SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

JOHN KATSIKOUMBAS, STEFANOS KATSIKOUMBAS AND MARIA KATSOUGRAKIS,

Plaintiffs,

-against-

CHRISTINA KATSIKOUMBAS AND EPIROS, LLC,

Defendants.

Index No.: 805347/2022E

VERIFIED ANSWER WITH COUNTERCLAIMS

C O U N S E L O R S :

Defendants **CHRISTINA KATSIKOUMBAS** ("Katsikoumbas") and **EPIROS, LLC** (hereinafter "Epiros") (hereinafter collectively "Defendants") by its attorneys, **PASCHALIDIS LAW OFFICES LLC**, answering the Complaint of plaintiffs **JOHN KATSIKOUMBAS, STEFANOS KATSIKOUMBAS** and **MARIA KATSOUGRAKIS** (hereinafter collectively "Plaintiffs" and "Minority Party"), herein upon information and belief:

1. Denies each and every allegation as well as Plaintiffs' alleged interpretation of the agreement referenced in the paragraph of the Complaint numbered "1."

2. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Complaint numbered "2," except admits that John Katskikoumbas is a member of defendant Epiros, LLC.

3. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Complaint numbered "3," except admits that Stefanos Katskikoumbas is a member of defendant Epiros, LLC.

4. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Complaint numbered "4," except admits

that Maria Katsougrakis is a member of defendant Epiros, LLC.

5. Admits each and every allegation contained in the paragraph of the Verified Complaint numbered "5."

6. Admits each and every allegation contained in the paragraph of the Verified Complaint numbered "6."

7. Admits each and every allegation contained in the paragraph of the Verified Complaint numbered "7."

8. Admits each and every allegation contained in the paragraph of the Verified Complaint numbered "8."

9. Admits each and every allegation contained in the paragraph of the Verified Complaint numbered "9."

10. Denies each and every allegation contained in the paragraph of the Complaint numbered "10."

11. Admits each and every allegation contained in the paragraph of the Verified Complaint numbered "11."

12. Denies each and every allegation contained in the paragraph of the Complaint numbered "12."

13. Admits each and every allegation contained in the paragraph of the Verified Complaint numbered "13."

14. Admits each and every allegation contained in the paragraph of the Verified Complaint numbered "14."

15. Admits each and every allegation contained in the paragraph of the Verified Complaint numbered "15."

16. Denies each and every allegation contained in the paragraph of the Complaint

numbered "16" and respectfully refers the Court to the Member Agreement for a judicial determination as to its true content and meaning.

17. Denies each and every allegation contained in the paragraph of the Complaint numbered "17," and respectfully refers the Court to the Member Agreement for a judicial determination as to its true content and meaning..

18. Denies each and every allegation contained in the paragraph of the Complaint numbered "18" and respectfully refers the Court to the Member Agreement for a judicial determination as to its true content and meaning.

19. Denies each and every allegation contained in the paragraph of the Complaint numbered "19" and respectfully refers the Court to the Member Agreement for a judicial determination as to its true content and meaning.

20. Denies each and every allegation contained in the paragraph of the Complaint numbered "20."

21. Denies every allegation contained in the paragraph of the Complaint numbered "21."

22. Denies every allegation contained in the paragraph of the Complaint numbered "22."

23. Denies each and every allegation contained in the paragraph of the Complaint numbered "23," and respectfully refers the Court to the Member Agreement for a judicial determination as to its true content and meaning.

24. Admits paragraph of the Verified Complaint numbered "24."

25. Denies each and every allegation contained in the paragraph of the Complaint numbered "25" and respectfully refers the Court to the Member Agreement for a judicial determination as to its true content and meaning.

26. Denies each and every allegation contained in the paragraph of the Complaint numbered "26 " and respectfully refers the Court to the Member Agreement for a judicial determination as to its true content and meaning.

27. Denies each and every allegation contained in the paragraph of the Complaint numbered "27," and respectfully refers the Court to the Member Agreement for a judicial determination as to its true content and meaning.

28. Denies the allegation contained in paragraph of the Complaint numbered "28."

29. Denies each and every allegation contained in the paragraph of the Complaint numbered "29" and respectfully refers the Court to the Member Agreement for a judicial determination as to its true content and meaning as well as the Minority Party's abuse of the clear language of the Member Agreement.

30. Denies each and every allegation contained in the paragraph of the Complaint numbered "30."

31. Denies each and every allegation contained in the paragraph of the Complaint numbered "31."

32. Admits each and every allegation contained in the paragraph of the Verified Complaint numbered "32."

33. Admits each and every allegation contained in the paragraph of the Verified Complaint numbered "33."

34. Admits each and every allegation contained in the paragraph of the Verified Complaint numbered "34" and respectfully refers the Court to the Member Agreement for a judicial determination as to its true content and meaning.

