintiff requested that Caporuscio refund the difference to the Company, he refused.

60. Similarly, Caporuscio was reimbursed \$480 for furniture purchased when the actual cost was \$87.10.

61. Caporuscio has used at least \$5,000 of the Company's money to pay unidentified legal fees.

62. Caporuscio has also misappropriated cash deposits from Keste Pizza and rather than depositing them in the Company's bank account, has kept the funds for himself. For example, on 4/11/13, he took \$385.55; on 4/12/13 he took \$53.03; on 4/13/13 he took \$1,237.16; on 4/14/13 he took \$315.56; on 4/16/13 he took \$528.48; on 4/17/13 he took \$270.13; on 4/18/13 he took \$576.02; on 4/19/13 he took \$345.25; on 4/20/13 he took \$573.37 and on 4/21/13 he took \$697.76.

63. Over Plaintiff's objection, Caporuscio has spent \$14,717.58 on a new POS system for Keste Pizza that has not been installed and that is not necessary, as Keste Pizza already has a POS system that functions well.

64. Caporuscio has his own Company checkbook. Recently, Caporuscio wrote out a Company check to "Keste Group," for \$25,000. Upon information and belief, this check for \$25,000 was deposited by Caporuscio on April 18, 2013, in an account at Capital One Bank in Secaucus, New Jersey over which he has sole control, though he had already received his monthly distribution of \$25,000.

65. Caporuscio used the Company's funds to pay himself an additional \$25,000, though he had already received his monthly distribution in that amount, and therefore, there was no basis for Caporuscio to withdraw the money from the Company's account.

66. Bank records show that on February 1, 2013, Caporuscio transferred \$7,000 from the Company's business savings account to his personal checking account.

67. Bank records show that on April 19, 2013, Caporuscio made two transfers, in the amounts of \$8,500 and \$895, from the Company's checking account to his personal checking account.

68. Bank records show that on April 22, 2013, Caporuscio withdrew \$11,000 from the Company's checking account.

69. Bank records show that on April 19, 2013, Caporuscio made two transfers in the amounts of \$695 and \$8,500 from the Company's checking account to his personal checking account.

70. Bank records show that on April 23, 2013, the Company was charged a fee of \$204 because there were inadequate funds to pay employee payroll checks numbered 8756, 8721, 8732, 8773, 8775, 8776, 8757, 8701, 8764 and 8788.

71. The Company hired a public relations firm for the period of June 2012 to September 2012. But after September 2012, Caporuscio continued to use the public relations firm to market his own personal endeavors, and sought to pay with the Company's funds.

72. On April 23, 2013 Plaintiff received an email from Keste's payroll provider asking if she was providing payroll because it had not been submitted. Plaintiff cannot provide payroll because Caporuscio transferred all the money out of the Company's bank accounts leaving a zero balance.

Caporuscio's misuse of Company funds for the benefit of Don Antonio

73. Caporuscio has continuously diverted assets from the Company to another restaurant he owns called Don Antonio.

74. Caporuscio uses the Company's assets to pay for wine sold by Don Antonio.

75. Caporuscio takes wine that belongs to the Company and brings it to sell at Don Antonio.

76. Caporuscio uses the Company's funds to pay Don Antonio employees.

77. On August 22, 2012, Caporuscio directed that the Company pay defendant Paterno \$3500 to handle an immigration matter for Federico Cupido, an individual residing in Italy who Caporuscio wanted to employ as a manager of Don Antonio. Cupido came to the United States and managed Don Antonio, and the Company was never reimbursed for the \$3500, though Cupido was never employed by the Company.

CAPORUSCIO'S BREACH OF HIS FIDUCIARY DUTIES TO PLAINTIFF

78. Though the Company was paying a public relations firm to market the Company, at Caporuscio's direction, Plaintiff was blocked from accessing the Company's social media sites, Plaintiff's name was deleted from marketing pieces and Plaintiff was excluded from promotional events at Keste Pizza.

