

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

HOWARD NOURIELI, an individual, and :
BOWERY KITCHEN SUPPLIES, INC., a New :
York corporation, :

Plaintiffs, :

v. :

MARCUS LEMONIS, an individual, MARCUS :
LEMONIS, LLC, a Delaware limited liability :
company, CAMPING WORLD HOLDINGS, :
INC., a Delaware corporation, MACHETE :
CORPORATION d/b/a MACHETE :
PRODUCTIONS, a California corporation; and :
DOES 1 through 10, inclusive, :

Defendants. :

Civil Action No. 20-cv-8233

COMPLAINT

**DEMAND FOR JURY TRIAL
ON ALL CLAIMS SO TRIABLE**

Bowery Kitchen Supplies, Inc. (“Bowery Kitchen” or the “Company”) and Howard Nourieli (“Howard” or “Plaintiff”) (collectively, “Plaintiffs”), by and through their undersigned counsel, bring this action against Defendants Marcus Lemonis (“Lemonis”), Marcus Lemonis LLC (“ML LLC” or “Lemonis Entity”) (Lemonis and ML LLC collectively, “Lemonis Defendants”), Camping World Holdings, Inc. (“Camping World”), Machete Corporation d/b/a Machete Productions (“Machete”), and DOES 1 through 10 (“DOE Defendants”), (collectively referred to as “Defendants”) and allege as follows:

INTRODUCTION

1. This case arises from an unfortunate—but not uncommon—scheme fraught with bad faith and intellectual property infringing actions by Defendants who knowingly and

purposefully made false representations and false promises to Plaintiffs for their own personal benefit and gain.

2. Bowery Kitchen was a brick-and-mortar specialty kitchen supplies business established in 1975 by the Nourieli family and originally located on the Bowery, one of the oldest streets and neighborhoods in New York City. Bowery Kitchen focused on selling specialty kitchen items to restaurant vendors, bars, pizzerias, delis, bakeries, and others.

3. In 1990, Plaintiff Howard decided to open his own Bowery Kitchen. In 1996, Howard together with his high school sweetheart and 50% owner of Bowery Kitchen, Robyn Coval (“Robyn”), moved Bowery Kitchen out of the Bowery and into the infamous Chelsea Market, its new flagship location, in lower Manhattan, New York. The Bowery Kitchen in Chelsea Market expanded its consumer base to not just restaurants, but cooking enthusiasts, from the professional chef de cuisine to the at-home chef, while providing wholesale prices. Bowery Kitchen was Howard and Robyn’s first “child” together, until they eventually married and had two children of their own.

4. Located in the popular Chelsea Market that generates foot traffic of over 9 million visitors per year, Bowery Kitchen became very successful, generating upwards of \$3 million in revenue annually by 2016. Although successful, Howard had always wished to expand Bowery Kitchen beyond its flagship Chelsea Market location.

5. Oftentimes, for a small business that wishes to expand, the best course of action is for the owner to hire a business consultant for a few thousand dollars a month, apply for a business line of credit and follow a strategic business plan formed by the business consultant. Unfortunately, in Plaintiffs case—Defendants sidetracked this plan.

6. Lemonis is a false prophet who uses his fame and fortune to exploit and loot small businesses that generally have no lawyers employed by the business. Through his CNBC television show titled, *The Profit*, Lemonis preys on small, established businesses and slowly drowns them in debt owed to his personally controlled companies in order to expand his own empire. On *The Profit*, Lemonis portrays himself as a savior to small businesses, when, in reality, he destroys the businesses he purports to save from the inside out. On every episode of *The Profit*, Lemonis says the same line, “**There is one condition, I am 100 percent in charge.**” This dominant persona affords Lemonis the opportunity to saddle the businesses with exorbitant debt and make them ever beholden to him or his entities. Eventually, Lemonis calls in his debt to take all of the assets for himself, leaving the original owners to try to climb out of the deep hole that he put them in.

