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

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

Plaintiff,

v.

ROBERTO CAPORUSCIO, SANDRO PATERNO and KESTE GROUP, LLC,

Defendants.

INDEX NO.: 651484/13

ANSWER WITH AFFIRMATIVE DEFENSES AND COUNTERCLAIM

Defendants **ROBERTO CAPORUSCIO**, **SANDRO PATERNO**, and **KESTE GROUP, LLC** (collectively, "Defendants"), by way of Answer with Affirmative Defenses to the Complaint of plaintiff Sandra G. Manzella ("Plaintiff"), state as follows:

PARTIES

1. Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 1 of the Complaint.

2. Defendants admit the allegations contained in paragraph 2 of the Complaint.

3. Defendants admit the allegations contained in paragraph 3 of the Complaint.

4. Defendants admit the allegations contained in paragraph 4 of the Complaint.

5. Defendants admit the allegations contained in paragraph 5 of the Complaint.

6. Defendants admit the allegations contained in paragraph 6 of the Complaint.

JURISDICTION

7. Defendants deny the allegations contained in paragraph 7 of the Complaint, which call for a legal conclusion.

8. Defendants deny the allegations contained in paragraph 8 of the Complaint, which call for a legal conclusion.

9. Defendants admit the allegations contained in paragraph 9 of the Complaint.

10. Except that Defendants admit that Caporuscio is a natural person residing in the State of New York, New York County, Defendants deny the remainder of the allegations contained in paragraph 10 of the Complaint, which call for a legal conclusion.

11. Except that Defendants admit that Paterno is a natural person who maintains his principal place of business in New York City, Defendants deny the remainder of the allegations contained in paragraph 11 of the Complaint, which call for a legal conclusion

12. Defendants deny the allegations contained in paragraph 12 of the Complaint, which call for a legal conclusion.

13. Defendants deny the allegations contained in paragraph 13 of the Complaint, which call for a legal conclusion.

BACKGROUND

14. Defendants admit the allegations contained in paragraph 14 of the Complaint.

15. Defendants admit the allegations contained in paragraph 15 of the Complaint.

16. Defendants admit the allegations contained in paragraph 16 of the Complaint.

17. Except that Defendants admit that the Company reported gross profits in the amounts indicated, Defendants deny the remainder of the allegations contained in paragraph 17 of the Complaint which characterize facts already admitted.

18. Defendants deny the allegations contained in paragraph 18 of the Complaint.

19. Defendants deny the allegations contained in paragraph 19 of the Complaint.

20. Defendants deny the allegations contained in paragraph 20 of the Complaint.

21. Defendants deny the allegations contained in paragraph 21 of the Complaint.

22. Defendants deny the allegations contained in paragraph 22 of the Complaint.

23. Defendants deny the allegations contained in paragraph 23 of the Complaint.

24. Defendants deny the allegations contained in paragraph 24 of the Complaint.

THE OPERATING AGREEMENT

25. Defendants admit the allegations contained in paragraph 25 of the Complaint.

26. Defendants deny the allegations contained in paragraph 26 of the Complaint.

27. Defendants admit the allegations contained in paragraph 27 of the Complaint.

28. Except that Defendants admit that Plaintiff was a Guarantor of the Company's lease, Defendants deny the remainder of the allegations contained in paragraph 28 of the Complaint.

29. Defendants deny the allegations contained in paragraph 29 of the Complaint.

30. Except that Defendants admit that Plaintiff made an $80,000 contribution to the Company in 2009, Defendants deny the remainder of the allegations contained in paragraph 30 of the Complaint.

31. Except that Defendants admit that Plaintiff and Caporuscio entered into an operating agreement, Defendants deny the remainder of the allegations contained in paragraph 31 of the Complaint.

32. Defendants deny the allegations contained in paragraph 32 of the Complaint.

33. Defendants deny the allegations contained in paragraph 33 of the Complaint.

34. Defendants admit the allegations contained in paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in paragraph 35 of the Complaint.

36. Defendants deny the allegations contained in paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in paragraph 37 of the Complaint.

CAPORUSCIO'S BREACH OF THE OPERATING AGREEMENT

38. Defendants neither admit nor deny the allegations contained in paragraph 38 of the Complaint and refer instead to the referenced "Operating Agreement," which speaks for itself.

39. Defendants deny the allegations contained in paragraph 39 of the Complaint.

40. Defendants deny the allegations contained in paragraph 40 of the Complaint.

41. Defendants deny the allegations contained in paragraph 41 of the Complaint.

CAPORUSCIO'S BREACH OF THE DON ANTONIO CONTRACT WITH PLAINTIFF

42. Defendants deny the allegations contained in paragraph 42 of the Complaint.

43. Defendants deny the allegations contained in paragraph 43 of the Complaint.

44. Except that Defendants are without information to admit or deny the truth of the allegations concerning what Plaintiff understood, Defendants deny the remainder of the allegations contained in paragraph 44 of the Complaint.

45. Defendants deny the allegations contained in paragraph 45 of the Complaint.

46. Defendants neither admit nor deny the allegations contained in paragraph 46 of the Complaint and refer instead to the referenced "Don Antonio Agreement," which speaks for itself.

47. Except that Defendants admit that Don Antonio opened in or around February 2012, Defendants deny the remainder of the allegations contained in paragraph 47 of the Complaint.

CAPORUSCIO'S BREACH OF HIS FIDUCIARY DUTIES TO THE COMPANY

48. Defendants deny the allegations contained in paragraph 48 of the Complaint.

49. Defendants deny the allegations contained in paragraph 49 of the Complaint.

Caporuscio's unauthorized pizza school

50. Except that Defendants are without information to admit or deny the truth of the allegations concerning what Plaintiff became aware of, Defendants deny the remainder of the allegations contained in paragraph 50 of the Complaint.