35. Denies each and every allegation contained in the paragraph of the Complaint numbered "35."

36. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Complaint numbered "36."

AS TO THE PLAINTIFF'S FIRST CAUSE OF ACTION

37. The Defendant repeats, reiterates and realleges the answers to paragraphs "1" through "36" of the Complaint inclusive, as if fully set forth herein in response to paragraph "37."

38. Denies each and every allegation contained in the paragraph of the Complaint numbered "38," except admits that the Minority Party cannot force the sale of the Building under the Member Agreement.

39. Denies each and every allegation contained in the paragraph of the Complaint numbered "39."

40. Denies each and every allegation contained in the paragraph of the Complaint numbered "40."

41. Denies each and every allegation contained in the paragraph of the Complaint numbered "41."

AS TO THE PLAINTIFF'S SECOND CAUSE OF ACTION

42. The Defendant repeats, reiterates and realleges the answers to paragraphs "1" through "41" of the Complaint inclusive, as if fully set forth herein in response to paragraph "42."

43. Denies each and every allegation contained in the paragraphs of the Complaint numbered "43."

44. Denies each and every allegation contained in the paragraph of the Complaint numbered "44."

45. Denies each and every allegation contained in the paragraph of the Complaint numbered "45."

46. Denies each and every allegation contained in the paragraph of the Complaint numbered "46."

47. Denies each and every allegation contained in the paragraph of the Complaint numbered "47."

48. Denies each and every allegation contained in the paragraph of the Complaint numbered "48."

49. Denies each and every allegation contained in the paragraph of the Complaint numbered "49."

AS TO THE PLAINTIFF'S THIRD CAUSE OF ACTION

50. The Defendant repeats, reiterates and realleges the answers to paragraphs "1" through "49" of the Complaint inclusive, as if fully set forth herein in response to paragraph numbered "50".

51. Denies each and every allegation contained in the paragraphs of the Complaint numbered "51."

52. Denies each and every allegation contained in the paragraphs of the Complaint numbered "52."

AS TO THE PRAYER FOR RELIEF

53. The Defendant denies all allegations and claims for relief stated in Plaintiff's "WHEREFORE" clause of the Complaint.

AFFIRMATIVE DEFENSES

54. Without assuming the burden of proof as to any of the following defenses or objections where the law does not impose such a burden on Defendant, Defendant asserts the

following defenses:

AND FOR A FIRST AFFIRMATIVE DEFENSE

55. That Plaintiff has failed to state a cause of action.

AND FOR A SECOND AFFIRMATIVE DEFENSE

56. That the Complaint fails to set forth facts sufficient to constitute a cause and/or causes of action upon which relief may be granted insofar as this Defendant is concerned.

AND FOR A THIRD AFFIRMATIVE DEFENSE

57. That Plaintiffs are improperly and frivolously attempting to dissolve the company absent express authority and in violation of *In re 1545 Ocean Avenue, L.L.C.* 72 A.D.3d 121, (2d Dep't 2010).

AND FOR A FOURTH AFFIRMATIVE DEFENSE

58. The case must be dismissed under the doctrine of Laches, as the Plaintiff failed to take legal action within a reasonable time after the alleged claims arose.

AND FOR A FIFTH AFFIRMATIVE DEFENSE

59. Plaintiff possessed unclean hands and is thus barred from recovery.

AND FOR A SIXTH AFFIRMATIVE DEFENSE

60. That the Plaintiff has failed to legally mitigate and/or reduce damages and losses, if any, as alleged in the Complaint.

AND FOR A SEVENTH AFFIRMATIVE DEFENSE

61. That the culpable conduct of the Plaintiff brought about the alleged damages and injuries which Plaintiff claims without any culpable conduct on the part of the Defendant.

AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

62. That upon information and belief, the Plaintiff's damages, if any, were caused or contributed to, in whole or in part, by the intervening and superseding causative factors and therefore the claims of the Plaintiff against this Defendant should be barred.

AND FOR A NINTH AFFIRMATIVE DEFENSE

63. The claims alleged herein are barred in whole or in part by the Plaintiff's own negligence and conduct.

AND FOR A TENTH AFFIRMATIVE DEFENSE

64. All actions taken by Defendant with respect to any matters alleged in the Complaint were taken in good faith.

AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

65. Plaintiff's claims must be barred as the plaintiff has not suffered any damages as a result of defendant.

AND FOR A TWELFTH AFFIRMATIVE DEFENSE

66. Defendants intend to rely upon any other and additional defense that is now or may become available or appear during, or as the result of, the discovery proceedings in this action or any developments in constitutional, statutory, administrative, regulatory, or decisional law, and hereby reserves its right to amend its Answer to assert such a defense.

AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

67. The Plaintiff's Summons and Complaint must be dismissed since the expiration of the statute of limitations precludes bringing this action.

AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

68. This answering Defendant alleges that the injuries and/or damages of the plaintiff was caused in whole or in part by the culpable conduct, contributory negligence and/or assumption of risk of plaintiff and plaintiff's claims are therefore barred or diminished to the

extent that such culpable conduct, contributory negligence and/or assumption of risk contributed to the occurrence and the injuries and/or damages claimed therefrom.

AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

69. In the event any settlement, discontinuance, release or agreement not to sue or not to enforce a judgment has been given or may hereafter be given to a person or entity liable or claimed to be liable, this answering defendant shall be entitled to a set off and reduction of any recovery against her pursuant to the provisions of General Obligations Law § 15-108.

AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

70. The alleged acts or omissions of this Defendant was not in the proximate cause of any injuries or damages incurred by plaintiff. Any injuries or damages incurred by plaintiff was the result of its own actions or omissions, the actions or omissions of others and/or the superseding intervention of causes outside the control of this Defendant.

AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

71. The allegations of the Complaint confuse the members derivative and individual rights and must be dismissed. *Abrams v. Donati,* 66 N.Y.2d 951, 953 (1985); *Kramer v. Meridian Capital Group, LLC,* 201 A.D.3d 909 (2d Dep't 2022).

COUNTERCLAIMS
AS AGAINST JOHN KATSIKOUMBAS, STEFANOS KATSIKOUMBAS AND MARIA KATSOUGRAKIS BY CHRISTINA KATSIKOUMBAS ON BEHALF OF EPIROS LLC

72. Without assuming the burden of proof as to any of the following counterclaims where the law does not impose such a burden, Defendant, Christina Katsikoumbas as a member of Epiros, LLC, derivatively asserts the foregoing Counterclaims against Plaintiff/Counterclaim Defendants JOHN KATSIKOUMBAS, STEFANOS KATSIKOUMBAS and MARIA KATSOUGRAKIS (hereinafter collectively "Plaintiff/Counterclaim Defendants" and "Minority Party"), and alleges upon information and belief:

COMMON FACTS

73. Defendant EPIROS, LLC ("Epiros" or "LLC") is a limited liability company organized and existing under the laws of the State of New York with its principal office located in County of Bronx and State of New York.

74. Defendant/Counterclaimant CHRISTINA KATSIKOUMBAS ("Christina") is the majority-owning member of Epiros, LLC and resident of New York with an address of 2711 Henry Hudson Pkwy, Apt 4F, Bronx, New York 10463.

75. Plaintiff/Counterclaim Defendant JOHN KATSIKOUMBAS ("John") is a member of defendant Epiros, LLC and resident of New York with an address of 14 Cedar Place, Rye, New York 10580.

76. Plaintiff/Counterclaim Defendant STEFANOS KATSIKOUMBAS ("Stefanos") is a member of defendant Epiros, LLC and resident of New York with an address of 14 Hartel Lane, Montvale, New Jersey 07645.

77. Plaintiff/Counterclaim Defendant MARIA KATSOUGRAKIS ("Maria") is a member of defendant Epiros, LLC and resident of New York with an address of 27 Desmond Avenue, Yonkers, New York 10708.

78. Plaintiffs lack standing to bring individual claims involving the LLC and the Building.

79. On or about November 13, 2006, the LLC was formed, governed by the Operating Agreement of the same date ("Operating Agreement"). A true and accurate copy of the Operating Agreement dated November 13, 2006 is attached hereto as Exhibit A.

80. On or about March 16, 2010, the ownership interest of the LLC was established through the Member Agreement of the same date ("Member Agreement"), establishing Christina as the Majority Party, retaining owning 51% interest in the LLC, and establishing the

Plaintiff/Counterclaim Defendants as the Minority Party, retaining 49% interest in the LLC. A true and accurate copy of the Member Agreement dated March 16, 2010 is attached hereto as Exhibit B.

81. In addition to being a majority member, Christina is the managing member of the LLC.

82. The same distribution of the ownership interest established by the Member Agreement, divided between the Defendant/Counterclaimant and Plaintiffs/Counterclaim Defendants as Majority Party and Minority Party respectively, persists through to this day.

