

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

PETER LENGYEL-FUSHIMI,

Plaintiff,

—against—

ANTHONY BELLIS, ZACHARY KINNEY,
and KINGS COUNTY BREWERS
COLLECTIVE, LLC,

Defendants.

Index No.

SUMMONS

JURY TRIAL DEMANDED

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff’s attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates venue in Kings County as the county in which a substantial part of the events or omissions giving rise to the claim occurred.

Dated: New York, New York
May 27, 2021

LAW OFFICE OF ALEXANDER SAKIN, LLC

/s/ Alexander Sakin

Alexander Sakin
80 Broad St., Suite 703
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Attorney for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
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COMPLAINT

1. Peter Lengyel-Fushimi, co-owner, co-founder, manager, and Head of Beer Production at Defendant Kings County Brewers Collective, LLC (“KCBC” or the “Company”), a successful craft brewery in Bushwick, brings this action following his ouster from KCBC, taken in breach of the Company’s Operating Agreement, and engineered by his two partners and co-managing members – Defendants Anthony Bellis and Zachary Kinney.

2. A co-founder of KCBC, Lengyel-Fushimi sunk his passion – and his life savings – into building, from scratch, a wildly successful craft brewery and taproom. Within a year of its founding, KCBC was being touted by *New York* magazine as one of just five “absolute best brewery taprooms” in New York City.

3. Though the brewery grew from year to year – and actually prospered during the COVID-19 pandemic – and though Lengyel-Fushimi’s contribution to the brewery’s business was invaluable, conflicts among its three managing members increased, with disagreements over employee management, hiring decisions, as well as over KCBC’s strategy for future growth. By late 2020, the three were openly discussing separation and even the sale of the business.

4. In December 2020, Defendants Bellis and Kinney began taking steps to first exclude, and then unlawfully expel Lengyel-Fushimi from the business he had spent some ten years of his life building – in blatant violation of the Operating Agreement governing the relationship between the three, and their fiduciary obligations as Company managers.

5. Notably, KCBC’s Operating Agreement did not permit its modification “in any respect” except by means of the unanimous written consent of all of its members – its three managing members, and its 24 non-managing members.

6. Yet, in April 2021, without obtaining the consent of Lengyel-Fushimi or the 24 non-managing members, Bellis and Kinney unilaterally “amended” the Operating Agreement, purporting to downgrade Lengyel-Fushimi’s membership to that of a “Class D” member, stripping him of his management rights, cutting off his access to the Company’s production and packaging scheduling tools, the Company’s Slack communication tool, its credit cards and books and records, and terminating him from his position as Head of Beer Production.

7. Defendants’ objective is clear and openly stated: on an April 5, 2021 conference call, responding to Lengyel-Fushimi’s accusation that “you two are trying to out me from this Company,” Bellis responded in no uncertain terms, “that’s true, I mean, that’s clear,” with Kinney seconding with a “yep.”

8. Thrown to the proverbial curb, Lengyel-Fushimi brings this action.

PARTIES

9. Plaintiff Peter Lengyel-Fushimi-Fushimi is and was at all relevant times, an individual and resident of Kings County, New York, a “Class A” managing member of KCBC, holder of a 25.33 percent equity interest in the Company, and the brewery’s Head of Beer Production/Operating Manager.

10. Defendant Anthony Bellis is and was at all relevant times, an individual and resident of Kings County, New York, a “Class A” managing member of KCBC, holder of a 25.33 percent equity interest in the Company, and the brewery’s Financial Manager and Treasurer.

11. Defendant Zachary Kinney is and was at all relevant times, an individual and resident of Kings County, New York, a “Class A” managing member of KCBC, holder of a 25.33 percent equity interest in the Company, and the brewery’s Secretary and Director of Sales and Marketing.

12. Defendant Kings County Brewers Collective, LLC (“KCBC”) is and was at all relevant times a New York limited liability company owned by three “Class A” managing members and 24 non-managing members, of whom 23 were “Class C” members, and one was a “Class B” member. At all relevant times, KCBC was a brewery and taproom located in Bushwick, Brooklyn.