79. When Plaintiff confronted Caporuscio about the illegal and harmful acts detailed above, he became verbally abusive and demanded that Plaintiff give him control of the Company's checkbook, even though he has a checkbook and has been writing checks on behalf of the Company.

80. Plaintiff refused, because according to the Operating Agreement she is entitled to manage the day-to-day activities of the Company.

81. Since the buy-out, Plaintiff had been successfully handling the Company's day-to-day business transactions, including, but not limited to, ensuring that all bills were timely paid, managing payroll and maintaining accurate books and records.

82. Though Plaintiff owns 45% of the Company, Caporuscio has worked relentlessly to marginalize Plaintiff and prevent her from taking credit for the Company's success. Caporuscio takes full credit for the success of the Company.

83. Caporuscio constantly speaks derogatorily about Plaintiff to vendors, employees and her peers in the restaurant business. He has made it impossible for Plaintiff to build upon the good will that she have developed as a Member of the Company and as a manager of the Company's business, which jeopardizes Plaintiff's future business opportunities.

84. Caporuscio has improperly withdrawn approximately \$55,177.

85. The Company's bank account currently has a zero balance.

86. Within the last week, Caporuscio has changed the Company's POS system so that Plaintiff no longer has access to the system and cannot verify any of the Company's cash or credit sales.

87. As a result of this, upon information and belief, the credit card sales and cash sales are being deposited to a bank account that Caporuscio controls.

88. Recently, Caporuscio signed a Company check for \$25,000 made out to "Keste Group" and deposited it in an account at Capital One bank in Secaucus, New Jersey, over which he has sole control,.

89. Caporuscio has also advised all the employees of the Company that Plaintiff was fired and that Plaintiff may not enter the premises.

90. Upon information and belief, Caporuscio is in the process of advising all of the Company's vendors that Plaintiff has been fired and that they should send all bills to his attention, so that he can manage the Company to Plaintiff's exclusion.

91. By email dated April 19, 2013, Caporuscio notified Plaintiff that she was "terminated for cause from any further employment services to Keste" for refusal to turn the checkbook over to Caporuscio.

92. However, Caporuscio has his own Company checkbook and, as set forth in paragraph 71 above, recently wrote a check to "Keste Group" for \$25,000 and deposited it in an account over which he sole control.

93. The email also goes on to say that Plaintiff is not a manager and does not have decision-making power over the business of the Company, in contradiction to section 4.1 of the

Operating Agreement, which gives Plaintiff managerial authority over the day to day affairs of the Company, notwithstanding Caporuscio's majority interest.

94. Further, upon information and belief, Caporuscio intends not to pay Plaintiff any further distributions.

95. By denying Plaintiff her livelihood, Plaintiff has no means of providing for her children or paying her rent or for food, heat, electricity or health insurance.

96. Plaintiff will be irreparably harmed if she has no control over the Company because she will have no way to ensure that it meets its financial obligations, some of which she personally guaranteed. Plaintiff's credit will be destroyed, she will suffer incredible hardship and, if Caporuscio does not pay the SBA loan or the rent to the landlord, Plaintiff will be liable, though she has done nothing wrong.

COUNT I

BREACH OF CONTRACT AGAINST CAPORUSCIO

97. Plaintiff repeats and realleges each and every allegation set forth in the aforementioned paragraphs of the Complaint as if fully set forth herein at length.

98. Pursuant to the 2012 Operating Agreement, Plaintiff became a member and owner of 45% of the Company and Defendant Caporuscio became a member and owner of 55% of the Company.

99. Section 4.1 of the 2012 Operating Agreement provides that: "Notwithstanding anything to the contrary contained in this Agreement, the Members agree that Caporuscio and Manzella shall have primary responsibility for running the day-to-day operations of the Company."