83. Christina is the member owning the majority and controlling interest in Epiros and, as the managing member, she is also the individual responsible for the day-to-day operations of the LLC.

84. The sole asset of the LLC is the commercial building located at 189-193 West 231st Street, Bronx, New York 10463 (the "Building").

Restaurant Interest at Time of Member Agreement

85. At the time the Member Agreement was executed, Stefanos had the controlling interest of Dale Restaurant, Inc. ("Dale Restaurant").

86. Dale Restaurant's tenancy was governed by the lease agreement between Dale Restaurant and Epiros dated January 7, 2010. A true and accurate copy of the lease agreement for Dale Restaurant is attached hereto as Exhibit C.

87. At the time the Member Agreement was executed, Dale Restaurant was the only business at the Building that was operating as a restaurant.

88. The purpose of paragraph 3(b) of the Member Agreement that states the LLC cannot "lease a **vacant store** to a tenant **selling food**, without the written consent of 66% of its members" was to protect Stefanos as a member of the LLC and an owner of a would-be

competing business at the Building. (emphasis added).

89. However, on February 23, 2015, the Dale Restaurant was sold by Stefanos.

90. Since February 23, 2015, Stefanos has not owned an interest in any restaurant or business at the Building.

91. During its tenancy Dale Restaurant had multiple periods of arrears and was always given a deal by the LLC.

Improper Pressuring of Majority Party by Minority Party

92. The current restaurant tenant does not have any of the LLC members as interest holders.

93. As a result of the effects and closures of the Covid-19 pandemic, the current restaurant went into arrears.

94. The position of the Majority Party was to work out a deal to allow the current restaurant to recover while paying arrears.

95. The Minority Party began to threaten Christina not to work out any deals and threatened Christina that she lacked the legal authority to make such deals.

96. John voiced the majority of the threats on behalf of the Minority Party, claiming to be an attorney and claiming that his position was validated by law.

97. The Minority Party informed the Majority Party that it needed 66% to work out any deals with any tenants in arrears.

98. The Minority Party's position on these issues is entirely incorrect and unsupported by the Member Agreement and the law.

99. The Majority Party sought to clarify the rights of the parties under the Member Agreement and the law and decided to call a meeting of members.

100. On June 15, 2021, a Notice of Meeting of Members was sent to all members of

Epiros, putting all of the member of Epiros on notice of the upcoming meeting of the LLC. A true and accurate copy of the Notice of Meeting of Members dated June 15, 2021, is attached hereto as Exhibit D.

101. In an effort to resolve the disputes that arose between Christina and Plaintiff/Counterclaim Defendants, a Special Meeting was held by the LLC on July 8, 2021 ("Special Meeting").

102. All of the members of the LLC attended the Special Meeting by teleconference, and both the Majority Party and Minority Party were represented.

103. John had attempted to have the meeting date moved despite the fact that remote participation was permitted.

104. John's attempts were denied as they were clearly seen as an attempt to delay.

105. Additionally, the Minority Party became inflamed by the fact that the LLC and Majority Party now had counsel and as such could not be bullied into satisfying the Minority Party's demands.

106. Present at the July 8, 2022, meeting, along with the Minority Party, were two attorneys from Phillips Lytle LLP, current counsel for the Minority Party ("Phillips Lytle").

107. The Minority Party, via John Katsikoumbas, claimed to have authority to control every aspect of anything having to do with any lease the LLC had and claimed that all actions or decisions required 66% approval.

108. Additionally, during this meeting John Katsikoumbas claimed that the Minority Party was entitled to the "maximum profit" from every tenant and did not have to settle for less.

109. The Minority Party refused to then follow the LLC protocol in electing a Chairperson or Secretary for the meeting.

110. As a result, despite attending the teleconference, the Minority Party refused to participate in any meaningful way and began voicing complaints and personal attacks upon Christina, who is their aunt.

111. On July 29, 2021, a Notice of Decision Pursuant to New York LLC Law § 407(a) was sent to all members of Epiros, enumerating the resolutions of the LLC and putting all of the member of Epiros on notice to that effect. A true and accurate copy of the Notice of Decision dated July 29, 2021, is attached hereto as Exhibit E.

Minority Party Attempt Around *1545 Ocean Avenue*

112. Once they realized that their interference in Member Meetings could not prevent the Majority Party from continued operations, the Minority Party began looking for another method to deadlock the LLC with the goal of dissolving it.

113. From the date of the Notice of the Meeting of Members and thereafter, it was made clear to the Minority Party and its counsel that the LLC was represented by counsel.