STATEMENT OF FACTS

Lengyel-Fushimi Leaves His Day Job to Start KCBC with Defendants

13. In 2011, Lengyel-Fushimi, then 37 years-old, was employed as a molecular biologist. His real passion, however, was craft beer. At the time, he had committed himself to his new goal of opening a brewery and had begun preparing himself by attending a professional brewing school program, brewing beer at home, working up to four part-time jobs in the beer industry, starting a home brewing club, and actively networking in brewing circles.

14. In 2013, deciding that he wanted to dedicate his life to beer, Lengyel-Fushimi took the plunge, left his six-figure position, and started working a series of low-paying jobs at breweries, learning the ropes of the trade – from cleaning kegs to concocting beer recipes.

15. Armed with his passion and a scientist’s mastery of the brewing process, Lengyel-Fushimi soon excelled at the brewer’s craft, preparing himself to finally start his own craft brewery.

16. In 2012, four years before KCBC opened in Bushwick, Lengyel-Fushimi formed KCBC with his acquaintance Bellis and some other partners who have since left the Company. Kinney was brought in as a partner later.

17. To generate some \$700,000 in startup capital, Lengyel-Fushimi, Bellis, and Kinney attracted 24 investors, mostly friends and family, all of whom became non-managing members of KCBC.

KCBC is Governed by the Operating Agreement

18. In forming the LLC, the members entered into the Operating Agreement dated January 15, 2014 (the “Agreement”), drafted by Elaine D. Papas, the Company’s lawyer.

19. Under the Agreement’s section 6.1(1), each of Lengyel-Fushimi, Bellis, and Kinney are explicitly classified as “Class A Members,” it being understood, under the terms of the Agreement, that other individuals would become Class B or Class C Members of KCBC.

20. Each Class A Member holds 25.33 percent of the LLC’s equity, for a total of 76 percent. The rest of the equity, comprising 24 percent, is held by 23 Class C members and one Class B member.

21. Class A Members, including Lengyel-Fushimi, enjoy special rights not accorded other members. Thus, under the Agreement, among other things:

- a. Section 4.1 provides that all management rights are vested in the Class A Members, with only such persons entitled to manage “[t]he business of the Company”;

- b. Section 6.1(1) specifies that Class A Members control the Company’s daily operations: “Class A Members will have sole voting rights on Company day to day operations,” and the approval of a majority of Class A Members is required “to approve or carry an action” related to management, “[u]nless otherwise stated in the Agreement.”
 - c. Corporate banking functions are vested in Class A Members, with section 4.2 providing that the “Class A Members . . . are authorized to execute any banking resolution provided by the [banking] institution where the [bank] accounts are being set up.”;
 - d. Under section 5.1, KCBC agrees to cover the Class A Members’ tax obligations, providing that “any and all draws taken by Class A Members will be equal and sufficient to cover their tax obligations as created by this entity”;
 - e. As for access to corporate books, under section 5.1, “[c]omplete books of account of the Company’s business” are available without limitation to Class A Members, while Class B or C Members can only view such books “not more than one time per year,” and on “reasonable notice” for “purposes reasonably related to the interest of such person” as member.
22. Pursuant to the Agreement’s Exhibit B, KCBC’s three officers are Lengyel-Fushimi as Operating Manager, Bellis as Treasurer, and Kinney as Secretary. KCBC officers, under section 4.3, “serve at the pleasure of the Class A Members.”
23. In addition, it was understood that, as part of their management duties, Class A Members were required to work at the Company.

24. Under section 7.6 of the Agreement, a Class A Member could retire only after “20 years of work.” Only at that point, as provided under Section 7.6, “[t]he retired Class A Member will no longer be required to perform any day to day work.”

25. It was further understood that, in exchange for working at KCBC, a Class A Member would be entitled to take a salary, or a “draw,” which entitlement would cease only upon the Class A Member’s retirement, at which point a Class A Member “will get distributions, not draw.” (Section 7.6). As for the amount of draw, under section 5.1 “any and all draws taken by Class A Members will be equal and sufficient to cover their tax obligations.”

26. As Operating Manager/Head of Beer Production, Lengyel-Fushimi – whose wife is a stay-at-home mom to their young son – went on to collect an annual draw of about \$84,000, his and his family’s only income.

27. Finally, under section 10.1, the Agreement “shall not be modified or amended **in any respect** except by a written instrument executed by all of the Members” of the Company – of whatever class (emphasis added).

