

STATE OF NEW YORK
SUPREME COURT, COUNTY OF NEW YORK

X

ATLANTIS MANAGEMENT GROUP II LLC,

Plaintiff

vs.

VERIFIED COMPLAINT
Index No.

RAJAN NABE and RAHUL NABE,
and FARMERS PETROLEUM LLC,
BRUCKNER PETROLEUM LLC,
10TH AVENUE PETROLEUM LLC,
and 138 PETROLEUM LLC

Defendants

X

Plaintiff, ATLANTIS MANAGEMENT GROUP II LLC, by its attorneys Spiegel Legal, LLC, as and for this Verified Complaint against RAJAN NABE and RAHUL NABE, and FARMERS PETROLEUM LLC, BRUCKNER PETROLEUM LLC, 10th AVENUE PETROLEUM LLC, and 138 PETROLEUM LLC, alleges and states the following:

PARTIES

1. Plaintiff ATLANTIS MANAGEMENT GROUP II LLC ("Plaintiff") is a limited liability company duly formed and existing under the laws of the State of New York, with an address at 555 South Columbus Avenue, Mt. Vernon, New York 10550.
2. Defendant FARMERS PETROLEUM LLC is a limited liability company organized and existing under the laws of the State of New York.
3. According to the New York State Department of State Division of Corporations database, the organizational papers of FARMERS PETROLEUM LLC were filed on August 7, 2008, with an address at P.O. Box 483, Syosset, New York 11791.
4. FARMERS PETROLEUM LLC operates a petroleum service station

located at 144-31 Farmers Boulevard, Jamaica, New York.

5. Plaintiff is the “investor member” of FARMERS PETROLEUM LLC, pursuant to the operating agreement of FARMERS PETROLEUM LLC.

6. Defendant BRUCKNER PETROLEUM LLC is a limited liability company organized and existing under the laws of the State of New York.

7. According to the New York State Department of State Division of Corporations database, the organizational papers of BRUCKNER PETROLEUM LLC were filed on August 7, 2008, with an address at P.O. Box 483, Syosset, New York 11791.

8. BRUCKNER PETROLEUM LLC operates a petroleum service station located at 281 Bruckner Boulevard, Bronx, New York.

9. Plaintiff is the “investor member” of BRUCKNER PETROLEUM LLC, pursuant to the operating agreement of BRUCKNER PETROLEUM LLC.

10. Defendant 10TH AVENUE PETROLEUM LLC is a limited liability company organized and existing under the laws of the State of New York.

11. According to the New York State Department of State Division of Corporations database, the organizational papers of 10TH AVENUE PETROLEUM LLC were filed on August 7, 2008, with an address at P.O. Box 483, Syosset, New York 11791.

12. 10TH AVENUE PETROLEUM LLC operates a petroleum service station located at 466 10TH Avenue, New York, New York.

13. Plaintiff is the “investor member” of 10TH AVENUE PETROLEUM LLC, pursuant to the operating agreement of 10TH AVENUE PETROLEUM LLC.

14. Defendant 138 PETROLEUM LLC is a limited liability company organized and existing under the laws of the State of New York.

15. According to the New York State Department of State Division of Corporations database, the organizational papers of 138 PETROLEUM LLC were filed on August 7, 2008, with an address at P.O. Box 483, Syosset, New York 11791.

16. 138 PETROLEUM LLC operates a petroleum service station located at 115 East 138th Street, Bronx, New York.

17. Plaintiff is the “investor member” of 138 PETROLEUM LLC, pursuant to the operating agreement of 10TH AVENUE PETROLEUM LLC.

18. Defendant RAJAN NABE is an individual person over the age of eighteen, residing in the State of New York.

19. RAJAN NABE has an address at either 75 Woodcrest Drive, Muttontown, New York 11791 and/or in care of Lotus Management Group, 25 Newbridge Road, Suite 312, Hicksville, New York 11801.

20. Defendant RAHUL NABE is an individual person over the age of eighteen, residing in the State of New York.

21. RAHUL NABE has an address at either 75 Woodcrest Drive, Muttontown, New York 11791 and/or in care of Lotus Management Group, 25 Newbridge Road, Suite 312, Hicksville, New York 11801.

22. Defendants RAJAN NABE and RAHUL NABE are related parties, being father and son.

23. Defendants RAJAN NABE and RAHUL NABE, or their corporate nominee, are the “managing member” of Defendant FARMERS PETROLEUM LLC.

24. Defendants RAJAN NABE and RAHUL NABE, or their corporate nominee, are the “managing member” of Defendant BRUCKNER PETROLEUM LLC.

25. Defendants RAJAN NABE and RAHUL NABE, or their corporate nominee, are the “managing member” of Defendant 10TH AVENUE PETROLEUM LLC.

26. Defendants RAJAN NABE and RAHUL NABE, or their corporate nominee, are the “managing member” of Defendant 138 PETROLEUM LLC.

JURISDICTION AND VENUE

27. The Supreme Court of the State of New York, in the County of New York, is possessed of jurisdiction of this action pursuant to §301 of the Civil Practice Law and Rules (“CPLR”), as Plaintiff and all Defendants are domiciled in the State of New York.

28. Venue is appropriate in the County of New York since Plaintiff and all Defendants reside or are domiciled in the State of New York, and some of the real property and businesses at issue in this action are located within the County of New York (with the remainder of the real property and businesses at issue all located in the City of New York).

OPERATING AGREEMENTS AND PERSONAL GUARANTEES

29. Defendant FARMERS PETROLEUM LLC is governed by an Operating Agreement dated as of October 21, 2008 (the “Farmers Petroleum LLC Operating Agreement”), among Plaintiff, RAJAN NABE, and RAHUL NABE.

30. Pursuant to Sections 1.1.I and 1.1.J of the Farmers Petroleum LLC Operating Agreement, Plaintiff was denominated as the “Investor Member” and Defendants RAJAN NABE and RAHUL NABE or their corporate nominee was denominated the “Managing Member”.

31. In connection with the execution and delivery of the Farmers Petroleum LLC Operating Agreement, Defendants RAJAN NABE and RAHUL NABE in a separate written and notarized instrument entitled “Guaranty” dated October 21, 2008, personally guaranteed to Plaintiff as the “Investor Member” the obligations and duties of the “Managing Member”.

32. According to the terms and conditions of this personal guaranty, executed and delivered in connection with the Farmers Petroleum LLC Operating Agreement, Defendants RAJAN NABE and RAHUL NABE “jointly and severally guarantee to Investor Member [*i.e.*, Plaintiff], its successors and assigns, the full and prompt performance of each and every obligation of the Managing Members under the [Farmers Petroleum LLC Operating] Agreement ... payable by Managing Member, its successors, its successors and assigns, under the Agreement, and... further guarantees the full and timely performance and observance of all the covenants, terms, conditions and agreements therein provided to be performed and observed by Managing Member, its successors and assigns pursuant to the Agreement...”

33. This personal guaranty was “an absolute and unconditional guaranty of payment and performance” pursuant to its terms and conditions.

34. A copy of the Farmers Petroleum LLC Operating Agreement and the personal guaranty of Defendants RAJAN NABE and RAHUL NABE, executed and delivered in connection with the Farmers Petroleum LLC Operating Agreement, is attached to this Verified Complaint and made a part hereof as Exhibit “A”.