7. Lemonis is also the Chairman and Chief Executive Officer (“CEO”) of Defendant Camping World, a company that specializes in the selling of recreational vehicles (“RVs”) and services related to RV ownership and maintenance. Before Camping World’s initial public offering (“IPO”), Lemonis—along with private equity firm Crestview Partners II GP, L.P. (“Crestview Partners”)—collected massive stakes in Camping World, becoming its majority and controlling shareholders. Camping World is incorporated in Delaware, with its principal place of business being in Lincolnshire, Illinois.

8. Machete Productions is a television production company that develops and produces CNBC’s show, *The Profit*. Machete, acting on Lemonis Defendants’ behalf, seeks out targets for the scam and vets them before they appear on the show. Machete Productions is incorporated in California, with its principal place of business being California.

9. After an arduous process of Howard and his wife being seduced and sold on being on the show, Bowery Kitchen was featured on an episode of *The Profit* that aired on October 18, 2016. Like many people approached by producers in the entertainment industry, Plaintiff Howard and Robyn were very excited by the thought of appearing on the show, meeting Lemonis, and, more importantly, growing and improving their business and lives. In the episode, Lemonis offered to invest in the business by acquiring a 33.3% interest in Bowery Kitchen for \$350,000. However, Lemonis abandoned the aired “deal,” and instead of helping the business “profit,” he forced into unrecoverable debt. Once Lemonis became involved and gained functional control of Bowery Kitchen, he began to drive the Company into the ground by unnecessarily liquidating the Company’s inventory at steeply discounted prices, negligently renovating and rebranding the store, and leaving Plaintiffs with a new unrecognizable store with over a half a million dollars in payables that the Company ultimately could not pay or afford. Lemonis then turned his “investment” into leverage, threatening Plaintiffs to hand over their intellectual property rights to Defendants or pay upwards of \$591,000.

10. As detailed below, Lemonis Defendants conned Howard and Robyn into thinking he wanted to expand their business and brand and help them profit. Instead, Howard and Robyn were swindled and victimized and saddled with debt, a tarnished reputation with vendors and long-term customers, ruined business relationships, and shattered dreams. Howard and Robyn were ultimately forced to close Bowery Kitchen’s doors in March 2020.

11. Most notably, months after Plaintiffs’ episode of *The Profit* was filmed, Lemonis Defendants, Camping World, and DOE Defendants intentionally, and without Plaintiffs’ authorization, manufactured and sold various kitchen items and supplies using Plaintiff Bowery Kitchen’s trademarked logo and brand. Furthermore, upon information and belief, Lemonis

Defendants and Camping World are currently impermissibly selling Bowery Kitchen branded products at several Camping World retail locations in addition to other retail outlets. Instead of receiving profits from these sales, Howard and Robyn were bombarded with complaints from customers about the inferior quality of the knockoff products sold at Camping World, of which they had no knowledge.

12. As discussed below, Lemonis Defendants use the allure of *The Profit* to bait small business owners like Howard into Defendants' web of lies. Lemonis Defendants and Machete knowingly and intentionally made false representations that they would be helping Bowery Kitchen and that the relationship was more akin to a partnership. In reality, they were setting Plaintiffs up to fail so that Defendants could take over the business and, more accurately, forever ruin the family business while knocking off the Company's trademarked products to be sold out of Camping World. Defendants' fraudulent and deceptive scheme violates the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, *et seq.*

13. By this action, Plaintiffs seek declaratory judgement, preliminary and permanent injunctive relief, compensatory damages in an amount to be determined at trial but believed to exceed millions of dollars, treble and statutory damages, and attorneys' fees under the Lanham Act and RICO, together with remedies for related common law claims for trademark infringement, fraud, fraudulent inducement, unjust enrichment, interference with business relations, and to hold Lemonis and Lemonis Defendants and their agents accountable for their RICO violations.