KCBC Proves a Success Despite its Managers’ Disagreements

28. KCBC opened for business in 2016 as a brewery with a taproom, selling exclusively KCBC-branded beers. With Lengyel-Fushimi’s tireless labor, focus on quality, commitment to excellence and innovation, and the signature KCBC brand art and aesthetic that he brought to the table, KCBC was an immediate, recognized success. In 2017, *New York* magazine nominated KCBC as one of five “absolute best brewery taprooms” in New York City, and the online publication *Thrillist* named it New York City’s best brewery in 2018.

29. In 2020, KCBC generated almost \$4 million in revenue. Enjoying consistent year-over-year double-digit growth in revenue, by 2020 KCBC was employing over 20 workers.

30. With Lengyel-Fushimi in charge of operations, the Company developed a robust online presence, an extensive distribution network, and a canning line, allowing it to sell cans of beer off its website (as well as at its taproom) for delivery all over the U.S. and the world. The Company was thus well positioned to weather the COVID-19 pandemic.

31. Despite the Company's success, personality and philosophical differences plagued relations between the three Class A Members, with Lengyel-Fushimi favoring a more aggressive approach to expanding KCBC's business than his two partners. Other disagreements arose over hiring and other employee-related decisions, as well as over Bellis' and Kinney's willingness to tolerate disorder on Company premises, and their penchant for self-promotion.

32. None of these disagreements impaired the Company's profitable functioning. They did, however, create an unpleasant working environment for the three partners, who were no longer on friendly terms.

33. By the fall of 2020, the three Class A Members were often at loggerheads and began discussing ways of engineering a business divorce.

In Late 2020, KCBC's Managers Discuss a Separation

34. At first, the three discussed a sale of KCBC. Then, discussions centered on a separation that would not involve the liquidation or sale of KCBC, including the idea of KCBC opening a second location that could be managed by one or two of the managing Members.

35. Then, in December 2020, Bellis and Kinney started pushing for Lengyel-Fushimi to leave the Company, at first on somewhat acceptable terms.

36. One scenario involved Lengyel-Fushimi going off to start his own brewery in Kingston, New York, while continuing to retain his interest in KCBC as a non-managing

member, and receiving a \$50,000-a-year stipend for ten years, to provide him with minimal income while he would be setting up his new operation.

37. Lengyel-Fushimi was a reluctant participant in these conversations. Leaving the Company meant foregoing his manager's draw – his family's only source of income – which by then equaled about \$84,000 a year. And, the new “plan” involved his abandonment of the brewery he had built up, in exchange for a speculative venture in an unfamiliar market, involving a long commute to Kingston. But he was willing to seriously entertain the notion to avoid a sale or liquidation of KCBC, and he felt pressured by Bellis and Kinney's growing insistence – soon escalating into outright threats – that he depart the Company.

Bellis and Kinney Seek the Expulsion of Lengyel-Fushimi from KCBC

38. Then, starting in late January 2021, Bellis and Kinney began to push for what was essentially an expulsion of Lengyel-Fushimi. As part of this push, they rejected the idea – which they had previously entertained – of any guaranteed payment or stipend to Lengyel-Fushimi in exchange for his departure from the Company, even though such scenario would leave Lengyel-Fushimi's family, in which he is the primary breadwinner, without any income or health benefits.

39. At the same time, in the winter of 2020, Bellis and Kinney, who had spent Company funds to fund its expansion, began discussing the possibility of KCBC taking a Small Business Administration (SBA) loan to fund operations.

40. It was understood among the managing members that SBA regulations required all owners of at least 20 percent equity to personally guarantee an SBA loan. Lengyel-Fushimi made clear that he was not willing to make such guarantee when his future at the Company was in serious question and he was deeply concerned about the ability of Bellis and Kinney to manage the Company without his involvement. However, Lengyel-Fushimi sought to

accommodate the business by seeking to sell a part of his equity to a third party so as to bring his ownership stake to below 20 percent.

41. Yet, hellbent on expelling Lengyel-Fushimi, Defendants soon dropped any interest they had in that, or any other compromise.

42. By the spring of 2021, Bellis and Kinney had assumed much of the Company's day-to-day operations, ceasing all communications regarding day-to-day operations with Lengyel-Fushimi.