114. From the date of the Notice of Meeting of Members and the presence of counsel for the Minority Party, it was also made clear that the Minority Party were represented by counsel.

115. It was also made clear to the Minority Party and its counsel that the LLC's interests and daily operations were being conducted by Christina, the majority and managing member.

116. The Majority Party respected that the Minority Party was represented by counsel despite the claims by John Kastsikoumbas that he was an attorney and his statements purported to be under color of law.

117. In complete disregard for this notice and without prior written consent from this office, on August 2, 2021, Phillips Lytle, via Mr. Flansburg, sent a communication regarding

the position of the Minority Party after the Special Meeting to this firm and directly to Christina in violation of Rule 4.2(a). A true and accurate copy of the letter sent from Phillips Lytle date August 2, 2021 is attached hereto as Exhibit F.

118. On August 2, 2021, Phillips Lytle engaged in inappropriate and sanctionable conduct in violation of Rule 4.2(a) when they chose to engage in direct communications with Christina by sending her email and snail mail communications in reference to the position and ultimate goals of the Minority Party.

119. The intent of the letter being sent directly to Christina was meant to have the exact type of chilling effect that Rule 4.2(a) is meant to prohibit.

120. The letter did have the intended chilling effect, as the frivolous threats and misdirected case citations were meant to overcome the Minority Party's clear weakness in the face of the actual agreements and the standard of the law.

121. The position of the Minority Party at that time amounted to a frivolous and desperate attempt to read ambiguity in the Operating Agreement and the Member Agreement that contains none as to where the vote of 66% is required in the hopes that they can create a deadlock and otherwise prevent the actions of the managing member vis-à-vis the managing of the tenants who currently operating out of the Building.

122. On August 19, 2021, representing the interests of Epiros and Christina, this firm sent a letter to Phillips Lytle establishing the position of the Majority Party. A true and accurate copy of the letter sent to Phillips Lytle dated August 19, 2021 is attached hereto as Exhibit G.

123. On August 27, 2021, Phillips Lytle sent a letter in response to the letter from this firm dated August 19, 2021.

124. On September 17, 2021, again representing the interests of Epiros and Christina,

this firm again sent a letter to Phillips Lytle further establishing the position of the Majority Party. A true and accurate copy of the letter sent to Phillips Lytle dated September 17, 2021 is attached hereto as Exhibit H.

125. On January 28, 2022, Phillips Lytle sent a letter in response to the letter from this firm dated September 17, 2021.

126. On February 4, 2022, again representing the interests of Epiros and Christina, this firm again sent a letter to Phillips Lytle, rebuffing any improper attempts by the Minority Party to force restrictions and deadlines on the Majority Party. A true and accurate copy of the letter sent to Phillips Lytle dated February 4, 2022 is attached hereto as Exhibit I.

127. On April 7, 2022, this firm was notified via email by Phillips Lytle that the Minority Party filed the present lawsuit in reference to the sale of the Building.

128. Currently, the position of the Minority Party is to read ambiguity in the Operating Agreement and the Member Agreement in order to unilaterally, and in direct contravention of the rights of the Majority Party, sell the Building, the only asset of the LLC.

129. The only places where either the Operating Agreement or the Member Agreement require more than a majority vote are expressly delineated as follows:

- "The vote of two-thirds shall be required to approve the sale, exchange, lease, mortgage, pledge, or other transfer or disposition of all or substantially all of the assets of the Company." Operating Agreement III(6).
- "No construction in an amount exceeding $20,000.00, or lease can be signed unless all parties have been notified in advance and consent is given by a 66% vote of the members." Member Agreement 3(a).
- "In order to constitute a quorum for the transaction of any business of any specified item of business members with at lease 50% interest shall be required to

be present; and in order to constitute a quorum for the transaction of any business. A majority of the interest in the LLC of the members shall be required to transact any and all business, or any specified item of business of the LLC. However, notwithstanding anything herein, the LLC cannot mortgage its building, or lease a vacant store to tenant selling food, without the written consent of 66% of all the members." Member Agreement 3(b).

130. As the owner of 51% of the interest in the LLC and as the managing member of the LLC, Christina's powers are clearly delineated in the first part of 3(b) of the Member Agreement, giving her the express authority to transact any and all business or specified item of business of the LLC, including the sale of the Building.

