

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

ANDREW DING,

Petitioner,

- against -

JOSHUA FRANK and NANAE MAMEUDA  
FRANK,

Respondents,

- and -

STRING & BRASS LLC,

Nominal Respondent.

Index No.: \_\_\_\_\_/2024

**VERIFIED PETITION**

Andrew Ding, petitioner (“Petitioner”), by and through his attorneys, Koutsoudakis & Iakovou Law Group, PLLC, as and for his verified petition against Joshua Frank, respondent (“Joshua”) and Nanae Mameuda Frank, respondent (“Nanae”, together with Joshua, “Respondents”) and STRING & BRASS LLC, nominal respondent (“S&B” or the “Company”), alleges as follows:

**PRELIMINARY STATEMENT**

1. This proceeding seeks the judicial dissolution of S&B pursuant to §702 of the New York Limited Liability Company Law (“LLC Law”), an order of the Court compelling Respondent to buyout Petitioner’s 50% membership interest in S&B, and awarding Petitioner damages on Petitioner’s claims against Respondent for breach of fiduciary duty, individually and derivatively on behalf of S&B, Petitioner’s demand for inspection of corporate books and records, Petitioner’s claim as against Nanae for aiding and abetting Joshua’s breach of fiduciary duty, Petitioner’s claim as against Nanae for tortious interference with contract, Petitioner’s

corporate waste claim, unjust enrichment claim, and accounting claim, and a preliminary injunction against Joshua to maintain the *status quo* until completion of Joshua’s buyout of Petitioner’s 50% interest in S&B.

**THE PARTIES**

2. Petitioner is an individual residing in New York, New York, and the co-founder of S&B.

3. Joshua is an individual residing in New York, New York, and the co-founder of S&B.

4. Nanae, Joshua’s wife, is an individual residing in New York, New York and an employee of S&B.

5. S&B is a limited liability company formed under the laws of the State of New York on May 10, 2017.

6. S&B is co-owned equally by Petitioner and Joshua.

7. S&B owns and operates the restaurant known as “The Expat” located in Manhattan at 64 Tiemann Place, New York, New York 10027.

8. Joshua implemented a calculated strategy designed to dilute Petitioner’s ownership interest, and rights as a co-founder and co-owner of S&B and its restaurant.

9. Joshua executed this methodical plan by stating his intention to adjust distributions without Petitioner’s knowledge or consent, and strip Petitioner of the equity contributions made by Petitioner into The Expat by years of dedication to its success that cannot be remedied by monetary compensation.

10. In doing so, Joshua conspired with Nanae, an employee of S&B and his wife, to engage in the freeze-out and oppression of Petitioner.

11. Joshua has engaged in malfeasance and misconduct by misappropriating assets of S&B and taking control of S&B while depriving Petitioner of the value of his membership interest in S&B, including his employment by S&B and the pay he earned at S&B.

12. Joshua has frozen-out Petitioner from S&B's business, changed authorized signors on S&B's bank accounts by removing Petitioner as a signatory, and denied Petitioner his right to return to work at The Expat after Petitioner spent two and one-half weeks in Australia to bury his grandmother.

13. Additionally, in late March 2024, Joshua exposed The Expat business to great irreparable financial risk when he removed four (4) carefully crafted "best-seller" menu items, altered the recipes to two tried and true best-selling items, and introduced at least one (6) new untested menu item.

14. Further, several employees of the Company refuse to work for Joshua due to his behavior and mismanagement of S&B. Also, Joshua unceremoniously and strategically cut the hours of a key employee, only to fire him days later.

### **JURISDICTION AND VENUE**

15. Jurisdiction over this action is based on New York's Civil Practice Law and Rules ("CPLR") §§ 301 and 302.

16. Venue is proper in the County of New York because S&B is located in and operates The Expat restaurant in this County, and a substantial part, if not all, of the acts and conduct complained of herein, giving rise to Petitioner's claims occurred or arose in this County.

17. This Court may exercise personal jurisdiction over Respondents and S&B, because at all times relevant to this proceeding, Respondents engaged in and transacted business with the Petitioner within the State and County of New York.

**FACTS COMMON TO ALL CAUSES OF ACTION****A. The Expat is Conceived**

18. In or around 2016, Petitioner and Joshua, in an effort to go into business together, started keeping their eyes open for interesting opportunities and attending a few showings to inspect empty retail store spaces.

19. In November 2016, Petitioner discovered a potential location for a new restaurant and subsequently negotiated with Columbia University, the location's landlord. The concept for "The Expat" was inspired by the eclectic and international vibe of a dive bar in the Lower East Side, aiming to capture the essence of a global expat community, which the subject location 195 Claremont Avenue did.

20. The idea for "The Expat" restaurant emerged during a brainstorming session at a favorite bar in the Lower East Side of Manhattan, the "Forgetmenot." This dive bar had a unique ambiance with random contents from the owner's parents' attic adorning the walls and ceiling, creating a welcoming, eclectic and oddly international atmosphere, which included diverse clientele such as finance professionals, backpacking tourists, trendy Brooklynites, and construction workers. Petitioner remarked to Joshua that it felt like an expat bar found in any major city, and thus, the name "The Expat" was born.

21. In or around 2018, Petitioner contacted Joshua to propose a tour of the site and tours of a few other sites as well. Joshua was initially hesitant and wary of becoming a tenant of Columbia, which Joshua believed would take advantage of them. However, Petitioner's reassurance helped alleviate Joshua's fears of doing business with a landlord like Columbia University.

22. Nonetheless, Joshua's combative and resistant tendencies manifested themselves

during the negotiation process with Columbia University, necessitating Petitioner to manage Joshua and to take the lead to become the primary point of contact.

**B. Initial Opening and Financial Contributions**

23. In January of 2019, Joshua and Nanae requested Petitioner to finance the remaining costs necessary to open the restaurant, including construction costs, renovation incidentals, equipment, fees, *etc.*

24. As a result of the foregoing, Petitioner contributed approximately \$266,000.000 in capital (which is 21% more than Joshua), and Joshua contributed approximately \$220,000 to the business of The Expat.

25. These sums have not yet been paid back to the Petitioner or Joshua.

26. Petitioner agreed to provide the financing, and, when Joshua offered additional equity to Petitioner for this additional injection of capital, Petitioner politely declined in the spirit of generosity and goodwill.