43. After weeks of wrangling, things came to a head on April 5, 2021, the day on which the three partners had agreed to hold a conference call to discuss their ongoing dispute.

44. About 30 minutes before the scheduled call, Kinney sent out a purported meeting "agenda," "on behalf of Tony [Bellis] and" him, indicating a proposed "vote to amend the KCBC Operating Agreement" to "transfer" Lengyel-Fushimi's equity to a new "Class D," which would have no management rights at all.

45. Of course, no such move was possible under the terms of the Agreement's section 10.1, which mandates the unanimous written consent of all 27 Company members – including Lengyel-Fushimi – to amend the Agreement "in any respect."

46. If there was any confusion about the Agreement's clear language on this point, the Company's attorney (Papas), the author of the Operating Agreement, had written to the partners on March 9, 2021 that "[a]ll [members] must accept for OA amendment to be allowed."

47. During the conference, Lengyel-Fushimi revealed, as he had revealed to Bellis the day before, that Gregor Rothfuss, the Company's sole Class B member, was interested in purchasing 5.5 percent of his equity for \$420,000 so as to bring Plaintiff's ownership stake below 20 percent and ease the way for the Company to take on an SBA loan.

48. This solution would eliminate the only material obstacle to the Company's continued smooth operations.

49. Yet Bellis and Kinney rejected the offer. This rejection was grounded in section 7.2 of the Agreement, under which a member "may not transfer Membership Interests to any other Person without the consent of all Class A Members." Yet Defendants' refusal to allow Plaintiff to transfer his shares to Rothfuss was not exercised in good faith, and lacked any legitimate business justification.

50. To be sure, section 7.2 of the Agreement states that "no Member, except for Class A Members or their heirs, may own individually or collectively, more than Eight (8%) percent of Company units." Plaintiff's proposed transfer of 5.5 percent of his equity to Rothfuss would have been in violation of this provision, as it would have resulted in Rothfuss, a Class B member, owning more than eight percent of KCBC. Yet this limitation was never put forth as a reason for Bellis and Kinney's rejection of Plaintiff's offer in April 2021. Nor was this an insurmountable obstacle, as the Agreement could have easily been amended to allow Rothfuss to own more than eight percent of shares

51. For Defendants, the sale to Rothfuss would mean having Lengyel-Fushimi remain a member of the Company, and enriched by \$420,000. Such an outcome would get in the way of their actual goal – that of depriving Plaintiff of all income so as to squeeze him out of the Company entirely.

52. Indeed, when, during the April 5 call, Lengyel-Fushimi accused his partners of "trying to out me from this Company," Bellis responded "that's true, I mean, that's clear," and Kinney chimed in with a "yep."

53. The April 5 conference concluded with the understanding that, by April 19, 2021, Lengyel-Fushimi would present his offer of a path forward, with Bellis and Kinney then having two weeks to respond. But no such good-faith exchange took place.

Bellis and Kinney Purport to Expel Plaintiff from KCBC

54. On April 19, as agreed, Lengyel-Fushimi wrote to propose a sale of 5.5 percent of his shares to Rothfuss for \$420,000 in cash.

55. Instead of responding with a counteroffer as contemplated on April 5, Bellis and Kinney, through their personal attorney (and not the Company attorney), responded by letter dated April 26, 2021, in which they unilaterally, on their own accord, purported to announce the downgrading of Lengyel-Fushimi's Class A shares to a "Class D," non-managing status, his "termination" as an officer of the Company, his removal from management, and the cessation of any further compensation payments to him.

56. Bellis and Kinney attempted to accomplish these changes without bothering, under Section 10.1 of the Agreement, to obtain the consent of all members required to amend the Agreement's terms, even though, pursuant to the terms of the Agreement, Plaintiff is a Company officer, is a holder of Class A units, is a managing member, and is entitled to take draws as compensation for his work.

57. Then, on May 10, 2021, Bellis and Kinney circulated a so-called "First Amendment to Operating Agreement" (the "First Sham Amendment"), and followed this up on May 21, 2021 with a so-called Second Amended & Restated LLC Operating Agreement of KCBC (the "Second Sham Amendment", and together with the First Sham Amendment, the "Sham Amendments"). Though the Sham Amendments were aimed at radically amending the Agreement, both Sham Amendments were signed by only two members of KCBC -- Bellis and

Kinney, with Plaintiff never agreeing to these changes. And at least two non-managing members of KCBC (Jeff Lengyel and Evangelo Pefanis) objected in writing to the amendment of the Agreement.

