

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

-----X
VITTORIO ANTONINI, individually and as
A member of BRIDGEVIEW AT
BROADWAY, LLC on behalf of Himself
And all other members of BRIDGEVIEW AT
BROADWAY, LLC similarly situated, and in
the right of BRIDGEVIEW AT BROADWAY,
LLC,

INDEX NO.: 652070/2010

Plaintiffs,

- against -

**VERIFIED ANSWER AND
COUNTERCLAIMS**

ORAZIO PETITO and ROCCO PETITO,

Defendants.

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ORAZIO PETITO and ROCCO PETITO,
Individually and as members of
BRIDGEVIEW AT BROADWAY, LLC, on
Behalf of themselves and all other members
Of BRIDGEVIEW AT BORADWAY, LLC
similarly situated, and in the right of
BRIDGEVIEW AT BROADWAY, LLC,

Counterclaimants,

- against -

VITTORIO ANTONINI,

Counterclaim Defendant.

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Defendants ORAZIO PETITO and ROCCO PETITO, and additional
counterclaimant BRIDGEVIEW AT BROADWAY, LLC, by and through their
attorneys, Law Offices of Bart J. Eagle, PLLC, for their verified answer and

counterclaims, state as follows:

THE PARTIES AND THE NATURE OF THEIR RELATIONSHIPS

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶1 of the verified complaint (the “Complaint”).
2. Admit the allegations set forth in ¶2 of the Complaint.
3. Admit the allegations set forth in ¶3 of the Complaint.
4. Deny the allegations set forth in ¶4 of the Complaint, except admit that Bridgeview at Broadway, LLC (“Bridgeview” or the “Company”) is a New York limited liability company, which was formed by the filing of Articles of Organization with the New York Secretary of State on or about August 29, 2006, with its principal office located at 1960 83rd Street, Brooklyn, New York 11214 and respectfully refers to the Operating Agreement of the Company for a statement of the business purposes for which the Company was organized.
5. Deny the allegations set forth in ¶5 of the Complaint, except admit that at or about the same time, Vittorio Antonini (“Vittorio”), Orazio Petito (“Orazio”) and Rocco Petito (“Rocco”) executed an Operating Agreement for the company (the “Operating Agreement”) and respectfully refer to the Operating Agreement for its terms and provisions.
6. Admit the allegations set forth in ¶6 of the Complaint.
7. Deny the allegations set forth in ¶7 of the Complaint, except that admit from the inception of the Company an agreement entered into in as of April 6, 2009 between Orazio, Rocco, Vittorio, Bridgeview and certain other individuals

and entities (the “Settlement Agreement”), Orazio was the sole managing member of Bridgeview.

8. Deny the allegations set forth in ¶8 of the Complaint, except aver that Orazio, Vittorio, Rocco, Bridgeview and certain other individuals and entities entered into the Settlement Agreement as of April 6, 2009, which, *inter alia*, settled litigation commenced by Vittorio against Orazio and Rocco, and litigation commenced by Orazio, Rocco and others against Vittorio and others, and respectfully refer to the Settlement Agreement for its terms and provisions.

9. Admit that the Settlement Agreement provided that upon the delivery of all of the documents referred to in the Settlement Agreement at the closing of said Settlement Agreement, Vittorio and Orazio would be the managing members of the Company, and respectfully refer to the Settlement Agreement for its terms and provisions.

10. Deny the allegations set forth in ¶10 of the Complaint, except admit that from time to time, Orazio has held a proxy from Rocco to vote Rocco’s interest in the Company.

JURISDICTION AND VENUE

11. Admit the allegations set forth in ¶11 of the Complaint.

12. Admit the allegations set forth in ¶12 of the Complaint.

FACTS COMMON TO ALL CAUSES OF ACTION

13. Deny the allegations set forth in ¶13 of the Complaint, except admit that Bridgeview was formed for the purpose of acquiring and renovating the premises located at 146-150 Broadway, Brooklyn, New York (the “Premises”) for

rental to commercial and residential tenants; that the Premises are two adjacent buildings, one one-story and one four-story building in a Brooklyn neighborhood (next to Peter Luger's Steakhouse) with permitted ground floor commercial zoning (the "Commercial Units") and permitted upper floor residential usage (the "Residential Units").

14. Deny the allegations set forth in ¶14 of the Complaint, except admit that at or about the formation of the Company, each member contributed the sum of \$285,000.00 as each member's sole required capital contribution to the Company.

15. Admit the allegations set forth in ¶15 of the Complaint.

16. Deny the allegations set forth in ¶16 of the Complaint, except admit that in order to finance the purchase of the Premises and to finance the renovation of the existing structure on the Premises, in or about September, 2006 Bridgeview obtained a mortgage loan from BRT Realty Trust ("BRT") in the principal sum of \$2,500,000.00 (the "BRT Loan").

17. Deny the allegations set forth in ¶17 of the Complaint, except admit that a portion of the BRT Loan, \$393,620.00 (called the "Construction Reserve" by the plaintiff in the Complaint), was specifically earmarked to finance certain renovations of the Premises.

18. Deny the allegations set forth in ¶18 of the Complaint, except admit that the Residential Units could not be leased until certain renovations were completed and that the Construction Reserve was specifically available for the renovation.

19. Deny the allegations set forth in ¶19 of the Complaint, except respectfully refer to the BRT Loan documents, as extended from time to time, for the amount of the required monthly mortgage payments by the Company to BRT during the term (and extended terms) of the BRT Loan.

20. Deny the allegations set forth in ¶20 of the Complaint.

21. Deny the allegations set forth in ¶21 of the Complaint.

22. Deny the allegations set forth in ¶22 of the Complaint.

23. Deny the allegations set forth in ¶23 of the Complaint, except admit that on or about October 23, 2007, Vittorio commenced an action against Orazio, Rocco and Bridgeview in the Supreme Court of the State of New York, County of New York, under Index No. 613513/07 (the “Bridgeview Lawsuit”); respectfully refer to the complaint in the Bridgeview Lawsuit for a statement of the claims and allegations set forth therein; and aver that pursuant to a motion to dismiss made by defendants Orazio, Rocco and Bridgeview in the Bridgeview Lawsuit, the court issued an order dismissing the cause of action seeking dissolution of the Company

24. Deny the allegations set forth in ¶24(A), (B), (C), (D), (E) of the Complaint, except admit that on or about April 6, 2009, the parties hereto, and others, entered into the Settlement Agreement and respectfully refer to the Settlement Agreement for its terms and provisions.