51. Defendants deny the allegations contained in paragraph 51 of the Complaint.

52. Defendants deny the allegations contained in paragraph 52 of the Complaint.

53. Defendants deny the allegations contained in paragraph 53 of the Complaint.

Caporuscio's misuse of Company funds for his personal use

54. Defendants deny the allegations contained in paragraph 54 of the Complaint.

55. Defendants deny the allegations contained in paragraph 55 of the Complaint.

56. Defendants deny the allegations contained in paragraph 56 of the Complaint.

57. Defendants deny the allegations contained in paragraph 57 of the Complaint.

58. Defendants deny the allegations contained in paragraph 58 of the Complaint.

59. Defendants deny the allegations contained in paragraph 59 of the Complaint.

60. Defendants deny the allegations contained in paragraph 60 of the Complaint.

61. Defendants deny the allegations contained in paragraph 61 of the Complaint.

62. Defendants deny the allegations contained in paragraph 62 of the Complaint.

63. Defendants deny the allegations contained in paragraph 63 of the Complaint.

64. Defendants deny the allegations contained in paragraph 64 of the Complaint.

65. Defendants deny the allegations contained in paragraph 65 of the Complaint.

66. Defendants neither admit nor deny the allegations contained in paragraph 66 of the Complaint and refer instead to the referenced "bank records," which speak for themselves.

67. Defendants neither admit nor deny the allegations contained in paragraph 67 of the Complaint and refer instead to the referenced "bank records," which speak for themselves.

68. Defendants neither admit nor deny the allegations contained in paragraph 68 of the Complaint and refer instead to the referenced "bank records," which speak for themselves.

69. Defendants neither admit nor deny the allegations contained in paragraph 69 of the Complaint and refer instead to the referenced "bank records," which speak for themselves.

70. Defendants neither admit nor deny the allegations contained in paragraph 70 of the Complaint and refer instead to the referenced "bank records," which speak for themselves.

71. Except that Defendants admit that the Company hired a public relations firm, Defendants deny the remainder of the allegations contained in paragraph 71 of the Complaint.

72. Except that Defendants are without information to admit or deny the truth of the allegations concerning what Plaintiff received from Keste's payroll provider, if anything, Defendants deny the remainder of the allegations contained in paragraph 72 of the Complaint.

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

73. Defendants deny the allegations contained in paragraph 73 of the Complaint.

74. Defendants deny the allegations contained in paragraph 74 of the Complaint.

75. Defendants deny the allegations contained in paragraph 75 of the Complaint.

76. Defendants deny the allegations contained in paragraph 76 of the Complaint.

77. Defendants deny the allegations contained in paragraph 77 of the Complaint.

CAPORUSCIO'S BREACH OF HIS FIDUCIARY DUTIES TO PLAINTIFF

78. Defendants deny the allegations contained in paragraph 78 of the Complaint.

79. Defendants deny the allegations contained in paragraph 79 of the Complaint.

80. Defendants deny the allegations contained in paragraph 80 of the Complaint.

81. Defendants deny the allegations contained in paragraph 81 of the Complaint.

82. Except that Defendants admit that Plaintiff owns 45% of the Company, Defendants deny the remainder of the allegations contained in paragraph 82 of the Complaint.

83. Defendants deny the allegations contained in paragraph 83 of the Complaint.

84. Defendants deny the allegations contained in paragraph 84 of the Complaint.

85. Defendants deny the allegations contained in paragraph 85 of the Complaint.

86. Defendants deny the allegations contained in paragraph 86 of the Complaint.

87. Defendants deny the allegations contained in paragraph 87 of the Complaint.

88. Defendants admit the allegations contained in paragraph 88 of the Complaint.

89. Defendants admit the allegations contained in paragraph 89 of the Complaint.

90. Defendants deny the allegations contained in paragraph 90 of the Complaint.

91. Defendants deny the allegations contained in paragraph 91 of the Complaint.

92. Except that Defendants admit that Caporuscio wrote a check to "Keste Group" for $25,000 and deposited into an account for Keste, Defendants deny the remainder of the allegations contained in paragraph 92 of the Complaint.

93. Defendants neither admit nor deny the allegations contained in paragraph 93 of the Complaint and refer instead to the referenced "email," which speaks for itself.

94. Defendants deny the allegations contained in paragraph 94 of the Complaint.

95. Defendants deny the allegations contained in paragraph 95 of the Complaint.

96. Defendants deny the allegations contained in paragraph 96 of the Complaint

COUNT I
BREACH OF CONTRACT AGAINST CAPORUSCIO

97. Defendants repeat and re-plead each of their responses to the foregoing allegations as if fully set forth at length herein.

98. Defendants admit the allegations contained in paragraph 98 of the Complaint.

99. Defendants neither admit nor deny the allegations contained in paragraph 99 of the Complaint and refer instead to the referenced "Operating Agreement," which speaks for itself.

100. Defendants deny the allegations contained in paragraph 100 of the Complaint.

101. Defendants deny the allegations contained in paragraph 101 of the Complaint.

102. Defendants deny the allegations contained in paragraph 102 of the Complaint.

103. Defendants deny the allegations contained in paragraph 103 of the Complaint.

104. Defendants deny the allegations contained in paragraph 104 of the Complaint.

COUNT II
DERIVATIVE CLAIM AGAINST CAPORUSCIO FOR BREACH OF FIDUCIARY DUTY

105. Defendants repeat and re-plead each of their responses to the foregoing allegations as if fully set forth at length herein.

106. Defendants admit the allegations contained in paragraph 106 of the Complaint.

107. Defendants neither admit nor deny the allegations contained in paragraph 107 of the Complaint and refer instead to the referenced "Operating Agreement," which speaks for itself.

108. Defendants deny the allegations contained in paragraph 108 of the Complaint, which call for a legal conclusion.

109. Defendants deny the allegations contained in paragraph 109 of the Complaint.

110. Defendants deny the allegations contained in paragraph 110 of the Complaint, which call for a legal conclusion.

111. Defendants deny the allegations contained in paragraph 111 of the Complaint.

112. Defendants deny the allegations contained in paragraph 112 of the Complaint.

COUNT III
DIRECT CLAIM AGAINST CAPORUSCIO FOR BREACH OF FIDUCIARY DUTY

113. Defendants repeat and re-plead each of their responses to the foregoing allegations as if fully set forth at length herein.

114. Defendants admit the allegations contained in paragraph 114 of the Complaint.

115. Defendants neither admit nor deny the allegations contained in paragraph 115 of the Complaint and refer instead to the referenced "Operating Agreement," which speaks for itself.

116. Defendants deny the allegations contained in paragraph 116 of the Complaint.

117. Defendants deny the allegations contained in paragraph 117 of the Complaint, which call for a legal conclusion.

118. Defendants deny the allegations contained in paragraph 118 of the Complaint.

119. Defendants deny the allegations contained in paragraph 119 of the Complaint.

120. Defendants deny the allegations contained in paragraph 120 of the Complaint.

121. Defendants deny the allegations contained in paragraph 121 of the Complaint.

122. Defendants deny the allegations contained in paragraph 122 of the Complaint.

COUNT IV
DERIVATIVE CLAIM FOR CORPORATE WASTE AGAINST CAPORUSCIO

123. Defendants repeat and re-plead each of their responses to the foregoing allegations as if fully set forth at length herein.