35. Defendant BRUCKNER PETROLEUM LLC is governed by an Operating Agreement dated as of October 20, 2008 (the “Bruckner Petroleum LLC Operating

Agreement”), among Plaintiff, RAJAN NABE, and RAHUL NABE.

36. Pursuant to Sections 1.1.I and 1.1.J of the Bruckner Petroleum LLC Operating Agreement, Plaintiff was denominated as the “Investor Member” and Defendants RAJAN NABE and RAHUL NABE or their corporate nominee was denominated the “Managing Member”.

37. In connection with the execution and delivery of the Bruckner Petroleum LLC Operating Agreement, Defendants RAJAN NABE and RAHUL NABE in a separate written and notarized instrument entitled “Guaranty” dated October 20, 2008, personally guaranteed to Plaintiff as the “Investor Member” the obligations and duties of the “Managing Member”.

38. According to the terms and conditions of this personal guaranty, executed and delivered in connection with the Bruckner Petroleum LLC Operating Agreement, Defendants RAJAN NABE and RAHUL NABE “jointly and severally guarantee to Investor Member [*i.e.*, Plaintiff], its successors and assigns, the full and prompt performance of each and every obligation of the Managing Members under the [Bruckner Petroleum LLC Operating] Agreement ... payable by Managing Member, its successors, its successors and assigns, under the Agreement, and... further guarantees the full and timely performance and observance of all the covenants, terms, conditions and agreements therein provided to be performed and observed by Managing Member, its successors and assigns pursuant to the Agreement...”

39. This personal guaranty was “an absolute and unconditional guaranty of payment and performance” pursuant to its terms and conditions.

40. A copy of the Bruckner Petroleum LLC Operating Agreement and the

personal guaranty of Defendants RAJAN NABE and RAHUL NABE, executed and delivered in connection with the Bruckner Petroleum LLC Operating Agreement, is attached to this Verified Complaint and made a part hereof as Exhibit "B".

41. Defendant 10TH AVENUE PETROLEUM LLC is governed by an Operating Agreement dated as of October 16, 2008 (the "10TH Avenue Petroleum LLC Operating Agreement"), among Plaintiff, RAJAN NABE, and RAHUL NABE.

42. Pursuant to Sections 1.1.I and 1.1.J of the 10TH Avenue Petroleum LLC Operating Agreement, Plaintiff was denominated as the "Investor Member" and Defendants RAJAN NABE and RAHUL NABE or their corporate nominee was denominated the "Managing Member".

43. In connection with the execution and delivery of the 10TH Avenue Petroleum LLC Operating Agreement, Defendants RAJAN NABE and RAHUL NABE in a separate written and notarized instrument entitled "Guaranty" dated October 16, 2008, personally guaranteed to Plaintiff as the "Investor Member" the obligations and duties of the "Managing Member".

44. According to the terms and conditions of this personal guaranty, executed and delivered in connection with the 10TH Avenue Petroleum LLC Operating Agreement, Defendants RAJAN NABE and RAHUL NABE "jointly and severally guarantee to Investor Member [*i.e.*, Plaintiff], its successors and assigns, the full and prompt performance of each and every obligation of the Managing Members under the [10TH Avenue Petroleum LLC Operating] Agreement ... payable by Managing Member, its successors, its successors and assigns, under the Agreement, and... further guarantees the full and timely performance and observance of all the covenants, terms, conditions and

agreements therein provided to be performed and observed by Managing Member, its successors and assigns pursuant to the Agreement...”

45. This personal guaranty was “an absolute and unconditional guaranty of payment and performance” pursuant to its terms and conditions.

46. A copy of the 10TH Avenue Petroleum LLC Operating Agreement and the personal guaranty of Defendants RAJAN NABE and RAHUL NABE, executed and delivered in connection with the 10TH Avenue Petroleum LLC Operating Agreement, is attached to this Verified Complaint and made a part hereof as Exhibit “C”.

47. Defendant 138 PETROLEUM LLC is governed by an Operating Agreement dated as of October 17, 2008 (the “138 Petroleum LLC Operating Agreement”), among Plaintiff, RAJAN NABE, and RAHUL NABE.

48. Pursuant to Sections 1.1.I and 1.1.J of the 138 Petroleum LLC Operating Agreement, Plaintiff was denominated as the “Investor Member” and Defendants RAJAN NABE and RAHUL NABE or their corporate nominee was denominated the “Managing Member”.

49. In connection with the execution and delivery of the 138 Petroleum LLC Operating Agreement, Defendants RAJAN NABE and RAHUL NABE in a separate written and notarized instrument entitled “Guaranty” dated October 17, 2008, personally guaranteed to Plaintiff as the “Investor Member” the obligations and duties of the “Managing Member”.

50. According to the terms and conditions of this personal guaranty, executed and delivered in connection with the 138 Petroleum LLC Operating Agreement, Defendants RAJAN NABE and RAHUL NABE “jointly and severally guarantee to

Investor Member [*i.e.*, Plaintiff], its successors and assigns, the full and prompt performance of each and every obligation of the Managing Members under the [Farmers Petroleum LLC Operating] Agreement ... payable by Managing Member, its successors, its successors and assigns, under the Agreement, and... further guarantees the full and timely performance and observance of all the covenants, terms, conditions and agreements therein provided to be performed and observed by Managing Member, its successors and assigns pursuant to the Agreement...”

51. This personal guaranty was “an absolute and unconditional guaranty of payment and performance” pursuant to its terms and conditions.

52. A copy of the 138 Petroleum LLC Operating Agreement and the personal guaranty of Defendants RAJAN NABE and RAHUL NABE, executed and delivered in connection with the 138 Petroleum LLC Operating Agreement, is attached to this Verified Complaint and made a part hereof as Exhibit “D”.

**NOTICES OF DEFAULT GIVEN TO DEFENDANTS AND THEIR COUNSEL,
OPPORTUNITIES TO CURE GIVEN TO DEFENDANTS AND THEIR COUNSEL,
AND FAILURE OR REFUSAL OF DEFENDANTS TO CURE DEFAULT**

53. Plaintiff ATLANTIS MANAGEMENT GROUP II LLC has provided Defendants FARMERS PETROLEUM LLC, BRUCKNER PETROLEUM LLC, 10th AVENUE PETROLEUM LLC, 138 PETROLEUM LLC, RAJAN NABE and RAHUL NABE with numerous formal and informal notices of default, and with numerous formal and informal opportunities to cure the defaults as alleged by Plaintiff, but Defendants have refused to cure the defaults (or even to commence cure of the defaults), thereby necessitating the institution of this lawsuit.

54. Several of these informal notices of defaults and informal opportunities to

cure said defaults took place at face-to-face meetings and in direct telephone conversations between the litigants (or their representatives, including Messrs. Tumay Basaranlar and/or Jose Montero for Plaintiffs, and Messrs. Rajan Nabe and/or Rahul Nabe for Defendants) in the weeks preceding November 1, 2016.

55. Pursuant to these informal notices of default and informal opportunities to cure, Plaintiff has demanded financial statements applicable to each of FARMERS PETROLEUM LLC, BRUCKNER PETROLEUM LLC, 10th AVENUE PETROLEUM LLC, and 138 PETROLEUM LLC.