PARTIES

14. Plaintiff Howard Nourieli is the co-founder, CEO, and 50% owner of Bowery Kitchen in Chelsea Market for over 20 years. Howard is a resident of New York, New York.

15. Plaintiff Bowery Kitchen Supplies, Inc. is a privately-held New York corporation with its principal place of business in New York, New York. Bowery Kitchen sold novelty kitchen supplies, gifts, and cooking gear. Bowery Kitchen closed its doors to the public in March 2020. Bowery Kitchen is an active entity registered to do business in the state of New York.

16. Defendant Marcus Lemonis is an individual domiciled in Illinois and owner of Marcus Lemonis LLC. Lemonis is an investor and television personality of CNBC's corrupt reality show *The Profit*. Lemonis is also chairman and CEO of Camping World, Good Sam Enterprises, Gander Outdoors, and The House Boardshop. He is a scam artist.

17. Defendant Marcus Lemonis, LLC ("ML, LLC") is a limited liability company organized and existing under the laws of Delaware with a principle place of business in the State of Illinois. The sole member of ML, LLC is Marcus Lemonis Enterprises, LLC, whose sole member is the Marcus Lemonis Revocable Trust, whose trustee is Marcus Lemonis. Marcus Lemonis Enterprises LLC is domiciled in Illinois. ML, LLC is the alter ego or agent of Lemonis. It is a vehicle through which fraud is conducted and stolen monies diverted.

18. Defendant Machete Corporation d/b/a Machete Productions ("Machete") is a television production company that develops and produces *The Profit* and acts in a complicit manner under Lemonis to select vulnerable, otherwise successful family businesses, to manipulate and defraud. Machete is a corporation organized and existing under the laws of California with a principle place of business in the State of California. Machete Corporation is the agent for Defendants Lemonis and ML, LLC. Machete Productions is also the production company behind the E! franchise "WAGS" and works with several cable television networks such as Bravo, E!, Oxygen, and Lifetime.

19. Defendant Camping World Holdings, Inc. (“Camping World”) is a retailer of RVs and outdoor supplies and accessories. Camping World is headquartered in Lincolnshire, Illinois, and is incorporated under the laws of Delaware. Camping World, which is publicly traded on the New York Stock Exchange, operates approximately 120 retail/service locations in 36 states, and also sells goods online, some of which are misappropriated in violation of state and federal law. The company is co-owned by Lemonis and the private equity firm, Crestview Partners.

20. The names of other defendants and/or their involvement in this dispute are presently unknown to Plaintiffs, who therefore sue such Defendants in this action by fictitious names. Each of the defendants designated as DOES 1-10 is legally responsible in some manner for the unlawful acts described above. Plaintiffs will seek leave of the Court to amend this Complaint to reflect the true names and capacities of the DOE defendants as and when their identified become known.

21. Each Defendant is the agent, servant, and/or employee of other Defendants and each Defendant was acting within the course and scope of his, her or its authority as agent, servant and/or employee of the other Defendants. Defendants, and each of them, are individuals, limited liability companies or corporations which joined in and conspired with the other wrongdoers in carrying out the tortious and unlawful acts described herein, and Defendants, and each of them ratified those acts.

22. At all times relevant to this action, Defendant Marcus Lemonis had exclusive and complete dominion and control over Marcus Lemonis LLC, such that this entity was his alter ego and the acts of ML, LLC as set forth in this Complaint are also the acts of Defendant Marcus Lemonis.