**C. June 13, 2019 Grand Opening: Kitchen & General Management Duties**

27. After laying the groundwork, Petitioner and Joshua were ready to open The Expat's doors to the public. The restaurant officially opened on June 13, 2019.

28. Petitioner's duties and responsibilities for running the business of The Expat were assigned and assumed as follows:

- Kitchen operations supervision
- Inventory management
- Accounts payable for: kitchen produce vendors / gas & electric / rent / pest control / internet /
- Menu quality control
- Supervision of monthly video & photoshoots by firm which delivered professional footage
- Ad campaign creation and management (Facebook/ Instagram)
- Online reputation management
- Customer satisfaction management

- Kitchen personnel management: training, scheduling, hiring, conflict mediation
- Creating social media posts for specials, initiatives, engagement.
- General store maintenance: Fixing / replacing broken items, coordinating repairs, painting, etc.
- Decorate seasonally: Halloween Christmas, Chinese New Year etc.
- Troubleshooting internet issues
- Troubleshooting media system issues
- Designing and updating our printed menus as needed.
- Communicate event menu requirements with Kitchen staff.
- Organize, promote, run events such as Open Mic (few times annually), Trivia (pre-pandemic)

29. Joshua's duties and responsibilities for running the business of The Expat were assigned and assumed as follows:

- Collaborate with bartender to create seasonal drinks
- Correspond & negotiate with liquor reps for sponsored events (which occur 5-6 times a year)
- Supervise liquor inventory purchases.
- Occasionally assist with repairs.
- Conduct periodic inspections in advance of DOH violation issues.
- Manage front of house HR issues involving complaints / mediation.
- Conduct reviews of COG's to look for efficiencies.
- Counting cash drops.
- Accounts payable for bar purchases

30. Joshua's and Nanae's duties and responsibilities regarding The Expat were assigned and assumed as follows:

- Running payroll (inefficiently as there are more efficient methods available)
- Front of house employee hiring and scheduling.
- Prep weekly sales report for meetings
- Pay Sales Tax
- Bookkeeping
- Manage growing event inquiries, which could be delegated to employee
- Nanae rarely came in herself.

**D. The Parties Are Deadlocked on all Daily Management Decisions**

31. Respondents have historically struggled with training employees for additional duties. As a result, Respondents abandon any efforts to train S&B's willing and able employees, opting instead to take on the tasks themselves.

32. For instance, tasks that Respondents insist on handling, such as sales tax payments and bookkeeping, are duties which should be delegated to an accountant to free up time for more specialized, executive-level work that cannot be easily delegated.

33. This is a prime example of Joshua’s mismanagement and inability to properly run S&B’s business operations.

**E. Respondent Initiates Oppressive Act Campaign and Locks-Out Petitioner**

34. On December 23, 2023, Petitioner left New York for his annual vacation to visit family in Australia.

35. Multiple days of restaurant closure due to holiday Christmas and New Years schedule renders the holidays the slowest business period of the year and therefore an ideal time for vacation. Petitioner always vacationed during this time, so as not to be away from the business during busy season.

36. Nanae chose to vacation during the summer, for a month-long vacation to Japan.

**a. January 2024 – Petitioner’s Return and Joshua’s Hostile Approach**

37. Petitioner returned to New York from vacation on January 15, 2024, at which point he continued on with his duties at the restaurant, including checking in with the kitchen, paying open invoices, and redecorating for Chinese New Year. Approximately one week after Petitioner’s return, Joshua and Nanae requested a telephonic partner meeting for Monday January 29, 2024.

38. During the January 29, 2024, telephonic meeting, Respondents expressed their desire to change the existing equity structure. They also informed Petitioner that Nanae would be made an equal owner, on the grounds that Nanae was not adequately compensated for the work she contributed to S&B during the increased seasonal workload. Consequently, Joshua and

Nanae demanded that Petitioner give 16.6% of his equity to Joshua, who would subsequently transfer one-third to Nanae, to achieve their goal of each owning one-third of S&B's equity.

39. During the telephonic meeting, Joshua and Nanae aired other grievances as well, including that they had to run payroll and monitor cooks' clock-out hours while Petitioner's was away on vacation.

40. The telephonic meeting became heated when Nanae began to demand one-third of S&B's equity. Nanae claimed that her increased seasonal workload entitled her to equity partnership. This was inappropriate. The discussion should have been one of a raise in salary, not Nanae becoming an equity partner.

41. Petitioner decided against giving controlling interest to a married couple, which inevitably would be accompanied with incompatible management styles and micromanagement stress. Petitioner determined that the only way he would agree to give up equity is if it was purchased at fair market value. Thus, Petitioner then offered to sell his 50% ownership interest in S&B to Joshua instead of transferring 16.6% ownership interest in S&B for no compensation.

42. Nanae again reiterated her demand for a one-third equity in S&B, as if she was entitled to said equity as of right, threatening to quit otherwise. When Petitioner responded to Nanae's threat by asking Joshua how he would delegate his wife's duties if in fact she had quit, Joshua refused to respond. Joshua also refused to respond to Petitioner's inquiries regarding whether Joshua had already transferred 16.6% of his interest in S&B to Nanae, as they demanded Petitioner to do.

43. To avoid further escalation, Petitioner proposed that he be given some time to consider the subject request and revert with a proposal.

44. Petitioner consulted professionals in order to obtain accurate appraisals of his



50% interest in S&B. Petitioner obtained two appraisals - \$373,728.00 and \$358,409.00 - both of which accounted for the U.S. Small Business Administration Economic Injury Disaster Loan indebtedness incurred by S&B, that remained outstanding, as well as the additional excess seed capital Petitioner contributed during construction.

45. Following the subject telephonic exchange, and subsequent events, it became clear to Petitioner that remaining as a 50-50 member in S&B with Joshua was no longer a feasible option. Joshua was antagonistic and hostile, their management styles were vastly different, and Joshua had plans to reverse the original design and concept that brought The Expat to life back in 2018.

**b. February 2024 – Petitioner’s Offer to Sell and Respondents’ Acceptance**

46. On February 5, 2024, Petitioner presented his buyout proposal to Respondents. A copy of the proposal presentation dated February 5, 2024, is annexed hereto as Exhibit A.