124. Defendants deny the allegations contained in paragraph 124 of the Complaint.

125. Defendants deny the allegations contained in paragraph 125 of the Complaint.

126. Defendants deny the allegations contained in paragraph 126 of the Complaint.

COUNT V
REQUEST FOR AN ACCOUNTING

127. Defendants repeat and re-plead each of their responses to the foregoing allegations as if fully set forth at length herein.

128. Defendants deny the allegations contained in paragraph 128 of the Complaint.

COUNT VI
LEGAL MALPRACTICE CLAIM AGAINST PATERNO

129. Defendants repeat and re-plead each of their responses to the foregoing allegations as if fully set forth at length herein.

130. Defendants deny the allegations contained in paragraph 130 of the Complaint.

131. Defendants deny the allegations contained in paragraph 131 of the Complaint.

132. Defendants deny the allegations contained in paragraph 132 of the Complaint.

133. Defendants deny the allegations contained in paragraph 133 of the Complaint.

134. Defendants deny the allegations contained in paragraph 134 of the Complaint.

135. Defendants deny the allegations contained in paragraph 135 of the Complaint.

136. Defendants deny the allegations contained in paragraph 136 of the Complaint.

137. Defendants deny the allegations contained in paragraph 137 of the Complaint.

138. Defendants deny the allegations contained in paragraph 138 of the Complaint.

139. Defendants deny the allegations contained in paragraph 139 of the Complaint.

COUNT VII
DIRECT CLAIM FOR BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING AGAINST CAPORUSCIO

140. Defendants repeat and re-plead each of their responses to the foregoing allegations as if fully set forth at length herein.

141. Defendants neither admit nor deny the allegations contained in paragraph 141 of the Complaint and refer instead to the referenced "Operating Agreement," which speaks for itself.

142. Defendants deny the allegations contained in paragraph 142 of the Complaint, which call for a legal conclusion.

143. Defendants deny the allegations contained in paragraph 143 of the Complaint.

144. Defendants neither admit nor deny the allegations contained in paragraph 144 of the Complaint and refer instead to the referenced "Operating Agreement," which speaks for itself.

145. Defendants deny the allegations contained in paragraph 145 of the Complaint.

COUNT VIII
DECLARATORY JUDGMENT

146. Defendants repeat and re-plead each of their responses to the foregoing allegations as if fully set forth at length herein.

147. Defendants deny the allegations contained in paragraph 147 of the Complaint.

148. Defendants deny the allegations contained in paragraph 148 of the Complaint.

149. Defendants deny the allegations contained in paragraph 149 of the Complaint.

150. Defendants deny the allegations contained in paragraph 150 of the Complaint, which call for a legal conclusion.

COUNT IX
INJUNCTIVE RELIEF

151. Defendants repeat and re-plead each of their responses to the foregoing allegations as if fully set forth at length herein.

152. Defendants deny the allegations contained in paragraph 152 of the Complaint.

153. Defendants deny the allegations contained in paragraph 153 of the Complaint, which call for a legal conclusion.

154. Defendants deny the allegations contained in paragraph 154 of the Complaint.

155. Defendants deny the allegations contained in paragraph 155 of the Complaint.

156. Defendants deny the allegations contained in paragraph 156 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint is barred because Defendants at all times discharged their contractual, fiduciary and good faith obligations to Plaintiff, if any, completely and in good faith.

THIRD AFFIRMATIVE DEFENSE

The Complaint is barred because Plaintiff has not sustained any cognizable damages attributable to Defendants.

FOURTH AFFIRMATIVE DEFENSE

The Complaint is barred because Plaintiff has breached her contractual, fiduciary and good faith obligations to Defendants.

FIFTH AFFIRMATIVE DEFENSE

The Complaint is barred by the equitable doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrine of accord and satisfaction.

SEVENTH AFFIRMATIVE DEFENSE

The Complaint is barred because the acts and/or omissions about which Plaintiff complains and which allegedly caused it damages were committed by Plaintiff herself and/or by third parties outside of Defendants' control.

EIGHTH AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrine of settlement.

TENTH AFFIRMATIVE DEFENSE

The Complaint is barred by the equitable doctrine of estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrine of setoff.

TWELFTH AFFIRMATIVE DEFENSE

The Complaint is barred because Plaintiff has failed to mitigate her damages, if any.

WHEREFORE, Defendants Roberto Caporuscio, Sandro Paterno, and Keste Group, LLC hereby demand judgment in their favor and against plaintiff Sandra G. Manzella dismissing the Complaint with prejudice and awarding Defendants attorneys' fees, costs and such other and further relief as this Court deems equitable and just.

COUNTERCLAIM

COUNTER-PLAINTIFFS ROBERTO CAPORUSCIO AND KESTE GROUP LLC (collectively, "Counter-Plaintiffs") by way of Counterclaim against Counter-Defendant Sandra G. Manzella, state as follows:

BACKGROUND FACTS

1. Roberto Caporuscio ("Caporuscio") is an individual residing in New York City. Among other things, Caporuscio is the founder, majority owner and member of Keste Group, LLC,

which owns and operates a restaurant located at 271 Bleecker Street, New York, NY known as "Keste Pizza & Vino."

2. Keste Group LLC ("Keste" or the "Company") is a limited liability company formed under the laws of the State of New York. Keste's Articles of Organization were filed on August 27, 2008 by its registered agent, Reid Rosen, Esq.

3. Sandra Manzella ("Manzella") is an individual residing in Harrison, New York. Since 2009, Manzella has been a minority owner and member of Keste.

A. Caporuscio's Central Role In Keste's Formation

4. Caporuscio, a native of Pontinia, Italy, is a world-renowned Neapolitan pizza chef, having trained and apprenticed for many years in the art of *pizza Napoletana* at several of the finest establishments in Naples before immigrating to the United States in 1999.

5. Among other things, Caporuscio currently serves as US President of the Associazione Pizzaiuoli Napoletani ("APN-Association of Neapolitan Pizza Makers"), an Italian governing body that teaches the 150-year-old art of Neapolitan pizza-making and certifies adherence to authentic procedures.

6. Over the past several years, Caporuscio has also conducted an intensive and highly sought-after ten-day pizza-making course that offers APN certification to its graduates.