23. There is such a unity of interest and ownership between Defendant Marcus Lemonis on the one hand and ML, LLC on the other hand, that the individuality of ML, LLC or its separateness from Defendant Marcus Lemonis has ceased because, upon information and belief:

- a. ML, LLC is completely influenced and governed by Defendant Marcus Lemonis, the sole natural person involved in each entity;
- b. Defendant Marcus Lemonis completely controls ML, LLC;
- c. Defendants Lemonis and ML, LLC share the same address as their principal place of business;
- d. ML, LLC was at all times material to this matter, an instrumentality used for the benefit of Defendant Marcus Lemonis;
- e. ML, LLC is, and at all times herein mentioned was, kept under-capitalized by Defendant Marcus Lemonis, in relation to the reasonable needs of its business;
- f. The corporate forms of ML, LLC is a mere façade for the operation of Defendant Lemonis;
- g. The corporate form, entity, and structure of ML, LLC was at all times disregarded by Defendant Marcus Lemonis;
- h. The assets of ML, LLC was or is intermingled with the assets of Defendant Marcus Lemonis, or transferred without consideration, to Defendant Marcus Lemonis in disregard of the purported separate corporate form, entity and structure of ML, LLC, so as to make it impossible to separate from individual liabilities;
- i. The business and corporate affairs of ML, LLC is intermingled with those of Defendant Marcus Lemonis;

- j. ML, LLC has failed to abide by corporate formalities; and
- k. Defendant Lemonis uses his control over ML, LLC and its assets to further his own personal interest.

24. Upon information and belief, Defendant ML, LLC was never intended to have, and never has, any true existence as a corporation. Indeed ML, LLC is and was organized and designed to act as a device by which Defendant Marcus Lemonis could evade his obligation, responsibility, and liability to third parties, including Plaintiffs, by engaging in unlawful activity without personal liability.

25. Continued adherence to the fiction of the separate existence of ML, LLC would sanction fraud and promote injustice, in that Defendant Marcus Lemonis is attempting to escape liability for his unlawful activity, as set forth below, by hiding behind ML, LLC and manipulating assets and liabilities to avoid responsibility for the unlawful acts that he directed and caused for his own benefit.

JURISDICTION AND VENUE

26. This Court has subject matter jurisdiction under 15 U.S.C. § 1121 (action arising under the Lanham Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1338(a) (any Act of Congress relating to patents, copyrights, or trademarks); 28 U.S.C. § 1338(b) (action asserting claim of unfair competition joined with a substantial and related claim under the trademark laws); 28 U.S.C. § 1332(a) (diversity of citizenship between the parties) and 28 U.S.C. § 1367 (supplemental jurisdiction).

27. As stated above, Plaintiffs are domiciled in the State of New York. No defendant is a citizen of the State of New York or domiciled in the State of New York. Defendant Lemonis

is domiciled in Illinois, Defendant ML LLC is a citizen of Illinois, Defendant Camping World is a citizen of Illinois and Delaware, and Defendant Machete is a citizen of California.

28. This Court has diversity jurisdiction over the parties pursuant to 28 U.S.C. § 1332 because all Plaintiffs are residents of different states than the Defendants and the amount in controversy exceeds \$75,000. As set forth below, Plaintiffs claim millions of dollars in damages.

29. Venue in this district is proper pursuant to 28 U.S.C. §§ 1391(b)(2) and (c)(2) because a substantial part of the events giving rise to this claim occurred in this judicial district and because Defendants derive substantial revenue from interstate commerce and have extensive contacts with, conduct business within, and have caused injuries to Plaintiffs, as described herein, in this judicial district.

FACTS

1. Background

1.1. Original Bowery Kitchen Supplies—45-Year-Old Family Business

30. Bowery Kitchen Supplies, founded by the Nourieli family, originally opened in 1975 on Bowery Street, New York's oldest street. Bowery Kitchen focused on selling heavy kitchen equipment items such as stoves, refrigerator, custom fabrications, tabletops, chairs and various kitchen accessories to restaurants, bars, pizzerias delis, bakeries etc.