47. In said proposal, Petitioner requested \$358,409.00, the lower of the two valuations, in exchange for his 50% interest in S&B.

48. After thinking it over for approximately one week, on February 12, 2024, Respondents informed Petitioner by telephone and in Joshua’s written proposal that they would purchase Petitioner’s interest for \$373,728.00, the higher of the two valuations. A copy of Joshua’s counterproposal/acceptance is annexed hereto as Exhibit B.

49. Respondents offered to pay Petitioner a down-payment of \$100,000.00 in exchange for 100% of Petitioner’s ownership interest in S&B, with the balance of the purchase price to be paid by Respondents in twelve (12) equal quarterly payments over three (3) years, interest free.

50. Petitioner accepted Respondents’ offer to pay \$373,728.00 but hesitated with

respect to the payment plan. Petitioner expected that he would be paid in full, upon which he would transfer 100% of his interest in S&B.

51. On February 12, 2024, Petitioner was called back to Australia because his grandmother was placed on palliative care and was not expected to live much longer. Petitioner quickly made travel arrangements to return to Sydney on February 14, 2024 to say goodbye to his grandmother and attend to funeral arrangements. Prior to departing, Petitioner notified Joshua of the unexpected turn of events and suggested the buyout discussion be tabled until Petitioner returned to the US.

52. Joshua offered by text to temporarily handle Petitioner's duties of running the kitchen while Petitioner was away, using the word "interim." A copy of said text message is annexed hereto as Exhibit C. Petitioner then returned from Australia in early March 2024.

**c. March 2024 – Joshua's Counteroffer**

53. By email dated March 4, 2024, Petitioner extended his first counterproposal. For Petitioner, the ideal resolution was full payment upfront for the sake of simplicity and efficiency. Petitioner's lack of confidence in Joshua's ability to properly manage and steer the business to ensure its continued success rendered any unpaid portion of the purchase price subject to risk. A copy of said email counterproposal is annexed hereto as Exhibit D.

54. Petitioner's March 4, 2024, counterproposal included two (2) alternative options in the event Joshua could not buy out Petitioner with the full purchase price on closing. Petitioner, expecting that the sale of his interest was imminent, offered to transfer his weekly salary to Joshua and Nanae.

**d. March 2024 – Respondents Make Important Unilateral Decisions**

55. On or about March 5, 2024, without consulting Petitioner, Respondents began

making unilateral decisions on significant and meaningful aspects of S&B's business which are changes of such magnitude that they require the consent of both managing members.

Specifically, on March 5m 2024, Joshua cut the hours of Valentin Simon, The Expat's main chef. By the time Petitioner learned of this change, it was too late to object. Respodnents had already fired Valentin Simon, without warning and without informing Petitioner of the same.

56. Joshua replied to Petitioner's counterproposal by email dated March 5, 2024. In said email, Joshua reiterated that he agreed to pay Petitioner the higher valuation, but that he disagreed on payment terms. A copy of Joshua's March 5, 2024 email is annexed hereto as Exhibit E.

**e. March 6, 2024 – Respondents Lock Out Petitioner from Email**

57. On or about March 6, 2024, Petitioner discovered that Respondents locked Petitioner out of S&B's email system. Petitioner decided not to address it, assuming that a viable solution to purchase his equity was in sight and that Respondents were simply (albeit prematurely) taking control of more aspects of the business in anticipation of the imminent buyout.

**f. March 7, 2024 – Respondents Locks Out Petitioner from ConEd Account**

58. On or about March 7, 2024, Petitioner unexpectedly received a "push" notification on his cellular phone notifying him that The Expat ConEdison account password was changed. Again, Petitioner decided not to address it, assuming that a viable solution to purchase his equity was in sight and that Respondents were simply (albeit prematurely) taking control of more aspects of the business in anticipation of the imminent buyout.

59. Later, on March 7, 2024, Joshua emailed Petitioner that the quick closing conditions Petitioner requested were almost impossible. Joshua advised that he and Nanae were

not originally interested in purchasing Petitioner's membership interest in full when this was initiated, as he was instead looking to make Nanae a one-third equal equity partner, and therefore Petitioner's terms of charging interest, rushing the timeline, or holding membership interest in escrow didn't make sense. Petitioner offered \$100,000 for 13.4% of the business based on Petitioner's valuation. Respondents also indicated that he intended to buy out Petitioner's remaining shares in the future. A copy of said email message from Joshua is annexed hereto as Exhibit F.

60. At this point, it became clear to Petitioner that Respondents had changed their position and were no longer interested in purchasing Petitioner's equity interest in S&B.

**g. March 8, 2024 – Respondents Withdraw all funds from S&B's Chase Account without Authorization**

61. Petitioner awoke to an email from Chase Bank notifying him that two (2) automated clearinghouse (ACH) payments scheduled for payment to two (2) S&B vendors for approximately \$666 and \$1,012.86 respectively, had failed due to lack of funds. A copy of the Chase email and two (2) phone notices are annexed hereto as Exhibit G.

62. Petitioner learned that Respondents cleared out all \$103,242.03 in funds in S&B's business checking account (account no. 927671508), which caused the vendor payments to fail. A copy of the account withdrawal notice generated by Chase Bank is annexed hereto as Exhibit H. Respondents transferred all funds to a new account, without informing Petitioner or advising Petitioner of the same. (account no. 629915284). A copy of the account deposit notice generated by Chase Bank is annexed hereto as Exhibit H.

63. When confronted by Petitioner, Joshua advised he had discovered fraud on the account and therefore had no choice but to open a new account. Joshua also falsely advised that S&B's Grubhub merchant account had been hacked. Additionally, Nanae falsely explained that

she changed the business Gmail password because she received “25 emails that [they] signed up all kinds of different services.” This was false because no such email messages were received in Petitioner’s account prior to Respondents cutting-off Petitioner.

64. By email dated March 8, 2024, Petitioner explained the reasoning behind his prior offers to Joshua, answered Joshua’s queries, and then made his final offer to Joshua, which offer included the following terms:

- \$150k initial payment
- Immediate transfer of 100% equity
- 18-month quarterly repayment (despite reservations)
- Zero interest
- Personal Guarantee/Lien.

A copy of Petitioner’s email dated March 8, 2024 is annexed hereto as Exhibit I.