131. The Minority Party claims and threatens that, if the Majority Party does not submit to their orders, they will have the authority to force a sale of the LLC and the Building under Section 3(b) of the Member Agreement, which states the following:

> After the expiration of the initial (8) year restriction on sale, if either the majority party (Dimitrios) or minority party (John, Stephanos, and Maria) wishes to sells its interest in the LLC, such offer to sell shall be made only to the other party. If the party to whom the offer is made does not, within 30 days,accept the offer to purchase, **and** both parties cannot agree as to who should buy the interest of the other **and** cannot agree upon a price, **then**, all parties agree to sell the building to a third party, after an appraisal is done by two independent appraisers chosen by their accountant or their lawyer at the time the decision to sell is made. If a valid bona fide offer is made by a third party which is not less than $250,000.00 than the lowest independent appraisal, then, the building either has to be sold to the third party or the party to whom the offer was first made to sell at the same terms as those offered by the third party should that party choose to purchase the building. Should the party to whom this offer is made not accept to purchase the building within 30 days from when the offer is made, and agree to close within six months, then the building will be sold to the third party. The purchasing LLC member shall have ten business days after having received the third party's offer in writing to decide in writing whether to purchase the entire interest of the LLC. With the same terms as the third party. If that party does not exercise this option, than the building must be sold to the third party. With respect to third parties, the offer to sell shall be open for 90

> days so that the best offer made during that time shall serve as the price to be paid for the building. Member Agreement 3(b).(emphasis added)

132. The use of the conjunctive word "and" makes clear that **all** conditions must be met for the forced sale and specifically requires that "both parties cannot agree as to who should buy the interest of the other."

133. Despite the best efforts of the Minority Party its letter purporting to trigger this clause improperly attempts to create confusion by simultaneously offering to purchase and sell interest.

134. However, the Majority Party has and will never offer its interest in the LLC for sale and has made the same clear to the Minority Party and their counsel on numerous occasions.

135. Despite the contentions of the Minority Party, there is no vehicle in the Member Agreement in which they can unilaterally offer to purchase the Majority Party's interest.

136. Nor can the Minority Party create the ability to trigger a forced sale of the business of the Majority Party.

137. The language of the "forced sale" of Section 3(b) of the Member Agreement is unequivocal and requires the following three conditions to occur at the same time:

A. First, that the **party to whom the offer to sell is made does not accept the offer to purchase**;

B. Second, that both **parties cannot agree as to who should buy the interest** of the other; and

C. Third, that the **parties cannot agree upon a price**.

138. It is only when all three conditions are met that the sale portion of the Member Agreement is triggered.

139. By frivolously and unilaterally attempting to force the sale of the Building,

against the intentions and interests of the Majority Party, the Minority Party is attempting to effectuate a *de facto* dissolution of Epiros to which they are not entitled due to their clear lack of authority due to their insufficient ownership interest in the LLC.

140. Under the judicial dissolution provision of New York's LLC Law, the petitioner must show it is not "reasonably practicable" to carry on the limited liability company in conformity with its operating agreement, as follows:

> On application by and for a member, the supreme court is the judicial district in which the office of the limited liability company is located may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement. A certified copy of the order of dissolution shall be filed by the applicant with the department of state within thirty days of its issuance. Ltd. Liab. Co. § 702.

141. The courts have interpreted the standard to mean that "judicial dissolution will be ordered only where the complaining member can show that the business sought be dissolved is unable to function as intended, or else that it is failing financially." *Schindler v. Niche Media Holdings, LLC*, 772 N.Y.S.2d 781, 785 (N.Y. Sup. Ct. 2003).

142. The 1545 Ocean Avenue court expressly defined carrying on the business of an LLC "not reasonably practicable" when either (1) the LLC does not meet its stated purpose; or (2) continuing the LLC is financially unfeasible. *In re 1545 Ocean Avenue, L.L.C.* 72 A.D.3d 121, (2d Dep't 2010).

143. The financial operations of the LLC are being properly managed by the Majority Party, with the LLC meeting its stated purpose of duly operating its sole asset, the Building and the LLC remaining financially feasibly.

144. Despite the attempts by the Minority Party to tailor the facts and law to their own purposes, the courts in New York have clearly held against effectuating judicial dissolution under Limited Liability Company Law § 702 in precisely these types of cases.

145. Since the Operating Agreement lacks specific withdrawal rights for the parties, the Minority Party must conform to Limited Liability Company Law § 702 with respect to any attempts for dissolution of the LLC.

146. Since the Member Agreement clearly delineates the three-part test that must be met for the sale of a party's interest in the LLC, that process is the only option that is available to the Minority Party in order to dispose their interest in Epiros.

147. Frivolous conduct is defined as such when "(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false." 22 NYCRR 130-1.1[c][1],[2]; *Mascia v. Maresco*, 39 A.D.3d 504 (2d Dep't 2007); *Greene v. Doral Conference Ctr. Assoc.*, 18 A.D.3d 429 (2d Dep't 2005).

