

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

ROWEN SEIBEL, individually and on behalf
of FCLA, LP and THE FAT COW, LLC,

Plaintiffs,

v.

GORDON RAMSAY and G.R. US
LICENSING, LP,

Defendants,

and

FCLA, LP and THE FAT COW, LLC,

Nominal Defendants.

GORDON RAMSAY and G.R. US
LICENSING, LP, Individually and on behalf
of FCLA, LP and THE FAT COW, LLC

Defendants-Counterclaimants,

v.

ROWAN SEIBEL,

Plaintiff-Counterdefendant,

and

FCLA, LP, and THE FAT COW, LLC

Nominal Defendants-Counterdefendants.

INDEX NO. 651046/14

PART 60

HON. MARCY S. FRIEDMAN

**VERIFIED ANSWER TO AMENDED
VERIFIED COMPLINT AND
COUNTERCLAIM OF GORDON
RAMSAY and G.R. US LICENSING, LP,
individually and on behalf of FCLA, LP and
THE FAT COW, LLC**

ANSWER

The defendants Gordon Ramsay (“Ramsay”) and G.R. US Licensing, LP (“GR”) (collectively the “defendants”), by their attorneys Mitchell Silberberg & Knupp LLP, answer the amended verified complaint (the “amended complaint”), on information and belief, as follows:

1. Deny the allegations contained in Paragraph 1 of the amended complaint, except admit that the plaintiffs’ action alleges various causes of action and seeks various remedies; and further aver that upon defendants’ motion, pursuant to CPLR 3211 (a)(7) and (a)(1), the Court in this action, by the decision and order of the Hon. Marcy S. Friedman, J.S.C. entered on March 27, 2015, (NYSCEF Doc. 39), dismissed “all causes of actions [in the amended complaint], except the derivative cause of action for breach of fiduciary duty and the direct and derivative causes of action for breach of contract with respect to The Fat Cow LLC.” This order will hereinafter be referred to as the “Order of Dismissal”.

2. Deny the allegations contained in Paragraph 2 of the amended complaint.

3. Admit the allegations contained in Paragraph 3 of the amended complaint.

4. Deny that Ramsay resides in Los Angeles, CA, and otherwise admit the allegations contained in Paragraph 4 of the amended complaint.

5. Admit the first sentence in Paragraph 5 of the amended complaint; with respect to matters relevant to this action, admit that Ramsay was an agent for GR with respect to actions taken by GR; and otherwise deny the remaining allegations contained in Paragraph 5 of the amended complaint.

6. Admit the allegations contained in Paragraph 6 of the amended complaint.

7. Admit the allegations contained in Paragraph 7 of the amended complaint.

8. Admit only that FCLA, LP is a limited partnership, organized under the laws of the State of Delaware, and has its principal offices at 200 Central Park South, New York, New York, and otherwise deny the allegations contained in Paragraph 8 of the amended complaint.

9. Admit the allegations contained in Paragraph 9 of the amended complaint.

10. Admit the allegations contained in Paragraph 10 of the amended complaint.

11. Admit the allegations contained in Paragraph 11 of the amended complaint.

12. Refer to the FCLA Limited Partnership Agreement for the complete terms and contents thereof, which are admitted and otherwise deny the allegations contained in Paragraph 12 of the amended complaint.

13. Refer to the FCLA Limited Partnership Agreement and The Fat Cow LLC Agreement for the complete terms and contents thereof, which are admitted, and otherwise deny the allegations contained in Paragraph 13 of the amended complaint.

14. Deny the allegations contained in Paragraph 14 of the amended complaint.

15. With respect to the first sentence in Paragraph 15 of the amended complaint, deny knowledge of information sufficient to answer these allegations because these allegations are vague and ambiguous and on that basis deny these allegations; and deny the remaining allegations contained in Paragraph 15 of the amended complaint, except aver that Ramsay's affiliated companies have an interest in Gordon Ramsay Steak, BurGR by Gordon Ramsay, and Pub & Grill, all of which have locations in Las Vegas, Nevada.

16. With respect to the first sentence of Paragraph 16 of the amended complaint, deny knowledge of information sufficient to answer the allegations because these allegations are vague and ambiguous and on that basis deny these allegations; and deny the remaining allegations contained in Paragraph 16 of the amended complaint, except admit only that Ramsay

had discussions with Plaintiff Rowen Seibel (“Seibel”) about the possibility of opening a restaurant in Los Angeles, CA.

17. Deny the allegations contained in Paragraph 17 of the amended complaint, except admit “The Fat Cow” name was discussed.

18. Deny the allegations contained in Paragraph 18 of the amended complaint, except admit that trademarking “The Fat Cow” name was discussed.

19. Admit only that Ramsay entered into a certain retail center lease agreement, dated November 18, 2011 as amended, modified, and supplemented from time to time, with GFM, LLC, d/b/a The Grove, for certain described premises at a retail center known as The Grove in Los Angeles, California (the “Lease”), and refer to the Lease for the complete terms and contents thereof, which are admitted, and otherwise deny the allegations contained in Paragraph 19 of the amended complaint.

20. Admit only that Ramsay entered the Lease and refer to the Lease for the complete terms and contents thereof, which are admitted, and otherwise deny the allegations contained in Paragraph 20 of the amended complaint.

21. Admit only that Ramsay entered the Lease and refer to the Lease for the complete terms and contents thereof, which are admitted, and otherwise deny the allegations contained in Paragraph 21 of the amended complaint.

22. Admit the allegations contained in Paragraph 22 of the amended complaint.

23. Admit only that Seibel knew that the US trademark application for “The Fat Cow” referred to in Paragraph 22 of the amended complaint had not been approved and that there was an existing registered trademark filed by a Florida restaurant, “Las Vacas Gordas”,

which is Spanish for “The Fat Cow”, and otherwise deny the remaining allegations contained in Paragraph 23 of the amended complaint.

24. Deny knowledge or information sufficient to answer the allegations set forth in Paragraph 24 of the amended complaint because these allegations allege incomplete, unattributed quotations by unidentified persons, and on that basis defendants deny the allegations contained in Paragraph 24 of the amended complaint.