7. Caporuscio has frequently appeared on The Food Network and serves as a consultant to many restaurants and restaurant owners throughout the United States, who seek his advice, expertise and guidance for their own fledgling businesses.

8. In 1999, Caporuscio settled initially in Pittsburgh, where he apprenticed at several restaurants. Over the ensuing nine years, Caporuscio learned the restaurant business as it is practiced

in the United States. In 2008, Caporuscio moved to New York City with the intention to start a restaurant specializing in *pizza Napoletana.*

9. Caporuscio originally formed Keste in March, 2009. He first retained Reid Rosen, Esq. on Keste's behalf to establish Keste as a New York limited liability company and, also, to draft its original Operating Agreement (the "2009 Operating Agreement").

10. Caporuscio also found a suitable location for Keste on Bleecker Street in the heart of New York City's Greenwich Village and, with the assistance of his close friend and personal attorney, Sandro Paterno, Esq., negotiated a long-term lease.

11. Most importantly, Caporuscio also hired and trained the cooks and waiters (training each of them in the art of *pizza Napoletana*), negotiated arrangements with Keste's food and beverage suppliers and organized and set up Keste's restaurant operations.

B. **<u>Keste's Initial Membership and Management</u>**

12. Caporuscio put together a small group of initial investors, including his friend, Rosario Porcino ("Porcino"), who invested $75,000 for a twenty-percent (20%) ownership interest in the newly-formed Company, and also received an additional twenty-percent (20%) ownership interest in "sweat equity."

13. With Caporuscio's consent, Porcino also involved his father-in-law, Francesco Garritano ("Garritano"), to invest $75,000 for a twenty percent (20%) ownership interest in Keste and, also, his sister-in-law, Sandra Manzella, who also invested $75,000 for a twenty percent (20%) ownership interest in the Company.

14. Caporuscio kept the remaining twenty percent (20%) ownership interest in the Company in exchange for his time, effort, know-how and vision -- to establish Keste as the finest *pizza Napoletana* restaurant in the United States.

15. Indeed, the name that Caporuscio chose for his first restaurant -- "Keste" -- fulfills his lifelong vision and translates from the Neapolitan dialect as "This is it."

16. Caporuscio's talents at Keste were immediately recognized by the food and restaurant industry. Within a few short years, Keste was touted as the "#1 Pizza in New York" by New York Magazine, as "Best Pizza" in the state of New York by Food Network Magazine, and among the "Best Pizza Places in the US" by Food and Wine Magazine.

17. Upon inception of its operations, Keste's initial management control involved Caporuscio and Porcino. Manzella had no experience in the restaurant industry and had no role in Keste's management or in Keste's operations.

18. Beginning in or about late 2009, Manzella began to work on one to two days per week at Keste, for which she was paid daily. Initially, Manzella served as a hostess, but because she had no prior experience and in fact managed to alienate both customers and staff, she was removed from the hostess position.

19. By 2010, Keste was generating enough revenue to enable the members to distribute profits well in excess of their respective initial investments. Keste's 2010 tax return confirms that Manzella, who had invested $75,000 in Keste in 2009, received a membership distribution in the amount of $94,550 in 2010 alone. She also received distributions of $67,000 and $60,600, respectively, in 2011 and 2012.

C. The 2012 Stock Redemption Agreement

20. In March of 2012, following a series of contentious negotiations, the members of Keste entered into a Stock Redemption Agreement, pursuant to which Porcino and Garritano divested themselves of their respective membership interests. Together, they sold to Keste the entirety of their

600 membership units (Porcino's 400 membership units and Garritano's 200 membership units) for the purchase price of $600,000.

21. Manzella was specifically advised by Caporuscio and Sandro Paterno, Esq. ("Paterno"), his close friend and personal attorney, that Paterno had represented Caporuscio individually on certain personal and business matters in the past, and, also, had represented Keste for purposes of its negotiations for the lease for its Bleecker Street location.

22. Manzella was also specifically advised by Caporuscio and Paterno that Paterno would be representing Caporuscio for purposes of the Stock Redemption Agreement.

23. Because Manzella complained that she could not afford to retain personal counsel at her own expense, Caporuscio volunteered to her that Paterno could represent them both for purposes of the Stock Redemption Agreement, at Keste's expense.

24. After being advised that Paterno would be representing Caporuscio for purposes of the Stock Redemption Agreement, Manzella agreed to retain Paterno to represent her also for purposes of the Stock Redemption Agreement, all at Keste's expense.

25. In order to fund the purchase contemplated in the Stock Redemption Agreement, Keste borrowed from JP Morgan Chase Bank ("Chase Bank") the sum of $457,000 through the auspices of the Small Business Association (the "SBA Loan"), which was personally guaranteed by each of Caporuscio and Manzella.

26. During the SBA Loan application process, Chase Bank representatives stressed to Caporuscio that SBA Loans were not typically approved for start-up restaurants and that the approval of the SBA Loan for Keste was premised primarily if not exclusively upon Caporuscio's reputation, ownership of and managerial control of Keste.

27. In addition to the proceeds from the SBA Loan, Caporuscio invested an additional $125,000 and Manzella invested an additional $25,000 into Keste to enable the buyout of Porcino's and Garritano's respective ownership interests.

28. As a result of the Stock Redemption Agreement, Caporuscio presently owns a majority fifty-five percent (55%) of Keste's membership units and Manzella owned the remaining forty-five percent (45%) minority interest.

D. The 2012 Operating Agreement

29. On or about February 10, 2012, as a result of the transaction accomplished by the Stock Redemption Agreement, Caporuscio and Manzella entered into a revised Operating Agreement (the "Operating Agreement").

30. The Operating Agreement used as a template the 2009 Operating Agreement drafted by Reid Rosen, Esq. on behalf of Keste. The only changes made to the 2009 Operating Agreement were the identity of the members (Caporuscio and Manzella) in the Preamble, Sections 2.1 and 3.1 and in Schedule A and, also, the substitution of Manzella's name into Section 4.1.

31. During the negotiations for the Operating Agreement, Caporuscio made clear to Manzella and others that he would at all times maintain a majority ownership interest in, and managerial control of, Keste. His $125,000 additional investment, compared to Manzella's additional $25,000 investment, underscores Caporuscio's majority ownership interest, and these additional investments were memorialized in Section 3.1 of the Operating Agreement.