31. Howard Nourieli ("Howard") worked for his family's kitchen equipment supplies business from a young age, until around 1990, when he decided to open his own Bowery Kitchen about a block away from his family's store. Howard's Bowery Kitchen expanded its consumer base to not just restaurants, but cooking enthusiasts alike, from the professional chef de cuisine to the at-home chef. There, Howard sold professional smallware supplies such as knives, utensils, pots and pans, gadgets and many other accessories that were popular among professional chefs

and the general public. On or around that time, because television shows were starting to promote more at-home cooking, Howard's business quickly became successful. To help the store with its quick success and merchandising, Howard hired his friend from high school, Robyn Coval ("Robyn").

32. In 1996, after surveying a new food hall on the westside of Manhattan, Howard and his soon-to-be wife and business partner, Robyn decided to move Bowery Kitchen out of the Bowery. Howard and Robyn opened Bowery Kitchen in a 4,000-square-foot retail store located inside the now famous Chelsea Market in lower Manhattan. The store was one-of-a-kind in terms of the merchandising offered to the public. Howard and Robyn treated their Bowery Kitchen store like it was their first child together, until they eventually married and had two children of their own.

33. Howard and Robyn's Bowery Kitchen store was located in Chelsea Market, the former home of the National Biscuit Company where the Oreo cookie was invented and a New York City hotspot for foodies, tourists, and shopping addicts. Primarily known for its wide range of eateries and retail shops, Chelsea Market is one of New York's most notable places to visit. The Chelsea Market complex fills an entire city block by Ninth and Tenth Avenues and 15th and 16th Streets. In addition to the retail concourse, it also provides office space for media and broadcasting tenants, such as Oxygen Network, Food Network, and MLB.com. Indeed, Chelsea Market's high volume of foot traffic makes it an ideal and coveted location for any retail operation.

34. Bowery Kitchen's name and brand quickly gained attention and press by being featured on Food Network shows, such as *Emeril Live* and *Beat Bobby Flay*, as well as being featured in the New York Times and named "Best Kitchen Supply in New York" by several notable

magazines. It employed approximately 15 employees and was a successful business with increasing growth, sales, and profit margins.

35. Due to its high-quality products, great reputation, and prime location, Bowery Kitchen was generating over \$3.1 million in revenue annually by 2016. Almost a third of its business came from its knife sales, the focal point of its promotional efforts. In fact, on Yelp, Bowery Kitchen was listed as one of the top ten knife stores in New York.

1.2. Bowery Kitchen as a Brand: Logo and Trademark

36. In 2011, Plaintiff Howard and Robyn hired Mammalfish, Inc. (“Mammalfish”), an award-winning design firm, to design and revamp the logo for Bowery Kitchen. The logo they chose featured Bowery Kitchen’s name beneath the New York City skyline in orange and white with utensils instead of buildings. To Howard and Robyn, the logo not only embodied their store brand but also their home, New York City. The logo was used on Bowery Kitchen’s website, on business cards, as well as for promotions and signage.

37. On or around March 30, 2017, Howard filed an application with the U.S. Patent and Trademark Office (“USPTO”) for the “Bowery Kitchen Supplies Where the Chefs Shop” logo that Mammalfish designed for Bowery Kitchen in 2011 (the “Infringed Mark” or “Bowery Kitchen’s Registered Trademark”).

38. The trademark, which is owned by Plaintiff Bowery Kitchen, was officially published on or around August 22, 2017. On or around November 7, 2017, the trademark was registered, and assigned US Registration Number 5328495. *See* Ex. A. Figure 1 is a copy of the official Bowery Kitchen logo that was designed for Bowery Kitchen by Mammalfish:

company, Camping World, he is on the hunt for struggling businesses that are desperate for cash and ripe for a deal. In the past 10 years, he’s successfully turned around over 100 companies.” The page ends by inviting interested business owners to “[a]pply now for a chance to save your business!”

42. CNBC’s website for *The Profit* promotes Lemonis’ tactics, stating that Lemonis “goes on the hunt for struggling businesses that are desperate for cash and ripe for a deal. In each one-hour episode of *The Profit*, Lemonis makes an offer that’s impossible to refuse; his cash for a piece of the business and a percentage of the profits.”