25. Admit the allegations contained in Paragraph 25 of the amended complaint.

26. Deny the allegations contained in Paragraph 26 of the amended complaint, except admit that the restaurant opened under the name “The Fat Cow”.

27. Deny knowledge of information sufficient to answer the allegations set forth in Paragraph 27 of the amended complaint because these allegations allege incomplete, unattributed quotations by unidentified persons, and on that basis defendants deny the allegations contained in Paragraph 27 of the amended complaint.

28. Deny the allegations contained in Paragraph 28 of the amended complaint, except admit that the restaurant opened under the name “The Fat Cow”.

29. Admit the allegations contained in Paragraph 29 of the amended complaint.

30. Admit the allegations contained in Paragraph 30 of the amended complaint, and refer to The Fat Cow LLC Agreement for the complete terms and contents thereof.

31. Admit the allegations contained in Paragraph 31 of the amended complaint, and refer to The Fat Cow LLC Agreement for the complete terms and contents thereof.

32. Refer to The Fat Cow LLC Agreement for the complete terms and contents thereof, which are admitted, and otherwise deny the allegations contained in Paragraph 32 of the amended complaint.

33. Admit the allegations contained in Paragraph 33 of the amended complaint.
34. Admit the allegations contained in Paragraph 34 of the amended complaint.
35. Refer to the terms of the FCLA Partnership Agreement for the complete contents and terms thereof, which are admitted, and otherwise deny the allegations contained in Paragraph 35 of the amended complaint.
36. Refer to the FCLA Partnership Agreement for the complete contents and terms thereof, which are admitted, and otherwise deny the allegations contained in Paragraph 36 of the amended complaint.
37. Refer to the FCLA Partnership Agreement for the complete contents and terms thereof, which are admitted, and otherwise deny the allegations contained in Paragraph 37 of the amended complaint.
38. Refer to the FCLA Partnership Agreement for the complete contents and terms thereof, which are admitted, and otherwise deny the allegations contained in Paragraph 38 of the amended complaint.
39. Refer to the FCLA Partnership Agreement for the complete contents and terms thereof, which are admitted, and otherwise deny the allegations contained in Paragraph 39 of the amended complaint.
40. Refer to the License Agreement for the complete contents and terms thereof, which are admitted, and otherwise deny the allegations contained in Paragraph 40 of the amended complaint.
41. Admit the allegations contained in Paragraph 41 of the amended complaint

42. Refer to the FCLA Partnership Agreement and License Agreement for the complete contents and terms thereof, which are admitted, and otherwise deny the allegations contained in Paragraph 42 of the amended complaint.

43. Refer to the License Agreement for the complete contents and terms thereof, which are admitted, and otherwise deny the allegations contained in Paragraph 43 of the amended complaint.

44. Refer to the License Agreement for the complete contents and terms thereof, which are admitted, and otherwise deny the allegations contained in Paragraph 44 of the amended complaint.

45. Refer to the FCLA Partnership Agreement, The Fat Cow LLC Agreement, Lease Assignment and the License Agreement for the complete contents and terms thereof, which are admitted, and otherwise deny the allegations contained in Paragraph 45 of the amended complaint.

46. Admit the allegations contained in Paragraph 46 of the amended complaint.

47. Refer to the Lease Assignment and Assumption Agreement for the complete contents and terms thereof, which are admitted, and otherwise deny the allegations contained in Paragraph 47 of the amended complaint.

48. Deny the allegations contained in Paragraph 48 of the amended complaint.

49. Admit the allegations contained in Paragraph 49 of the amended complaint.

50. Refer to the Indemnification Agreement for the complete contents and terms thereof, which are admitted, and aver that Seibel is bound by its terms as written, and otherwise deny the allegations contained in Paragraph 50 of the amended complaint.

51. Admit that FCLA and Upper Ground Enterprises, Inc. entered into an agreement for the television show “Hell’s Kitchen,” starring Gordon Ramsay (“Hell’s Kitchen Agreement”) and refer to the complete contents and terms thereof, and further admit that the Hell’s Kitchen was broadcast during prime time domestically by Fox Broadcasting Company, as well as internationally by various other television providers, and otherwise deny knowledge or information sufficient to answer the allegations set forth in Paragraph 51 of the amended complaint because these allegations are incomplete, vague and ambiguous and on that basis defendants deny the remaining allegations contained in Paragraph 51 of the amended complaint.

52. Deny knowledge or information sufficient to answer the allegations set forth in Paragraph 52 of the amended complaint because these allegations are incomplete, vague and ambiguous and on that basis defendants deny the allegations contained in Paragraph 52 of the amended complaint.

53. Deny the allegations contained in Paragraph 53 of the amended complaint, and refer to the Order of Dismissal.

54. Deny the allegations contained in Paragraph 54 of the amended complaint, and refer to the Order of Dismissal.

55. Deny the allegations contained in Paragraph 55 of the amended complaint, except admit that the restaurant opened under the name “The Fat Cow”.

56. Deny the allegations contained in Paragraph 56 of the amended complaint.

57. Admit only that “The Fat Cow” officially opened on or about October 1, 2012 and otherwise deny the allegations contained in Paragraph 57 of the amended complaint.

58. Deny knowledge or information sufficient to answer Paragraph 58 of the amended complaint because the term “positive cash flow” is vague and ambiguous and is susceptible to

various interpretations, and also because this is a compound allegation covering different points in time and on these bases deny the allegations contained in Paragraph 58 of the amended complaint.

59. Admit that on or about February 27, 2013, Ramsay received written Notice of Default with respect to the Lease, and refer to such written notice for the contents thereof, and otherwise deny the allegations contained in Paragraph 59 of the amended complaint.

60. Admit that Ramsay met with the Landlord, and received a letter dated April 25, 2013 and refer to such letter for the contents thereof, and otherwise deny the allegations contained in Paragraph 60 of the amended complaint.

61. Refer to the April 25, 2013 letter for the contents thereof, and otherwise deny the allegations contained in Paragraph 61 of the amended complaint.