56. These financial statements are required pursuant to the operating agreement of each of FARMERS PETROLEUM LLC, BRUCKNER PETROLEUM LLC, 10th AVENUE PETROLEUM LLC, and 138 PETROLEUM LLC, respectively, for reasons including, *inter alia*, in order to properly calculate profits and losses, and properly determine cash distributions payable to the members of each operating entity.

57. On November 1, 2016, a formal notice declaring default was sent by the undersigned counsel to Plaintiffs, via certified mail, to Defendants RAJAN NABE, RAHUL NABE, and FARMERS PETROLEUM LLC, at the address set forth per Section 11.5 of the Farmers Petroleum LLC Operating Agreement, *i.e.*, 75 Woodcrest Drive, Muttontown, New York 11791. A copy of this notice was also sent to the last known business address of RAJAN NABE and RAHUL NABE, in care of Lotus Management Group, 76 N. Broadway, Suite 3016, Hicksville, New York 11801. A copy of this notice is attached to this Verified Complaint and made a part hereof as Exhibit "E".

58. This formal default notice dated November 1, 2016 also contained formal notice of an opportunity to cure the default, and formal notice of the rights and remedies

available to Plaintiff for failure of Defendant to cure the default.

59. This formal default notice dated November 1, 2016 was returned to sender, in the case of both the address of 75 Woodcrest Drive, Muttontown, New York 11791, and in care of Lotus Management Group, 76 N. Broadway, Suite 3016, Hicksville, New York 11801. A copy of the envelopes, as returned to sender by the United States Postal Service, are attached to this Verified Complaint and made a part hereof as Exhibit "F".

60. This formal default notice was then re-dated November 22, 2016, and sent to another suspected business address for Defendants, RAJAN NABE and RAHUL NABE, in care of Lotus Management Group, 25 Newbridge Road, Suite 312, Hicksville, New York 11801. A copy of this notice is attached to this Verified Complaint and made a part hereof as Exhibit "G".

61. This formal default notice re-dated November 22, 2016, and sent to the suspected business address, was delivered to Defendants RAJAN NABE and RAHUL NABE.

62. Following this delivery, counsel to Plaintiffs received correspondence from counsel to Defendants RAJAN NABE and RAHUL NABE, acknowledging receipt by Defendants RAJAN NABE and RAHUL NABE of the formal default notice of November 22, 2016. A copy of this correspondence from Discreccio & Trivedi, LLP, 400 Jericho Turnpike, Suite 318, Jericho, New York 11753, attention: Nehal Trivedi, Esq., is attached to this Verified Complaint and made a part hereof as Exhibit "H".

63. After repeated failed attempts for counsel for the litigants to speak with one another, Plaintiff's undersigned counsel Steven J. Spiegel, Esq., sent a letter dated

December 22, 2016 to Mr. Trivedi as counsel to Defendants RAJAN NABE and RAHUL NABE. A copy of this correspondence from Mr. Spiegel (on behalf of Plaintiffs) to Mr. Trivedi (on behalf of Defendants) is attached to this Verified Complaint and made a part hereof as Exhibit "I".

64. In this correspondence dated December 22, 2016, from Mr. Spiegel to Mr. Trivedi, Mr. Trivedi was notified that the same defaults as alleged in the default notice re-dated November 22, 2016 existed for three other limited liability companies (*i.e.*, defendants BRUCKNER PETROLEUM LLC, 10th AVENUE PETROLEUM LLC, and 138 PETROLEUM LLC, in addition to FARMERS PETROLEUM LLC).

65. Following December 22, 2016, Mr. Spiegel had several conversations with Mr. Trivedi in which Mr. Spiegel, *inter alia*, sought to obtain financial statements and/or financial information for all four limited liability company Defendants.

66. After it became apparent to Mr. Spiegel, in the last of these conversations with Mr. Trivedi, that no financial statements and/or financial information would be sent for any or all of the four limited liability company Defendants, a formal notice of default dated January 3, 2017 was sent to BRUCKNER PETROLEUM LLC, 10th AVENUE PETROLEUM LLC, and 138 PETROLEUM LLC, as well as to individual Defendants RAJAN NABE and RAHUL NABE. The formal notice to these three limited liability company Defendants was in form and substance nearly identical to the formal notice of default as previously sent to and received by defendants RAJAN NABE and RAHUL NABE (*i.e.*, also containing formal opportunity to cure and formal notice of the remedies for failure to cure) with respect to FARMERS PETROLEUM LLC. A copy of these default notices dated January 3, 2017, are attached to this Verified Complaint and made a

part hereof as Exhibit “J”.

67. A copy of these additional notices of default dated January 3, 2017 was sent by fax to Mr. Trivedi, as counsel to Defendants. A copy of electronic confirmation of receipt is attached to this Verified Complaint and made a part hereof as Exhibit “K”.

68. These additional notices of default dated January 3, 2017 were sent to the same address of defendants RAJAN NABE and RAHUL NABE at which the previous notice of default was received, *i.e.*, in care of Lotus Management Group, 25 Newbridge Road, Suite 312, Hicksville, New York 11801.

69. Defendants RAJAN NABE and RAHUL NABE refused receipt of these notices. A copy of each of the envelopes, as returned to sender by the United States Postal Service—each envelope being specifically marked “refused” by the United States Postal Service—are attached to this Verified Complaint and made a part hereof as Exhibit “L”.

70. Not only have Defendants RAJAN NABE and RAHUL NABE refused receipt of these notices, Defendants RAJAN NABE and RAHUL NABE have refused to cure (or even commence cure) any of the defaults specified in these notices of default.

**DEFAULTED OBLIGATIONS AND DUTIES OWED BY DEFENDANT AS
“MANAGING MEMBER” PER OPERATING AGREEMENTS, INCLUDING
FINANCIAL REPORTING, PROFIT DISTRIBUTIONS, AND TAX PAYMENTS**

71. Defendants RAJAN NABE and RAHUL NABE, or their corporate nominees, owe certain duties and obligations as managing member pursuant to the Operating Agreements of Defendants FARMERS PETROLEUM LLC, BRUCKNER PETROLEUM LLC, 10th AVENUE PETROLEUM LLC, AND 138 PETROLEUM LLC (collectively, the “Defendant LLCs”), as respectively annexed in Exhibit “A”, Exhibit

“B”, Exhibit “C” and Exhibit “D” (collectively, the “Operating Agreements”).

72. Certain of the duties and obligations owed by Defendants RAJAN NABE and RAHUL NABE or their corporate nominees as managing member pursuant to the Operating Agreements, benefit and protect Plaintiff as the investor member under the Operating Agreements.

73. Plaintiff has been damaged in an amount to be determined at trial by the failure of Defendants RAJAN NABE and RAHUL NABE or their corporate nominees to perform their duties and obligations as managing member under the Operating Agreements.

74. Because Defendants RAJAN NABE and RAHUL NABE or their corporate nominees have failed to perform their duties and obligations as managing member under the Operating Agreements, the Defendant LLCs have failed to operate as provided in the Operating Agreements.