32. At no time during the negotiations for the Stock Redemption Agreement or at the highly contentious closing of the transaction did Manzella ever mention to Paterno or Caporuscio that she wanted or expected to have managerial control over Keste equal to Caporuscio.

33. In fact, Manzella was at the time and remained as a result of the Stock Redemption Agreement a minority owner and part-time employee without managerial status or control.

34. Had Manzella made any such request for equal managerial control of Keste, Caporuscio -- who had conceived, formed, managed and grown Keste's business without anything but Manzella's financial contribution -- would have rejected the concept outright, and Paterno would have identified an actual conflict of interest between Caporuscio and Manzella.

E. <u>Manzella's Involvement In Keste's Business and Operations</u>

35. Beginning in or about late 2010, Manzella began performing certain bookkeeping functions for Keste, including tending to payroll and vendor invoices, maintaining the accounts payable and daily receipts and keeping Keste's QuickBooks records to reflect sales and expenses -- all in concert with and under the supervision of Keste's outside accountants.

36. Manzella performed these services on a part-time basis, working parts of one to three days per week, and she was compensated for her services, first on an hourly basis and subsequently on a daily and, eventually, a weekly basis.

37. Ultimately, Manzella paid herself a weekly salary in the amount of $840.00, an amount well in excess of the value of her part-time bookkeeping services.

38. Caporuscio at the same time continued to maintain responsibility for the restaurant's food, service and floor operations, including training and overseeing Keste's cooks, selecting and negotiating with its vendors and suppliers, supervising the wait staff and floor managers and, also, serving as Keste's public face and drawing card.

39. As a result of the Stock Redemption Agreement transaction the Operating Agreement provides at Section 4.1 that Keste "shall be managed and controlled" by the "affirmative vote of a

majority in interest of its Members," and, consistent therewith also provides that Manzella shares with Caporuscio "primary responsibility for running the day-to-day operations" of Keste.

40. That provision, however, does not vest any management authority or equal control of the Company to Manzella, who remains a minority member and owner.

41. In fact, among other things, Keste's Operating Agreement provides that "it 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." See Section 4.1.

42. Section 4.4(a) reiterates that "[t]he Members may exercise all powers...to the extent authorized by a *majority* of the interests which vote of the Company," and Section 4.4(c) provides that unless otherwise specified by law or by the Operating Agreement, "all matters requiring the vote, approval, consent, authorization or determination of the Members shall require the vote or consent of the members holding a *majority* of the issued and outstanding voting interests held by all of the Members."

43. Caporuscio, as holder of 55% of Keste's issued and outstanding membership units, owns and controls a majority of interest in Keste and therefore enjoys full and exclusive management and decision-making authority for its business and operation, subject to unanimity requirements set forth in Section 4.2B of the Operating Agreement.

F. Manzella's Misconduct and Interference With Keste's Business and Operations

44. Manzella's inexperience in the restaurant industry was evident even in her bookkeeping services. Her work was sporadic, incomplete, often inaccurate and never without controversy.

45. Initially, Manzella removed from Keste's premises its financial books and records. She also seized unilateral control over Keste's checkbook and check register, and kept them outside of Keste's business premises.

46. On numerous occasions, Caporuscio received angry complaints about Manzella's abrasiveness, temper and unreasonable conduct from vendors, employees and landlord.

47. Keste's vendors complained to Caporuscio about not being paid for their goods and services, or about not being paid the entire amounts of their invoices or not being paid in a timely manner.

48. Caporuscio's attempts to explain to Manzella the importance of timely payments to Keste's vendors -- if for no other reason than to avoid having the vendors place Keste on "C.O.D." status, meaning that goods would only be delivered to Keste if paid for at the time of delivery -- were met with anger, denial and fits of pique in which Manzella complained that she had to personally "approve" invoices before paying them.

49. Several employees, particularly those among the *pizza Napoletana* makers, threatened to quit working for Keste as a result of encounters with Manzella. On numerous occasions, Caporuscio was required to intervene with the employees who had been alienated by Manzella's abrasive conduct.

50. Keste's landlord -- a company owned by two individuals with whom Caporuscio had forged a friendly working relationship -- complained to Caporuscio that Manzella was arguing for inappropriate rent concessions, and informed Caporuscio that they no longer wished to engage in communications with Manzella.

51. As 2012 progressed, Manzella increasingly interfered with Keste's business and operations, holding herself out as a co-manager with equal authority to Caporuscio's, asserting that

she had to approve all Keste expenditures before they would be paid and withholding payment on Keste's ordinary course expenditures for which Caporuscio did not seek her advance approval.

52. Manzella also began refusing without authority to pay certain of Keste vendors' invoices, including invoices that Caporuscio had specifically approved for payment, and thus wrongfully interfered with Caporuscio's efforts to operate Keste in the ordinary course of business.

53. Despite the clear and unambiguous language in the Operating Agreement that vests managerial control in the majority ownership, Manzella seized upon the language that enables her to share with Caporuscio "primary responsibility for running the day-to-day operations" of Keste, and began to hold herself out as a co-manager with authority equal to Caporuscio's, interfering with Keste's business relationships and undermining Caporuscio's efforts to operate and improve Keste's business.

54. In or about March of 2013 Manzella refused to provide to Caporuscio access to or copies of Keste's financial books and records and its checkbook, despite his repeated requests.

55. By refusing to provide to Caporuscio access to or copies of Keste's financial books and records and its checkbook, Manzella effectively held Keste's business and financial affairs hostage to the whim of the part-time bookkeeper and minority owner, to Caporuscio's exclusion.

56. Increasingly, Manzella interfered with Keste's carefully developed public relations program, accusing Caporuscio of misusing Keste's funds to advertise himself when in fact Keste's advertisements were making use of Caporuscio's name, likeness and reputation to increase its own public profile and reputation in the restaurant community.

57. Among other things, Manzella -- a minority owner and part-time bookkeeper with no restaurant industry experience -- attempted to make unilateral changes to Keste's website without Caporuscio's authority or consent.

58. She insisted, for example, to include her name alongside Caporuscio's on the Keste website, castigated Keste's public relations representative as working solely for Caporuscio's benefit and refused to pay that vendor's invoice.

59. Manzella also began maligning Caporuscio's reputation in communications with third parties, publicly accusing Caporuscio variously of misappropriating Keste's funds, of devoting no time to Keste's business, of paying himself for work not performed and, remarkably, of disrupting Keste's business and operations.