As to Orazio’s [Alleged] Misconduct has Caused the Development of the Premises to Remain Substantially Incomplete Four Years After Its Acquisition Despite Having Construction Funds In Place From Day One.

25. Deny the allegations set forth in ¶25 of the Complaint.

26. Deny the allegations set forth in ¶¶26 of the Complaint.

27. Deny the allegations set forth in ¶¶27 of the Complaint, except respectfully refer to the complaint in the Bridgeview Lawsuit for the allegations and claims set forth therein.

28. Deny the allegations set forth in ¶¶28 of the Complaint, except admit that the parties, and others, entered into the Settlement Agreement, which, *inter alia*, settled the claims brought by Vittorio against Orazio, Rocco and Bridgeview in the Bridgeview Lawsuit, claims brought by Orazio, Rocco and one Daniel Greaves (“Greaves”) against Vittorio and others in a separate lawsuit commenced in the Supreme Court of the State of New York, County of Kings, involving another company - N.9th LLC (“N.9th”) - in which Orazio, Rocco and Vittorio, and others, had interests (the “N.9th Lawsuit”), and claims brought in still another lawsuit commenced in the Supreme Court of the State of New York, County of New York, involving another company – Dean Street Apts, LLC (“Dean Street”) – in which Orazio, Vittorio and another individual had interests (the “Dean Street Lawsuit”), and respectfully refer to the Settlement Agreement for its terms and provisions.

29. Deny the allegations set forth in ¶¶29 of the Complaint, except admit that in or about July, 2009, the Company refinanced its mortgage obligation with BRT (the “First Loan Extension”), and respectfully refer to the documents executed by the Company in connection with the First Loan Extension for the terms and provisions thereof.

30. Deny the allegations set forth in ¶30 of the Complaint, except admit that the Construction Reserve was increased to \$433,620.00.

31. Deny the allegations set forth in ¶31 of the Complaint, except admit that in or about January, 2010, at the request of the Company, BRT withdrew its request for the payment by the Company of an additional \$40,000.00 to be applied to the Construction Reserve.

32. Deny the allegations set forth in ¶32 of the Complaint, except admit that the First Loan Extension has expired and aver that on or about January 6, 2011, the Company entered into a second loan extension agreement with BRT (the "Second Loan Extension"), and that the Second Loan Extension does not require any additional increase in the amount of the Construction Reserve.

33. Deny the allegations set forth in ¶33 of the Complaint.

34. Deny the allegations set forth in ¶34 of the Complaint.

As to Orazio and Rocco [Allegedly] Flagrantly Breached the Settlement Agreement and Operating Agreement by Failing to Contribute Half of the Monthly BRT Mortgage Payment.

35. Deny the allegations set forth in ¶35 of the Complaint.

36. Deny the allegations set forth in ¶36 of the Complaint.

37. Deny the allegations set forth in ¶37 of the Complaint, except respectfully refer to the Settlement Agreement for its terms and provisions.

38. Deny the allegations set forth in ¶38 of the Complaint, except respectfully refer to the Operating Agreement for its terms and provisions.

39. Deny the allegations set forth in ¶39 of the Complaint.

40. Deny the allegations set forth in ¶40 of the Complaint.

41. Deny the allegations set forth in ¶41 of the Complaint, except respectfully refer to the Settlement Agreement for its terms and provisions.

42. Deny the allegations set forth in ¶42 of the Complaint.

43. Deny the allegations set forth in ¶43 of the Complaint, except admit that the July, 2009 mortgage payment owed by the Company to BRT was properly made by Orazio using funds in the Bridgeview account to which Orazio, Rocco and Vittorio had contributed.

44. Deny the allegations set forth in ¶44 of the Complaint.

45. Deny the allegations set forth in ¶45 of the Complaint, except respectfully refer to the Operating Agreement for its terms and provisions, and admit that in a purported notice dated October 8, 2010 and not mailed until November 2, 2010 , Vittorio improperly attempted to terminate the interest of Orazio and Rocco in the Company, and respectfully refer to this complaint which sets forth the first cause of action.

As to Orazio [Allegedly] Engages in Further Breaches of Fiduciary Duty

46. Deny the allegations set forth in ¶46 of the Complaint.

47. Deny the allegations set forth in ¶47 of the Complaint.

48. Deny the allegations set forth in ¶48 of the Complaint.

49. Deny the allegations set forth in ¶49 of the Complaint, except admit that during settlement discussions prior to the execution of the Settlement Agreement, it was agreed by Vittorio and Orazio that they would be the general contractors of record for the project, and that notwithstanding that agreement,

Vittorio solicited two bids from other general contractors to do the actual work, which bids he at some point submitted to Orazio.

50. Deny the allegations set forth in ¶50 of the Complaint, except admit that Orazio solicited a bid from Greaves.

51. Deny the allegations set forth in ¶51 of the Complaint, except aver that at or about the time the Settlement Agreement was executed, Greaves had over fourteen (14) years of experience in construction and over nine (9) years of experience as a general contractor; admit that Vittorio would not approve Greaves as the contractor; and admit that Greaves, Vittorio, Orazio, Rocco and others had been adverse parties in one prior lawsuit.

52. Deny the allegations set forth in ¶52 of the Complaint, except admit that Greaves submitted the best and lowest bid.

53. Deny the allegations set forth in ¶53 of the Complaint, except admit that in or about August, 2009, Vittorio and Orazio met with Alex Marra (“Marra”), the Company’s attorney and the mediator designated in the Settlement Agreement to resolve certain disputes that may arise between the managing members, concerning the selection of a contractor to carry out the renovation of the Premises.

54. Deny the allegations set forth in ¶54 of the Complaint, except admit that to resolve the issue of which contractor to use, the mediator proposed, and Orazio and Vittorio agreed, to a process whereby each of the contractors would be given exactly the same detailed scope of work to be done, (with specifications) after which each of the contractors would have the opportunity to

re-bid for the project in a blind bid process to be resolved [by] the mediator appointed in the Settlement Agreement; and aver that when it came to putting together the scope of work, it was agreed that Orazio would use his best efforts, with Vittorio's cooperation, to prepare a draft of the detailed scope of the work within a period of two weeks following the meeting, and then Vittorio would review the same and have the opportunity to discuss any proposed changes..