62. Deny the allegations contained in Paragraph 62 of the amended complaint.

63. Deny the allegations contained in Paragraph 63 of the amended complaint.

64. Deny knowledge or information sufficient to answer the allegations set forth in Paragraph 64 of the amended complaint because these allegations are vague and ambiguous and on that basis defendants deny the allegations contained in Paragraph 64 of the amended complaint.

65. Deny the allegations contained in Paragraph 65 of the amended complaint.

66. Admit that Ramsay received a notice from an attorney representing a restaurant in Florida, Las Vacas Gordas, claiming that “The Fat Cow” was infringing upon the mark, “Las Vacas Gordas,” and refer to the contents of that notice, and otherwise deny the allegations contained in Paragraph 66 of the amended complaint.

67. Admit that on or about December of 2013, a written “Settlement Agreement” was executed between FCLA LP, and The Fat Cow, LLC, and the owners of the “Las Vacas Gordas” (“The Fat Cow”) the tradename, which among other things, permitted FCLA LP and The Fat Cow LLC to use “The Fat Cow” name for the restaurant at the Grove through February 28, 2014, and refer to that Settlement Agreement for the terms thereof, and otherwise deny the allegations contained in Paragraph 67 of the amended complaint.

68. Deny the allegations contained in Paragraph 68 of the amended complaint.

69. Deny the allegations contained in Paragraph 69 of the amended complaint.

70. Deny the allegations contained in Paragraph 70 of the amended complaint.

71. Deny the allegations contained in Paragraph 71 of the amended complaint.

72. Deny the allegations contained in Paragraph 72 of the amended complaint.

73. Deny the allegations contained in Paragraph 73 of the amended complaint.

74. Deny the allegations contained in Paragraph 74 of the amended complaint.

75. Deny knowledge or information sufficient to answer the allegations set forth in Paragraph 75 of the amended complaint because these allegations are incomplete, vague and ambiguous, and on that basis defendants deny the allegations contained in Paragraph 75 of the amended complaint, except admit that other applications were filed with the USPTO.

76. Deny the allegations contained in Paragraph 76 of the amended complaint.

77. Deny the allegations contained in Paragraph 77 of the amended complaint.

78. Deny the allegations contained Paragraph 78 of the amended complaint and refer to The Fat Cow LLC Agreement and the FCLA Partnership Agreement for the complete terms thereof, which are admitted.

79. Deny the allegations contained Paragraph 79 of the amended complaint.

80. Admit that Andi Van Willigan worked in connection with the “Hell’s Kitchen” and “Kitchen Nightmares” television programs starring Gordon Ramsay, and otherwise deny the allegations contained in Paragraph 80 of the amended complaint.

81. Deny the allegations contained in Paragraph 81 of the amended complaint.

82. Deny the allegations contained in Paragraph 82 of the amended complaint.

83. Deny knowledge of information sufficient to answer the allegations set forth in the first clause in Paragraph 83 of the amended complaint, ending with the word “aptitude”, and otherwise deny the allegations contained in Paragraph 83 of the amended complaint.

84. Deny the allegations contained in Paragraph 84 of the amended complaint, but admit compensating Van Willigan for the work she was performing at the “The Fat Cow” restaurant.

85. Deny the allegations contained in Paragraph 85 of the amended complaint.

86. Deny knowledge or information sufficient to answer the allegations set forth in Paragraph 86 of the amended complaint because these allegations are incomplete, vague and ambiguous, and on that basis deny the allegations contained in Paragraph 86 of the amended complaint.

87. In response to Paragraph 87 of the amended complaint, aver that Seibel and Ramsay did not reach a decision about operation of the restaurant by unanimous consent and on that basis deny the allegations contained in Paragraph 87 of the amended complaint.

88. In response to Paragraph 88 of the amended complaint, aver that Seibel and Ramsay did not reach a decision about the operation of the restaurant by unanimous consent, and otherwise deny knowledge of information sufficient to answer the allegations set forth in the first clause in Paragraph 88 of the amended complaint because they are based on alleged statements

made by and to unidentified persons and because such allegations are vague and ambiguous, and otherwise deny the allegations contained in Paragraph 88 of the amended complaint.

89. Deny the allegations contained in Paragraph 89 of the amended complaint

90. Admit only that the staff at “The Fat Cow” restaurant were advised that the restaurant would be closing, and aver that that Seibel and Ramsay did not unanimously agree on any decision about the operation of the restaurant, and otherwise deny the allegations contained in Paragraph 90 of the amended complaint.

91. Deny the allegations contained in Paragraph 91 of the amended complaint.

92. Deny the allegations contained in Paragraph 92 of the amended complaint.

93. In response to Paragraph 93 of the amended complaint, refer to the WARN Notice for the contents thereof, and otherwise deny the allegations contained in Paragraph 93 of the amended complaint.

94. Deny the allegations contained in Paragraph 94 of the amended complaint.

95. Deny the allegations contained in Paragraph 95 of the amended complaint.

96. Admit the allegations in the first sentence of Paragraph 96 of the amended complaint, and otherwise deny the allegations contained in Paragraph 96 of the amended complaint.

97. Deny the allegations contained in Paragraph 97 of the amended complaint.

98. Deny the allegations contained in Paragraph 98 of the amended complaint.

99. With respect to the allegations in the first sentence of Paragraph 99 of the amended complaint admit only that episodes began to air in or about April 2014, and otherwise deny the allegations contained in Paragraph 99 of the amended complaint.

100. Deny knowledge of information sufficient to answer the allegations set forth in the first sentence in Paragraph 100 of the amended complaint which are vague and ambiguous and otherwise deny the allegations contained in Paragraph 100 of the amended complaint.

101. Deny the allegations contained in Paragraph 101 of the amended complaint.

102. Deny the allegations contained in Paragraph 102 of the amended complaint.

103. Deny the allegations contained in Paragraph 103 of the amended complaint.

104. With respect to the first sentence of Paragraph 104 of the amended complaint, deny knowledge or information sufficient to answer the allegations set forth therein because these allegations are incomplete, vague and ambiguous, and on that basis deny this allegation, and otherwise deny the allegations contained in Paragraph 104 of the amended complaint.