100. In breach of Section 4.1 of the 2012 Operating Agreement, Defendant Caporuscio has, among other things, unilaterally and without notice to Plaintiff prevented Plaintiff from participating in the day-to-day operations of the Company.

101. In breach of Section 4.9 of the 2012 Operating Agreement, Defendant Caporuscio has, among other things, unilaterally and without notice to Plaintiff withheld Plaintiff's weekly salary.

102. In breach of Section 8.1, 8.2 and 8.3 of the 2012 Operating Agreement, Defendant Caporuscio has, among other things, unilaterally and without notice advised Plaintiff that she will no longer receive distributions.

103. In addition to breaching the 2012 Operating Agreement, Caporuscio breached his agreement to pay Plaintiff 3% of the net profit distribution of Don Antonio Restaurant pursuant to the January 26, 2012 Don Antonio Agreement. Plaintiff has never received any profit distribution from Don Antonio Restaurant.

104. By reason of Defendant Caporuscio's breach of the 2012 Operating Agreement and the January 26, 2012 Don Antonio Agreement, Plaintiff has been damaged in an amount to be determined at trial, but estimated to exceed \$1,000,000.

COUNT II

DERIVATIVE CLAIM AGAINST CAPORUSCIO FOR BREACH OF FIDUCIARY DUTY

105. Plaintiff repeats and realleges each and every allegation set forth in the aforementioned paragraphs of the Complaint as if fully set forth herein at length.

106. Pursuant to the 2012 Operating Agreement, Plaintiff became a member and owner of 45% of the Company and Defendant Caporuscio became a member and owner of 55% of the Company.

107. Section 4.1 of the 2012 Operating Agreement provides that: "Notwithstanding anything to the contrary contained in this Agreement, the Members agree that Caporuscio and Manzella shall have primary responsibility for running the day-to-day operations of the Company."

108. By virtue of his position as co-owner, Defendant Caporuscio owed the Company fiduciary duties, including duties of due care, good faith, candor, loyalty and full disclosure.

109. In breach of his fiduciary duties, Defendant Caporuscio has, among other things, misused Company funds for his own personal use, to the detriment of the Company.

110. Plaintiff is a member entitled to bring a claim derivatively on behalf of the Company.

111. It would be futile for Plaintiff to demand that the Company pursue claims for breach of fiduciary duty and corporate waste against Defendant Caporuscio because he is the majority member of the Company, is not disinterested and dominates and controls the Company. Plaintiff therefore asserts this claim against Defendant Caporuscio derivatively on behalf of the Company.

112. By reason of Defendant Caporuscio's breach of fiduciary duty to Plaintiff and to the Company and its members, the Company has been damaged in an amount to be determined at trial, but estimated to exceed \$1,000,000.

COUNT III

DIRECT CLAIM AGAINST CAPORUSCIO FOR BREACH OF FIDUCIARY DUTY

113. Plaintiff repeats and realleges each and every allegation set forth in the aforementioned paragraphs of the Complaint as if fully set forth herein at length.

114. Pursuant to the 2012 Operating Agreement, Plaintiff became a member and owner of 45% of the Company and Defendant Caporuscio became a member and owner of 55% of the Company.

115. Section 4.1 of the 2012 Operating Agreement provides that: "Notwithstanding anything to the contrary contained in this Agreement, the Members agree that Caporuscio and Manzella shall have primary responsibility for running the day-to-day operations of the Company."

116. Defendant Caporuscio and Plaintiff agreed that Plaintiff would oversee the day-to-day business operations of the Company.

117. By virtue of his position as co-owner with Plaintiff, Defendant Caporuscio owed Plaintiff fiduciary duties, including duties of due care, good faith, candor, loyalty and full disclosure.

118. In breach of his fiduciary duties, Defendant Caporuscio has, among other things, unilaterally and without notice, terminated Plaintiff from her managerial position, thereby preventing Plaintiff from participating in the day-to-day operations of the Company.