55. Deny the allegations set forth in ¶55 of the Complaint.

56. Deny the allegations set forth in ¶56 of the Complaint.

57. Deny the allegations set forth in ¶57 of the Complaint, except admit that on or about October 25, 2010, Orazio had suggested the names of two contractors from whom he would solicit written proposals.

As to Orazio's [Alleged] Misconduct [Allegedly] Prevents the Premises From Being Sold So That The Members Can [Allegedly] Limit Their Losses.

58. Deny the allegations set forth in ¶58 of the Complaint.

59. Deny the allegations set forth in ¶59 of the Complaint.

60. Deny the allegations set forth in ¶60 of the Complaint, except respectfully refer to the Settlement Agreement for its terms and provisions, and admit that Orazio would not consent to the sale of the Premises, which would have unnecessarily locked in substantial losses to the members, and that Orazio at all times advised Vittorio that he and Rocco were not consenting to said sale and thought that any such sale was unnecessary and harmful to the Company and its members.

61. Deny the allegations set forth in ¶61 of the Complaint, except aver that Orazio and Rocco have contributed to the Company cash equal to at least

one-half of all monthly debt service obligations of the Company to BRT, including the Construction Reserve, for every month since the inception of the BRT Loan.

As to Orazio Determin[ing] that the Company Needs a New Real Estate Broker to Find a Tenant But [allegedly] Fail[ing] to Take Steps to Renovate the Premises So That It Can Be Leased.

62. Deny the allegations set forth in ¶62 of the Complaint, except admit that in or about March, 2010, Orazio, on behalf of himself and Rocco, asserted that it was in the best interests of the Company to hire a new real estate broker to solicit tenants for the Commercial Units and that Vittorio did not object to this proposal.

63. Deny the allegations set forth in ¶63 of the Complaint, except admit that Orazio was adamant that the renovation of the Premises must go forward and that the Premises should not be sold so as to prevent unnecessary, substantial losses to the Company and its members and to create a situation that would enable the members to recoup, and achieve a profit from, their investments.

As to The Claims in the Complaint

64. Deny the allegations set forth in ¶64 of the Complaint, except respectfully refer to the Complaint for the claims set forth therein.

65. Repeats, reiterates and realleges each and every admission, denial and averment set forth in the paragraphs referred to in ¶65 of the Complaint, as if

more particularly set forth at length herein.

AS AND TO THE FIRST CAUSE OF ACTION

(Declaratory Judgment)

66. Deny the allegations set forth in ¶¶66 of the Complaint.

67. Deny the allegations set forth in ¶¶67 of the Complaint, except respectfully refer to the Operating Agreement for its terms and provisions.

68. Deny the allegations set forth in ¶¶68 of the Complaint, except respectfully refer to the Settlement Agreement for its terms and provisions.

69. Deny the allegations set forth in ¶¶69 of the Complaint, except respectfully refer to the Operating Agreement for its terms and provisions, and admit that in a purported notice dated October 8, 2010 and not mailed until November 2, 2010, Vittorio improperly attempted to terminate the interests of Orazio and Rocco in the Company.

70. Deny the allegations set forth in ¶¶70 of the Complaint.

71. Deny the allegations set forth in ¶¶71 of the Complaint.

AS AND TO THE SECOND CAUSE OF ACTION

(Declaratory Judgment)

72. Deny the allegations set forth in ¶¶72 of the Complaint, except respectfully refer to the Operating Agreement for its terms and provisions.

73. Admit the allegations set forth in ¶¶73 of the Complaint.

74. Admit the allegations set forth in ¶¶74 of the Complaint and respectfully refer to the Settlement Agreement for its terms and provisions.

75. Deny the allegations set forth in ¶75 of the Complaint

76. Admit the allegations set forth in ¶76 of the Complaint and respectfully refer to the Settlement Agreement for its terms and provisions.

77. Deny the allegations set forth in ¶77 of the Complaint.

78. Deny the allegations set forth in ¶78(A) (B) of the Complaint.

79. Deny the allegations set forth in ¶79 of the Complaint.

AS AND TO THE THIRD CAUSE OF ACTION

(Breach of Fiduciary Duty Against Orazio)

80. Deny the allegations set forth in ¶80 of the Complaint, except admit that as managing members of the Company, Orazio and Vittorio each owe the Company a fiduciary duty as provided by applicable law.

81. Deny the allegations set forth in ¶81 of the Complaint.

82. Deny the allegations set forth in ¶82 of the Complaint.

83. Deny the allegations set forth in ¶83 of the Complaint.

84. Deny the allegations set forth in ¶84 of the Complaint.

85. Deny the allegations set forth in ¶85 of the Complaint.

AS AND TO THE FOURTH CAUSE OF ACTION

(Fraudulent Misrepresentation Against Orazio and Rocco)

86. Deny the allegations set forth in ¶86 of the Complaint, except respectfully refer to the Settlement Agreement for its terms and provisions.

87. Deny the allegations set forth in ¶87 of the Complaint, except admit that Orazio properly made the July, 2009 mortgage payment to BRT by using

funds in the company account which were contributed to by Orazio, Rocco and Vittorio.

88. Deny the allegations set forth in ¶88 of the Complaint.
89. Deny the allegations set forth in ¶89 of the Complaint.
90. Deny the allegations set forth in ¶90 of the Complaint.
91. Deny the allegations set forth in ¶91 of the Complaint.
92. Deny the allegations set forth in ¶92 of the Complaint.
93. Deny the allegations set forth in ¶93 of the Complaint.
94. Deny the allegations set forth in ¶94 of the Complaint.
95. Deny the allegations set forth in ¶95 of the Complaint.
96. Deny the allegations set forth in ¶96 of the Complaint.

