

At an IAS Part 49 of the Supreme Court of the State of New York, held in and for the County of New York at the Courthouse thereof, located at 60 Centre Street, New York, New York, on the 26 day of April, 2013.

PRESENT:

Hon. **O. PETER SHERWOOD**, J.S.C.

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

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

Plaintiffs,

Index No. 651484-13

-against-

**ORDER TO SHOW
CAUSE WITH
TEMPORARY
RESTRAINING ORDER**

ROBERTO CAPORUSCIO and SANDRO PATERNO,

Defendants,

-and-

KESTE GROUP, LLC,

Nominal Defendant.

-----X
UPON, reading and filing the annexed Affidavit of SANDRA G. MANZELLA, a forty-five (45) percent owner of the KESTE GROUP, LLC (the "Keste Group" or "Company"), duly affirmed the 24th day of April, 2013, the annexed Complaint; the accompanying Memorandum of Law, and UPON the Oral Argument held before the Honorable O. Peter Sherwood on April 25, 2013, during which undersigned counsel appeared for both Plaintiff Sandra G. Manzella, and Defendant Roberto Caporuscio:

LET, DEFENDANT ROBERTO CAPORUSCIO, or his attorney(s), show cause before this Court at an IAS Term Part 49 of this Court, Room 252 at the

OPS

Courthouse thereof, located at 60 Centre Street, New York, New York, on the ^{4th} day of ~~April~~ June, 2013, at 9:30 a.m., or as soon thereafter as counsel can be heard,

WHY, an Order should not be made and entered as follows:

1. Pursuant to Article 63 of the CPLR, enjoining and restraining Defendant Caporuscio his employees, agents and servants from 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. Pursuant to Article 63 of the CPLR, 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 on April 18, 2013;

3. Pursuant to Article 63 of the CPLR, directing that all checks written on the Account contain the join signatures of Manzella and Caporuscio and that the Account be immediately re-designated a joint signature account with Chase;

4. Pursuant to Article 63 of the CPLR, directing that all cash sales by Keste Group be deposited into the aforementioned JP Morgan Chase, N.A. Account;

5. Pursuant to Article 63 of the CPLR, 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;

6. Pursuant to Article 63 of the CPLR, 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;

7. Pursuant to Article 63 of the CPLR, 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;

8. Pursuant to Article 63 of the CPLR, 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;

9. Pursuant to Article 63 of the CPLR, 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;

10. Granting to Plaintiff such other, further and different relief as to this Court may seem just and proper.

NOW, upon the motion of Sadis & Goldberg LLP, attorneys for Plaintiff, and it appearing that sufficient cause being alleged, it is

ORDERED that to the extent plaintiff and Caporuscio have taken distributions on or after April 10, 2013, said distributions shall be returned to the company account promptly. Any failure to comply will be taken into account at the remedy stage following the June 4, 2013 hearing; and it is further

ORDERED, that pending the June 4, 2013 hearing on Plaintiff's motion for a preliminary injunction, and unless otherwise ordered by the Court, Defendant Caporuscio, his employees, agents and/or servants, and Plaintiff Sandra G. Manzella, in accordance with the Limited Liability Company Operating Agreement dated as of February 10, 2012 (the "Operating Agreement") between Plaintiff Sandra G. Manzella and Defendant Roberto Caporuscio, which requires them to act in the best interest of the Keste Group at all times, hereby agree to:

1. Acknowledge that Plaintiff Manzella and Defendant Caporuscio "shall have primary responsibility for running the day-to-day operations of the Company" in accordance with Section 4.1 of the Operating Agreement;

2. Reinstate Plaintiff Manzella to her position as co-manager of Keste Group;

3. Advise the employees and vendors that Sandra Manzella ~~is a co-manager and~~ has not been terminated;

4. ~~Compensate~~ Plaintiff Manzella \$840.00 per week ~~such amount~~ ^{Each party has respective weekly salaries,} ^{Caporuscio's nonly salary} ~~representing her weekly salary as co-manager of Keste Group~~ in accordance with Section 4.9 of the Operating Agreement;

5. ~~Reimburse~~ ^{Pay} Sandra Manzella the weekly salary of \$840.00 per week as accrued from April 19, 2013 to date;