119. In breach of his fiduciary duties, Defendant has denied Plaintiff access to the Company's bank accounts and books and records.

120. In breach of his fiduciary duties, Defendant Caporuscio has refused to pay Plaintiff her salary and distribution.

121. In breach of his fiduciary duties, Defendant Caporuscio has misused the Company's funds for his personal use, and the Company's assets for his personal benefit.

122. By reason of Defendant Caporuscio's breach of fiduciary duty to Plaintiff, Plaintiff has been damaged in an amount to be determined at trial, but estimated to exceed \$1,000,000.

COUNT IV

DERIVATIVE CLAIM FOR CORPORATE WASTE AGAINST CAPORUSCIO

123. Plaintiff repeats and realleges each and every allegation set forth in the aforementioned paragraphs as if fully set forth herein at length.

124. As set forth above, Defendant Caporuscio, unilaterally and without notice to Plaintiff, has made decisions regarding the Company that have benefitted him personally at the expense of the Company.

125. It would be futile for Plaintiff to demand that the Company pursue a claim for corporate waste against Defendant Caporuscio because he is the majority member of the Company, is not disinterested and dominates and controls the Company. Plaintiff therefore asserts this claim against Defendant Caporuscio derivatively on behalf of the Company.

126. By reason of Defendant Caporuscio's commission of corporate waste, the Company has been damages in an amount to be determined at trial, but estimated to exceed \$1,000,000.

COUNT V

REQUEST FOR AN ACCOUNTING

127. Plaintiff repeats and realleges each and every allegation set forth in the aforementioned paragraphs as if fully set forth herein at length.

128. Based on the above allegations of wrongdoing by Defendant Caporuscio, including breach of fiduciary duty and commission of corporate waste, Plaintiff is entitled to an accounting to ascertain the amount of money damages suffered as a result of said misconduct by Defendant Caporuscio.

COUNT VI

LEGAL MALPRACTICE CLAIM AGAINST PATERNO

129. Plaintiff repeats and realleges each and every allegation set forth in the aforementioned paragraphs as if fully set forth herein at length.

130. Defendant Paterno drafted the Operating Agreement.

131. Paterno advised Plaintiff that he was her lawyer and Caporuscio's lawyer and was representing her interests in negotiating and drafting the Operating Agreement.

132. Before signing the Operating Agreement, Plaintiff expressed her desire to Defendant Paterno to own 50% of the Company, so that she and Defendant Caporuscio would have equal control over the Company.

133. Defendant Paterno assured Plaintiff that even if she owned 45% of the Company, he wrote the Operating Agreement in such a way so as to provide that she would share equal control over the day-to-day operations of the Company with Defendant Caporuscio.

134. Plaintiff relied on Defendant Paterno's advice when she signed the Operating Agreement.

135. Defendant Paterno failed to obtain a conflict waiver from Plaintiff prior to her signing of the Operating Agreement.

136. Caporuscio alleges that Paterno advised him that Plaintiff does not have equal managerial control and that Caporuscio can exclude her from the Company.

137. To the extent that the Operating Agreement does not give Plaintiff equal managerial control, Paterno failed to exercise the ordinary skill and knowledge commonly possessed by a member of the legal profession when he drafted the Operating Agreement and provided legal advice to Plaintiff before she signed the Operating Agreement because Defendant Paterno had a close relationship with Defendant Caporuscio and drafted the Operating Agreement in a way that failed to adequately protect Plaintiff's membership rights.

138. To the extent that the Operating Agreement does not give Plaintiff equal managerial control, Paterno breached his fiduciary duty to Plaintiff by putting the interests of Caporuscio ahead of those of Plaintiff.

139. Defendant Paterno's breach of this duty proximately caused Plaintiff to sustain actual and ascertainable damages in an amount to be determined at trial but not less than \$1,000,000.