AS AND FOR A FIFTH CAUSE OF ACTION

(Interference with Prospective Contractual Relations Against Orazio)

97. Deny the allegations set forth in ¶97 of the Complaint.
98. Deny the allegations set forth in ¶98 of the Complaint.
99. Deny the allegations set forth in ¶99 of the Complaint, except admit, upon information and belief, that Vittorio, from time to time, without authorization, spoke with various real estate brokers concerning the sale of the Premises, and that at his insistence, the Company engaged a real estate broker to solicit offers from prospective purchasers, subject to the caveat that doing so was not intended to constitute or imply Orazio or Rocco's consent to the sale of the Premises.
100. Admit the allegations set forth in ¶100 of the Complaint.

101. Deny the allegations set forth in ¶101 of the Complaint.

102. Deny the allegations set forth in ¶102 of the Complaint.

103. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶103 of the Complaint, except deny that Orazio deliberately withheld any information from Vittorio and prevented any offer being made to any prospective purchaser.

104. Deny the allegations set forth in ¶104 of the Complaint.

105. Deny the allegations set forth in ¶105 of the Complaint.

AS AND FOR A SIXTH CAUSE OF ACTION

(Breach of the Covenant of Good Faith and Fair Dealing Against Orazio)

106. Aver that the paragraph sets forth a legal conclusion to which no response is required and respectfully refer to applicable law with respect to any and all legal principles applicable to the Operating Agreement and Settlement Agreement.

107. Aver that the paragraph sets forth a legal conclusion to which no response is required and respectfully refer to applicable law.

108. Deny the allegations set forth in ¶108 of the Complaint.

109. Deny the allegations set forth in ¶109 of the Complaint.

110. Deny the allegations set forth in ¶110 of the Complaint.

111. Deny the allegations set forth in ¶111 of the Complaint.

112. Deny the allegations set forth in ¶112 of the Complaint.

113. Deny the allegations set forth in ¶113 of the Complaint.

114. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶114 of the Complaint.

115. Deny the allegations set forth in ¶115 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

116. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

117. The causes of action are barred by the doctrine of laches.

AS AND FOR A THIRD AFFIRAMTIVE DEFENSE

118. The causes of action are barred by the doctrine of waiver.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

119. The causes of action are barred by the doctrine of estoppel.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

120. The causes of action are barred by the doctrine of ratification.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

121. The causes of action are barred on the ground of course of dealing.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

122. The causes of action are barred by the doctrine of unclean hands.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

123. The causes of action are barred by the doctrine of release.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

124. The causes of action are barred by the terms and provisions of the Settlement Agreement.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

125. The causes of action are barred by the terms and provisions of the Operating Agreement.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE
AND FIRST COUNTERCLAIM**

(Breach of Fiduciary Duty

126. Defendants and counterclaimants repeat, reiterate and reallege each and every admission set forth in ¶¶2-4 above, as if more particularly set forth at length herein.

127. Upon information and belief, plaintiff/counterclaim defendant Vittorio is an individual who resides in the City, County and State of New York.

A. Bridgeview at Broadway, LLC, Other Companies in Which Vittorio, Orazio, Rocco and Others Have or Had Interests, and the Settlement Agreement.

128. Prior to the entering into of the Settlement Agreement as of April 6, 2009, Orazio, Rocco and Vittorio each owned a one-third interest in Bridgeview; Orazio, Vittorio and another individual were the members of Dean Street; and Orazio, Rocco, Vittorio and other individuals were the members of N.9th.

129. Prior to the entering into of the Settlement Agreement, Orazio was the managing member of Bridgeview.

130. At the formation of the Company, Vittorio owned a one-third membership interest in Bridgeview.

131. Prior to the commencement of the Bridgeview Lawsuit and the closing of the Settlement Agreement, Vittorio owned less than a one-third membership interest in Bridgeview.

132. Prior to the commencement of the Bridgeview Lawsuit, Vittorio utilized certain portions of the Premises – the Commercial Units - for his own personal use including, without limitation, the storage of automobiles, the storage of personal tools and equipment, the storage of certain equipment from his restaurant, and as a workshop to perform work on his automobiles, and allowed access to his own workers to fabricate and paint items for use in his personal restaurant business.

133. Vittorio's use of the Premises as described in ¶132 above was without prior notification to, or the consent of, the Company, Orazio and/or Rocco.

134. Vittorio's use of the Premises as described in 132above was without compensation to the Company.

135. Vittorio commenced the Bridgeview Lawsuit on or about on or about October 29, 2007.

136. Renovation of the Premises could not be commenced prior to the commencement of the Bridgeview Lawsuit as a result of Vittorio's failure to abide by his agreement as to how the business of Company would be conducted, Vittorio's interference with the management of the Company and the duties and responsibilities of the managing member, Vittorio's use of the Premises for his own personal purposes, Vittorio's failure to abide by decisions made at certain Special Meetings of members, and Vittorio's commencement of the Bridgeview Lawsuit which, *inter alia*, sought the dissolution of Bridgeview.

137. Prior to the entering into of the Settlement Agreement as of April 6, 2009, the Bridgeview Lawsuit, the Dean Street Lawsuit and the N.th 9th Lawsuit had been commenced.

138. In the N.9th Lawsuit, Orazio, Rocco and Greaves sought the dissolution of N. 9th, the removal of Vittorio as managing member of N.9th, and damages against Vittorio for breach of fiduciary duty.

139. Pursuant to the terms of the Settlement Agreement, *inter alia*, the Bridgeview Lawsuit, the Dean Street Lawsuit and the N.9th Lawsuit were discontinued, with prejudice.

140. Pursuant to the terms of the Settlement Agreement, *inter alia*, the parties to the Settlement Agreement, including, without limitation, Orazio, Rocco and Vittorio, exchanged general releases, releasing any and all claims against one another, including, without limitation, any claims alleged by Vittorio against Orazio and Rocco in connection with Bridgeview.

141. Pursuant to the terms of the Settlement Agreement, *inter alia*, Orazio, Rocco and Greaves relinquished their interests in N. 9th, Vittorio and another individual relinquished their interests in Dean Street, and the membership interests of Vittorio, Orazio and Rocco in Bridgeview were changed.

142. As a result of the Settlement Agreement, *inter alia*, Vittorio increased his percentage interest in Bridgeview from 31.768 percent to 50 percent and Orazio and Rocco each reduced their percentage interests in Bridgeview from 34.116 percent each to 25 percent each.