**h. March 12, 2024 – Respondents Unilaterally Fire No. 2 and Most Experienced Chef**

65. Without notice to or consent of Petitioner, on March 12, 2024, Respondents cut the hours of S&B’s longest standing cook, Valentin Simon, from 45 hours per week to 34 hours per week. In addition to being head chef, Valentin Simon was also the assistant manager and was the most skilled, knowledgeable and experienced cook with respect to S&B’s menu.

66. Soon thereafter, Respondents removed Valentin Simon from the schedule, unilaterally firing him without Petitioner’s consent.

67. All of Respondents’ actions with respect to Valentin Simon were without Petitioner’s consent. In fact, Respondents took these actions without first informing Petitioner, let alone obtaining Petitioner’s consent. Termination of Valentin Simon was the clearest indication of Respondents’ inability to manage S&B’s business and more importantly, confirmed that it was not practicable to carry on the business in conformity with its original design.

**i. March 15, 2024 – Respondents Rescind Offer to Purchase Membership Interest**

68. After a week's silence, Joshua advised Petitioner by email dated March 15, 2024 that he and Nanae were not moving forward with the acquisition of Petitioner's membership interest in S&B. A copy of Joshua's March 15, 2024 email is annexed hereto as Exhibit J.

**j. March 15, 2024 – ADP Freezes Payroll Account and Respondents Increase their Salaries**

69. On March 15, 2024, Petitioner learned that his login to the ADP payroll account no longer worked. Petitioner contacted ADP for assistance in restoring his access. During said phone call, the ADP agent asked why Petitioner's partner revoked his access, and after recounting the situation regarding the potential equity sale, the ADP agent advised that ADP characterizes such a situation an "ownership dispute."

70. Following said telephonic exchange with ADP, ADP advised by letter dated March 15, 2024, the following:

The correspondence . . . received from originally authorized payroll contacts . . . indicates a dispute between the apparent owners of Client and contains conflicting information about their authority to provide instructions to ADP, thereby making it impossible for ADP to perform the services. Accordingly, ADP is suspending all services pending receipt of a court order indicating what individuals at Client are authorized to provide payroll instructions to ADP, . . .

See March 15, 2024 letter from ADP, a copy of which is annexed hereto as Exhibit K.

71. At this point, Petitioner was effectively locked out. Respondents assumed total control of the business. Locked out and stripped of control, Petitioner reminded Respondents by email, of his rights as a 50% owner and that Joshua can only act if Petitioner agrees with a proposed act, including decisions concerning corporate accounts. Petitioner's email included the following points:

- Petitioner expected that his access be restored in the interest of operational transparency.
- Despite having stepped away from day-to-day duties (also concluding that Respondents

did not want him to return because Respondents locked him out of everything), Petitioner expected to be consulted on all operational and financial matters.

- As a 50% owner, Petitioner was still entitled to distributions, including cash.
- The transfer of \$400 of Petitioner's weekly salary could temporarily stay in place, but any future changes required mutual agreement.<sup>1</sup>

A copy of said email dated March 15, 2024, is annexed hereto as Exhibit L.

72. To spin the narrative, Joshua's attorney falsely accused Petitioner of freezing out Respondents from the ADP payroll system, which was clearly untruthful as ADP's letter clearly provided that the freeze was a step ADP routinely undertook after determining that an ownership dispute existed within a given company. ADP determined that the dispute between Petitioner and Joshua made it impossible for ADP to perform its services and therefore suspended services pending receipt of a court order clarifying the dispute.

73. Further, ADP required a letter from Petitioner and Joshua that neither of them would lock the other out of the account again, and that the ownership dispute was resolved. ADP advised that restoration of access from any subsequent lockouts would require a court order.

74. Joshua then advised, by and through his attorney, that he was planning to unilaterally adjust his salary upwards and retroactively to "market rate", ignoring the fact that he and Petitioner agreed upon said salary for each of them at the inception of the business. Joshua's attorney's letter also provided that he planned to adjust the capital accounts in his favor. The letter provided:

While you will continue to receive half of the distributions provided to members, we do not believe that accurately reflects the current balance of capital accounts, which need to be adjusted to take into effect Mr. Frank's below-market labor and management services provided to The Expat from its inception until such time as Mr. Frank's salary is adjusted to the market rate. Accordingly, we reserve the right to retroactively adjust the capital accounts,

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<sup>1</sup> Petitioner voluntarily gave up a portion of his salary in his response to Respondent's purchase terms on March 4, 2024 in a showing of good faith during negotiations.

although we're not doing so at the moment. Mr. Frank will also continue to operate The Expat in the best interest of the LLC, including by adjusting his salary and Ms. Mameuda-Frank's salary to a market rate, thereby making the continued operation of The Expat viable.

A copy of the letter is annexed hereto as Exhibit M.

75. Joshua has engaged an attorney to assert self-serving allegations of duty breaches, though it is Joshua who has breached his duties and obligations to Petitioner. Joshua exploited Petitioner's year-end vacation and bereavement leave, and purported buyout discussions, of which he clearly had no interest, using the same as an opportunity to freeze Petitioner out of the business.

76. One of Joshua's greatest misrepresentations was the allegation that Petitioner is a "non-operating member of the LLC" when in fact Petitioner has been hands-on since inception and until Joshua froze him out.

**k. March 19-20, 2024 –Respondents Make Unauthorized and Damaging Menu Changes**

77. Without consulting Petitioner who had created the restaurant's menu items from inception of the business, and without Petitioner's consent, on or about March 19, 2024 Respondents announced their large-scale menu update launching on March 21, 2024. A copy of this March 19, 2024 announcement is annexed hereto as Exhibit N.

78. By email dated March 20, 2024, Petitioner advised Respondents of Petitioner's formal objection to the planned the menu changes, reminding them that the food menu and kitchen operations had always been under Petitioner's purview of duties, and that the changes threatened to damage the restaurant's brand, reputation, and business. A copy of Petitioner's March 20, 2024 message is annexed hereto as Exhibit O.

79. By March 20, 2024 email, Respondents replied, misguidedly asserting his right to



make such menu changes without first obtaining Petitioner's approval, and wrongly justifying his unilateral decision-making with Petitioner's inability to be involved due to his freeze-out. A copy of Respondents' March 20, 2024 email is annexed hereto as Exhibit P.