COUNT VII

DIRECT CLAIM FOR BREACH OF IMPLIED COVENENANT OF GOOD FAITH AND FAIR DEALING AGAINST CAPORUSCIO

140. Plaintiff repeats and realleges each and every allegation set forth in the aforementioned paragraphs as if fully set forth herein at length.

141. Plaintiff and Defendant Caporuscio entered into the Operating Agreement, which sets forth the parties' obligations with respect to management of the Company's day-to-day operations.

142. Like all contracts in New York, the parties' contract is subject to an implied covenant of good faith and fair dealing.

143. Defendant Caporuscio failed to honor the Operating Agreement's provision that Plaintiff have equal control over the day-to-day operations of the Company though she is the minority member.

144. Section 4.1 of the 2012 Operating Agreement provides:

Management by Members. The Company shall be managed and controlled by its Members by the affirmative vote of a majority in interest of the Members (unless otherwise provided herein) and shall not have any Managers within the meaning of the Act. Notwithstanding anything to the contrary contained in the provisions of this Agreement, the Members agree that Caporuscio and Manzella shall have primary responsibility for running the day-to-day operations of the Company.

145. Defendant Caporuscio breached the covenant of good faith and fair dealing by acting in a manner that eviscerates the meaning of the language of Section 4.1, which provides that Plaintiff and Caporuscio share equal control over the day-to-day operations of the Company regardless of any other provisions which requires an affirmative vote of a majority in interest.

COUNT VIII

DECLARATORY JUDGMENT

146. Plaintiff repeats and realleges each and every allegation set forth in the aforementioned paragraphs as if fully set forth herein at length.

147. By reason of the foregoing, a serious dispute and justiciable controversy exists concerning the interpretation of language of Section 4.1 of the Operating Agreement with respect to Plaintiff's right to equally manage and participate in the Company's day-to-day operations.

148. Unless and until the rights of the parties are declared, Plaintiff remains subject to Caporuscio's interpretation of Section 4.1 of the Operating Agreement, which he claims allows him to exclude Plaintiff from managing the Company's day-to-day business, cease paying her salary and cease paying her distributions.

149. Plaintiff has no adequate remedy at law.

150. Accordingly, Plaintiff seeks a declaration by this Court pursuant to CPLR §3001, as follows: (a) Pursuant to the Operating Agreement, Plaintiff and Caporuscio equally share primary responsibility for running the day-to-day operations of the Company; (b) Caporuscio may not terminate Plaintiff or prevent her from managing the day-to-day operations of the Company; (c) Caporuscio may not unilaterally withhold Plaintiff's salary and distributions; (d) Defendants are liable to Plaintiff in an amount to be determined at trial.

COUNT IX

INJUNCTIVE RELIEF

151. Plaintiff repeats and realleges each and every allegation set forth in the aforementioned paragraphs as if fully set forth herein at length.

152. Plaintiff seeks a permanent injunction.

153. Plaintiff has demonstrated a likelihood of success on the merits of this action, because of Caporusio's material breaches of the Operating Agreement, which provides that Plaintiff shares primary responsibility for the day-to-day operations of the Company with Caporuscio.

154. Plaintiff has demonstrated that she will be irreparably harmed in the absence of injunctive relief, because she invested her entire life savings in the Company and it is her only source of income; without her salary and distributions from the Company she will be unable to support her two children; she is a signatory to the lease, loan and liquor license and is personally liable for any failure by the Company to satisfy its obligations pursuant to these agreements, and her credit and business reputation will be destroyed and she will be unable to open another business.

155. The balance of the equities favor Plaintiff because without an injunctive relief Plaintiff is unable to exercise control over her 45% ownership interest in the Company, but an injunction would not prevent Caporuscio from participating in the day-to-day operations of the Business.