143. In order to increase Vittorio's membership interest in Bridgeview at the time the Settlement Agreement was entered into, Orazio and Rocco each transferred 9.116 percent of their respective membership interests in Bridgeview to Vittorio in consideration for the payment by Vittorio of the sum of \$165,000.00 to each of Orazio and Rocco, for a total sum of \$330,000.00 (the "Purchase Price").

144. At the time the Settlement Agreement was entered into, Vittorio represented to Orazio and Rocco that he did not have sufficient funds to pay the Purchase Price because he needed cash to invest in N. 9th and requested that he be allowed to give non-interest bearing promissory notes to Orazio or Rocco, each in the sum of \$165,000.00, to pay the Purchase Price pay for his increased membership interest in Bridgeview.

145. In reliance upon Vittorio's representation that he could not afford to pay for his additional capital contribution in cash because he needed cash to invest in N. 9th, Orazio and Rocco consented to Vittorio's request and, at the closing of the Settlement Agreement, in exchange for the increase in his capital contribution to the Company from 31.7568 percent to 50 percent, Vittorio delivered promissory notes to Orazio and to Rocco, each in the sum of \$165,000.00.

146. At the time of the closing of the Settlement Agreement, Orazio and Rocco had each contributed \$617,500.00 in actual cash to Bridgeview, for a total of \$1,235,000.00, while Vittorio had contributed only \$575,000.00 in cash to Bridgeview.

147. The promissory notes each provide, *inter alia*, that they would become due and payable at the earlier of (a) a permitted transfer of Vittorio's interest in Bridgeview as set forth in the Settlement Agreement; (b) the closing of the Bridgeview refinancing if Vittorio's share of the proceeds of such refinancing is sufficient to pay the balance due on the promissory note; (c) any transfer by Vittorio of his interest in N. 9th; or (d) the closing of any new loan obtained by N. 9th subsequent to the N. 9th refinancing with United Commercial Bank.

148. As a result of Vittorio's refusal to cooperate with the selection of a contractor to perform the renovation of the Premises, Bridgeview has been unable to refinance the BRT Loan.

149. As a result of Vittorio's refusal to cooperate with the selection of a contractor to perform the renovation of the Premises, the conditions upon which the promissory notes would become payable based on events involving Bridgeview – the permitted transfer of Vittorio's interest in Bridgeview or the closing of the Bridgeview refinancing – have not yet occurred.

150. Orazio and Rocco do not know if either of the conditions upon which the promissory notes would become payable based on events involving N.9th – a transfer of Vittorio's interest in N.9th or the closing of any new loan obtained by N. 9th subsequent to the N. 9th refinancing with United Commercial Bank – has occurred.

151. Vittorio has not paid Orazio or Rocco any portion of the amount due, or to become due, under the promissory notes.

152. To date, Orazio and Rocco have each contributed \$763,405.01 in cash to the Company, for a total of \$1,526,810.02 – which is, upon information and belief, approximately \$660,000.00 more than has been contributed in cash by Vittorio.

153. Pursuant to the terms of the Settlement Agreement, Orazio and Vittorio became the managing members of Bridgeview.

154. As a co-managing member of Bridgeview, Vittorio owed a fiduciary duty to Orazio and Rocco.

155. Vittorio owed a fiduciary duty to Bridgeview, Orazio and Rocco to work on behalf of the best interests of the Company and to work with co-managing member, Orazio, to select a contractor, move forward with the renovation of the Premises, and move forward with the lease of the Premises.

B. The Selection of A General Contractor for Bridgeview.

156. Prior to the execution of the Settlement Agreement, Vittorio and Orazio agreed that Vittorio and Orazio would be the co-general contractors of the renovation of the Premises.

157. Despite the agreement that Vittorio and Orazio would, together, be the general contractors of the renovation of the Premises, the bids obtained by Vittorio were from two general contractors: Professional Grade Construction Group Incorporated (“Professional Grade”) and Leecon Construction (“Leecon”).

158. The bid obtained by Vittorio from Professional Grade was for the sum of \$574,550.00, not inclusive of all necessary renovation work.

159. The bid obtained by Vittorio from Leecon was in the sum of \$595,291.63, upon information and belief not inclusive of all necessary renovation work.

160. Each of the two bids obtained by Vittorio was well in excess of the Construction Reserve, which at the time was in the sum of \$393,620.00.

161. Leecon was a general contractor that was and still is presently performing work on behalf of another entity, N. 9t, a company that was formed for the specific purpose of developing property located at 260 and 262 N. 9th Street, Brooklyn, New York.

162. Prior to the execution of the Settlement Agreement, Vittorio had presented and advocated the acceptance of the Leecon proposal to be the general contractor of the development of the N. 9th premises.

163. Orazio, Rocco and Greaves reviewed the N. 9th proposal, met with the principal of Leecon, and objected to the acceptance of the Leecon bid.

164. Orazio, Rocco and Greaves based their objection to acceptance of the Leecon proposal for the construction of N.9th on their determination that the budget submitted by Leecon was unrealistic, that they were dissatisfied with the responses of Leecon's principal, Jonathan Lee, at the meeting attended by the members, who was unable to directly respond to many of the questions posed to him by Greaves, who himself is a general contractor who at the time had approximately nine (9) years of experience, and concern about both the quality of Leecon's work and Leecon's ability to complete the project.

165. Upon information and belief, after the closing of the Settlement Agreement, N.9th, of which Vittorio was managing member, retained Lee as the general contractor.

166. Orazio has over twenty years of experience in managing real property, construction, and building and project management.

167. Upon information and belief, Vittorio owns and manages a restaurant in Greenwich Village, New York which is his full time occupation.

168. Upon information and belief, other than his recent involvement in N. 9th, Vittorio has no experience in managing real property, construction, and building and project management.

169. Orazio and Rocco refused to consent to Vittorio's proposal to accept the Leecon proposal for the renovation of the Premises for several reasons, including cost – approximately \$600,000.00.

170. Vittorio spoke again with Lee and, thereafter, advised Orazio, that Leecon could not reduce the cost of its proposal.

171. Orazio and Rocco, as was their right as members of Bridgeview, refused to agree to the retention of Leecon for the renovation of the Bridgeview Premises.

172. After the closing of the Settlement Agreement, Orazio solicited and presented to Vittorio a bid from Greaves, who then had more than fourteen (14) years experience in construction and nine (9) years experience as a general contractor, for \$515,500.00.