105. Deny knowledge or information sufficient to answer the allegations in Paragraph 105 of the amended complaint which are vague and ambiguous, and on that basis deny the allegations contained in Paragraph 105 of the amended complaint.

106. Deny the allegations contained in Paragraph 106 of the amended complaint, and aver that a trademark for “Gordon Ramsay at the Grove” was filed with the USPTO on January 27, 2014.

107. Deny the allegations contained in Paragraph 107 of the amended complaint, and aver that a trademark for “GR Roast” was filed with the USPTO on January 27, 2014.

108. Deny the allegations contained in Paragraph 108 of the amended complaint.

109. Deny the allegations contained in Paragraph 109 of the amended complaint.

110. Deny the allegations contained in Paragraph 110 of the amended complaint.

111. Deny the allegations contained in Paragraph 111 of the amended complaint.

ANSWER TO FIRST CAUSE OF ACTION
AGAINST DEFENDANTS RAMSAY AND GR
(Breach of Fiduciary Duty and Self-Dealing)

112. Repeat and reallege each and every prior response to paragraphs 1-111 of the amended complaint as if fully set forth herein.

113. Portions of this cause of action were dismissed by the Order of Dismissal and require no answer, and otherwise admit only that GR was controlled by Ramsay, and further state that the allegations in Paragraph 113 of the amended complaint call for a legal conclusion which requires no answer and on that basis defendants deny the allegations contained in Paragraph 113 of the amended complaint.

114. Portions of this cause of action were dismissed by the Order of Dismissal and require no answer, and further state that the allegations in Paragraph 114 of the amended complaint call for a legal conclusion which requires no answer and on that basis defendants deny the allegations contained in Paragraph 114 of the amended complaint.

115. Portions of this cause of action were dismissed by the Order of Dismissal and require no answer, and further state that the allegations in Paragraph 115 of the amended complaint call for a legal conclusion which requires no answer, and on that basis defendants deny the allegations contained in Paragraph 115 of the amended complaint.

116. Portions of this cause of action were dismissed by the Order of Dismissal and require no answer, and further state that the allegations in Paragraph 116 of the amended complaint call for a legal conclusion which requires no answer, and on that basis defendants deny the allegations contained in Paragraph 116 of the amended complaint.

117. Portions of this cause of action were dismissed by the Order of Dismissal and require no answer, and otherwise defendants deny the allegations contained in Paragraph 117 of the amended complaint.

118. Portions of this cause of action were dismissed by the Order of Dismissal and require no answer, and otherwise defendants deny the allegations contained in Paragraph 118 of the amended complaint.

ANSWER TO SECOND CAUSE OF ACTION
AGAINST DEFENDANTS
(Breach of Contract)

119. Repeat and reallege each and every prior response to Paragraphs 1-118 of the amended complaint as if fully set forth herein.

120. Portions of this cause of action were dismissed by the Order of Dismissal and require no answer, and otherwise defendants deny the allegations contained in Paragraph 120 of the amended complaint.

121. Portions of this cause of action were dismissed by the Order of Dismissal and require no answer, and otherwise defendants deny the allegations contained in Paragraph 121 of the amended complaint.

122. Portions of this cause of action were dismissed by the Order of Dismissal and require no answer, and otherwise defendants deny the allegations contained in Paragraph 122 of the amended complaint.

123. Portions of this cause of action were dismissed by the Order of Dismissal and require no answer, and otherwise defendants deny the allegations contained in Paragraph 123 of the amended complaint.

DEFENSES AND AFFIRMATIVE DEFENSES

FIRST DEFENSE

124. The amended complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

125. Plaintiffs' breach of fiduciary duty and loyalty claims and causes of action, and all equitable claims in the amended complaint, are barred by the doctrines of unclean hands, estoppel, acquiescence, ratification, waiver, plaintiffs' bad faith, and laches.

THIRD DEFENSE

126. Plaintiffs' claims and causes of action are barred because of Plaintiff Seibel's wrongful, culpable and bad faith conduct.

FOURTH DEFENSE

127. Plaintiffs' claims and causes of action based on breach of fiduciary duty, breach of loyalty, and breach of contract are barred by (i) Plaintiff Seibel's breaches of fiduciary duty and duty of loyalty owed to the defendants and to The Fat Cow LLC and FCLA LP, and (ii) Seibel's breaches of contract. These breaches of duty and contract are alleged in the defendants' counterclaim in this action, which are incorporated herein by reference.

FIFTH DEFENSE

128. Plaintiffs' breach of contract claims are barred in whole or in part because performance of the contracts by defendants was frustrated, impossible or rendered commercially impracticable in that *inter alia* the managers of The Fat Cow LLC were not able to make material decisions upon unanimous consent and The Fat Cow LLC was not able to take actions as the general partner of FCLA LP, no funds were available to operate "The Fat Cow" restaurant,

and because of the wrongful conduct of the Plaintiff Seibel as set forth in the defendants' counterclaims in this action.

SIXTH DEFENSE

129. Plaintiffs' breach of contract claims are barred, in whole or in part, by plaintiffs' failure to fulfill a condition precedent to defendants' duty to perform, if any, because the managers of The Fat Cow, LLC were not able to not make material decisions upon unanimous consent with respect to the management of The Fat Cow, LLC, FCLA LP or operation of "The Fat Cow" restaurant.

SEVENTH DEFENSE

130. Plaintiffs' breach of contract claims are barred by their failure to mitigate any alleged damages.

EIGHTH DEFENSE

131. Plaintiffs' breach of contract claims are barred by the statute of frauds.

NINTH DEFENSE

132. Plaintiffs' breach of contract claims are barred under the parol evidence rule.

TENTH DEFENSE

133. Plaintiffs' claims are barred by the applicable statute of limitations.

ELEVENTH DEFENSE

134. All causes of actions in the amended complaint, except the derivative cause of action for breach of fiduciary duty and the cause of action for breach of contract, are dismissed and barred pursuant to the decision and order of the Hon. Marcy S. Friedman, J.S.C. entered in this case on March 27, 2015, (NYSCEF Doc. 39), which is the law of the case.