156. Plaintiff is without a legal remedy for Caporuscio's unauthorized conduct.

WHEREFORE, Plaintiff respectfully requests that the Court enter a judgment as follows:

(a) Damages on the first cause of action against Defendant Caporuscio in an amount to be determined at trial, but estimated to exceed \$1,000,000;

(b) Damages on the second cause of action against Defendant Caporuscio in an amount to be determined at trial, but estimated to exceed \$1,000,000;

(c) Damages on the third cause of action against Defendant Caporuscio in an amount to be determined at trial, but estimated to exceed \$1,000,000;

(d) Damages on the fourth cause of action against Defendant Caporuscio in an amount to be determined at trial, but estimated to exceed \$1,000,000;

(f) Damages on the sixth cause of action against Defendant Paterno in an amount to be determined at trial, but estimated to exceed 1,000,000.

(g) Damages on the seventh cause of action against Defendant Caporuscio in an amount to be determined at trial, but estimated to exceed \$1,000,000.

(h) An accounting to ascertain the amount of money damages suffered as a result of said misconduct by Defendant, and

(i) An injunction permanently enjoining and restraining Defendant Caporuscio his employees, agents and servants from:

(1) withholding monthly distributions from Plaintiff Manzella and directing Defendant to pay Plaintiff her \$20,000 monthly distribution and weekly salary of \$840.00, and enjoining and restraining Defendant Caporuscio from engaging in any actions to prevent Plaintiff Manzella from taking her distributions and salary from Keste in consideration of her role as a co-manager in Keste Group;

(2) directing that Defendant Caporuscio his employees, agents and/or servants, cause all credit card sales (i) to be deposited into Keste Group's joint bank account held by JP Morgan Chase, N.A., Account Number: 2905255790 (the "Account"), and (ii) return all monies

improperly transferred from Keste Group accounts to said Account, including the \$25,000 transferred to Caporuscio's personal banking account by Keste Check number 5814, deposited April 18, 2013;

(3) directing that all checks written on the Account contain the joint signatures of Manzella and Caporuscio and that the Account be immediately re-designated a joint signature account with Chase;

(4) directing that all cash sales by Keste Group be deposited into the aforementioned JP Morgan Chase, N.A. Account; directing that Defendant Caporuscio his employees, agents and/or servants, grant Plaintiff Manzella daily access to the Keste Group's Point of Sale System, otherwise known as the "POS sale system" and grant Plaintiff Manzella daily access to the Keste Group's financial books and records;

(5) directing that Defendant Caporuscio his employees, agents and/or servants acknowledge that Plaintiff Manzella is a co-manager of Keste Group and to advise all employees of Keste Group that Plaintiff is a co-manager and has not been terminated;

(6) enjoining and restraining Defendant Caporuscio from taking any action that interferes with, obstructs, or prevents Manzella from fulfilling her role as a co-manager of the day-to-day operations of Keste;

(7) enjoining and restraining Defendant Caporuscio, his employees, agents and servants from altering, moving, destroying, secreting or fabricating the books and records (including all ledgers and accounting records) of the Keste Group;

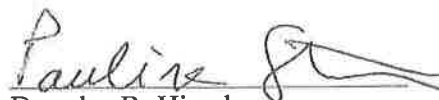
(8) enjoining and restraining the Defendant Caporuscio, his employees, agents and servants from transferring, assigning, mortgaging, pledging, hypothecating or otherwise

disposing of any Keste Group money or property, except in the ordinary course of business, and for good and valuable consideration in money or money's worth;

(j) An award of reasonable costs and attorneys' fees; and

(k) For such other and further relief as the Court deems just and proper.

Dated: New York, New York
April 25, 2013



Douglas R. Hirsch
Jennifer Rossan
Paulina Stamatelos
SADIS & GOLDBERG LLP
Attorneys for Plaintiff
551 Fifth Avenue, 21st Floor
New York, NY 10176
(212) 947-3793

TO:
Sandro Paterno
Sandro Paterno Law Offices
225 Broadway # 39
New York, NY 10007
(212) 732-2086

Roberto Caporuscio
5 Morton Street, Apt. 1A
New York, NY 10014