75. Plaintiff has also been damaged in an amount to be determined at trial by the failure of the Defendant LLCs to operate as provided in the Operating Agreements. Defendant LLCs are joined as defendants in this action as necessary parties, because of their failure to operate as provided in the Operating Agreements.

76. Some of the duties and obligations of Defendants RAJAN NABE and RAHUL NABE, or their corporate nominees, as managing member pursuant to the Operating Agreements, or the duties and obligations of Defendant LLCs themselves, were described in the formal notices of default (“Default Notices”) sent to Defendants RAJAN NABE and RAHUL NABE and the Defendant LLCs, as annexed in Exhibit “E”, Exhibit “G”, and Exhibit “K”.

77. Defendants RAJAN NABE and RAHUL NABE or their corporate nominees, as managing member pursuant to the Operating Agreements of the Defendant LLCs, or the Defendant LLCs themselves, were obligated to provide complete and accurate books, records, and financial accounting of the applicable Defendant LLCs (collectively, “Financial Reporting”) to Plaintiff as the investor member, as generally required by Article XIII (captioned “Books and Reports”) of each of the Operating Agreements.

78. Within Article XIII, Section 13.3 of each of the Operating Agreements specifically provides that: “The Managing Members will cause to be sent to the Members within a reasonable period after the close of each year the following: (a) annual statements of the Company’s gross receipts and operating expenses, and the capital account of each Member, prepared by the Company’s Independent Public Accountants, to be transmitted to each Member; and (b) a report to be transmitted to each Member indicating the Member’s share of the Company’s profit or loss for that year and the Member’s allocable share of all items of income, gain, loss, deduction, and credit, for Federal income tax purposes.”

79. The Operating Agreements were very specific with respect to Financial Reporting about accounting methods to be followed by the managing member and the accountants to be utilized by the managing member for each of the Defendant LLCs.

80. The Defendants RAJAN NABE and RAHUL NABE were repeatedly notified, both informally and formally, of their failures with respect to Financial Reporting.

81. The Default Notices each declared that “Managing Member is in default

of its duties and obligations pursuant to the Operating Agreement as follows:

(1) Failure to provide complete and accurate books, records, and financial accounting of the Company to Investor Member, as required by Article XIII of the Operating Agreement; and

(2) Failure to follow accounting methods as directed by Investor Member, as required by Section 6.4(1) of the Operating Agreement;

(3) Failure to utilize the designated accountants for the Company or otherwise obtain approval for alternative accountants, as required by Section 6.6 of the Operating Agreement; and

(4) Failure to pay to the Investor Member in a timely manner when due all sums to which the Investor Member is legally entitled, as required by Section 6.3 of the Operating Agreement.”

82. Each of said defaults, as declared in the Default Notices, is ongoing and continuing.

83. The Default Notices also each declared that “The foregoing may not be a complete list of defaults by Managing Member pursuant to the Operating Agreement, because among other things Investor Member has been denied access to Managing Member of the books, records, and financial accounting of the Company, the review of which may reveal additional defaults by Managing Member.”

84. On information and belief, additional defaults by (or caused by) Defendants RAJAN NABE and RAHUL NABE, as managing member of the Defendant LLCs, exist under the Operating Agreements, which additional defaults will be revealed following disclosure of Financial Reporting (or following a forensic audit of Financial Reporting if and when provided by Defendants RAJAN NABE and RAHUL NABE, as managing member of the Defendant LLCs).

85. The Default Notices also provided an opportunity for Defendants RAJAN NABE and RAHUL NABE, as the managing member, to cure these defaults in Financial Reporting before the enforcement of available rights and remedies by Plaintiff as investor

member: “Managing Member is hereby directed within five (5) days of this letter, to provide access to Investor Member of these books, records, and financial accounting, including without limitation the Company’s tax returns, balance sheets, profit and loss statements, general ledgers, and all associated financial records for the current partial calendar year and the last three (3) prior calendar years. Please be advised that in the event that Managing Member fails to provide access to the Company’s books, records, and financial accounting within five (5) days as aforesaid, Investor Member will legally enforce its rights and remedies against Managing Member and/or Guarantors.” (emphasis in original)

86. Despite these repeated informal and formal demands for Financial Reporting, despite the expiration of time permitted for cure under the Default Notices, and despite the elapse of one or more additional month(s) since the expiration of applicable timeframes for cure, the Defendants RAJAN NABE and RAHUL NABE have failed and refused to provide Financial Reporting under Article XIII of each of the Operating Agreements generally (and the statements and reports described in Section 13.3 of each of the Operating Agreements specifically) with respect to any and all of the Defendant LLCs.

87. Despite these repeated informal and formal demands for Financial Reporting, Defendants RAJAN NABE and RAHUL NABE have not utilized “the appropriate accounting method or methods to be used by the Company [i.e., each Defendant LLC].” Per Section 6.4(1) of each Operating Agreement, Plaintiff as investor member has “the sole and absolute right to make the... decisions [with respect to accounting method or methods]... without obtaining the consent of the Managing

Members”.

88. On information and belief, Defendants RAJAN NABE and RAHUL NABE have not utilized the accountants designated per Section 6.6 of each of the Operating Agreements for Financial Reporting, which provides that “the accountant for the Company [i.e., each Defendant LLC] shall be Frey & Wagner, P.C., unless otherwise determined by the Investor Members in their sole discretion.”

89. On information and belief, Defendants RAJAN NABE and RAHUL NABE have underreported gross receipts and profits, as well as Plaintiff’s share of the profits, of the Defendant LLCs (or any or all of them).

90. On information and belief, Defendants RAJAN NABE’s and RAHUL NABE’s underreporting of gross receipts and profits, as well as Plaintiff’s share of the profits, of the Defendant LLCs (or any or all of them) has been intentional and material.

91. For example, on information and belief, the gross receipts and profits of 10th AVENUE PETROLEUM LLC have materially increased since the closing of a competitive petroleum service station nearby, but Defendants RAJAN NABE and RAHUL NABE have neither reported any material increases in gross receipts or profits to Plaintiff with respect thereto, nor provided any increased distributions to Plaintiff with respect thereto.

92. On information and belief, Defendants RAJAN NABE and RAHUL NABE as managing member have also underreported the gross receipts and profits of the Defendant LLCs (all or any of them) for Federal, State, and/or local tax reporting purposes, subjecting the Defendant LLCs (all or any of them) and/or their members to potential tax liabilities.

93. Pursuant to the specific Operating Agreements of each of the Defendant LLCs (including Section 6.6 of each Operating Agreement), and pursuant to general obligations at law, Defendants RAJAN NABE and RAHUL NABE as managing member had duties and obligations as the Tax Matters Member to file accurate tax reports and pay applicable taxes due.

94. Such acts or omissions by Defendants RAJAN NABE and RAHUL NABE with respect to Financial Reporting (including without limitation tax reporting) have or may subject Plaintiff to potential claims, liabilities, costs, and expenses (including without limitation legal costs and expenses).

95. As a result of the defaults of Defendants RAJAN NABE and RAHUL NABE, that remain uncured following applicable notice as required by the Operating Agreements, plaintiff is entitled to exercise its rights and remedies for such uncured defaults pursuant to the applicable terms and conditions of the Operating Agreements.