80. By email dated March 20, 2024, Petitioner advised Respondents that Petitioner asserted all his rights to have input in management, and that Petitioner would resume his duties so that the business could return to its pre-vacation *status quo*. Petitioner also reiterated his demand for restored access to all admirative accounts of S&B. A copy of Petitioner's email dated March 20, 2024 is annexed hereto as Exhibit Q.

81. Respondents replied by email dated March 20, 2024, blocking Petitioner's demand to return to the business of S&B saying they didn't require Petitioner's help, and that Respondents had managed just fine without Petitioner since December 2023. But Respondents advised that Petitioner could return to water the plants and post on Instagram and reiterated that his menu changes would proceed. Also, Respondents ignored Petitioner's request to restore Petitioner's access to administrative accounts. A copy of said March 20, 2024 email is annexed hereto as Exhibit R.

**m. March 21, 2024 –Respondents Reject Petitioner's Demand to Return to the Business and Advance Menu Changes**

82. By email dated March 21, 2024, Petitioner voiced his strong objection to the menu changes and advised that should Respondents proceed with said menu changes, Petitioner would be forced to instruct the kitchen staff to reject Respondents' directives, which was a step Petitioner was reluctant to take because it would cause turmoil for S&B's employees.

83. In the same email, Petitioner also reiterated his demand for access to administrative accounts, including the new checking account Respondents opened under the guise of fraudulent banking activity. A copy of said email is annexed hereto as Exhibit S.

84. By email dated March 21, 2024, Respondents ignored Petitioner's demand to maintain the menu, advising that the changes align with the restaurant's goals and customer focus. Respondents also advised that they would revisit the buyout issue provided that Petitioner accepted their terms. Respondents once again ignored Petitioner's request for access to the checking account illustrating that his true intention was to preclude any such access. A copy of said March 21, 2024 email is annexed hereto as Exhibit T.

85. The following is an itemized list of changes to S&B's menu made by Respondents:

- Changed the recipe of "Chicken Sando" that was one of S&B's top sellers second only to S&B's signature wings. The new recipe is untested.
- Removed the entire "nacho" section of the menu, which was a high performer.
- Changed the recipe of "Char Siu pork noodles" which was a top performer to using ramen noodles instead of rice noodles. - The new recipe is untested and is in direct conflict with S&B's original mission to not be an 'Asian Fusion' restaurant.
- Removed "Thai Chicken Noodle Soup" that was a customer favorite and top seller.
- Changed yellow curry to red curry. Yellow curry has been a top seller as well as a menu item since opening. Red curry is untested, and disregards the that yellow curry is a far more ubiquitous.
- Due to the removal of yellow curry, Joshua now adapted S&B's Roti appetizer (which is a flaky pancake traditionally served with a side of yellow curry for dipping) to be served with red curry. A seemingly small adjustment but to any educated food enthusiast reads "Asian Fusion."
- Removed a customer favorite salad dressing that had multiple uses across the menu.
- Replaced S&B's top-selling premium burger with a new, untested 'Smash Burger,' which also risks damaging the established perception that we are a gastropub known for serious food, as opposed to a lower-tier casual spot.
- Also removed 5 Spice pulled pork which was used in both lunch specials as well as in the nachos.
- Other additions: Tom Yum Fried Rice / Bo Luc Beef Cubes / Shrimp Satay / Fish & Chips

86. Regardless of Respondents' stated or actual objectives, such drastic, swift, and untested adjustments to the menu are reckless. A copy of the tested, successful, pre-dispute menu is annexed hereto as Exhibit U. A copy of the menu which Joshua is unauthorized to adopt but is

promulgating over Petitioner's objections is annexed hereto as Exhibit V.

87. It is clear that Respondents lack a nuanced understanding of the brand's fragility and image, which Petitioner has carefully nurtured over the last five (5) years. S&B's image appealed to customers from a broad cross-section of the local community, ranging from octogenarian long-time residents to undergraduate and graduate student bodies of nearby schools, to professionals of all sectors.

88. Respondents' reckless and short-sighted menu changes threaten to shift the existing image and brand to be far narrower and lower-tier, jeopardizing the previously growing appeal among customers who wish to visit and dine for special occasions and events.

89. On or about March 24, 2024, Petitioner was informed by S&B employee Jose Antonio that a cook walked out mid-shift and during peak service due to a challenging work environment resulting from Respondents' management changes.

90. On or about March 27, 2024, Petitioner was informed that Jose Antonio, the "kitchen lead" at S&B handed in his resignation due to Respondents' methodical undermining of kitchen operations and the installation of Respondents' own kitchen manager from their other restaurant, Tampopo Ramen.

**AS AND FOR A FIRST CAUSE OF ACTION**

(Petition for Dissolution- LLC Law § 702)

91. Petitioner repeats, realleges and incorporates each and every preceding allegation as if fully set forth at length herein.

92. Pursuant to section 702 of the Limited Liability Company law of New York, Petitioner hereby applies to this Court for a decree of judicial dissolution of the S&B limited liability company as it is not reasonably practicable to carry on the business of said company.

93. As more particularly set forth above, Joshua has undertaken acts without authority

and without the consent of Petitioner, including but not limited to removing menu items from the menu of S&B, adding untested menu items, removing Petitioner from the bank accounts of S&B, not disclosing the whereabouts of S&B's new bank accounts opened by Joshua, precluding Joshua's access to S&B's bank and other accounts, and freezing out Petitioner from his rightful role of co-managing member of S&B.

94. For all of the foregoing reasons, Petitioner hereby seeks an order of the Court judicially dissolving the limited liability company S&B.

**AS AND FOR A SECOND CAUSE OF ACTION**

(Purchase of Petitioner's Membership Interest - As Against Respondents)

95. Petitioner repeats, realleges and incorporates each and every preceding allegation as if fully set forth at length herein.

96. Although New York's Limited Liability Company Law does not expressly authorize a buyout in a dissolution proceeding, a court may equitably require Petitioner to be bought-out by Respondents.

97. Respondents and Petitioner have agreed on the specific purchase price of \$373,728.00 for Respondents' purchase of Petitioner's membership interest in S&B.