173. The Greaves proposal was for substantially less than the proposals made by Professional Grade and Leecon.

174. Based on his own personal animus towards Greaves, Vittorio refused to agree to accept the Greaves proposal or to hire Greaves as general contractor.

175. After receiving the Greaves proposal, Vittorio suddenly stated that he was certain that Leecon could match the cost of the Greaves proposal – notwithstanding his having previously advised Orazio that the Leecon bid could not be lowered.

176. Vittorio's relationship and other business with Leecon and his change in position concerning Leecon's ability to make a lower proposal caused great concern to Orazio and Rocco concerning the validity of the Leecon proposal and raised questions concerning Vittorio's motives in urging acceptance of the Leecon proposal.

177. Upon information and belief, Vittorio's rejection of the Greaves proposal was made due to his personal animus against Greaves and his desire to give additional business to Leecon and to possibly gain discounts or other advantageous treatment on his other project with Leecon.

178. Upon information and belief, Vittorio's advancement of the Leecon proposals for an amount significantly higher than the Construction Reserve, was knowingly made in bad faith.

179. Upon information and belief, Vittorio's rejection of the Greaves proposal was made in bad faith.

180. After a meeting that took place in or about August, 2009 with Marra, the Company's attorney and mediator for certain disputes, Vittorio failed to communicate and cooperate with Orazio in the preparation of the detailed scope of work with specifications and the taking steps necessary to select a contractor to perform the renovations.

181. Vittorio made false claims and demands as a pretense to avoid moving forward with the selection of a contractor for the renovation of the Premises.

182. From the time Vittorio submitted the proposals from Professional Grade and Leecon in or about July, 2009, through January 6, 2011 – after the Complaint in the instant action was filed – Vittorio took no action whatsoever to identify a contractor, solicit bids from a contractor, or to further the renovation of the Premises.

183. Instead, in or about October, 2009, Vittorio served a demand for arbitration on Orazio and Rocco, which was purportedly based on Section 2.1.1 of the Settlement Agreement.

184. The Settlement Agreement only provided for arbitration of claims to resolve certain disputes that required the unanimous consent of the managing members.

185. Vittorio's arbitration claims did not pertain to any decisions required to be made unanimously by the managing members, which were the decision that would be subject to the arbitration provision.

186. Vittorio's claims for damages, including, in some instances, for legal fees and the cost of arbitration, were based on a variety of specious allegations.

187. On or about November 16, 2009, Orazio and Rocco moved for an order permanently staying the arbitration of all claims set forth in Vittorio's arbitration demand in the Supreme Court, State of New York, County of New York.

188. On or about April 8, 2010, the court issued an order permanently staying Vittorio's demand for arbitration and statement of claim.

189. From the time of execution of the Settlement Agreement onward, Orazio, on behalf of himself and Rocco, continuously requested and demanded that Vittorio move forward and cooperate with him in the selection of a contractor to renovate the Premises.

190. Vittorio refused to do so and took no action whatsoever after his submission of the Professional Grade and Leecon proposals.

191. At a special meeting of members that took place in or about March, 2010, Orazio proposed that he would be the general contractor for the renovation of the Premises, and that he would be willing to do so for the amount of the construction loan available from BRT; if the cost of the renovation exceed the Construction Reserve, Orazio agreed to underwrite those costs himself.

192. Orazio reiterated that offer to Vittorio at a special meeting of members that took place on or about August 19, 2010 and stated that he (Orazio) would guarantee that neither the Company nor its members would incur construction costs in excess of the Construction Reserve (approximately

\$433,620.00) in connection therewith provided that, in the event that Orazio's actual costs exceed the amount of the Construction Reserve, Orazio would receive a corresponding credit to his capital contribution in the Company.

193. At that same special meeting of members on August 19, 2010, Orazio proposed, in the alternative, that in the event that Vittorio does not agree to the selection of Orazio as the general contractor, Orazio and Rocco would consider any general contractor proposed by Vittorio, including Leecon, provided that the general contractor would guarantee that neither the Company nor its members would incur construction costs in excess of the Construction Reserve.

194. Orazio and Rocco voted in favor of the two proposals made by Orazio at the August 19th special meeting of members. Vittorio voted in opposition to the proposals.

195. After the August 19, 2010 special meeting of members, Vittorio again rejected Orazio as the general contractor, but did not propose Leecon, or any other general contractor, to perform the work.

196. At the same time that Vittorio rejected Orazio's proposals that (Orazio) act as general contractor, and Orazio's proposal that Vittorio propose a general contractor, Vittorio continued to demand that Orazio suggest another contractor.

1978. Vittorio claimed that there was "a large universe of competent contractors eager to work," but did not propose a single person or company from whom the Company should solicit a proposal, or engage.

198. Vittorio continued to demand, for the entire period beginning in or about August, 2009 through and including January 6, 2011, that Orazio, alone, identify and obtain bids from other contractors; Vittorio did nothing.

199. On or about October 25, 2010, in a letter from his attorney to Vittorio's attorney, Orazio suggested that two companies, Calo Construction and the Christopher Companies, be contacted to submit proposals to be general contractor. In that same letter, Orazio's attorney concluded, "We are interested in hearing of any constructive proposal that Vittorio has."

200. Orazio took actions to attempt to obtain bids from Calo Construction and The Christopher Companies.

201. After the October 25, 2010 letter, Vittorio again did not contact Orazio with the name of any contractor to be contacted to submit a bid, and, upon information and belief, did not seek to obtain any proposals – until, upon information and belief, on or within a few days prior to a special meeting of members called by Orazio for January 6, 2011.

202. On or about December 31, 2010, Orazio called a special meeting of members for January 6, 2011 for the purpose of, *inter alia*, addressing the hiring of a contractor.

203. Prior to the January 6, 2011 meeting, Orazio obtained bids from two general contractors: GIM Construction Inc. ("GIM") and Teddy Bosko Builders LLC ("Bosko").

204. Written proposals from GIM and Bosko were presented to Vittorio at the January 6, 2011 special meeting of members.

205. One day prior to the January 6, 2011 meeting, Vittorio advised Orazio that he would be seeking to obtain a bid from another contactor. This was the first mention by Vittorio of any action on his behalf to identify and/or obtain a bid from a contractor to renovate the Premises since in or about August, 2009.