58. Pursuant to the Sham Amendments, Bellis and Kinney purported, as majority equity holders, to “modify” and replace KCBC’s Agreement with a new arrangement that excludes Plaintiff by:

- a. Taking over KCBC’s management;
- b. Downgrading Lengyel-Fushimi’s Class A shares to “Class D” status;
- c. In connection with this downgrade, barring Lengyel-Fushimi from any management role, and denying him all the privileges of Class A membership by denying him:
 - i. the right of involvement in the Company’s day-to-day operations;
 - ii. the right to access the Company’s books and records; and
 - iii. the right to receive draws sufficient to cover his tax obligations.
- d. Under the First Sham Amendment, instituting a three-year freeze on all transfers of members’ units (never mind that the non-managing members had invested about \$700,000 in KCBC), a provision that was replaced in the Second Sham Amendment with the requirement that all transfers of members’ units be “subject to the consent of” Bellis and Kinney – all in order to deny Plaintiff the right to sell his equity to Rothfuss.

59. As is especially obvious from the Second Sham Amendment, Bellis and Kinney seek to entrench themselves as owners and controllers of KCBC, essentially free to run it as they

please, with Lengyel Fushimi, a Company co-founder and leader, relegated to a passive, second-class role. As stated in the Second Sham Amendment:

- a. Distributions shall be “made to the Members at such times and in such amounts as [Bellis and Kinney] determine[] in their sole discretion.” (para. 6.1)
- b. The Company’s “management and control” is to be “vested exclusively” in Bellis and Kinney, who “shall have the exclusive right to manage the business of the Company” (para. 7.1, 7.4)
- c. Bellis and Kinney “may charge to the Company” “all reasonable out-of-pocket [expenses] incurred” by them. (para. 7.7)
- d. Bellis and Kinney are to be paid a “management fee” set “in the discretion of” Bellis and Kinney (para. 7.10);
- e. “[A]ll [share] transfers shall be subject to the consent of [Bellis and Kinney] at [their] sole discretion.” (para. 8.7);
- f. The Company may be dissolved upon “the determination of [Bellis and Kinney] to dissolve” (para. 9.1(a));
- g. Non-managing members may inspect KCBC books and records only “at reasonable times and on reasonable notice” to Bellis and Kinney, with any “accounting” to take place at the non-managing member’s expense and not more “than one time per fiscal year.” (para. 11.1);

60. Further, at or about this time, Bellis and Kinney blocked Plaintiff from access to Company credit cards, cancelled his family’s health insurance and Company-paid cell phone service, and announced the imminent shut down of his KCBC email account.

61. Finally, having deprived Plaintiff of income, Bellis and Kinney, through their attorney, offered to refund Lengyel-Fushimi his initial \$33,333.33 investment in KCBC, in exchange for all of his equity and a release of claims.

62. Given that the last valuation of the Company assessed that it was worth about \$7.5 million, the \$33,333.33 offer for a 25.33 percent stake cannot be taken seriously. Of course, this “offer” was made with the cynical expectation that it would be accepted by a desperate Plaintiff, a man deprived of all income, and denied the right to receive draws sufficient to cover his tax obligations.

63. Lengyel-Fushimi, his family’s sole breadwinner, has been left without work, without income, without access to the Company he had built, and without any funds with which to cover his looming tax liabilities.

COUNT ONE

Declaratory Judgment Against All Defendants

64. Plaintiff re-alleges and incorporates by reference the allegations set forth in all of the preceding paragraphs as if fully set forth herein.

65. Section 10.1 of the Agreement provides that it “shall not be modified or amended **in any respect** except by a written instrument executed by all of the Members” of the Company (emphasis added).

66. Further, under the Agreement’s section 6.1(1), Plaintiff was explicitly classified as a “Class A Member,” with all the rights and privileges that flow from that classification, pursuant to the Agreement.