98. Under the facts of this case, the remedy of a buyout by Respondents of Petitioner's membership interest in S&B for the sum of \$373,728.00, plus 50% of the value of S&B's bank and other accounts, is appropriate.

99. By reason of the foregoing, Petitioner is entitled to an order of the Court directing Respondents to purchase Petitioner's membership interest in S&B for the sum of \$373,728.00 forthwith and in one payment with no installments, plus 50% of the value of S&B's bank and other accounts.

**AS AND FOR A THIRD CAUSE OF ACTION**  
(Specific Performance - As Against Respondents)

100. Petitioner repeats, realleges and incorporates each and every preceding allegation as if fully set forth at length herein.

101. At all times relevant to this proceeding, Respondents agreed to purchase Petitioner's membership interest in S&B for the sum of \$373,728.00 which both the Petitioner and Respondents agreed is the fair market value of Petitioner's membership interest in S&B.

102. Petitioner is entitled to compel Respondents to purchase Petitioner's membership interest in S&B.

103. Petitioner seeks an order of this Court compelling Respondents to purchase Petitioner's membership interest in S&B.

104. Respondents must be compelled to perform as required.

105. By reason of the foregoing, Petitioner is entitled to specific performance of Joshua's obligations under the operating agreements and governing memoranda.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
(Joshua's Breach of Fiduciary Duty Derivatively  
brought by Member Petitioner)

106. Petitioner repeats, realleges and incorporates each and every preceding allegation as if fully set forth at length herein.

107. Nominal Respondent S&B is a limited liability company formed under the laws of New York with its principal place of business at 40 Morningside Drive, New York, New York.

108. Joshua has been a managing member (along with Petitioner) since the inception of the business of S&B in 2017.

109. As more particularly set forth at length above, Joshua has commandeered control of the business of S&B, has excluded all other managing members, has undertaken acts which

harm the business of S&B including removing top-selling menu items from the menu of S&B, fired or caused to quit, key kitchen staff including chefs and cooks, misappropriated the funds in the bank account of S&B by relocating such funds to undisclosed bank accounts, and taken other steps as set forth above which are not in the best interest of S&B and stand to harm S&B.

110. Petitioner is a member of S&B. Petitioner brings this action derivatively on behalf of and for the benefit of S&B to redress injuries suffered, and to be suffered, by it as a result of the misconduct of Joshua as alleged herein.

111. Petitioner has owned his interest in S&B since inception of the company in 2017 and continues to own such interest in the company.

112. This is not a collusive attempt to confer jurisdiction on this Court that it would not otherwise have.

113. Petitioner will fairly and adequately represent the interests of S&B in enforcing and prosecuting its rights and has retained competent counsel experienced in derivative litigation to enforce and prosecute this action.

114. The co-managing member Joshua has wrongfully refused the Petitioner's demands made on several occasions on March 20, 21 and 22, 2024, to refrain from taking steps concerning the business of S&B which Petitioner did not approve and which were not in the best interest of S&B.

115. Joshua's refusal of Petitioner's demands was wrongful because it disregarded Joshua's obligation to act jointly with Petitioner.

116. Joshua's refusal of Petitioner's demands was wrongful because Petitioner had no legal authority to refuse such demand and as such acted with bad faith in refusing the demand.

117. As a result of Joshua's breach of his duties, S&B is entitled to a judgment directing Joshua to provide access (including being named signatory) to Petitioner of all bank accounts of S&B regardless of location and date opened, directing restoration of the business of S&B to its condition prior to December 2023 including restoring Petitioner to his position as co-managing member, restoring the books and records of S&B, including payroll being processed by ADP, to their condition prior to December 2023, including restoration of the menu items which Joshua has taken out of the menu in or about March 20, 2024, and make such menu items available to customers, re-hire employees which Joshua has fired or caused to quit, terminate those employees which Joshua hired from Joshua's other business, plus punitive damages, attorneys' fees, and costs.

118. As a result of Joshua's breach of his duties, S&B has suffered and will suffer injury and significant damages in an amount to be determined at trial, plus punitive damages, interest, attorneys' fees, and costs.

**AS AND FOR A FIFTH CAUSE OF ACTION**  
(Books and Records Inspection)

119. Petitioner repeats, realleges and incorporates each and every preceding allegation as if fully set forth at length herein.

120. At some time in March 2024, Petitioner served Joshua with a demand to inspect books and records of S&B. The demand requested the inspection of documents relating to, among other things, the bank accounts with Joshua had newly opened, as well as the former bank accounts which S&B had at Chase Bank.

121. Despite such a demand, Joshua has not provided the requested access to Petitioner.

122. As a result of the foregoing, Petitioner is entitled to an order of the Court directing

Joshua to provide such books and records and access thereof to Petitioner.

**AS AND FOR A SIXTH CAUSE OF ACTION**  
(Joshua's Breach of Fiduciary Duty Owed to Petitioner)

123. Petitioner repeats, realleges and incorporates each and every preceding allegation as if fully set forth at length herein.

124. At all relevant times, Joshua had a fiduciary relationship with Petitioner, as Petitioner and Joshua are equal 50-50 members of S&B.

125. Joshua and Petitioner are both managing members of S&B.

126. Joshua and Petitioner are the only two (2) members of the subject privately held limited liability company.

127. Given Joshua's fiduciary relationship with Petitioner, Joshua owed a duty to act in the best interests of Petitioner as equal 50-50 members of S&B.

128. Joshua's self-dealing and unilateral decision-making on major issues and minor issues concerning the business of S&B is a breach of Joshua's fiduciary duty owed to Petitioner by Joshua.

129. At all times relevant to this proceeding, Joshua failed to act in good faith by intentionally acting with a purpose other than that of advancing the best interests of S&B.

130. At all times relevant to this proceeding, Joshua failed to act in good faith by intentionally acting with a purpose other than that of advancing the best interests of Petitioner.

131. At all times relevant to this proceeding, Joshua intentionally failed to act in accordance with his known duty to act, demonstrating a conscious disregard for his duties.

132. At all times relevant to this proceeding, Joshua failed to act on a reasonably informed basis.

133. At all times relevant to this proceeding, Joshua failed to act without conflicts of



interest.

134. At all times relevant to this proceeding, Joshua made decisions that were not attributable to a rational business purpose.