60. Manzella also retained counsel to threaten Caporuscio with legal action for unspecified misconduct, including for "creat[ing] havoc" at Keste and of being an "unscrupulous business partner."

61. Manzella's inappropriate conduct and defamatory statements of and concerning Caporuscio to third parties has caused at least one vendor to advise her on March 19, 2013 that "it is not fair of you to insert me into an internal dispute between you and your partner."

62. Manzella's refusal to pay Keste's vendor invoices in the ordinary course was premised at least in part by her short-sighted desire to retain as much cash as possible to distribute to herself. Indeed, in mid-April 2013, Manzella paid out cash distributions to herself and Caporuscio without Caporuscio's knowledge or consent, and in fact over his objection.

63. At that time, Caporuscio determined that distributions should in fact not be paid, including to himself, because Keste need to upgrade if not replace its air conditioning unit -- an expenditure that Manzella, of course, challenged and refused to pay.

64. Manzella, who continued to maintain unilateral control over Keste's checkbook, also refused to make payment to Keste's vendor for a new "point of sale system" ("POS System") that

Caporuscio had determined was necessary to increase efficiency of Keste's food service operations and enable servers to turn tables more often and thus increase Keste's sales.

65. The POS System that Caporuscio chose was one that he had successfully recommended to other restaurants which had retained him as a consultant, based upon his growing reputation in the restaurant industry.

66. Indeed, Caporuscio's increasing profile and visibility in the restaurant industry inured to Keste's benefit, although he took no compensation from Keste for his public relations activities.

67. Nevertheless, Manzella refused to pay the POS System's vendor invoice, complaining variously to the vendor that the POS System was not necessary to Keste's operations, that the vendor had overcharged Keste for the System and that the System did not work.

68. Manzella's complaints to the vendor ignored that Caporuscio's had already approved the purchase and installation of the POS System, and that the purchase price had actually been discounted based upon the vendor's relationship with Caporuscio.

69. Also, any initial problems with the POS System that Keste briefly experienced were based upon a lack of familiarity among the staff with its use and features. These problems were quickly corrected by training sessions that Manzella, for her part, failed and refused to attend.

70. Manzella's refusal to pay vendor invoices and other expenses that Caporuscio had authorized for Keste, and her refusal to return the financial books and records and checkbook to Keste, was badly damaging to Keste's business and reputation in the restaurant industry and left Keste, and Caporuscio in an untenable situation that could not continue.

71. As a result, on numerous occasions Caporuscio was forced by Manzella's refusal to cooperate with him, or to pay his previously approved expenditures, to outlay his personal funds to pay vendor invoices and other Keste expenses. Caporuscio would thereafter reimburse himself from

Keste's account for these personal outlays by going to the Chase Bank branch where Keste maintained its business account, and generating a check at the branch to repay himself, or otherwise transferring Keste funds to himself, in the amounts that he had advanced on Keste's behalf.

72. When she discovered these transactions, Manzella wrongfully assumed that Caporuscio was transferring Keste's funds to himself or was otherwise misappropriating Keste's funds, when a simple inquiry into the underlying facts would demonstrate otherwise.

73. In any event, Manzella accused Caporuscio of misappropriation of Keste's funds and of paying to himself monies to which he was not entitled, and retained counsel to threaten legal action against him.

74. By this time, moreover, communications between Caporuscio and Manzella have deteriorated to a point that they can no longer effectively communicate other than through counsel.

G. Termination of Manzella's Employment With Keste

75. On April 19, 2013, as a result of Manzella's sustained wrongful and unlawful conduct, the substantial damages and irreparable harm to Keste's and Caporuscio's business and professional reputation that it has caused, and Manzella's continued refusal to cooperate with Caporuscio and to enable Keste to run its business in a manner consistent with the Operating Agreement, Caporuscio terminated Manzella's employment with Keste for cause.

76. Caporuscio also opened a new business account for Keste, at Capital One Bank, so that he could oversee and manage Keste's financial affairs without further interference.

H. The Instant Lawsuit and Temporary Restraining Order

77. On April 25, 2013 Manzella commenced this lawsuit. The Court, on an incomplete record and thus unaware at the time of Manzella's misconduct, entered an Order temporarily restoring Manzella to her employment with Keste and requiring, among other things, that she and Caporuscio operate Keste in accordance with the Operating Agreement.

78. Manzella was ordered to return Keste's checkbook for the Chase Account to Keste's premises and that the financial affairs of Keste were to be managed and maintained at Keste.

79. The Court's Order, entered on April 26, 2013 provided, among other things, that "if there is a dispute over business expenditures, in accordance with the Operating Agreement, the majority of membership interest shall" control the decision.

80. Also, the Court ruled that "to the extent that … the both of them can't agree on it, then I believe … the Operating Agreement allows the majority -- the owner of the majority of the units to make a decision about that. So there may be some things in terms of the operation of the business that she is the junior partner, so to speak, and she's got to recognize that."

I. Manzella's Violations of the Court's Order

81. Since entry of the Court's Order, however, Manzella has engaged in conduct that violates its explicit terms.

82. Manzella wrongfully and in bad faith interpreted the Court's requirement that the Keste checkbook be kept at Keste's premises as somehow entitling her to "set up my office at Keste as ordered by the judge."

83. Manzella suggested that Keste should sacrifice valuable and revenue-generating dining space to enable her to set up her "office" and further advised Mr. Caporuscio, "I can either set up in the back where the pizza station is, where table 1, 2, 3 is or I can set up in the

front where tables 16, 17, 18 are. The only issue is that we will be losing tables during business hours."

84. Among other things, Manzella has refused, despite Caporuscio's repeated instructions as majority owner and member, to pay certain vendor invoices, including the part-time bookkeeper that Caporuscio retained to establish and maintain order in Keste's financial reporting and to correct and oversee Manzella's shoddy and self-serving bookkeeping.

85. Manzella has in fact voided and reversed certain payments that Caporuscio has authorized from Keste's account.

86. More recently, Manzella has attempted to hire her current boyfriend as an assistant manager at Keste, and has "approved" his training and employment at Keste's expense, all in Caporuscio's absence and over his repeated objections.

87. Finally, Manzella has spread false and defamatory information to Caporuscio's daughter in Naples, with whom she has attempted to communicate with regularly over the past several months, and has repeatedly bad-mouthed Caporuscio to his daughter.

88. Manzella has failed and refused Caporuscio's repeated requests that she discontinue communications with Caporuscio's daughter, and Manzella continues to spread false and defamatory information of and concerning Caporuscio to his daughter.