TWELFTH DEFENSE

135. Plaintiffs lack the capacity or standing to assert all or some of the causes of action asserted in the amended complaint.

THIRTEENTH DEFENSE

136. Plaintiffs' claims are barred, in whole or in part, by the business judgment rule.

FOURTEENTH DEFENSE

137. Plaintiffs' claims are barred, in whole or in part, by the manager's privilege.

FIFTEENTH DEFENSE

138. Defendants hereby give notice of their intention to rely upon such other and further defenses as may become available or apparent during pretrial proceedings in this action and hereby reserve their rights to amend this answer and assert all such defenses.

WHEREFORE, Defendants Gordon Ramsay and G.R. US Licensing, LP respectfully demand judgment against the Plaintiffs dismissing all claims and causes of action in the amended complaint and awarding to defendants Gordon Ramsay and G.R. US Licensing, LP, attorneys' fees and costs, and such other relief as this Court may deem just and proper.

VERIFIED COUNTERCLAIM

Gordon Ramsay and G.R. US Licensing, LP individually and on behalf of nominal defendants The Fat Cow, LLC and FCLA, LP (collectively, Ramsay and GR are referred to herein as "counterclaimants"), by their attorneys Mitchell Silberberg & Knupp LLP, for their counterclaim against Rowen Seibel ("Seibel"), allege, on information and belief, as follows:

PARTIES

1. Counterclaimant Gordon Ramsay ("Ramsay") is an individual.

2. Counterclaimant G.R. US Licensing, LP (“GR”) is a Delaware limited partnership affiliated with Ramsay. GR is a limited partner in FCLA, LP and a member of The Fat Cow, LLC.

3. Seibel is an individual residing in the State of New York.

4. FCLA, LP (“FCLA”) is a Delaware limited partnership. Counterclaimants GR and nominal counterdefendant The Fat Cow, LLC bring certain claims in this counterclaim derivatively on behalf of nominal counterdefendant FCLA.

5. The Fat Cow, LLC is a California limited liability company. Counterclaimant GR brings certain claims in this counterclaim derivatively on behalf of nominal counterdefendant The Fat Cow, LLC.

FACTS

Background of Ramsay and Seibel

6. Gordon Ramsay is a world-renowned chef, author and television personality. He operates over two-dozen restaurants, which have received numerous awards. He also has five, successful, prime-time television shows in the United States, including *Hell’s Kitchen*, *Kitchen Nightmares*, *Hotel Hell*, and *Master Chef*. Ramsay’s *Hell’s Kitchen* show is in its twelfth season.

7. In 2011, Ramsay planned to open, through an affiliated entity, “The Fat Cow,” a new farm-to-table restaurant. Ramsay planned to open the restaurant at an upscale outdoor shopping plaza in Los Angeles called “The Grove.” He intended that Andi Van Willigan, one of his long-time assistant chefs who has also participated in Ramsay’s television programs, would operate the restaurant day-to-day.

8. When Seibel learned that Ramsay intended to open the Los Angeles restaurant, he asked to be included. Although Ramsay had no need for Seibel's money, and although Seibel offered no particular talents or expertise that would aid in the new restaurant, Ramsay agreed to include Seibel in the Los Angeles restaurant plans as an accommodation to Seibel because Seibel and Ramsay had been involved in other restaurant ventures.

Restaurant Operations and Lease

9. On November 18, 2011, before Seibel became involved, Ramsay personally entered into a lease agreement (the "Lease Agreement") for the restaurant space at The Grove with GFM, LLC ("GFM") as landlord. Van Willigan later also agreed to become personally liable under the Lease Agreement. The rent under the Lease Agreement was significant – for ten years at roughly \$50,000 per month. (The exact rent varied as common maintenance expenses, utilities, and other charges changed over time) *See, e.g.*, Lease Agreement, Article 3.

10. The Los Angeles "The Fat Cow" restaurant opened in Fall 2012. At about the same time, Seibel's investment and the operations of the "The Fat Cow" were structured as follows. Through a Limited Liability Company Agreement dated October 12, 2012 ("The Fat Cow, LLC Agreement"), Seibel and GR formed nominal counterdefendant The Fat Cow, LLC, as a California limited liability company. GR and Seibel were the sole members, and Ramsay and Seibel were the exclusive managers, of The Fat Cow, LLC. *See* The Fat Cow, LLC Agreement, Articles 5 and 6.

11. Through an October 12, 2012 Limited Partnership Agreement (the "FCLA LP Agreement"), the parties also formed nominal counterdefendant FCLA, LP, a Delaware limited partnership, for which The Fat Cow, LLC was general partner and 2% owner. Seibel and GR were each equal 49% limited partners in FCLA. *See* FCLA LP Agreement, Article 7.1.

12. Under The Fat Cow, LLC Agreement, the “Managers shall have the full and exclusive right, power and authority to manage all the business and affairs of the Company and to make all decisions on behalf of the Company” and “all decisions of the Managers shall be made upon unanimous consent of the Managers.” The Fat Cow, LLC Agreement, Article 7(a). Under the FCLA LP Agreement, the “exclusive right, power and authority to manage all the affairs and the business of the Company ... shall be vested in the General Partner [i.e. The Fat Cow, LLC].” FCLA LP Agreement, Article 8.2. As result of these provisions, decisions for “The Fat Cow” restaurant required the unanimous consent of Ramsay and Seibel.

13. Seibel and GR each invested approximately \$800,000 (for a total of \$1.6 million) in FCLA for purposes of establishing and operating “The Fat Cow” restaurant.

14. The Fat Cow, LLC owned the “The Fat Cow” name and restaurant concept. Under a written agreement dated October 12, 2012 between The Fat Cow, LLC and FCLA (the “License Agreement”), The Fat Cow, LLC licensed these names and concepts to FCLA.

15. Seibel asked that the Lease Agreement be assigned to FCLA. The parties prepared and signed an October 20, 2012 Lease Assignment and Assumption which assigned the Lease Agreement to FCLA, but, on information and belief, The Grove never approved the assignment because Seibel, who was responsible for doing so, failed to comply with the lease formalities for landlord approval.