**OPERATING AGREEMENTS PROVIDE REMEDY OF “BUY BACK RIGHTS”
TO PLAINTIFF AS “INVESTOR MEMBER” FOR UNCURED DEFAULTS BY
DEFENDANT AS “MANAGING MEMBER”**

96. Pursuant to Section 6.2 (captioned “Events Triggering Buy-Back Rights”) of the Operating Agreements of the Defendant LLCs (annexed hereto as Exhibits “A”, “B”, “C” and “D”), “The Investor Members [*i.e.*, Plaintiff] shall have the right to Buy-Back the Membership Interests of the Managing Members [*i.e.*, defendants RAJAN NABE and RAHUL NABE] pursuant to Section ‘6.3’ of this [Operating] Agreement, upon the occurrence of any of the following [default] events” as thereafter specified.

97. The default events triggering such “Buy Back Rights” pursuant to Section 6.2 of each Operating Agreement included “1. Breach of any provision of this Operating

Agreement... by Managing Members individually and or behalf of the Company [i.e., the Defendant LLC] pursuant to Section '6.1' of this [Operating] Agreement.”

98. Pursuant to Section 6.1(11) of each Operating Agreement, “The Managing Members shall not engage in any act in contravention of this Agreement or the laws of any federal, state or local governmental agency, authority or entity.”

99. The default events triggering such “Buy Back Rights” pursuant to Section 6.2 of each Operating Agreement also included “4. Commission by a Managing Member or any of the Managing Members’ employees or agents of any fraudulent or illegal act relative to the business of the Company on the Demised Premises.”

100. The default events triggering such “Buy Back Rights” pursuant to Section 6.2 of each Operating Agreement also included “6. Failure by a Managing Member to pay to the Investor Members and or the Company in a timely manner when due all sums to which the Investor Members and or the Company is legally entitled.”

101. The default events triggering such “Buy Back Rights” pursuant to Section 6.2 of each Operating Agreement also included “8. Failure by the Managing Members to comply with all applicable federal, state or local tax laws or regulations.”

102. The breach of defendants RAJAN NABE and RAHUL NABE with respect to Financial Reporting, profit distributions and payments, and/or tax payments constitutes a breach of the Operating Agreements for each of the Defendants LLCs pursuant to Sections 6.2.1, 6.2.4, 6.2.6, and/or 6.2.8 of the Operating Agreements.

103. As a result of said breach or breaches of the Operating Agreement, Plaintiff as investor member has the right and remedy to Buy-Back Rights, as described in the Operating Agreements generally and Section 6.3 of the Operating Agreement

particularly.

104. Section 6.3 of each of the Operating Agreements for each of the Defendant LLCs provides that:

“If the Managing Members [*i.e.*, defendants RAJAN NABE and RAHUL NABE], jointly or individually, shall fail to perform any of the covenants of Section ‘6.1’ or ‘6.2’ of this Operating Agreement, the Investor Members [*i.e.*, plaintiff] shall have the right, jointly or individually, at the Investor Member’s election, and upon five (5) days written notice to cure to the Managing Members, or such lesser period of time as is reasonable under the circumstances, to Buy-Back all of the Member Interests of the Managing Members in consideration for the sum of One (\$1.00) Dollar U.S., by transferring the Certificates of Membership Interest to the Investor Members’ own name(s) or to the name(s) of its nominee(s); and the Investor Members are also authorized as the Managing Members’ attorney-in-fact to endorse or otherwise effect the transfer of any of the Certificates of Membership Interests and to reflect such transfer in the books and records of the Company. Upon exercise of the Investor Member’s Buy-Back rights under this Section, the Managing Member’s rights under this Operating Agreement shall terminate with the exception of the Managing Member’s indemnification obligations under Sections ‘6.3(5)’ and ‘6.8’ and their Personal Guaranty.”

105. The Default Notices (annexed as Exhibits “E”, “G”, and “K”) provided the requisite five (5) days written notice from plaintiff as Investor Member to defendants RAJAN NABE and RAHUL NABE as Managing Members.

106. The Default Notices also notified defendants “that in the event that Managing Member fails to provide access to the Company’s books, records, and financial accounting within five (5) days as aforesaid, Investor Member will legally enforce its rights and remedies against Managing Member and/or Guarantors.” (emphasis in original)

107. The Default Notices further notified defendants of specific rights and remedies available to plaintiff as Investor Member, should defendants RAJAN NABE and RAHUL NABE as Managing Members fail to cure their defaults.

108. As specified in the Default Notices, the first of four remedies available to

plaintiff was plaintiff's Buy-Back rights:

“(a) Investor Member's Buy-Back rights from Managing Member pursuant to Section 6.3 of the Operating Agreement. The self-help remedy of Buy-Back by Investor Member of all of the Membership Interests of the Managing Members, in consideration for the sum of One (\$1.00) Dollar, requires five (5) days written notice to Managing Member, and this notice hereby constitutes said five (5) day written notice.

The remedy of Buy-Back pursuant to Section 6.3 is available to Investor Member for the Managing Member's defaults as described above, based on certain triggering events described in the following subsections of Section 6.2 of the Operating Agreement, including without limitation: §6.2(1) (breach by Managing Member of the provisions of the Operating Agreement); §6.2(2) (failure by Managing Member to continuously operate the Demised Premises in accordance with the provisions of §6.1, including failure to maximize the Company's profits and operation in contravention of the Operating Agreement); and §6.2(6) (failure by Managing Member to pay to the Investor Member in a timely manner when due all sums to which Investor Member is legally entitled).” (emphasis in original)

109. As a result of the default (or defaults) by defendants RAJAN NABE and RAHUL NABE as Managing Member, that were not timely cured following written notice to defendants as required by the Operating Agreements, plaintiff is now entitled to enforce its Buy-Back Rights as provided in Section 6.3 of each of the Operating Agreements for each of the Defendant LLCs.

OPERATING AGREEMENTS PROVIDE REMEDY OF INDEMNIFICATION BY DEFENDANTS IN FAVOR OF PLAINTIFF

110. Pursuant to paragraph 1 of Section 6.8 (captioned “Indemnity”) of the Operating Agreements of the Defendant LLCs (annexed hereto as Exhibits “A”, “B”, “C” and “D”), “The Managing Members hereby indemnify and agree to save harmless the Investor Members and the Company from and against any and all claims including reasonable costs and attorneys' fees in connection with same) with either... (b) arise from or are in connection with the construction, the ownership, possession, use, occupation,

management, repair, maintenance or control of the Demised Premises; (b) arise from or are in connection with any act or omission of Managing Members, [or] Managing Members' agents... that constitutes or results in any Default, breach, violation, or nonperformance of this Operating Agreement... or (g) constitutes a violation of any law, rule or regulation of any federal, state, or local governmental body, authority or entity."

111. As a result of the default (or defaults) by defendants RAJAN NABE and RAHUL NABE as Managing Member, that were not timely cured following written notice to defendants as required by the Operating Agreements, plaintiff is now entitled to enforce its indemnification rights as provided in Section 6.8 of each of the Operating Agreements for each of the Defendant LLCs.

112. Section 6.8.1 of the Operating Agreements provides that the "Investor Members or the Company shall not be required to wait until a judgment is rendered... before enforcing this indemnity against Managing Members" so plaintiff is entitled to seek indemnity pursuant to this Complaint.