67. In addition, Plaintiff is a Company officer pursuant to the terms of the Agreement’s Exhibit B.

68. As regards Class A Membership, the Agreement provides that:

- a. “The business of the Company shall be managed by the Class A Members”
(Section 4.1);
- b. “Class A Members will have sole voting rights on Company day to day operations” (Section 6.1(1));
- c. “Complete books of account of the Company’s business . . . shall be kept at the Company’s principal executive office and available to Class A Members.”
(Section 5.1);
- d. “Class A Members . . . are authorized to execute any banking resolution provided by the [banking] institution where the [bank] accounts are being set up.” (Section 4.2);

69. In addition, it was understood that, as part of their management duties, Class A Members, including Plaintiff, were required to work at the Company. While not explicitly spelled out in the Agreement, this understanding was reflected in section 7.6, pertaining to retirement, which provides that “Company policy on Class A Member retirement requires 20 years of work by that individual.” Only at that point, as provided under Section 7.6, “[t]he retired Class A Member will no longer be required to perform any day to day work.”

70. It was further understood that, in exchange for working at KCBC, a Class A Member, including Plaintiff, would be entitled to take a salary, or a “draw.” This entitlement is reflected, in part, in section 7.6, which provides that upon retirement, a Class A Member “will get distributions, not draw.” As for draw amount, under section 5.1, “any and all draws taken by Class A Members will be equal and sufficient to cover their tax obligations.”

71. In effectuating the Sham Amendments that downgraded Plaintiff’s Class A shares to “Class D,” terminated Plaintiff as a manager and an officer of the Company, denied Plaintiff

access to corporate books and records, and cut off his entitlement to any further draws, Bellis and Kinney acted unilaterally, failing to obtain the written consent of all KCBC members to the Sham Amendments – all in breach of section 10.1 of the Agreement.

72. A ripe and justiciable controversy exists between Plaintiff and Defendants concerning whether the Sham Amendments are valid and effective, whether the Amendment remains valid and effective, whether Plaintiff’s Class A shares were properly downgraded to “Class D”, whether Plaintiff was properly terminated as a manager and officer of the Company pursuant to , whether Plaintiff was properly denied access to corporate books and records, and was properly cut off from his entitlement to any further draws.

73. Plaintiff is entitled to a judgment declaring that:

- a. KCBC is governed by the Operating Agreement dated January 15, 2014 (the “Agreement”);
- b. Each and every provision of the Agreement is valid and is in effect;
- c. Plaintiff remains a Class A member of KCBC, pursuant to the terms of the Agreement;
- d. Plaintiff retains his management role in the Company pursuant to the Agreement, including the right of involvement in the Company’s day-to-day operations, the right to access the Company’s books, the right to receive draws sufficient to cover his tax obligations, and the right to access and use corporate credit cards;
- e. Plaintiff remains an officer of KCBC, pursuant to the terms of the Agreement;

- f. The First Amendment to Operating Agreement dated April 20, 2021 (the “First Sham Amendment”), including each and every provision thereof, is invalid, void, and is of no force or effect;
- g. The Second Amended & Restated Limited Liability Company Operating Agreement of Kings County Brewing Collective LLC dated May 2021 (the “Second Sham Amendment”), including each and every provision thereof, is invalid, void, and is of no force or effect.

COUNT TWO

Breach of Contract

74. Plaintiff re-alleges and incorporates by reference the allegations set forth in all of the preceding paragraphs as if fully set forth herein.

75. Section 10.1 of the Agreement provides that it “shall not be modified or amended **in any respect** except by a written instrument executed by all of the Members” of the Company (emphasis added).

76. Further, under the Agreement’s section 6.1(1), Plaintiff was explicitly classified as a “Class A Member,” with all the rights and privileges that flow from that classification, pursuant to the Agreement.

77. In addition, Plaintiff is a Company officer pursuant to the terms of the Agreement’s Exhibit B.

78. As regards Class A Membership, the Agreement provides that:

- a. “The business of the Company shall be managed by the Class A Members” (Section 4.1);
- b. “Class A Members will have sole voting rights on Company day to day operations” (Section 6.1(1));

- c. “Complete books of account of the Company’s business . . . shall be kept at the Company’s principal executive office and available to Class A Members.”
(Section 5.1);
- d. “Class A Members . . . are authorized to execute any banking resolution provided by the [banking] institution where the [bank] accounts are being set up.” (Section 4.2);

79. In addition, it was understood that, as part of their management duties, Class A Members, including Plaintiff, were required to work at the Company. This understanding is contained in section 7.6, pertaining to retirement, which provides that “Company policy on Class A Member retirement requires 20 years of work by that individual.” Only at that point, as provided under Section 7.6, “[t]he retired Class A Member will no longer be required to perform any day to day work.”