206. At the special meeting of members that took place on January 6, 2011, Vittorio identified Eric Lam ("Lam"), as a contractor with whom he had spoken, who he would like to obtain a bid from. Lam had not yet reviewed the plans or prepared a proposal.

207. Subsequent to the January 6, 2011 meeting, Orazio and Vittorio, together, met separately with GIM and Bosko. After negotiating with both, bids were submitted from each in the sum of approximately \$375,000.00 for the general scope of work that had been the subject of the Professional Grade and Leecon proposals, and for amounts between \$400,000.00 and \$417,000.00 that would incorporate additional work for the Premises.

208. The bids submitted by GIM and Bosko were significantly lower than the Construction Reserve bids submitted by Professional Grade and Leecon, and for less than the Construction Reserve.

209. On or about January 10, 2011, Orazio and Vittorio, together, met with Lam at the Premises.

210. When they met on January 10, 2011, Lam advised Orazio and Vittorio that he had not yet reviewed the plans for the renovation of the Premises.

211. Lam has still not submitted a proposal for the renovation of the Premises.

212. From the date of the closing of the Settlement Agreement through and including today, the Construction Reserve was available from BRT for the purpose of renovating the Premises.

213. Vittorio's advocacy of the Leecon proposal, for an amount significantly greater than the Construction Reserve, and for an amount significantly higher than proposals obtained from Greaves, and thereafter from GIM and Bosco, constituted a breach of his fiduciary obligations to the Company, Orazio and Rocco.

214. Vittorio's unjustifiable rejection of the Greaves proposal constituted a breach of his fiduciary duty to the Company, Orazio and Rocco.

215. Vittorio's refusal to take any action whatsoever for close to one and one-half years (from the dates he obtained the Professional Grade and Leecon proposals in or about August, 2010 until the date he first spoke with Lam in or about January, 2011, constituted a breach of his fiduciary obligations to the Company, Orazio and Rocco.

216. Vittorio's refusal to cooperate with Orazio and Rocco in selecting a contractor to renovate the Premises delayed the renovation of the Premises while, at the same time, the Company incurred additional obligations to BRT.

217. Vittorio's refusal to cooperate with Orazio and Rocco in selecting a general contractor and advancing the renovation of the Premises delayed the Company's opportunity to renovate and thereafter lease the residential units, and from realizing income therefrom.

218. Vittorio's refusal to cooperate with Orazio and Rocco in the selection of a contractor to renovate the Premises constituted a breach of his fiduciary obligations to the Company, Orazio and Rocco.

C. Vittorio's Interference with Efforts to Lease the Commercial Space and his Insistence that the Premises Be Sold, at a Considerable Loss to the Company and its Members.

219. At all times, it was in the Company's best interests to lease the Commercial Units.

220. The Commercial Units were in adequate condition to be leased even without the renovation of the Residential Units of the Premises.

221. Prior to, and at all times after the execution of the Settlement Agreement, the Commercial Units were listed with a commercial real estate broker for lease.

222. Vittorio interfered with the Company's efforts to lease the Commercial Units by, *inter alia*, taking the keys from the broker for a period of time, so that he could give entrance to his workmen to use the Commercial Units in the Premises to fabricate and paint items for use in his personal restaurant business; refusing to remove his personal items, and cease using the Commercial Units for his personal use, which made it more difficult, if not impossible, to lease the Commercial Units; and from time to time made statements to the brokers that caused the brokers uncertainty as to whether they should be attempting to lease the Commercial Units.

223. Instead of cooperating with Orazio and Rocco to advance - even begin - the renovation of the Premises, Vittorio, for his own purposes, advocated

the sale of the Premises, which was the only real asset of the Company, at an amount that would have locked in substantial losses to the Company and its members.

224. Orazio and Rocco objected to the sale of the Premises and ultimately refused to consent to the issuance to of a contract of sale to a prospective purchaser for a purchase price that would have resulted in the Company and its members sustaining significant, unnecessary losses.

225. Vittorio's demand for the sale of the sale of the Premises and his refusal to cooperate with Orazio and Rocco in the selection of a contractor to renovate the Premises, constituted a breach of his fiduciary obligation to the Company, Orazio and Rocco.

D. Vittorio's Other Breaches of his Fiduciary Obligations to the Company and Orazio.

226. Upon information and belief, during the time that the Premises was listed for sale, Vittorio engaged in private conversations with real estate brokers, in which he made false statements about Orazio.

227. Vittorio's false statements to third parties, including brokers, concerning Orazio, was in further breach of his fiduciary obligations to the Company and to Orazio.

228. In an effort to try and resolve a growing impasse between Vittorio and Orazio, Orazio sought to bring in an investor to purchase Vittorio's interest in the Company.

229. Before any such transfer of interest could be completed, BRT would have had to approve the prospective purchaser and collateral that would have

had to be offered by the prospective purchaser to replace collateral of Vittorio that was already pledged as collateral as security for the BRT Loan.

230. Upon information and belief, based on statements made by Vittorio to BRT, BRT imposed conditions that would have made any sale of the Vittorio's interest impossible.

231. Vittorio's statements to BRT which resulted in BRT imposing conditions that made it impossible for Orazio to bring in a purchaser to acquire Vittorio's interest in the Company were in breach of Vittorio's fiduciary obligations to the Company, Orazio and Rocco.

232. Vittorio's actions as hereinabove set forth, including, without limitation, his refusal to cooperate in the selection of a contractor and the resultant delay in the renovation of the Premises, has caused great economic harm to the Company.

233. Based upon the foregoing, the Company has a derivative claim against Vittorio for the losses that it has sustained, and that it will continue to sustain, as a result of Vittorio's improper actions.

234. Inasmuch as Vittorio owns a fifty (50%) percent membership interest in the Company and his consent would be required for the Company to commence an action against him, any demand upon the Company would be fruitless.

235. Based upon the foregoing breaches of fiduciary duty, the Company, Orazio and Rocco have suffered damages in an amount to be determined at trial,

but which are no less than \$2,000,000.00, plus interest and punitive damages in the sum of \$2,000.000.