113. Plaintiff's rights and remedies of indemnity in favor of plaintiff by defendants RAJAN NABE and RAHUL NABE, are also not precluded by Plaintiff's enforcement of its rights and remedies of Buy-Back (as specifically provided in Section 6.3 of each of the Operating Agreements for each of the Defendant LLCs), and such rights and remedies are cumulative.

114. Pursuant to paragraph 3 of Section 6.8 of the Operating Agreements of the Defendant LLCs, Plaintiff's rights and remedies of indemnity "is intended to be broad and inclusive so as to obligate the Managing Members to indemnify and save the Investor Members and the Company harmless against all claims, casualties and costs (including

attorneys' fees, expert witness fees, costs and disbursements) of whatever nature and from whatever cause, whether caused by the act or failure to act of the Managing Members, its agents, officers, employees, representatives, guests, or otherwise..."

115. Defendants RAJAN NABE and RAHUL NABE were notified of this Indemnity (and that "this indemnity is a separate and cumulative, even after Investor Member's Buy Back rights") in the Default Notices (annexed hereto as Exhibits "E", "G" and "K").

GUARANTEES PROVIDE ADDITIONAL REMEDIES OF PAYMENT AND PERFORMANCE BY DEFENDANTS PERSONALLY IN FAVOR OF PLAINTIFF

116. In connection with the execution and delivery of the Operating Agreements of the Defendant LLCs (annexed hereto as Exhibits "A", "B", "C" and "D"), as Schedule G to each of the Operating Agreements, both Defendants RAJAN NABE and RAHUL NABE executed a personal guaranty (each, a "Personal Guaranty").

117. As provided therein, each Personal Guaranty "is an absolute and unconditional guaranty of payment and of performance" and "shall be a continuing guaranty".

118. Defendants RAJAN NABE and RAHUL NABE were also notified in the Default Notices (annexed hereto as Exhibits "E", "G" and "K") that enforcement of the Personal Guaranty is "a separate and cumulative remedy, even after Investor Member's Buy-Back rights, pursuant to Section 6.3(1)" of the Operating Agreements.

119. Similarly, the Personal Guaranty also specifies that "All of Investor Member's rights and remedies under the [Operating] Agreement, the Indemnity or under this Guaranty are intended to be distinct, separate and cumulative and no such right or

remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others.”

120. Although notice of default was in fact provided to defendants RAJAN NABE and RAHUL NABE (in both their capacities as managing member under the Operating Agreement and personally under the Personal Guaranty as referenced in the caption of the Default Notices), the Personal Guaranty is “enforceable against Guarantor, its successors and assigns, without the necessity of ... any notice of non-payment, non-performance, or non-observance or of any notice of acceptance of this Guaranty or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives...”

121. As a result of the default (or defaults) by defendants RAJAN NABE and RAHUL NABE, plaintiff is now entitled to enforce its payment and performance rights against defendants RAJAN NABE and RAHUL NABE personally pursuant to their respective Personal Guaranty.

**OPERATING AGREEMENT AND PERSONAL GUARANTY BOTH PROVIDE
REMEDY OF COLLECTION OF ALL PLAINTIFF’S COSTS AND EXPENSES
INCLUDING LEGAL FEES**

122. Defendants RAJAN NABE and RAHUL NABE were notified in the Default Notices (annexed hereto as Exhibits “E”, “G” and “K”) that remedies included the collection of all expenses in the collection of monies owed to Plaintiff including without limitation legal fees and disbursements.

123. Defendants were further reminded in the Default Notices that these “expenses of collection and enforcement...will increase over time, based on your [*i.e.*, Defendants’] actions and omissions to act.

124. Section 6.3.5 of the Operating Agreement provides that the “Managing Members agree to pay on demand (a) all expenses (including, without limitation, legal fees and disbursements) incurred by the Investor Members in connection with the enforcement of their rights under this Section, and (b) all expenses of enforcing the provisions of this Operating Agreement and the Investor Members’ rights against any of the Managing Members, including, without limitation, expenses and fees of legal counsel, court costs and the cost of appellate proceedings.”

125. Section 6.8.2 of the Operating Agreement further provides that defendants RAJAN NABE and RAHUL NABE shall indemnify and hold plaintiffs harmless against the costs and expenses of collection and enforcement (“including attorneys’ fees, expert witness fees, costs, and disbursements”).

126. The Personal Guaranty further provides that plaintiff is entitled to payment of the expenses of collection and enforcement from Defendants RAJAN NABE and RAHUL NABE pursuant to its terms, such that defendants RAJAN NABE and RAHUL NABE as guarantors “will forthwith pay to Investor Member all damages that may arise in consequence of any default by Managing Member, its successors or assigns, under the [Operating] Agreement or the Indemnity, including without limitation, all reasonable attorneys’ fees and disbursements incurred by Investor Member or caused by any such default and/or by the enforcement of this Guaranty.”

127. Accordingly, as a result of the default (or defaults) by defendants RAJAN NABE and RAHUL NABE, defendants RAJAN NABE and RAHUL NABE are now responsible for the costs and expenses of this lawsuit, including without limitation the preparation and filing of this Complaint and court costs.

**PLAINTIFF HAS NOT WAIVED ANY RIGHTS OR REMEDIES AGAINST
DEFENDANTS**

128. Defendants RAJAN NABE and RAHUL NABE were notified in the Default Notices (annexed hereto as Exhibits “E”, “G” and “K”) that plaintiff had not waived any rights or remedies against defendants.

129. The Operating Agreement provides in Section 6.3.4 that the “failure or delay by the Investor Members in exercising any of the Investor Members’ rights hereunder in any instance shall not constitute a waiver thereof in that or any other instance” and that the “Investor Members may waive their rights under this Section [6.3.4] only by an instrument in writing signed by the Investor Members.”

130. The Personal Guaranty further provides that “Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall not be terminated, affected, diminished, or impaired by reason of the assertion or the failure to assert by Investor Member against Managing Member, or against Managing Member’s successors or assigns, of any of the rights or remedies reserved to Investor Member pursuant to the provisions of the [Operating] Agreement at law or in equity.”

**AS AND FOR FIRST CAUSE OF ACTION:
ACCOUNTING**

131. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1-130 as though set forth in full herein.

132. Defendants RAJAN NABE and RAHUL NABE (as managing member of each of the Defendant LLCs) owe Plaintiff (as investor member of each of the Defendant LLCs) a fiduciary duty or other trust-based duty with respect to the business and affairs of each of the Defendant LLCs (*i.e.*, FARMERS PETROLEUM LLC, BRUCKNER

PETROLEUM LLC, 10th AVENUE PETROLEUM LLC, and 138 PETROLEUM LLC).

133. As a result of this trust-based relationship between Defendants RAJAN NABE and RAHUL NABE, as managing member, and Plaintiff, as investor member, is entitled to an accounting with respect to the Defendant LLCs.

134. Plaintiff has previously demanded such an accounting from defendants RAJAN NABE and RAHUL NABE.

135. Defendants RAJAN NABE and RAHUL NABE have failed and/or refused to provide such accounting.

136. On information and belief, defendants RAJAN NABE and RAHUL NABE have failed and/or refused to provide such accounting so as to conceal defendants' wrongful acts in derogation of the plaintiff's rights.