43. As Plaintiffs would soon learn, Lemonis used the show to prey upon less sophisticated business owners to build his own individual wealth at the expense of the businesses he was supposed to be helping.

44. Indeed, *The Profit* often features small, family-owned businesses where the family members are often overworked and fulfilling multiple roles in the company. These business owners do not have formal business training. Even more, these companies often do not have general counsel or independent attorneys who can review the company’s involvement with Lemonis, his various entities, and the show.

1.4. Lemonis is No Stranger to Fraudulent Business Practices

45. As summarized below, and unbeknownst to Plaintiffs at the time of Bowery Kitchen’s participation on *The Profit*, Lemonis and his various entities have engaged in unscrupulous business practices upon several other small business-owners, some also participants in *The Profit*, and many sharing striking similarities to the instant case:

- ***Bow & Truss v. Lemonis***, Illinois Cook County Law Division: The allegations in the lawsuit state, in seeking to buy a majority stake in Bow Truss Coffee Roasters, Lemonis “devised a fraudulent scheme to attempt to purchase [Bow Truss] at a rock bottom bargain basement giveaway price and failing to accomplish that to destroy [Bow Truss].” Bow Truss also alleged

that Lemonis “took over” and tried to strong-arm the company into a significantly lower purchase price two hours before the company needed another cash infusion to keep its employees from walking out and all 11 locations from closing.

- ***Ference (Simple Greek LLC) v. Lemonis***, Pennsylvania Allegheny County: Michael Ference and Kathleen Kamouyerour Ference sued Lemonis after appearing on *The Profit* to accept Lemonis’ help in turning around their struggling family business, Simple Greek, a franchise of fast-casual Greek restaurants. The lawsuit alleged that Lemonis took over the family business, sold franchises, and expanded across the United States while denying the Ferences’ ownership interest in their own company.
- ***Sugarfina, Inc. v. Sweet Petes LLC et al***, Central District of California: Sweet Pete’s, one of Lemonis’ and *The Profit*’s purported “success stories,” ripped off popular sugar company, Sugarfina’s intellectual property by copying the types of candy, packing, and protectable names offered by Sugarfina. While the claims against Lemonis individually were dismissed, the overall case settled for \$2 million.

46. Indeed, shortly after the Bowery Kitchen episode of *The Profit* aired, a federal securities fraud class action was filed against Camping World and Lemonis on behalf of the Camping World investors. *See Ronge v. Camping World Holdings, Inc.*, No. 18-cv-7030 (N.D. Ill. 2018). The lawsuit came as no surprise when, after repeated assurances were given to investors that the company possessed adequate internal controls with respect to an acquisition of Gander Mountain Stores, the company then restated its revenues in public filings. As of March 12, 2020, plaintiffs in that action filed papers seeking preliminary approval of a \$12.5 million settlement on behalf of investors in Camping World against the Company, Lemonis, and related persons and entities.

2. *The Profit* Comes to “Save” Bowery Kitchen

47. On or around March 9, 2016, Kevin Smith (“Smith”) of Machete and/or CNBC called Bowery Kitchen and spoke to Howard about appearing on *The Profit*. Both Howard and Robyn were not aware of the television show nor had either applied to appear on it. At the time, Howard assumed that one of Bowery Kitchen’s employees had reached out to CNBC and submitted Bowery Kitchen as a potential candidate.

48. Machete is the agent of Lemonis and ML, LLC. Machete acted on the Lemonis Defendants' behalf, and with their authority, when screening potential targets for "The Profit" and when making representations to potential applicants, including Plaintiffs, about Lemonis' ability to help small businesses, the deals Lemonis makes on the show, and how Lemonis has helped business that appeared on previous episodes of "The Profit."