148. There is no question that the findings would support that plaintiffs' counsel, Phillips Lytle, experienced attorneys, commenced and continued this action in bad faith, and that the action was without any reasonable basis in law or fact and could not be supported by a good faith argument for an extension, modification, or reversal of existing law. CPLR 8303–a[c][i]; [ii]; *Zysk v. Kaufman, Borgeest & Ryan, LLP*, 53 A.D.3d 482 (2d Dept. 2008).

AND FOR A FIRST COUNTERCLAIM
(Declaratory Judgment That Dissolution of the LLC Cannot Be Effectuated Unilaterally)

149. Defendants/Counterclaimants repeat and reiterate all prior responses to the above allegations as if fully set forth herein.

150. The Minority Party has attempted to force the sale of the Building, the sole asset of the LLC.

151. The forced sale of the Building by unilateral decree of the Minority Party would amount to a *de facto* dissolution of the LLC.

152. The Minority Party is not entitled to dissolve the LLC unilaterally.

153. By reason of the foregoing, the Majority Party is entitled to a judgment declaring that the Minority Party does not have a right to dissolve the LLC unilaterally.

154. The Majority Party is entitled to a judgment declaring that the provisions of the forced sale clause have not been and cannot be met without the Majority Party's willingness to dispose of its interest in the LLC.

AND FOR A SECOND COUNTERCLAIM
(Declaratory Judgment That the Majority Party Has Complete Authority to Operate all of the Affairs of the LLC)

155. Defendants/Counterclaimants repeat and reiterate all prior responses to the above allegations as if fully set forth herein.

156. As the member retaining a 51% interest in Epiros and retaining the position of Managing Member, Christina has full authority to manage the day-to-day operations of the LLC in all respects.

157. Christina has performed and continues to perform all of her duties, managing the day-to-day operations of the LLC in all respects.

158. Christina has addressed and continues to address all of the LLC's responsibilities with respect to the lease agreements and tenancies of the Building, the sole asset of the LLC.

159. By reason of the foregoing, the Majority Party is entitled to a judgment declaring that the Majority Party retains full and complete authority to operate all of the affairs of the LLC, including anything relating to tenancies and/or lease agreements of the Building.

AND FOR A THIRD COUNTERCLAIM
(Declaratory Judgment That the 66% Voting Restriction with Respect to Lease Agreements No Longer Apply)

160. Defendants/Counterclaimants repeat and reiterate all prior responses to the above allegations as if fully set forth herein.

161. Section 3(b) of the Member Agreement states that "notwithstanding anything herein, the LLC cannot mortgage its building, or lease a vacant store to tenant selling food, without the written consent of 66% of all the members." Member Agreement 3(b).

162. This 66% voting restriction contained within Section 3(b) of the Member Agreement was instituted in order to protect Stefanos and Dale Restaurant from competition with respect to leasing commercial space in the Building.

163. Ever since Stefanos sold his interest in Dale Restaurant in 2015, the 66% voting restriction contained within Section 3(b) of the Member Agreement no longer applied to any existing commercial tenancy of the Building.

164. The Minority Party is now attempting to improperly impose the 66% voting restriction contained within Section 3(b) of the Member Agreement in order to restrict and limit the ability of the Majority Party to manage the current, pre-existing commercial tenancy of the Building.

165. The 66% voting restriction contained within Section 3(b) of the Member Agreement should now be deemed inapplicable to the current circumstances, which do not involve mortgaging the Building or leasing vacant commercial space to a tenant for the purposes of selling food.

166. By reason of the foregoing, the Majority Party is entitled to a judgment declaring that the 66% voting restriction contained within Section 3(b) of the Member Agreement no longer applies for tenancies in the Building and that it only applies to new mortgages and leasing vacant commercial space to a tenant for the purposes of selling food.

AND FOR A FOURTH COUNTERCLAIM
(Declaratory Judgment That Phillips Lytle and Flansburg Be Disqualified As Counsel)

167. Defendants/Counterclaimants repeat and reiterate all prior responses to the above allegations as if fully set forth herein.

168. Mr. Flanburg of Phillips Lytle sent an unsolicited communication to Christina in violation of Rule 4.2(a).

169. Rule. 4.2 (a) states that "[i]n representing a client, a lawyer shall not communicate or cause another to communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in this matter, unless the lawyer has the prior consent of the other lawyer or is authorized to do so by law." 22 NYCRR 1200 R. 4.2(a).