137. An accounting is necessary to determine plaintiff's monetary damages and/or in order to determine the true and full information about the financial affairs of the Defendant LLCs.

138. The accounting is applicable to each of the Defendant LLCs for each annual year (or partial period) of its operation and its management by defendants RAJAN NABE and RAHUL NABE.

AS AND FOR SECOND CAUSE OF ACTION:
BREACH OF FIDUCIARY DUTIES

139. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1-138 as though set forth in full herein.

140. Defendants RAJAN NABE and RAHUL NABE (as managing member of each of the Defendant LLCs) owe Plaintiff (as investor member of each of the Defendant LLCs) a fiduciary duty or other trust-based duty with respect to the business and affairs

of each of the Defendant LLCs (*i.e.*, FARMERS PETROLEUM LLC, BRUCKNER PETROLEUM LLC, 10th AVENUE PETROLEUM LLC, and 138 PETROLEUM LLC).

141. Defendants RAJAN NABE and RAHUL NABE have committed misconduct with respect to their fiduciary duties owed to plaintiff.

142. Such misconduct by defendants RAJAN NABE and RAHUL NABE includes violations of their duty of care, their duty of loyalty, their duty of honesty, and/or by self-dealing, with respect to their management of all or any of the Defendant LLCs.

143. Plaintiff has been directly damaged as a result of such misconduct by defendants RAJAN NABE and RAHUL NABE, in an amount to be proven at trial.

AS AND FOR THIRD CAUSE OF ACTION:
BREACH OF CONTRACT CAUSING MONETARY DAMAGES

144. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1-143 as though set forth in full herein.

145. A contract exists between defendants RAJAN NABE and RAHUL NABE, as managing member, and plaintiff, as investor member, in the form of the Operating Agreements for each of the Defendant LLCs.

146. A contract exists between defendants RAJAN NABE and RAHUL NABE, as guarantor, and plaintiff, as investor member, in the form of each Personal Guaranty given in connection with each of the Operating Agreements for each of the Defendant LLCs.

147. Defendants RAJAN NABE and RAHUL NABE are in continuing breach and default of their contractual obligations as managing members pursuant to each or any Operating Agreement (or all of them).

148. Defendants RAJAN NABE and RAHUL NABE are in continuing breach and default of their contractual obligations as guarantors pursuant to each or any Personal Guaranty (or all of them).

149. Plaintiff has performed its own obligations and duties, as investor member, under each and every Operating Agreement.

150. Plaintiff has performed its own obligations and duties, as investor member, under each and every Personal Guaranty.

151. As a result of said breach or breaches of contract, plaintiff has been damaged monetarily by defendants RAJAN NABE and RAHUL NABE in an amount to be proven at trial.

152. Said monetary damages as a result of defendants RAJAN NABE's and RAHUL NABE's breach of contract (under each Operating Agreement and/or each Personal Guaranty) includes plaintiff's lost profits and lost distributions, interest on unpaid profits and distributions from the date due, collection costs including legal fees, disbursements, and court costs necessary to enforce the contracts and obtain monetary damages justly due to plaintiff, and other monetary damages as permitted by law.

AS AND FOR FOURTH CAUSE OF ACTION:
SPECIFIC PERFORMANCE AND OTHER EQUITABLE RELIEF

153. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1-152 as though set forth in full herein.

154. Plaintiff is entitled to exercise and enforce Investor Member's "Buy-Back" rights from Managing Member pursuant to Section 6.3 of each Operating Agreement.

155. Each Personal Guaranty given by defendants RAJAN NABE and RAHUL

NABE is a guaranty of performance (and not merely payment), and thereby guarantees performance owed by the managing member of each Defendant LLC including performance of said “Buy-Back” rights.

156. These Buy-Back rights require, pursuant to Section 6.3 of each Operating Agreement, the transfer of certificates of membership Interest from defendants RAJAN NABE and RAHUL NABE, as managing members, to plaintiff, as investor member (or its nominee or nominees, to be reflected in the books and records of each of the Defendant LLCs.

157. Although plaintiff, as investor member, is “authorized as the Managing Members’ attorney-in-fact to endorse or otherwise effect the transfer of any of the Certificates of Membership Interests and to reflect such transfer in the books and records of the Company [*i.e.*, each Defendant LLC]” this Buy-Back rights authorization clause is not fully self-operative in that Plaintiff, as investor member, has been denied access by defendants RAJAN NABE and RAHUL NABE, as managing members, to the books and records of each of the Defendant LLCs.

158. Monetary damages would be an inadequate remedy, or alternatively would not be a full, adequate and perfect remedy, in lieu of specific performance (or other alternative equitable or injunctive relief) with respect to these Buy-Back rights of plaintiff pursuant to Section 6.3 of each Operating Agreement.

159. Each of the applicable Defendant LLCs manage or control certain specific real property, personal property and other specific assets, which are unique and which have special value which cannot be readily obtained in the market. For instance, the ownership of 10th AVENUE PETROLEUM LLC represents one of very few petroleum

service stations remaining in Manhattan; similarly, each of the other Defendant LLCs represent ownership of petroleum service stations in New York City at specific and unique locations.

160. Only specific performance (or other alternative equitable or injunctive relief) transferring management, ownership, and control of the applicable Defendant LLCs would provide plaintiffs with a full, adequate and perfect remedy.

161. The circumstances of this case, in which these Buy-Back rights in favor of plaintiff were negotiated and agreed in a commercial and contractual context, also provides an equitable basis for specific performance (or other alternative equitable or injunctive relief) to enforce and grant these Buy-Back rights.

162. Enforcement of these Buy-Back rights are also necessary in order to prevent further damages to plaintiff. If specific performance (or other alternative equitable or injunctive relief) is not granted, defendants RAJAN NABE and RAHUL NABE will continue to deny plaintiff the economic benefits of ownership of the Defendant LLCs and will continue to further deny plaintiff the legal rights associated with ownership of the Defendant LLCs.

163. Upon the tendering of FOUR DOLLARS (\$4.00 U.S.), by plaintiff to defendants RAJAN NABE and RAHUL NABE, representing ONE DOLLAR (\$1.00 U.S.) for each of the four Defendant LLCs, as provided in Section 6.3 of each Operating Agreement, specific performance (or other alternative equitable or injunctive relief) of the Buy-Back rights of plaintiff should be granted.

AS AND FOR FIFTH CAUSE OF ACTION:
DECLARATORY JUDGMENT

164. Plaintiff repeats and realleges each and every allegation set forth in

paragraphs 1-163 as though set forth in full herein.

165. In connection with the Buy-Back rights of plaintiff, pursuant to Section 6.3 of each Operating Agreement, the ownership and management of each Defendant LLCs needs to be judicially declared, so that third parties can rely on their transactions, dealings and commercial arrangements with each Defendant LLC.

AS AND FOR SIXTH CAUSE OF ACTION:
FRAUD

166. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1-165 as though set forth in full herein.

167. On information and belief, defendants RAJAN NABE and RAHUL NABE have filed fraudulent tax returns or made fraudulent filings with respect to Federal, State, and/or local taxes, with respect to the Defendant LLCs.