J. **<u>The Future of Keste's Business and Operations</u>**

89. Given the circumstances described above, there is no business relationship between Caporuscio and Manzella that may be salvaged, and Caporuscio is no longer willing in any event to remain in any business partnership or alliance with Manzella.

90. To the extent, he may no longer exercise the control over Keste's business and operations that he had in fact exercised prior to this lawsuit -- and to which the Operating Agreement

entitled him to exercise, as demonstrated herein -- Caporuscio has no alternative based upon Manzella's misconduct and intransigence but to seek a judicial dissolution of Keste.

FIRST COUNT

(Breach of Contract)

91. Counter-Plaintiffs repeat and re-plead each of their responses to the foregoing allegations as if fully set forth at length herein.

92. The Operating Agreement is a binding and enforceable contract between Caporuscio and Manzella.

93. Pursuant to Section 4.1 of the Operating Agreement, "The Company shall be managed and controlled by its Members by the affirmative vote of a majority in interest of the Members . . ."

94. Furthermore, Pursuant to Section 4.4(a) provides that "Members may exercise all powers of the Company to the extent authorized by a majority of the interests . . ."

95. Likewise, Section 4.4(c) provides that unless otherwise specified by law or by the Operating Agreement, "all matters requiring the vote, approval, consent, authorization or determination of the Members shall require the vote or consent of the members holding a majority of the issued and outstanding voting interests held by all of the Members."

96. As to books and records, Section 6.2 of the Operating Agreement states, "[p]roper and complete books of account and records of the business of the Company shall be kept under the supervision of the Members at the Company's principal office and at such other place as designated by the Members."

97. Article VIII of the Operating Agreement governs distributions to Members pursuant to certain restrictions contained in the Article. Pursuant to Section 8.1 of the Operating Agreement, distributions of cash flow "for each taxable year of the Company . . . shall be distributed as often as practicable in the exercise of reasonable business judgment by the Members" first to pay off Company

liabilities, followed by principal and interest on member loans to the Company, if any, and only then to Members in proportion to their respective ownership interests.

98. In addition to mandatory distributions of 50% of the Company's Net Income each year (Section 8.2), discretionary distributions *may* be made, pursuant to Section 8.3, "[t]o the extent the Company's cash on hand exceeds its current and anticipated needs, including, without limitation, needs for operating expenses . . ."

99. As stated in Section 8.8, "[e]xcept as provided in this Article VIII and in Section 2.8 [Rights of Dissociating Member], no withdrawals or distributions shall be required or permitted."

100. Section 4.9, Compensation of Members, states that each Member shall be "each of the Members agrees that Caporuscio and Manzella shall be entitled to compensation, taken at such times and in such amounts as they reasonable determine, for running the day-to-day operations of the Company."

101. Caporuscio has fully performed his obligations pursuant to the Operating Agreement.

102. As set forth at length above, Manzella has breached the Operating Agreement by refusing to provide Caporuscio with access to Keste's checkbook, or with access to or copies of Keste's books and records.

103. Manzella has also breached the Operating Agreement by refusing without authority to pay Keste's vendors, as described in detail above.

104. Manzella has also breached the Operating Agreement by wrongfully taking unauthorized distributions from Keste.

105. Manzella has also breached the Operating Agreement by wrongfully interfering with Caporuscio's efforts to operate Keste's ordinary course of business, damaging Keste's business and reputation by holding herself out improperly as Keste's "co-Manager" with equal authority to

Caporuscio, the majority owner, and by maligning both Keste's and Caporuscio's reputation in communications with third parties.

106. As a direct and proximate cause of Manzella's breach of contract as set forth in detail above, Keste and Caporuscio have sustained substantial damages.

SECOND COUNT

(Breach of Fiduciary Duty)

107. Counter-Plaintiffs repeat and re-plead each of their responses to the foregoing allegations as if fully set forth at length herein.

108. Manzella, as a member of Keste, owes a fiduciary duty to Keste, as well as to Caporuscio, the majority member and owner.

109. Manzella's fiduciary duties include, but are not limited to, the duties of due care, loyalty and good faith, to act in Keste's best interests and to conduct and administer the business of Keste in conformity with the express terms of the Operating Agreement.

110. Manzella has breached her fiduciary duties to Keste and Caporuscio by refusing to provide Caporuscio with access to Keste's checkbook, or with access to or copies of Keste's books and records, refusing without authority to pay Keste's vendors in the ordinary course, wrongfully taking unauthorized distributions from Keste, wrongfully interfering with Caporuscio's efforts to operate Keste's ordinary course of business, damaging Keste's business and reputation by holding herself out improperly as Keste's "co-Manager" with equal authority to Caporuscio, the majority owner, and maligning both Keste's and Caporuscio's reputation in communications with third parties.

111. As a direct and proximate cause of Manzella's breach of her fiduciary duties as set forth in detail above, Keste and Caporuscio have sustained substantial damages.

THIRD COUNT

(Breach of Covenant of Good Faith)

112. Counter-Plaintiffs repeat and re-plead each of their responses to the foregoing allegations as if fully set forth at length herein.

113. Implicit in the Operating Agreement executed between Manzella and Caporuscio is an obligation of good faith and fair dealing requiring each of the parties to refrain from any act or omission that would injure or destroy the right of the other to receive the fruits and benefits of the Operating Agreement.

114. By the acts and omissions to act as described more fully above, Manzella knowingly and intentionally failed to fulfill her implied covenant of good faith and fair dealing with respect to the Operating Agreement.

115. As a result of Manzella's acts and omissions to act as described more fully above, Manzella has wrongfully breached her implied covenant of good faith and fair dealing with respect to the Operating Agreement.

116. As a direct and proximate result of Manzella's breach of its covenant of good faith and fair dealing interference as set forth in detail above, Keste and Caporuscio have sustained substantial damages.

FOURTH COUNT

(Tortious Interference with Contractual and Prospective Business Relations)

117. Counter-Plaintiffs repeat and re-plead each of their responses to the foregoing allegations as if fully set forth at length herein.