135. At all times relevant to this proceeding, Joshua's decisions and actions were not fair with respect to all members of S&B.

136. As a direct result of the Joshua's breach of fiduciary duties owed to the Petitioner, Petitioner is entitled to a judgment in Petitioner's favor for money damages in an amount to be determined at trial, including but not limited to attorneys' fees and punitive damages.

**AS AND FOR A SEVENTH CAUSE OF ACTION**

(Aiding and Abetting Breach of Fiduciary Duty – As Against Nanae)

137. Petitioner repeats, realleges and incorporates each and every preceding allegation as if fully set forth at length herein.

138. At all times relevant to this proceeding, Joshua perpetrated a breach of his fiduciary duties to Petitioner, and S&B, by improperly freezing Petitioner out of the operations of S&B.

139. At all times relevant to this proceeding, Nanae, as Joshua's right hand, had actual knowledge of Joshua's violations of his fiduciary obligations to Petitioner, and S&B.

140. At all times relevant to this proceeding, Nanae was involved in all calculated attempts to freeze Petitioner out of S&B, in Petitioner's capacity as a managing member, as well as from the day-to-day operations of S&B. Nanae was involved in disabling Petitioner's accounts, including Petitioner's Gmail account.

141. The failed buyout of Petitioner's interest in S&B began with Nanae's purported desire to become a one-third shareholder in S&B. Nanae aided Joshua in facilitating buyout discussions, which apparently were a ruse to keep Petitioner at bay while Joshua, with Nanae's

assistance, gradually phased out Petitioner out of the business.

142. Accordingly, Petitioner is entitled to judgment for money damages in an amount to be determined at trial, including but not limited to attorneys' fees, punitive damages, and costs.

**AS AND FOR AN EIGHTH CAUSE OF ACTION**  
(Tortious Interference with Contract – As Against Nanae)

143. Petitioner repeats, realleges and incorporates each and every preceding allegation as if fully set forth at length herein.

144. At all times relevant to this proceeding, Petitioner and Joshua were contractually obligated to each other by way of S&B's operating agreement and other governing documents, and regulations governing New York limited liability companies.

145. At all times relevant to this proceeding, Nanae had actual knowledge that Joshua and Petitioner were each 50% members of S&B and were bound by the operating agreement and other governing documents, and regulations governing New York limited liability companies.

146. Nanae interfered with Joshua's compliance with the operating agreement and other governing documents, and regulations governing New York limited liability companies, by compelling Joshua to freeze Petitioner out of the day-to-day operations of S&B and make changes to S&B's menu, employees, and other business decisions without first obtaining Petitioner's consent and sometimes, over Petitioner's objection.

147. Accordingly, as a result of Nanae's tortious interference with contract, Plaintiff has suffered damages and is entitled to judgment for money damages in an amount to be determined at trial, including but not limited to attorneys' fees, punitive damages, and costs.

**AS AND FOR A NINTH CAUSE OF ACTION**

(Waste - As Against Respondents)

148. Petitioner repeats, realleges and incorporates each and every preceding allegation as if fully set forth at length herein.

149. Nominal Respondent S&B is a limited liability company formed under the laws of New York with its principal place of business at 40 Morningside Drive, New York, New York.

150. Joshua has been a managing member (along with Petitioner) since the inception of the business of S&B in 2017.

151. Joshua is liable to S&B for waste of company assets expended (i) inefficiently, and (ii) without the consent of Petitioner.

152. S&B and its members suffered and continue to suffer injury due to the wasteful transactions engaged in by Respondents.

153. Petitioner is a member of S&B. Petitioner brings this action derivatively on behalf of and for the benefit of S&B to redress injuries suffered, and to be suffered, by it as a result of the misconduct of Respondents as alleged herein.

154. Petitioner has owned his interest in S&B since inception of the company in 2017 and continues to own such interest in the company.

155. This is not a collusive attempt to confer jurisdiction on this Court that it would not otherwise have.

156. Petitioner will fairly and adequately represent the interests of S&B in enforcing and prosecuting its rights and has retained competent counsel experienced in derivative litigation to enforce and prosecute this action.

157. The co-managing member Joshua and Nanae have wrongfully refused Petitioner's demands to cease wasteful activity made on several occasions on March 20, 21 and 22, 2024,

none of which Petitioner approved and which were not in the best interest of S&B.

158. Respondents' refusal of Petitioner's demands was wrongful because it disregarded Joshua's obligation to act jointly with Petitioner.

159. Respondents' refusal of Petitioner's demands was wrongful because Joshua had no legal authority to refuse such demand and as such acted in bad faith in refusing the demand.

160. Petitioner, on behalf of S&B, has no adequate remedy at law.

161. Further, because of Respondents' waste of company assets, S&B has suffered and will suffer injury and significant damages in an amount to be determined at trial, plus punitive damages, interest, attorneys' fees, and costs.

**AS AND FOR A TENTH CAUSE OF ACTION**  
(Unjust Enrichment - As Against Respondents)

162. Petitioner repeats, realleges and incorporates each and every preceding allegation as if fully set forth at length herein.

163. By their wrongful acts, omissions, and anticipated redistribution of weekly and monthly pay, Respondents enrich themselves at the expense of, and to the detriment of, S&B.

164. Respondents derived profits, benefits, and other compensation from S&B as mutually agreed with co-managing member Petitioner.

165. However, now that Respondents have frozen out Petitioner, Respondents propose to adjust their pay upward and deny Petitioner his pay, thereby unjustly enriching Respondents during the time such wrongful practices occur.

166. Respondents propose to reallocate the capital accounts of Petitioner and Joshua to the detriment of Petitioner, and to the benefit of Respondents.

167. It would be unconscionable and against the fundamental principles of justice, equity, and good conscience for Respondents to retain such profits, benefits, and other

compensation gained from their wrongful conduct.

168. Petitioner seeks restitution from Respondents for such unjust enrichment.

169. Petitioner seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by Respondents as a result of their wrongful conduct.

170. Petitioner has no adequate remedy at law.

**AS AND FOR AN ELEVENTH CAUSE OF ACTION**  
(Accounting - As Against Respondents)

171. Petitioner repeats, realleges and incorporates each and every preceding allegation as if fully set forth at length herein.