80. It was further understood that, in exchange for working at KCBC, a Class A Member, including Plaintiff, would be entitled to take a salary, or a “draw.” This entitlement is reflected, in part, in section 7.6 of the Agreement, which provides that upon retirement, a Class A Member “will get distributions, not draw.” As for draw amount, under section 5.1, “any and all draws taken by Class A Members will be equal and sufficient to cover their tax obligations.”

81. In effectuating the Sham Amendments that downgraded Plaintiff’s Class A shares to “Class D,” terminated Plaintiff as a manager and an officer of the Company, denied Plaintiff access to corporate books and records, and cut off his entitlement to any further draws, Bellis and Kinney acted unilaterally, failing to obtain the written consent of all KCBC members to the Sham Amendments – all in breach of section 10.1 of the Agreement.

82. Specifically:

- a. In terminating Plaintiff as a manager of the Company, Bellis and Kinney breached sections 4.1, 6.1(1), and 10.1 of the Agreement;
 - b. In terminating Plaintiff as an officer of the Company, Bellis and Kinney breached Exhibit B and section 10.1 of the Agreement;
 - c. In denying Plaintiff access to corporate books and records, Bellis and Kinney breached sections 5.1 and 10.1 of the Agreement;
 - d. In cutting off Plaintiff's entitlement to any further draws, Bellis and Kinney breached sections 5.1, 7.6, and 10.1 of the Agreement;
 - e. In denying Plaintiff access to the Company's credit cards, Bellis and Kinney breached sections 4.2, 6.1(1), and 10.1 of the Agreement.
83. Plaintiff is entitled to injunctive relief, to be entered against Defendants, pursuant to which:
- a. Plaintiff remains and/or is reinstated as a "Class A Member" of the Company, pursuant to the Agreement;
 - b. Plaintiff remains and/or is reinstated as an officer of the Company, pursuant to the Agreement;
 - c. Plaintiff is restored to his management role in the Company pursuant to the Agreement, including the right of involvement in the Company's day-to-day operations pursuant to section 6.1 of the Agreement, the right to access the Company's books pursuant to section 5.1 of the Agreement, the right to receive draws sufficient to cover his tax obligations pursuant to sections 5.1 and 7.6 of the Agreement, and the right, pursuant to sections 4.2 and 6.1 of the Agreement, to access and use corporate credit cards.

84. Further, as a result of Bellis' and Kinney's breaches of the Agreement, Plaintiff has been damaged in an amount to be determined at trial.

COUNT THREE

Breach of the Implied Covenant of Good Faith and Fair Dealing Against Bellis and Kinney

85. Plaintiff re-alleges and incorporates by reference the allegations set forth in all of the preceding paragraphs as if fully set forth herein.

86. Plaintiff and Bellis and Kinney are parties to the Agreement, a valid and binding contract governed by the laws of the State of New York.

87. New York law implies a covenant of good faith and fair dealing in all contracts, which prevents a party from doing anything to destroy or injure the right of the other party to receive the fruits of the contract.

88. Bellis and Kinney had the ability and discretion, under section 7.2 of the Agreement, to consent to Plaintiff transferring all or part of his Membership Interest to any other Person.

89. Bellis and Kinney breached the covenant of good faith and fair dealing under the Agreement by refusing to consent to Plaintiff's proposed sale of 5.5 percent of his equity to Rothfuss, one of the Company's non-managing members, for \$420,000 in cash.

90. Such refusal was part of Bellis and Kinney's plan, undertaken in bad faith and for an improper purpose, to deprive Plaintiff of any income, so as to squeeze him out of the Company and force him to agree, in desperation, to the sale of his 25.33 percent stake in a Company valued at \$7.5 million as of February 2021, to Bellis and Kinney for the paltry sum of \$33,333.33.

91. As a result of Bellis and Kinney’s breach of the covenant of good faith and fair dealing under the Agreement, Plaintiff has been damaged in an amount to be determined at trial, but not less than \$420,000.00.

