

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS-----X
EFRAT GAM and SLIM'S BAGLES & BIALYS, INC.,

Plaintiffs,

-against-

JOSEPH DVIR,

Defendant.
-----X

Index No. 2017- 701298

**PLAINTIFFS'
RULE 31(C) RESPONSE
REQUEST TO CHARGE****Request to Charge**

In addition to standard general pre and post trial charges, Plaintiffs respectfully requests the following charges:

<u>PJI Section</u>	<u>Explanation</u>
1.22	Falsus in Uno
2.277	Damages
2.278	Punitive Damages
4.2	Unjust Enrichment

Dated: Jericho, New York
November 26, 2019

Respectfully submitted,

Richard L. Farley

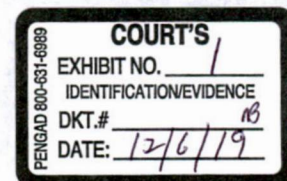
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Email: rlf@FarleyKessler.com

To: Lawrence F. Spirn, Esq.
Attorneys for Defendant
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Northport, N.Y. 11768
Phone: 631-651-9070
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Email: lawrencespirn@gmail.com

16266RequestToCharge

FILED

DEC 11 2019

COUNTY CLERK
QUEENS COUNTY

FILED

RECEIVED NYSCEF: 12/11/2019

DEC 11 2019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENSCOUNTY CLERK
QUEENS COUNTY-----X
EFRAT GAM and SLIM'S BAGLES & BIALYS, INC.,

Index No. 2017- 701298

Plaintiffs,

**JURY INSTRUCTION
PJI 4.2-UNJUST ENRICHMENT**

-against-

JOSEPH DVIR,

J. Livote

Defendant.
-----X

Where a person has obtained money or property from another under such circumstances that in good conscience it should not be retained, the law imposes a duty to repay or return it.

Under that principle, a business partner who pays himself and his credit card providers, out of company accounts, monies to which he is not entitled, will be required to repay the company the amounts wrongfully taken.

The parties agree that during the years 2010 – 2013, more than \$234,000. in checks were issued from the company account to Defendant in excess of the checks issued to Plaintiff.

Plaintiff claims that those amounts were wrongfully taken in violation of the parties' Agreement(s) and should be returned to the company.

Defendant denies that the monies were wrongfully taken and alleges that an equal amount was paid by him in cash from the company to the individual Plaintiff by delivery to third parties on Plaintiff's behalf in 2010 – 2013.

The parties agree that during the years 2012 – 2016, more than \$69,000 in checks were issued from the company account to Defendant's credit card providers American Express and Citicards.

Plaintiff claims that more than \$69,000. was wrongfully paid from the company accounts to American Express and Citicards, Defendant's personal credit card providers, during the years 2012 – 2016, and should be repaid to the company.

PENGAD 800-631-6989	COURT'S
	EXHIBIT NO. <u>2</u>
	IDENTIFICATION/EVIDENCE
	DKT.# <u>183</u>
DATE: <u>12/6/19</u>	

Defendant denies the claim and alleges that they were proper reimbursement of supplies purchased for the business.

Plaintiff has the burden of proving the facts on which Plaintiff bases her claims. Defendant has the burden of proving the facts on which Defendant bases his defenses. If you find that the monies paid to Defendant or for his benefit were improper, you will find for the Plaintiff for the amount of the improper payments. If you find that the payments were not improper, then you will find for the Defendant.

Respectfully Submitted,

Richard L. Farley, Esq.
Farley & Kessler, PC
Attorneys for Plaintiffs
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16266JuryInstruction

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

Index No.: 2017-701298

EFRAT GAM and SLIM'S BAGELS & BIALYS, INC.,

Plaintiffs,

VERDICT FORM

-against-

JOSEPH DIVIR.

Defendant

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COUNTY CLERK
QUEENS COUNTY

Your verdict will include answers to the following questions which are submitted to
you in writing:

1. Was the Defendant unjustly enriched?

YES OR NO: _____

If your answer is "no" Stop.

If your answer is "yes" proceed to Question #2.

At least five jurors must agree on the answer to this question:

We, the undersigned jurors, concur in this verdict:

2. If yes to question #1, then in what amount was the Defendant unjustly
enriched and from what date?
amount: _____

If your answer is "none" STOP.

If your answer is "yes" proceed to Question #3.

At least five jurors must agree on the answer to this question:

We, the undersigned jurors, concur in this verdict:

PENGAD 800-631-6589	COURT'S
	EXHIBIT NO. <u>3</u>
	IDENTIFICATION/EVIDENCE
	DATE: <u>12/6/19</u>

_____	_____
_____	_____
_____	_____

The undersigned juror does not concur in the above verdict:

3. If yes to question #2, then in what date was the Defendant unjustly enriched?

date: _____

If your answer is "none" STOP.