Seibel’s Restaurant Operations

16. Instead of Van Willigan managing “The Fat Cow” restaurant operations as Ramsay originally intended, Seibel insisted that Seibel himself was expert in restaurant operations, and from the very commencement of “The Fat Cow” restaurant’s Fall 2012 opening until late 2013, Seibel demanded that his manager from Seibel’s affiliated Las Vegas

“Serendipity” restaurant be placed in day-to-day charge of the “The Fat Cow” restaurant under Seibel’s direction and oversight.

17. As a result, restaurant operations were a disaster. On information and belief, despite being paid \$10,000 per month, Seibel’s hand-picked manager, Jerri Rose Tassan, was not complying with California wage and hour laws or other California restaurant requirements; hired workers without adequate documentation; incurred improper expenses; failed properly to train, supervise or organize the kitchen and wait staff; failed to obtain the correct kitchen equipment; failed to adopt written or legally compliant employment policies or operations manuals; and alienated the staff, with the result that the restaurant could not keep capable chefs. On information and belief, Seibel knew about and directed this illegal and reckless activity.

18. On information and belief, Jerri Rose Tassan spent inadequate time at “The Fat Cow” restaurant or in California, working instead mostly at Seibel’s Las Vegas “Serendipity” restaurant or other Seibel ventures (thus effectively using her “The Fat Cow” salary to subsidize other Seibel operations.) On information and belief, Seibel knew about and directed such activity.

19. On information and belief, Seibel personally sought reimbursements from “The Fat Cow” restaurant for undocumented and personal expenses. On information and belief, Seibel also took kick-backs from “The Fat Cow” vendors (like the water vendor) and attempted to implement fraudulent tax schemes -- for example, advocating that “The Fat Cow” avoid sales tax on its purchases of chairs, tables, and silverware by falsely claiming that it was buying those items for re-sale.

20. On information and belief, as a result of Seibel’s actions and management of “The Fat Cow” restaurant, employees and chefs quit, customers complained, reviews were poor, and

food service and wait times were substandard. In February 2013, The Grove threatened eviction over the poor food operations, and expressed concern that Ramsay was not more directly involved.

21. Individual restaurant employees filed claims before the California Labor Commissioner. On information and belief, Seibel and Jerri Rose Tassan concealed the claims, lost them, and then concealed those losses from Ramsay and GR.

22. Later, in June 2013, with the employment problems still not having been fixed by Seibel and Jerri Rose Tassan, restaurant employees filed a class action lawsuit in Los Angeles Superior Court alleging numerous violations of California's labor laws.

Efforts To Fix The Problems

23. As a result of these problems, Jerri Rose Tassan was replaced by Van Willigan. The manager change took place in Fall 2013. The restaurant paid Van Willigan the same \$10,000 per month which it had paid Seibel's manager, Ms. Tassan, but unlike Ms. Tassan and Seibel, Van Willigan spent significant time properly and knowledgeably running the restaurant. As result, operations substantially improved.

24. Seibel was nevertheless unhappy with the change, and, on information and belief, began stealing \$10,000 a month from FCLA, offering a flimsy after-the-fact (and unjustified) excuse that he had not authorized Van Willigan's hiring and so should receive a monthly amount equal to her pay.

25. Van Willigan's hiring came too late to solve the restaurant's problems. By late 2013, the restaurant had exhausted its \$1.6 million in capital and had extensive unpaid bills (for example, the restaurant owed the lawyers defending the class action lawsuit more than \$75,000).

26. In late 2013, Ramsay asked Seibel to contribute additional capital to help pay such expenses. Seibel refused. At year-end 2013, GR contributed another \$90,000 of its own funds so that FCLA could meet certain restaurant expenses, including back-due rent and attorneys' fees for the class action lawsuit. Seibel contributed nothing and refused to contribute anything.

27. At the same time, the restaurant faced other problems. Before Seibel and Ramsay formed the operating entities, one of Ramsay's companies filed a trademark application for "The Fat Cow." However, the U.S. Patent and Trademark Office ("USPTO") preliminarily refused to issue the trademark because a Miami restaurant owned a similar Spanish language mark, "Las Vacas Gordas" (the Spanish translation of "The Fat Cow"). This was no secret. The Fat Cow agreements (drafted by Seibel's lawyers) specifically recited the USPTO's preliminary rejection of the registration, and noted that the parties would try to convince the USPTO to change its mind but there were no guarantees. *See License Agreement, Schedule A.*

28. Beginning in April 2013, the Miami restaurant threatened to sue for trademark infringement and demanded immediate cessation of use. Seibel left Ramsay on his own to try to address the problem.

29. In late 2013, Ramsay's lawyers negotiated a temporary license allowing the restaurant to continue using "The Fat Cow" name until March 2014. Given the Miami owner's ire, Ramsay's lawyers did very well to extend the use even for that long.

Closing Of The Restaurant.

30. With all these problems, restaurant operations became untenable and commercially unsustainable. The restaurant was insolvent; there was no money to meet ongoing obligations.

31. Seibel refused to provide more funding.

32. The restaurant in any event could not operate under the existing name. The Lease required landlord permission to change the name, which on information and belief, the landlord would not have given under the circumstances. Changing the name would also have required a substantial additional investment that Seibel was unwilling to make. Seibel did not offer or propose any plan to fund the continuing operation of the restaurant. Instead, Seibel demanded that the restaurant continue to operate (while never explaining who would pay for that or how it could occur). Ramsay did not want to continue operating the restaurant. Seibel could not unilaterally demand that the restaurant continue operating, and in any event the restaurant could not in fact continue to operate. Because the restaurant had to close, Ramsay took steps to limit further liability by complying with the WARN Act, and otherwise efficiently terminating restaurant operations.

33. The WARN Act notice was particularly important, since if the restaurant had closed without such notice, the principals could have been liable.