COUNT FOUR

Violation of N.Y. LLCL § 409 Against Bellis and Kinney

92. Plaintiff re-alleges and incorporates by reference the allegations set forth in all of the preceding paragraphs as if fully set forth herein.

93. New York Limited Company Law § 409 requires that managers of LLCs perform their duties “in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances.”

94. Bellis and Kinney have violated Section 409, mistreating Plaintiff by, among other things:

- a. Downgrading Lengyel-Fushimi’s Class A shares to “Class D” status, and removing Plaintiff from his position as officer of the Company, without obtaining the consent of all of the Company’s members, per the Agreement’s section 10.1;
- b. In connection with this wrongful downgrade, barring Lengyel-Fushimi from any management role, and denying him all the privileges of Class A membership, including the right of involvement in the Company’s day-to-day operations, the right to access the Company’s books, the right to receive draws sufficient to cover his tax obligations, and the right to access KCBC credit cards;
- c. Wrongfully elevating Bellis and Kinney to the role of KCBC’s sole, essentially unremovable managing members;
- d. Under the First Sham Amendment, instituting a three-year freeze on all Members’ units, restricting them for three years from selling or assigning their shares, a

provision that was replaced in the Second Sham Amendment with the requirement that all transfers of members' units be "subject to the consent of" Bellis and Kinney – all in order to prevent Rothfuss from buying Plaintiff's equity, or to deny Plaintiff the right to sell his equity to Rothfuss; and

- e. Refusing to consent to Plaintiff's sale of 5.5 percent of his equity to Rothfuss, one of the Company's non-managing members, for \$420,000 in cash.

95. Bellis and Kinney's mistreatment of Plaintiff was intentional and in bad faith, as they placed their own interests before Plaintiff's and deliberately undermined Plaintiff's rights as a member and manager of KCBC.

96. Plaintiff has and will suffer damages as a result of Bellis and Kinney's misconduct in an amount to be determined at trial, but no less than \$420,000.00.

COUNT FIVE

Breach of Fiduciary Duty Against Bellis and Kinney

97. Plaintiff re-alleges and incorporates by reference the allegations set forth in all of the preceding paragraphs as if fully set forth herein.

98. Bellis and Kinney are managing members of KCBC and owe Plaintiff fiduciary obligations.

99. Acting in bad faith and in breach of their fiduciary obligations to Plaintiff, Bellis and Kinney:

- a. Downgraded Lengyel-Fushimi's Class A shares to "Class D" status without obtaining the consent of all of the Company's members, per the Agreement's section 10.1;
- b. In connection with this downgrade, barred Lengyel-Fushimi from any management role, and denied him all the privileges of Class A membership,

including the right of involvement in the Company's day-to-day operations, the right to access the Company's books, the right to receive draws sufficient to cover his tax obligations, and the right to access to KCBC credit cards;

- c. Wrongfully elevated Bellis and Kinney to the role of KCBC's sole managing members; and
- d. Under the First Sham Amendment, instituted a three-year freeze on all Members' units, restricting them for three years from selling or assigning their shares, a provision that was replaced in the Second Sham Amendment with the requirement that all transfers of members' units be "subject to the consent of" Bellis and Kinney – all in order to prevent Rothfuss from buying Plaintiff's equity, or to deny Plaintiff the right to sell his equity to Rothfuss; and
- e. Refused to consent to Plaintiff's sale of 5.5 percent of his equity to Rothfuss, one of the Company's non-managing members, for \$420,000 in cash.

100. Plaintiff has and will suffer damages as a result of Bellis and Kinney's misconduct in an amount to be determined at trial, but no less than \$420,000.

WHEREFORE, it is respectfully requested that the Court award Plaintiff:

- a. Compensatory damages against Bellis and Kinney in an amount to be determined at trial;
- b. Declaratory and injunctive relief to be entered against Defendants specified herein;
- c. Punitive and liquidated damages against Bellis and Kinney in an amount to be determined at trial;
- d. Costs, interest, and attorney's fees; and
- e. Such other and further relief as this Court may deem just and proper.

Dated: New York, New York
May 27, 2021

LAW OFFICE OF ALEXANDER SAKIN, LLC



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