AS AND FOR AN TWELFTH AFFIRMATIVE DEFENSE
AND A SECOND COUNTERCLAIM

(Breach of the Covenant of Good Faith and Fair Dealing)

236. Defendants repeat, reiterate and reallege each and every allegation set forth in ¶¶126 through 235 above, as if more particularly set forth at length herein.

237. There is an implied covenant of good faith and fair dealing applicable to all parties to the Operating Agreement and Settlement Agreement.

238. The Operating Agreement and Settlement Agreement contemplated that the parties take actions consistent with the objective of timely renovating the Premises and entering into a lease of the Commercial Unites as quickly as possible.

239. The Settlement Agreement and promissory notes contemplated that the Company would complete the renovation of the Premises and enter into a lease of the Commercial Unites as quickly as possible so that the Company could close on the refinancing of the BRT Loan, with Vittorio receiving sufficient funds from said refinancing so that the balance due on the promissory notes would be paid.

240. By failing and refusing to cooperate with Orazio and Rocco in the selection of a contractor, causing great delay in the renovation of the Premises; by initiating an arbitration for claims that were not subject to the arbitration clause of the Settlement Agreement, which also had the effect of delaying the selection

of a contractor and commencement of the renovations; and by seeking the sale of the Premises, which would have unnecessarily resulted in tremendous losses to the Company and its members, Vittorio engaged in conduct that has deprived Orazio and Rocco of the right to receive the benefits of the Settlement Agreement and Operating Agreement: a renovated, improved, revenue-producing property, which would have also permitted the Company to refinance its loan and reduce its debt service and the members to recoup their investments and earn a profit.

241. By failing and refusing to cooperate with Orazio and Rocco in the selection of a contractor, causing great delay in the renovation of the Premises; by initiating an arbitration for claims that were not subject to the arbitration clause of the Settlement Agreement, which also had the effect of delaying the selection of a contractor and commencement of the renovations; and by seeking the sale of the Premises, which would have unnecessarily resulted in tremendous losses to the Company and its members, Vittorio engaged in conduct that has deprived Orazio and Rocco of the right to receive the benefits of the Settlement Agreement and promissory notes – the refinancing of the BRT Loan and the payment by Vittorio, to each of Orazio and Rocco, the balance due on each of the promissory notes.

242. To date, as a result of Vittorio's actions, the conditions pertaining to Bridgeview upon which the promissory notes to Orazio and Rocco would have become due have not yet occurred.

243. As a result of Vittorio's actions, the Premises has not generated any income and the residential units are not yet ready for lease.

244. As a result of Vittorio's actions, the Company has incurred additional and unwarranted debt to BRT.

245. As a result of Vittorio's actions, the Premises is not in a condition that a sale of the Premises could even be contemplated.

246. As a result of Vittorio's action, the Company is not now in a position to refinance its debt to BRT under more favorable terms.

247. As a result of Vittorio's attempt to sell the Premises, if not opposed by Orazio and Rocco, the members would have suffered additional significant, unnecessary damages.

248. Based upon the foregoing, Vittorio has deprived Orazio and Rocco of the benefit of their bargain – the reason they invested at the time of the closing of the Settlement Agreement over \$1,000,000.00 in a property that has not generated any revenue whatsoever.

249. As a result of the foregoing Orazio and Rocco have suffered damages in an amount to be determined at trial, but not less than \$2,000,000.00, plus interest and punitive damages in the sum of \$2,000,000.00..

**AS AND FOR AN THIRTEENTH AFFIRMATIVE DEFENSE
AND A THIRD COUNTERCLAIM**

(Fraud)

250. Defendants repeat, reiterate and reallege each and every allegation set forth in ¶¶126 through 235, and 237-249 above, as if more particularly set forth at length herein.

251. Upon information and belief, Vittorio's statements to Orazio and Rocco, that he did not have sufficient funds to pay the Purchase Price for his increased interest in Bridgeview as contemplated in the Settlement Agreement because he needed cash to invest in N. 9th was false when made, was known by Vittorio to be false when made, and was made with the intent of inducing Orazio and Rocco to accept non-interest bearing promissory notes from Vittorio for the balance of the Purchase Price due at the closing of the Settlement Agreement.

252. But for the representation of Vittorio as hereinabove described, Orazio and Rocco would not have allowed Vittorio to increase his membership interest in Bridgeview in exchange for non-interest bearing promissory notes.

253. Based upon the foregoing, Orazio and Rocco have suffered damages in the sum of \$165,000.00 each, plus interest from April 6, 2009 and punitive damages in the sum of \$2,000,000.00..

WHEREFORE, defendants and counterclaimants Orazio Petito and Rocco Petito, and additional plaintiff on the counterclaim Bridgeview at Broadway, LLC, respectfully demand judgment as follows:

- (a) dismissing the Complaint in its entirety;
- (b) on the first counterclaim, awarding the defendants and counterclaimants judgment in an amount to be determined at trial, but not less than \$2,000,000.000, plus interest and punitive damages in the sum of \$2,000,000.00;
- (c) on the second counterclaim, awarding the defendants and counterclaimants judgment in an amount to be determined at

trial, but not less than \$2,000,000.000, plus interest and punitive damages in the sum of \$2,000,000.00;

(d) on the third counterclaim, awarding Orazio and Rocco damages in the sum of \$165,000.00 each, plus interest from April 6, 2009 and punitive damages in the sum of \$2,000,000.00; and together with interest, costs, attorney's fees, and such other and further relief as to the court seems just and proper.

Dated: January 21, 2011
New York, New York

LAW OFFICES OF BART J. EAGLE, PLLC

By: /s/Bart J. Eagle

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ATTORNEY'S VERIFICATION

BART J. EAGLE, an attorney licensed to practice law in the state of New York, affirms the following under the penalty of perjury:

I am a member of the law firm, Law Offices of Bart J. Eagle, PLLC, attorneys for defendants/counterclaimants Orazio Petito and Rocco Petito, and additional counterclaimant Bridgeview at Broadway, LLC, in this action, and have read the attached verified answer and counterclaims and all the contents thereof are true to my knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The grounds of my information and the sources of my belief are conversations with my Orazio Petito, statements made by plaintiff Vittorio Antonini, and review of certain documents. I am making this affidavit since the defendants do not reside in the county where my firm has its office.

Dated: January 21, 2011
New York, New York

/s/Bart J. Eagle
Bart J. Eagle