34. Seibel not only failed to provide any plan for continuing restaurant operations, he impeded every effort to streamline its necessary closure or to address the problems he had created and which made that closure necessary. For example, Ramsay organized a settlement conference for the employee class action suit, which made serious allegations creating a substantial risk of liability. Seibel promised to appear. Ramsay's representatives flew from London to Los Angeles to attend the conference, but Seibel was a no show. Seibel continued to refuse funding any defense or settlement of the case.

35. Seibel also tried to impede the essential WARN Act notice, even threatening personal liability to Van Willigan for sending the notice.

36. Seibel also refused, despite Ramsay's request, to declare bankruptcy for FCLA or The Fat Cow, LLC, and Ramsay could not declare bankruptcy without Seibel's cooperation. On information and belief, that the failure to declare bankruptcy exacerbated the losses.

The Potential New Restaurant.

37. Although Ramsay had no particular interest in operating a new restaurant at The Grove, he was properly concerned about the 10-year, about \$600,000 annual lease. GFM was willing to have a Ramsay-operated and owned restaurant on the premises. (Indeed, the existing lease expressly required Ramsay's personal involvement in the restaurant).

38. Ramsay told Seibel that he was going to try negotiating a lease for a new Ramsay-only restaurant in the same space, to mitigate liability under the lease.

39. Seibel knew the landlord would not agree to a lease involving Seibel, and that a new lease with Ramsay was the only option. Seibel nevertheless not only objected to any new Ramsay lease, but filed these proceedings falsely and outrageously claiming that Ramsay's negotiations (fully disclosed to Seibel) were a "secret" attempt to steal the old lease. Because of Seibel's objections, Ramsay abandoned the idea of a new lease. So did GFM, who counterclaimants are informed and believe was afraid that any new lease negotiations would enmesh it in this litigation. Instead, GFM has separately sued Ramsay seeking past and future unpaid rent.

**FIRST CAUSE OF ACTION FOR BREACH OF
FIDUCIARY DUTY**

[By GR derivatively on behalf of FCLA and The Fat Cow, LLC Against Seibel]

40. Counterclaimants incorporate by reference each allegation above.

41. Counterclaimant GR, as a member of The Fat Cow, LLC, brings these claims derivatively on behalf of nominal counterdefendant The Fat Cow, LLC. Demand that The Fat

Cow LLC bring these claims directly is futile and excused because these claims seek recovery from Rowen Seibel who is one of two managers of The Fat Cow, LLC and who in that capacity can arguably preclude The Fat Cow, LLC from bringing these claims directly.

42. Counterclaimant GR, as both a limited partner in FCLA, and derivatively on behalf of The Fat Cow, LLC as a general partner in FCLA, brings these claims derivatively on behalf of nominal defendant FCLA. Demand that The Fat Cow, LLC bring these claims directly is futile and excused because these claims seek recovery from Rowen Seibel, because FCLA is managed by The Fat Cow, LLC, and because Seibel is a manager of The Fat Cow, LLC and so can arguably preclude FCLA from bringing these claims directly.

43. Counterclaimants deny that the managers of The Fat Cow, LLC owe fiduciary duties. Counterclaimants also contend that none of the breaches of fiduciary duty alleged in the amended complaint or in these counterclaims constitute direct harm to The Fat Cow, LLC as opposed to direct harm to FCLA. Therefore counterclaimants believe that The Fat Cow, LLC cannot itself recover for any such harm other than to the extent it sues derivatively, as general partner of FCLA and on behalf of FCLA. However, without waiving these positions, these counterclaims are asserted on behalf of The Fat Cow, LLC to the extent The Fat Cow, LLC managers like Seibel are determined to have fiduciary duties to The Fat Cow, LLC and to the extent any of the alleged harms is deemed to be to The Fat Cow, LLC rather than FCLA.

44. Seibel owed fiduciary duties to FCLA by virtue of the fact that he assumed managerial responsibility for its business and restaurant operations.

45. Subject to Paragraph 43 above, counterclaimants are informed and believe that Seibel breached any fiduciary duties he owed to The Fat Cow, LLC as its manager and his

fiduciary duties to FCLA assumed as result of controlling and managing its affairs, through the among others the following acts and conduct:

- A. Embezzling and converting more than \$80,000 in FCLA monies, knowing that such monies belonged to FCLA, knowing that he had no entitlement to such monies, and intending to use and using such monies for his own personal purposes.
- B. Obtaining kickbacks and other personal payments from FCLA vendors, including the water vendor, knowing that such payments belonged to FCLA, knowing that he had no entitlement to such payments, and intending to use and using such kickbacks and payments for his own personal purposes.
- C. Submitting for reimbursement and obtaining from FCLA reimbursements for expenses that were not and/or were not properly documented to be legitimate “The Fat Cow” expenses, knowing that he was not entitled to such reimbursements.
- D. Hiring and retaining his hand-picked manager Jerri Rose Tassan for “The Fat Cow” restaurant knowing that she was not competent to operate “The Fat Cow” restaurant, knowing that she was violating California law in such operations, and knowing she was operating “The Fat Cow” restaurant in a substandard fashion that would result in operational losses and liabilities, but doing so notwithstanding such knowledge because among other reasons Seibel intended: (i) to use “The Fat Cow” restaurant funds to pay the manager for performing services for the benefit of other Seibel

enterprises; and (ii) to use “The Fat Cow” restaurant operations to obtain other improper and personal benefits of the kind described above.

- E. Intentionally and knowingly concealing the operational deficiencies and liabilities incurred at “The Fat Cow” restaurant, including concealing that employees had asserted and won administrative actions obtaining recompense for what California labor authorities determined to be improper employment practices.
- F. Willfully failing and refusing to declare bankruptcy of “The Fat Cow” restaurant, knowing and intending that under the circumstances the restaurant could not continue to operate and that they delay in taking such steps would cause additional losses.
- G. Willfully refusing and disrupting efforts by Ramsay to mitigate losses at the “The Fat Cow” restaurant and to efficiently terminate its operations.