At least five jurors must agree on the answer to this question:

We, the undersigned jurors, concur in this verdict:

_____	_____
_____	_____
_____	_____

The undersigned juror does not concur in the above verdict:

16266VerdictForm

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
EFRAT GAM and SLIM'S BAGELS

Plaintiffs

-against-

JOSEPH DVIR

Defendant
-----X

INDEX NO.:
701298/2017

DEFENDANT'S
PROPOSED
REQUEST TO
CHARGE

Section 1:20 Introduction

Section 1:21 Review Principles Stated

Section 1:22 Falsus in Uno

Section 1:23 Burden of Proof

Section 1:24 Return to Courtroom

Section 1:25 Consider only Testimony and Exhibits

Section 1:26 Five Sixths Verdict

Section 1:27 Exclude Sympathy

Section 1:41 Weighing Testimony

Section 1:60 General Instruction – Burden of Proof

Section 4:2.1 Unjust Enrichment

Dated: December 3rd, 2019
Northport, New York

CREEDON & GILL P.C.
By :

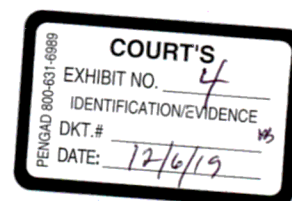


PETER J. CREEDON
24 Woodbine Ave, Ste 8
Northport, New York 11768

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QUEENS COUNTY



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COUNTY CLERK
QUEENS COUNTYSUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS-----X
EFRAT GAM and SLIM'S BAGELS
PlaintiffsINDEX NO.:
701298/2017

-against-

DEFENDANT'S
PROPOSED
VERDICT SHEETJOSEPH DVIR
Defendant
-----X

1. Have Plaintiffs proven that Joseph Dvir wrote checks to himself from Slim's Bagels checking account in an amount in excess to monies which should also have been paid to the Efrat Gam or that Joseph Dvir used Slim Bagel's monies to pay for expenses in other businesses owned by Joseph Dvir?

Yes _____ No. _____

Jurors who agree with this decision.

If your answer is "NO" go no further and report your answer to the Court. If your answer is "YES" proceed to question "2".

PENGAD 800-631-6989	COURT'S
	EXHIBIT NO. <u>5</u>
	IDENTIFICATION/EVIDENCE
	DKT.# <u>112</u>
DATE: <u>12/6/19</u>	


2. In what amount did Joseph Dvir write checks to himself from Slim's Bagels checking account in an amount in excess to monies which should also have been paid to the Efrat Gam and/or use Slim Bagel's monies to pay for expenses in other businesses owned by Joseph Dvir?

\$ _____

Jurors who agree with this decision.

Dated: December 3rd, 2019
Northport, New York

CREEDON & GILL P.C.
By :



PETER J. CREEDON
24 Woodbine Ave, Ste 8
Northport, New York 11768

UNJUST ENRICHMENT PJI 4:2.1

As you have heard, the Plaintiffs claims that the defendant Joseph Dvir was unjustly enriched at Slim's Bagels' expense in that Joseph Dvir wrote checks to himself from Slim's Bagels' checking account in an amount in excess to monies which should have been paid to Efrat Gam and used Slim Bagel's monies to pay for expenses in other businesses he owned.

The defendant Joseph Dvir denies the Plaintiffs' claims and contends that the Plaintiff received an equal amount from Slim Bagel's in the form of cash payments she took in cash envelopes and that he did not use Slim Bagel's monies to pay for expenses in other businesses he owned.

Unjust enrichment occurs when one person has obtained money, property or a benefit under such circumstances that, in fairness and good conscience, the money, property or benefit should not be retained. In those circumstances, the law requires that person to repay or return money unfairly received.

Plaintiffs have the burden of proving that Joseph Dvir was unjustly enriched at Slim's Bagels' expense in that Joseph Dvir wrote checks to himself from Slim's Bagels' checking account in an amount in excess to monies which should also have been paid to the Efrat Gam and that he used Slim Bagel's monies to pay for expenses in other businesses he owned.

If you decide that Plaintiffs have not proven that Joseph Dvir wrote checks to himself from Slim's Bagels' checking account in an amount in excess to monies which should also have been paid to Efrat Gam or used Slim Bagel's monies to pay for expenses in other businesses he owned you will find for the Defendant Joseph Dvir.

If you decide that Plaintiffs have proven that Joseph Dvir unjustly wrote checks to himself from Slim's Bagels checking account in an amount in excess to monies which should also have been paid to Efrat Gam or used Slim Bagel's monies to pay for expenses in other businesses he owned you will find that Joseph Dvir is liable to Slim's Bagel in the amount of monies which should have been paid to Efrat Gam or which were used to pay for expenses in other businesses Joseph Dvir owned.