170. Having intentionally violated Rule 4.2(a), Phillips Lytle and Mr. Flansburg should be disqualified as counsel in this case and they should no longer be able to represent the Minority Party.

171. There was no other reason to serve the letter on Christina individually but to attempt to terrify her with legalese and improperly secure an advantage for the Minority Party.

172. If counsel for Minority Party had any doubt as to the representation of Christina, they could have protected themselves with a simple query to the Majority Party's counsel.

173. Counsel for the Minority Party didn't bother with such a line of inquiry because they were well aware of the active status of representation for Christina.

174. By reason of the foregoing, the Majority Party is entitled to a judgment declaring that Phillips Lytle and Mr. Flansburg be disqualified as counsel in this case and that they are no longer be able to represent the Minority Party.

AND FOR A FIFTH COUNTERCLAIM
(Plaintiff/Counterclaim Defendants Be Sanctioned Under 130-1.1 for Frivolous Filings)

175. Defendants/Counterclaimants repeat and reiterate all prior responses to the above allegations as if fully set forth herein.

176. Plaintiff/Counterclaim Defendants have no right to file the Complaint in this case against Defendants/Counterclaimants.

177. As Plaintiff/Counterclaim Defendants' counsel's continued disregard for the

Uniform Rules for the Supreme Court continue, the Defendants/Counterclaimants are now forced to undertake unnecessary motion practice.

178. In each response to such frivolous attempt to intentionally misread the agreements, violate the Rules of Professional Conduct, and operate outside existing caselaw for limited liability dissolutions, the Minority Party and their counsel were put on notice of the appropriate sanctions. 22 NYCRR 130-1.1.

179. The behavior of counsel for the Minority Party is clearly in violation of 22 NYCRR 130-1.1.

180. There can be no argument that the Minority Party or their counsel were unaware of the relevant law regarding such conduct.

181. Therefore, plaintiffs and their counsel must be sanctioned pursuant to 22 NYCRR 130-1.1 for their repeated frivolous conduct and motion practice directed against Defendants/Counterclaimants, who should never have been called to defend themselves in this case, as well as being required to reimburse Defendants/Counterclaimants for all of the attorney's fees spent by him in defense of this case.

182. WHEREFORE, Defendants/Counterclaimants, demand judgment against Plaintiff/Counterclaim Defendants, for compensatory damages, consequential damages, incidental damages, pre-judgment and post-judgment interest, cost of suit, attorneys' fees, penalties, and any and all such other and further relief this Court deems just and equitable.

WHEREFORE, Answering Defendants respectfully demands judgment against the Plaintiff as follows:

a) Dismissing the Complaint against Defendants;

b) Granting Defendants a Declaratory Judgment that the provisions of the forced sale

clause of the Member Agreement have not been and cannot be met without the Majority Party's willingness to dispose of its interest in the LLC.;

c) Granting Defendants a Declaratory Judgment providing that the Majority Party retains full and complete authority to operate all of the affairs of the LLC, including anything relating to tenancies and/or lease agreements of the Building;

d) Granting Defendants a Declaratory Judgment that the 66% voting restriction contained within Section 3(b) of the Member Agreement no longer applies for tenancies in the Building and that it only applies to new mortgages and leasing vacant commercial space to a tenant for the purposes of selling food;

e) Disqualifying Mr. Flansburg and Phillips Lytle from representing Plaintiffs in this action;

f) Sanctioning Plaintiffs and their counsel for continued frivolous conduct;

g) Awarding Defendants the costs and disbursements in this action; and

h) Awarding Defendants such other and further relief as the Court deems just.

Dated: Astoria, New York
May 6, 2022

PASCHALIDIS LAW OFFICES LLC

By: /s/ Nicholas T. Petratos
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TO: Chad W. Flansburg, Esq. (via NYSCEF)
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VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF BRONX)

CHRISTINA KATSIKOUMBAS, undersigned, being duly sworn, deposes and says:

1. I am the managing member and majority member of Epiros LLC, the entity defendant in the above-referenced action and am also the individual defendant named therein. I have read the foregoing **Answer with Counterclaims** or had them translated for me and know the contents thereof and that the same is true to my own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters I believe to be true.

2. The grounds of my belief as to all matters not stated upon knowledge are based upon personal conversations, personal recollection, review of my records and correspondence related to this action that were prepared in the ordinary course.

3. The foregoing statements are true, under penalties of perjury.

By: _____
Christina Katsikoumbas

Sworn to before me this
7th day of MAY, 2022

Stephen Reich
Notary Public

STEPHEN REICH
Notary Public - State of New York
NO. 01RE6145199
Qualified in Bronx County
My Commission Expires May 1, 2026