46. As a direct and proximate result of these fiduciary breaches, The Fat Cow, LLC and FCLA have incurred losses subject to proof at trial, but not less than \$1 million, including but not limited to: (a) amounts paid to defend and settle the employee class action; (b) amounts incurred to defend and/or resolve claims by “The Fat Cow” vendors and creditors; and (c) losses incurred (but which would not have been incurred) at “The Fat Cow” restaurant but for Seibel’s misconduct; and (d) expenses, kickbacks, embezzlements and other amounts improperly taken by Seibel.

47. By reason of the foregoing, punitive damages are warranted to punish Seibel for conduct that exhibits a high degree of moral culpability and manifests a willful, wanton or reckless disregard for the rights of others.

SECOND CAUSE OF ACTION FOR BREACH OF CONTRACT
[By GR and Ramsay individually against Seibel]

48. Counterclaimants incorporate by reference each allegation above.

49. Seibel and GR are parties to The Fat Cow, LLC Agreement. Counterclaimants deny that Ramsay is a party to The Fat Cow, LLC Agreement; however, the Court has ruled otherwise. Without waiving his position that he is not a party to The Fat Cow, LLC Agreement, Ramsay asserts this claim individually and in addition to GR, to the extent that he is deemed a party to The Fat Cow, LLC Agreement.

50. Counterclaimants deny that any party to The Fat Cow, LLC agreement can be liable for not making unanimous decisions, since no party can be forced to agree with the other. However, without waiving that position, GR and Ramsay assert these claims to the extent the Court determines otherwise.

51. Subject to Paragraphs 49 and 50 above, counterclaimants are informed and believe that Seibel has materially breached the provision of The Fat Cow, LLC Agreement requiring that “all decisions of the Managers shall be made upon unanimous consent of the Managers” by deciding unilaterally, and without consent from GR or Seibel, and engaging in conduct without consent from GR or Seibel, to among other things:

- A. Obtain kickbacks and other personal payments from “The Fat Cow” restaurant vendors.
- B. Obtain personal reimbursements for expenses that were not legitimate “The Fat Cow” expenses.

- C. Direct and approve activities at “The Fat Cow” restaurant that violated California law, alienated customers, employees, and the landlord, and resulted in substandard operations.
 - D. Conceal the operational deficiencies and liabilities incurred at “The Fat Cow” restaurant, including that employees had asserted and won administrative actions obtaining recompense for what California labor authorities determined to be improper employment practices.
 - E. Prevent bankruptcy of “The Fat Cow” restaurant.
 - F. Prevent reasonable efforts to mitigate losses at the “The Fat Cow” restaurant and efficiently terminate its operations.
 - G. Make and insist that “The Fat Cow” restaurant continue operating.
52. GR and Ramsay performed all obligations on their part under The Fat Cow, LLC Agreement.
53. As a direct and proximate result of Seibel’s breaches of the Fat Cow, LLC Agreement, counterclaimants incurred losses according to proof at trial but in an amount not less than \$1 million.

THIRD CAUSE OF ACTION FOR INDEMNIFICATION
[By Ramsay individually against Seibel]

54. Counterclaimants incorporate by reference each allegation above.
55. Under the terms of the Indemnification Agreement entered into by Seibel in or about October 2012, Ramsay is entitled to contractual indemnification from Seibel for any loss, liability, or damage (including but not limited to counsel fees and costs) resulting from Ramsay having entered into the Lease at The Grove.

56. Ramsay has performed all terms and conditions to be performed on his part under the Indemnification Agreement, except as such performance has been excused by the acts or omissions of Seibel.

57. On or about February 19, 2014, Ramsay, through one of his entities, paid GFM, LLC Fifty-Two Thousand Two Hundred Twenty Dollars and Fifty Cents (\$52,220.50) that was past due for rent and other charges under the Lease.

58. On or about June 12, 2014, Ramsay, through one of his entities, paid GFM, LLC Two Hundred Thirty Thousand Six Hundred Twenty-Three Dollars and Eighty-Three Cents (\$230,623.83) that was past due for rent and other charges under the Lease.

59. On or about August 7, 2014, GFM, LLC brought an action against Ramsay based on a breach of the Lease. Ramsay incurred One Hundred Seventy-One Thousand One Hundred Fifty Dollars and Nineteen Cents (\$171,150.19) in legal fees and costs arising from that lawsuit.

60. On or about November 4, 2015, Ramsay settled the lawsuit with GFM, LLC for Eight Hundred Thousand Dollars (\$800,000.00).

61. Ramsay has repeatedly requested that Seibel indemnify him for the amounts specified above. Seibel has materially breached the Indemnification Agreement by failing and refusing to provide such indemnification.

62. As a result of Seibel's material breaches of the Indemnification Agreement, Ramsay is entitled to an order indemnifying him for one-half of the rent and other charges paid by Ramsay under the Lease, one-half of legal fees and costs incurred by Ramsay in defending the action brought by GFM, LLC, and one-half of the amount paid to settle the action with GFM, LLC.

WHEREFORE, counterclaimants respectfully demand judgment against Seibel as

follows:

- A. On the First Cause of Action, compensatory and punitive damages, in an amount to be determined at trial, but not less than \$1 million;
- B. On the Second Cause of Action, compensatory damages, in an amount to be determined at trial, but not less than \$1 million;
- C. On the Third Cause of Action, compensatory damages for indemnification from Seibel for liability and damages resulting from Ramsay having entered into the Lease at The Grove, in an amount to be determined at trial, but not less than one-half of \$1,253,994.52;
- D. Award counterclaimants attorneys' fees, costs and disbursements, and prejudgment interest; and
- E. Grant counterclaimants such other and further relief as this Court may deem just, equitable and proper.

DATED: New York, New York

March 21, 2019

Respectfully submitted,

MITCHELL SILBERBERG & KNUPP LLP

By: 

Paul D. Montclare (pdm@msk.com)
437 Madison Avenue, 25th Floor
New York, New York 10022
Telephone: (212) 509-3900
Facsimile: (212) 509-7239

Kevin E. Gaut (keg@msk.com)
(admitted pro hac vice)
11377 West Olympic Blvd.
Los Angeles, California 90064-1683
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

Attorneys for
Defendants and Counterclaimants Gordon
Ramsay and G.R. US Licensing, LP