172. At all times relevant to this proceeding, Petitioner has had and continues to have a fiduciary relationship with Joshua as it relates to their co-ownership in S&B.

173. By reason of the foregoing, Petitioner is entitled to a full accounting of Joshua's and Nanae's income, dividends, bonuses, expenses, benefits and other profits and monies Joshua and Nanae have taken from S&B for their benefit, to the detriment of Petitioner.

**AS AND FOR A TWELFTH CAUSE OF ACTION**  
(Injunctive Relief – As Against Respondents)

174. Petitioner repeats, realleges and incorporates each and every preceding allegation as if fully set forth at length herein.

175. Petitioner will suffer irreparable harm absent an order against Respondents and each of them, their attorneys, agents or any other person or persons or entity acting on their behalf, preliminarily and permanently: (i) enjoining Respondents from freezing out Petitioner from the business of S&B; (ii) enjoining Respondents from making any changes to the menu items offered by S&B; (iii) directing Respondents to forthwith

restore Petitioner's access (online and in person) to all bank accounts that S&B maintains wherever located, and to maintain such access; (iv) directing Respondents to forthwith disclose in writing to Petitioner all account information (including bank name, branch address and account number) for all bank accounts that S&B maintains wherever located, and to maintain such disclosure; (v) enjoining Respondents from opening bank accounts for S&B without Petitioner's written consent; (vi) enjoining Respondents from withdrawing funds from S&B's bank accounts (or other financial accounts) without Petitioner's written consent; (vii) directing Respondents to forthwith restore Petitioner's access (online and in person) to all accounts of S&B including but not limited to S&B's email accounts, QuickBooks account, Spectrum account, Con Edison account, and ADP account; (viii) directing Respondents to restore Petitioner to his duties in running S&B or allow Petitioner to hire employees to fulfill said duties if Petitioner so chooses; (ix) directing Respondents to restore and continue to pay and member distributions which Petitioner had previously received from S&B; (x) enjoining Respondents from making changes to S&B's books and records including but not limited to the adjustments to the respective capital accounts of S&B's members, without Petitioner's written consent; and (xi) granting Petitioner such other and further relief as the Court deems just and proper.

176. Without such relief, Petitioner will be severely prejudiced as an equitable owner of the assets, funds and property in which Respondents currently have possession and control.

177. Petitioner will suffer irreparable injury as a result of his inability to ever recover his interest in the business of S&B if Respondents' unauthorized activity continues.

178. Petitioner has no adequate remedy at law.

179. Petitioner seeks and is entitled to a temporary restraining order and a preliminary

injunction for the duration of this action prohibiting Respondents in accordance with the foregoing.

**WHEREFORE**, Petitioner demands judgment on the causes of action as follows:

- A. On the First Cause of Action, awarding Petitioner judicial dissolution of the S&B;
- B. On the Second Cause of Action, compelling Respondents to purchase Petitioner's membership interest in S&B;
- C. On the Third Cause of Action, for specific performance of Respondents' purchase agreement of Petitioner's membership interest in S&B;
- D. On the Fourth Cause of Action, for breach of fiduciary duty brought derivatively by Petitioner, awarding S&B compensatory damages against Joshua for breach of fiduciary duty, in an amount to be determined at trial plus punitive damages, interest, attorneys' fees, and costs;
- E. On the Fifth Cause of Action, for an order directing Joshua to provide books and records and access thereof to Petitioner;
- F. On the Sixth Cause of Action, for breach of fiduciary duty, awarding Petitioner compensatory damages against Joshua for breach of fiduciary duty, in an amount to be determined at trial, plus punitive damages, interest, attorneys' fees, and costs;
- G. On the Seventh Cause of Action, for aiding and abetting breach of fiduciary duty as against Nanae, in an amount to be determined at trial, plus punitive damages, interest, attorneys' fees, and costs;
- H. On the Eighth Cause of Action, for tortious interference as against Nanae, in an amount to be determined at trial, plus punitive damages, interest, attorneys' fees, and costs;

- I. On the Ninth Cause of Action, for order awarding S&B a judgment against Respondents for waste of company assets;
- J. On the Tenth Cause of Action, for an award of unjust enrichment in favor of Petitioner and against Respondents.
- K. On the Eleventh Cause of Action, for an order awarding Petitioner an accounting;
- L. On the Twelfth Cause of Action, awarding Petitioner injunction relief in the form of a temporary restraining order, a preliminary injunction and a permanent injunction against Respondents;
- M. And granting Petitioner such other and further relief that is just equitable and proper, none of which has been requested of this or any other court.

Dated: New York, New York  
April 16, 2024

Koutsoudakis & Iakovou Law Group PLLC  
*Counsel for Petitioner*

By: \_\_\_\_\_

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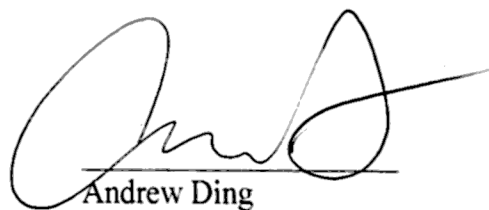
**VERIFICATION**

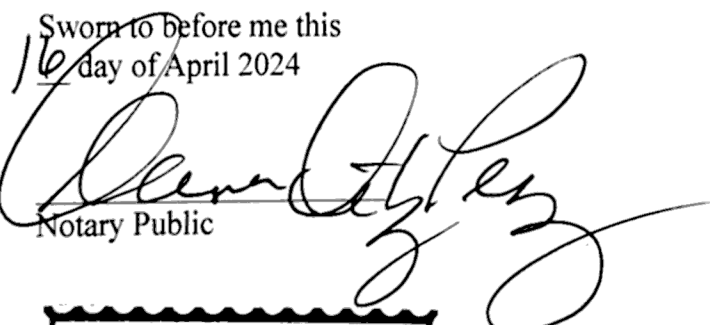
STATE OF NEW YORK     )  
  )ss.: *ny*  
COUNTY OF NEW YORK    )

ANDREW DING, being duly sworn, deposes and says:

- 1. Deponent is the petitioner in the above-captioned action.
- 2. Deponent has read the foregoing Summons and Petition and knows the contents

thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, deponent believes to be true.

  
Andrew Ding

Sworn to before me this  
*16* day of April 2024  
  
Notary Public