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QUEENS COUNTY

VERDICT SHEET

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

**PRESENT: HONORABLE LEONARD LIVOTE
ACTING SUPREME COURT JUSTICE**

IAS TERM, PART 33

-----X
**EFRAT GAM AND
SLIM'S BAGLES & BIALYS, INC.
PLAINTIFFS,**

INDEX NO: 701298/17

-- AGAINST --

**JOSEPH DVIR,
DEFENDANT.**

-----X
MEMBERS OF THE JURY:

**IN ACCORDANCE WITH THE CHARGE OF THE COURT AND THE
FACTS AS YOU HAVE FOUND THEM YOU ARE TO ANSWER THE
FOLLOWING QUESTIONS IN CONNECTION WITH YOUR
VERDICT AND RETURN THIS QUESTIONNAIRE WITH YOUR
VERDICT TO THE COURT. AT LEAST FIVE JURORS MUST
AGREE TO THE ANSWER TO EVERY QUESTION RESPONDED
TO. (PLEASE NOTE: THE SAME JURORS NEED NOT AGREE
ON EACH QUESTION. A QUESTION IS ANSWERED WHEN ANY
FIVE OR ALL OF THE JURORS AGREE). THE JURORS SHALL
SIGN EACH QUESTION NEXT TO THEIR DESIGNATED JUROR
NUMBER. THE FOREPERSON IS TO SIGN AT THE END OF THE
VERDICT SHEET.**

PEUGAD 800-631-6888	COURT'S
	EXHIBIT NO. <u>6</u>
	IDENTIFICATION/EVIDENCE <u>703</u>
	DKT.# <u>12/6/19</u>
DATE: <u>12/6/19</u>	

AGREEMENT OF ANY FIVE JURORS IS SUFFICIENT FOR AN ANSWER**QUESTION 1.****WAS THE DEFENDANT JOSEPH DVIR UNJUSTLY ENRICHED?****ANSWER:****YES** ☒**NO** ☐**AT LEAST FIVE JURORS MUST SIGN BELOW.**

1. Paul A Santos 4. Heidy Inoa
2. Beatriz Humphreys 5. [Signature]
3. [Signature] 6. [Signature]

FOREPERSON:Paul A Santos**IF YOUR ANSWER IS "YES," PROCEED TO QUESTION 2.****IF YOUR ANSWER IS "NO," STOP AND RETURN TO THE COURTROOM - DO NOT ANSWER ANY ADDITIONAL QUESTIONS..**

AGREEMENT OF ANY FIVE JURORS IS SUFFICIENT FOR AN ANSWER

QUESTION 2.

IN WHAT AMOUNT WAS THE DEFENDANT UNJUSTLY ENRICHED FOR EXCESS SALARY AND DISTRIBUTIONS.

AMOUNT: \$ 141,099

(2011 - \$50,000.-
2012 - \$21,000.-
2012 - 39,839.-
2013 - 21,500.-
TAX - 87,500.-)

AT LEAST FIVE JURORS MUST SIGN BELOW:

1. Paula A. Santos

4. Hedy Inoa

2. Beatriz Humphreys

5. Carol

3. Michael

6. John

FOREPERSON:

Paula A. Santos

PROCEED TO QUESTION 3.

AGREEMENT OF ANY FIVE JURORS IS SUFFICIENT FOR AN ANSWER**QUESTION 3.**

**IN WHAT AMOUNT WAS THE DEFENDANT UNJUSTLY ENRICHED FOR
WRONGFUL CREDIT CARD REIMBURSEMENTS.**

AMOUNT: \$ - 0. -

AT LEAST FIVE JURORS MUST SIGN BELOW:

1. Paul A. Santos 4. Hedy Inoa
2. Beate Humphreys 5. Paul
3. Michael 6. James

FOREPERSON: Paul A. Santos

**STOP AND RETURN TO THE COURTROOM - DO NOT ANSWER ANY
ADDITIONAL QUESTIONS.**

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DEC 11 2019

PART: CDAT/PT 33
INDEX #701298/17
CASE: GAM VS. DVIR

COUNTY CLERK
QUEENS COUNTY

HON. LEONARD LIVOTE

JURY NOTE

WE THE JURY:

REQUEST THE FOLLOWING DOCUMENTS:

- DISTRIBUTIONS CHECKS
- CORPORATE TAX RETURNS
- PAYROLL CHECKS

DATE 12-6-19

FOREPERSON (signature)

TIME:

3:50 PM

FOREPERSON (print)

COURT EXHIBIT#



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DEC 11 2019

COUNTY CLERK
QUEENS COUNTYPART: CDAT/PT 33
INDEX #701298/17
CASE: GAM VS. DVIR

HON. LEONARD LIVOTE

JURY NOTE

WE THE JURY:

HAVE REACHED A VERDICT

DATE 12-6-19 FOREPERSON (signature) Paul A. Santos
TIME: 4:50 PM FOREPERSON (print) Paul A. Santos
COURT EXHIBIT# 8