168. On information and belief, in making or filing these fraudulent tax returns or tax filings, defendants RAJAN NABE and RAHUL NABE have presented the governmental entities with false representations of material facts regarding financial affairs of each or all of the Defendant LLCs.

169. On information and belief, in making or filing these fraudulent tax returns or tax filings for each or all of the Defendant LLCs, defendants RAJAN NABE and RAHUL NABE had knowledge or scienter with respect to the false representations of material facts.

170. Plaintiff, as an investor member in each of the Defendant LLCs, reasonably relied on defendants RAJAN NABE and RAHUL NABE as managing member of each of the Defendant LLCs to provide reasonably and materially accurate information in connection with the filing of tax returns and/or other tax filings.

171. Said reasonable reliance by plaintiff, upon defendants RAJAN NABE and RAHUL NABE as managing member of each of the Defendant LLCs, was justified in that defendants RAJAN NABE and RAHUL NABE had a fiduciary relationship and superior knowledge with respect to the management of each of the Defendant LLCs and the filing of appropriate tax returns and/or other tax filings.

172. As an investor member in each of the Defendant LLCs, plaintiff is damaged by the filing of fraudulent tax returns and/or other fraudulent tax filings with respect to the Defendant LLCs.

173. Defendants RAJAN NABE and RAHUL NABE have further committed fraud in the inducement, by materially misrepresenting their intention to provide Financial Reporting as required by the terms and conditions of each of the Operating Agreements for the Defendant LLCs.

174. On information and belief, defendants RAJAN NABE and RAHUL NABE had no intention to materially and reasonably comply with the requirements of the Operating Agreements for Financial Reporting.

175. Said representations fraudulently induced plaintiffs to invest in each of the Defendant LLCs.

176. It was reasonable for plaintiff to rely on such representations of defendants RAJAN NABE and RAHUL NABE, given the fiduciary relationship established by each Operating Agreement with respect to each of the Defendant LLCs.

177. It was also reasonable for plaintiff to rely on such representations of defendants RAJAN NABE and RAHUL NABE, given prior due diligence indicating that defendants RAJAN NABE and RAHUL NABE were experienced and skilled operators

of petroleum service stations and had no prior known history of fraud or inappropriate business dealings at the time of the fraudulent inducement of plaintiff.

178. As a result of defendants RAJAN NABE's and RAHUL NABE's fraud, plaintiff has been damaged in an amount to be proven at trial, but which shall include punitive damages, in addition to plaintiff's lost profits and lost distributions, interest on unpaid profits and distributions from the date due, and collection costs including legal fees, disbursements, and court costs necessary to enforce the contracts and obtain monetary damages justly due to plaintiff.

WHEREFORE, Plaintiff ATLANTIS MANAGEMENT GROUP II LLC demands a judgment of this court in their favor against Defendants, for damages and relief on Plaintiff's causes of action, and such other relief as follows:

(1) On the first cause of action, against Defendant, for ACCOUNTING, with respect to the business of FARMERS PETROLEUM LLC, BRUCKNER PETROLEUM LLC, 10th AVENUE PETROLEUM LLC, and 138 PETROLEUM LLC, for all annual (or partial) periods of operation in which defendants RAJAN NABE and RAHUL NABE were managing member; and

(2) On the second cause of action, against Defendant, for BREACH OF FIDUCIARY DUTIES, in an amount to be determined at trial; and

(3) On the third cause of action, against Defendant, for BREACH OF CONTRACT CAUSING MONETARY DAMAGES, in an amount to be determined at trial, but which shall include plaintiff's lost profits and lost distributions, interest on plaintiff's unpaid profits and distributions from the date due, and plaintiff's collection

costs including legal fees, disbursements, and court costs necessary to enforce the contracts and obtain monetary damages justly due to plaintiff; and

(4) On the fourth cause of action, against Defendant, for SPECIFIC PERFORMANCE AND/OR OTHER EQUITABLE OR INJUNCTIVE RELIEF, such that defendants RAJAN NABE and RAHUL NABE shall surrender all of their membership certificates and ownership in (and their position as managing member for) each of FARMERS PETROLEUM LLC, BRUCKNER PETROLEUM LLC, 10th AVENUE PETROLEUM LLC, and 138 PETROLEUM LLC, to be effective upon plaintiff tendering ONE DOLLAR (\$1.00 U.S.) for each of said Defendant LLCs, and as otherwise provided in the “Buy-Back” rights provisions of Section 6.3 of each Operating Agreement; and

(5) On the fifth cause of action, against Defendant, for DECLARATORY JUDGMENT, affirming plaintiff’s sole membership interest and ownership in FARMERS PETROLEUM LLC, BRUCKNER PETROLEUM LLC, 10th AVENUE PETROLEUM LLC, and 138 PETROLEUM LLC, following the equitable enforcement of the “Buy-Back” rights provisions of Section 6.3 of each Operating Agreement; and

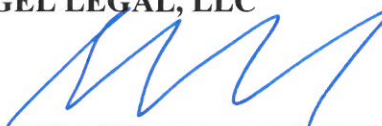
(6) On the sixth cause of action, against Defendant, for FRAUD, in an amount to be determined at trial, but which shall include punitive damages, in addition to plaintiff’s lost profits and lost distributions, interest on unpaid profits and distributions from the date due, and collection costs including legal fees, disbursements, and court costs necessary to enforce the contracts and obtain monetary damages justly due to plaintiff; and

(7) Plaintiffs further respectfully request such other and further relief as this

Court may deem just, equitable, and proper.

Dated: Florida, New York
March 17, 2017

SPIEGEL LEGAL, LLC


By: STEVEN J. SPIEGEL, ESQ.
Its: Managing Member

Attorneys for Plaintiffs
148 North Main Street
Florida, New York 10921
845-651-5000 (telephone)
845-651-5111 (facsimile)

VERIFICATION

STATE OF NEW YORK)
)
) SS. :
COUNTY OF Queens)

JOSE MONTERO, managing member of **ATLANTIS MANAGEMENT**

GROUP II LLC, being duly sworn, deposes and says that: I am the managing member of the plaintiff in the within proceeding; I have read the verified complaint, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

ATLANTIS MANAGEMENT GROUP II LLC

By:

JOSE MONTERO
its managing member

Sworn to before me this
13th day of March 2017

Shirley German Veredde
Notary Public

INGRIS GERMAN MERCEDES
Notary Public, State of New York
No. 01GE6241878
Qualified in Bronx County
Commission Expires May 31, 2019

VERIFICATION

STATE OF NEW YORK)
)
) SS. :
COUNTY OF Bronx)

TUMAY BASARANLAR, managing member of ATLANTIS

MANAGEMENT GROUP II LLC, being duly sworn, deposes and says that: I am a managing member of the plaintiff in the within proceeding; I have read the verified complaint, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

ATLANTIS MANAGEMENT GROUP II LLC

By: 
TUMAY BASARANLAR
its managing member

Sworn to before me this
13th day of March 2017

Angie German of Toledo
Notary Public

INGRIS GERMAN MERCEDES
Notary Public, State of New York
No. 01GE6241878
Qualified in Bronx County
Commission Expires May 31, 2019