6. ~~Keep~~ ^{The parties shall maintain} the Company's books and financial records, including the Keste Group company checkbook, on the Company's premises ("Keste premises") located at 271 Bleecker Street, New York, New York, 10014 ^{NY};

7. In accordance with Section 4.1, ~~to facilitate Plaintiff Manzella's ability to run the day-to-day operations of the Company:~~ (a) grant Plaintiff Manzella access to the

Keste Group's Point of Sale System, otherwise known as the "POS sale system"; (b) allow Plaintiff daily access to the Keste premises ~~on a twenty-four a day, seven days a week basis from where Plaintiff Manzella will perform her co-manager duties and obligations;~~ and (c) ~~grant Plaintiff Manzella~~ ^{each party shall have} daily access to the Keste Group's financial books and records, including the Company checkbook;

8. Cause all credit card sales and cash to be deposited to the Company's joint bank account held at JP Morgan Chase, N.A., Account Number: 2905255790 (the "Chase Account") to which Manzella and Caporuscio will both have access and which shall be the only bank account for Keste Group;

9. ~~Direct all assets improperly transferred from the Chase Account be returned to the Chase Account, including, but not limited to: (a) \$25,000 deposited to Defendant Caporuscio's Capital One bank account by Keste Check number 5814, deposited on April 18, 2013; (b) \$7,000 from the Keste business savings account to Defendant Caporuscio's personal checking account; (c) \$8,500 and \$895 from the Keste checking account to Defendant Caporuscio's personal checking account; (d) \$11,000 Defendant Caporuscio withdrew from the Keste checking account; and (e) cash deposits withdrawn by Defendant Caporuscio, including but not limited to, \$385.55 on 4/11/13; \$53.03 on 4/12/13; \$1,237.16 on 4/13/13; \$315.56 on 4/14/13; \$528.48 on 4/16/13; \$270.13 on 4/17/13; \$576.02 on 4/18/13; \$345.25 on 4/19/13; \$573.37 on 4/20/13; \$697.76 on 4/21/13;~~ ^{the balance of funds} ^{into a separate operating account to}

10. ~~Restrain~~ ^{Each party shall be restrained} from altering, moving, destroying, secreting or fabricating the books and records (including all ledgers and accounting records) of the Keste Group;

11. Restrain from transferring, assigning, mortgaging, pledging, hypothecating or otherwise disposing of any Keste Group property, except in the ordinary course of business, and for good and valuable consideration in money or money's worth;

upon satisfaction of Company's expenditures,

~~Continue monthly distributions~~ **pay distributions** to both Plaintiff Manzella and Defendant

Caporuscio, in accordance with Article 8 of the Operating Agreement, and, ~~barring some significant change in the business, it is anticipated that Plaintiff Manzella will receive,~~ **upon agreement of the majority of membership interests,**

~~approximately \$20,000 and Defendant Caporuscio will receive approximately \$25,000, as~~

~~has been the historical practice since September 2012 and agree to act in good faith and~~

~~in the best interests of the Company with respect to distributions, and to negotiate~~

~~management disputes in good faith and in the best interest of the Company, including~~

~~disputes relating to the day-to-day operations of the Company.~~

and James

(stet)

SUFFICIENT CAUSE APPEARING THEREFOR,

LET, service of a copy of this Order to Show Cause, together with the papers upon which it is based, upon defendant Caporuscio, by personal service no later than April __, 2013, and that such be deemed good and sufficient service; and it is further

ORDERED, that all papers, if any, submitted in opposition to this motion be served upon Sadis & Goldberg, LLP, 551 Fifth Avenue, 21st Floor, New York, NY 10176, so that they are received by counsel for Plaintiff at least __ business days before the return date of June 4, 2013, so that Plaintiff may serve reply papers at least __ business days before the Preliminary Injunction Hearing on June 4, 2013.

Dated: New York, NY
April 26, 2013

13. Pay Keste's business expenditures first

Entered:

[Signature]
O. PETER SHERWOOD

13. Pay Keste's business expenditures upon approval of the majority of membership interest in accordance with the Operating Agreement.

and if there is a dispute over business expenditures, in accordance with the Operating Agreement, the majority of membership interests shall decide whether the business expenditures will be approved.