118. Manzella has intentionally interfered with certain of Keste's and Caporuscio's business, vendor, real estate, employee and personal relationships and caused damage to their

respective reputations, by engaging in the conduct set forth in detail above, including but not limited to:

A. refusing to provide Caporuscio with access to Keste's checkbook, or with access to or copies of Keste's books and records, refusing without authority to pay Keste's vendors in the ordinary course, and preventing Caporuscio from paying vendors and service providers, or from paying them in a timely manner, as was agreed;

B. wrongfully interfering with Caporuscio's efforts to operate Keste's ordinary course of business;

C. holding herself out improperly as Keste's "co-Manager" with equal authority to Caporuscio, the majority owner, and

D. maligning both Keste's and Caporuscio's reputation in communications with third parties, and accusing Caporuscio of engaging in misappropriation and unauthorized use of Keste's funds for personal expenses or of inappropriate business expenses.

119. Manzella's interference with Keste's and Caporuscio's business, vendor, real estate, employee and personal relationships was intentional and with malice.

120. As a result of the Manzella's tortious interference, Keste and Caporuscio have lost or sustained a diminution of valuable relationships with certain vendors and business partners.

121. Manzella's conduct constitutes tortious interference with contractual relations and prospective economic gain, in violation of law.

122. As a direct and proximate result of Manzella's tortious interference as set forth in detail above, Keste and Caporuscio have sustained substantial damages.

FIFTH COUNT

(Declaratory Relief Pursuant To C.P.L.R. §3001)

123. Counter-Plaintiffs repeat and re-plead each of their responses to the foregoing allegations as if fully set forth at length herein.

124. As a result of the Parties' dispute concerning their respective authority to manage, run and exercise decision-making authority over Keste's business and operations, an actual and justiciable controversy exists between Manzella, Keste and Caporuscio concerning their respective rights and liabilities to each other under the Operating Agreement.

125. In order to manage and conduct their affairs in the ordinary course of business and to ascertain their respective rights, obligations and liabilities under the Operating Agreement, Manzella, Keste and Caporuscio must know their actual rights, duties and obligations thereunder.

126. Accordingly, Counter-Plaintiffs seek the following declarations pursuant to C.P.L.R. §3001:

A. That Caporuscio, as majority owner and manager of Keste, is Keste's sole Manager and enjoys full and exclusive management and decision-making authority for its business and operations, subject to unanimity requirements set forth in Section 4.2B of the Operating Agreement;

B. That Section 4.1 of the Operating Agreement providing that Keste "shall be managed and controlled" by the "affirmative vote of a majority in interest of its Members," and, also, that Manzella shares with Caporuscio "primary responsibility for running the day-to-day operations" of Keste, does not convey or confer upon Manzella equal management authority as that exercised by Caporuscio, Keste's majority member and owner, over Keste's management and decision-making authority for its business and operations;

C. That Sections 4.1, 4.2.B and 4.4(c) of the Operating Agreement mandate that Keste's management and decision-making authority for its business and operations derive exclusively from a majority of the membership interest;

D. That Manzella is not a "co-Manager" of Keste, and does not as a minority member and owner possess, enjoy or have any right to exercise, managerial control over Keste equal to Caporuscio's managerial rights;

E. That the language authorizing Manzella to share with Caporuscio "primary responsibility for running the day-to-day operations" of Keste in Section 4.1 of the Operating Agreement must be construed in concert with all other provisions of the Operating Agreement;

F. That the language authorizing Manzella to share with Caporuscio "primary responsibility for running the day-to-day operations" of Keste in Section 4.1 of the Operating Agreement refers, in accordance with New York law, to administrative and ministerial functions and daily activities and does not refer to or implicate general business or managerial control over Keste's business and affairs.

SIXTH COUNT

(Petition for Judicial Dissolution)

127. Counter-Plaintiffs repeat and re-plead each of their responses to the foregoing allegations as if fully set forth at length herein.

128. Dissolution by judicial decree of Keste Group LLC may occur under Section 11.1(d) of the Operating Agreement and/or New York law, including New York Limited Liability Company Law §§701-705.

129. Manzella, as a member of Keste, has engaged in conduct as set forth in detail above that results in it not being reasonably practicable to carry on the business of Keste in

conformity with the Operating Agreement and, also, that casts reasonable doubt on the ability of the members to wind up the business and affairs of the Company.

130. Accordingly, Keste, by and through Caporuscio, its majority member, and Caporuscio, as majority member of Keste, hereby petition the Court for entry, as soon as reasonably practicable, of an order of dissolution to wind up the business and affairs of the Company, in accordance with the terms of the Operating Agreement and New York law, including New York Limited Liability Company Law §§701-705.

SEVENTH COUNT

(Unjust Enrichment)

131. Counter-Plaintiffs repeat and re-plead each of their responses to the foregoing allegations as if fully set forth at length herein.

132. As set forth more fully above, Manzella has engaged in inequitable conduct that has caused substantial damages to Keste and Caporuscio.

133. These actions have conferred a benefit upon Manzella in the form of excessive salary and member distributions, as well as unapproved expenditures wrongfully charged to Keste, to the detriment of Keste and Caporuscio.

134. As a direct and proximate result of Manzella's misconduct, as set forth in detail above, Manzella has been unjustly enriched, to the detriment of Keste and Caporuscio.

135. Manzella's unjust enrichment has caused Keste and Caporuscio to sustain substantial damages.

REQUEST FOR RELIEF

WHEREFORE, Counter-Plaintiffs Keste Group, LLC and Roberto Caporuscio respectfully request that this Court enter judgment in their favor and against Plaintiff Sandra G. Manzella as follows:

A. Awarding Counter-Plaintiffs compensatory, consequential and incidental damages;

B. Awarding Counter-Plaintiffs punitive and exemplary damages as allowed by law;

C. Awarding Counter-Plaintiffs prejudgment and post-judgment interest as permitted by law;

D. Awarding Counter-Plaintiffs reasonable attorneys' fees and costs of suit as permitted by law;

E. Awarding Counter-Plaintiffs pursuant to C.P.L.R. §3001 the declaratory relief set forth in the Fifth Count, above;

F. Awarding Counter-Plaintiffs the judicial dissolution relief set forth in the Sixth Count, above, dissolving the business and affairs of Keste Group LLC in accordance with applicable law; and

G. Awarding Counter-Plaintiffs such other and further relief as this Court deems equitable and just.

McCUSKER, ANSELMI, ROSEN & CARVELLI, P.C.
805 Third Avenue, 12th Floor
New York, New York 10022
Attorneys for Defendants/Counter-Plaintiffs
Keste Group, LLC, Roberto Caporuscio and Sandro Paterno

By: ______________________
Patrice E. LeTourneau, Esq.

Dated: July 3, 2013