49. The Lemonis Defendants authorized Machete to make representations to potential applicants for "The Profit," including Plaintiffs, in order to induce them to appear on the show and allow the Lemonis Defendants to invest in their small businesses.

50. The Lemonis Defendants also authorized Machete to make the advertisements and websites promoting the show to the general public, described above, which included representations about Lemonis' ability to help small businesses, the deals Lemonis makes on the show, and how Lemonis has helped businesses that appeared on previous episodes of "The Profit." The Lemonis Defendants had the right to control the representations made by Machete to the general public and to potential applicants for "The Profit," including Plaintiffs.

51. During the call that took place on or around March 9, Smith discussed the basic premise of the show, explaining how Lemonis represents how he helps businesses, and informed Howard that he would have to fill out a "Casting Application." Smith represented to Howard that if he filled out the Casting Application, they would be considered as applicants on the show. Like many people approached by producers in the entertainment industry, Howard was very excited of the thought of appearing on a national TV show, meeting the so-called "Profit" and more importantly growing and improving his business and life.

52. After speaking with Smith, Howard looked into the show and watched two episodes of *The Profit*, one of which featured a pet food store business, Bentley Pet Stuff. Howard saw how

Lemonis represented his ability to help the two business owners, a husband and wife duo, expand their brand and business successfully through subscription delivery services and local marketing efforts. Howard also believed the show depicted Lemonis as genuinely interested in expansion of the business. After watching, Howard was hopeful that Lemonis would also be able to do the same for Bowery Kitchen, which he had built into a successful company on his own.

53. Following their call, on March 9, 2016 Smith emailed Howard the “Casting Application” and asked Howard to quickly return it by the end of the week. At no point was Howard advised to have an attorney review the application, nor advised that the application contained any waiver provisions. Howard did not know that by filling out and signing the casting application, he was also signing a waiver of rights and any recourse to sue, as no one explained this to him. Howard made no knowing waiver in signing the form application. Had he been aware, he would not have signed it. On its face, the waiver and release, which was signed and made unknowingly, related to the application itself and the use of Howard, Robyn and Bowery Kitchen’s name and likeness on the show. Sometime thereafter, Howard submitted the application to be on *The Profit*.

54. Sometime between March 10 and 14, 2016, Howard and Robyn attended a filmed Skype interview with Smith and some other producers for Machete that lasted roughly forty (40) minutes. During the Skype interview, the producers asked Howard and Robyn about Bowery Kitchen, their finances, and any personal problems between the two. The interview was primarily utilized to gauge their personalities and fish for information on what would interest them to go on the show. For example, they asked questions such as “if Marcus invested a certain amount of money, how would this help Bowery Kitchen” or “what if Marcus helped you with branded merchandise, would this help the store?” Essentially these questions were designed to form the

bait for inducing Howard and Robyn to allow Lemonis into their business and by making it appear that Lemonis was genuinely concerned with formulating the best method of helping Bowery Kitchen.

55. On March 15, 2016, Smith introduced Howard to his supervisor, Kimberly Donnan (“Donnan”), Co-Executive Producer of *The Profit* and Executive Vice President of Development of Machete Productions. Smith informed Howard that Bowery Kitchen had made it to the “next level” of the application process and the next step involved “paperwork” (i.e. background checks and other forms to sign).

56. After the Skype interview, Robyn had made up her mind that she did not want to go on the show. Sometime in or around April to mid-April, Robyn received a several phone calls from producers at Machete. They explained how much Lemonis really loved Howard and Robyn’s dynamic and emphasized how he could really help their store. Robyn was still not convinced.

57. To alleviate Robyn’s worries, on or around April 13, 2016, Donnan emailed Robyn the contact information of a past participant on the show, Carolyn Devito (“Devito”), a salon owner who appeared in a 2014 episode of *The Profit*. Lemonis supposedly helped expand and re-brand her line of hair products. Of course, at the time, Devito’s business was one of Lemonis’ so-called success stories. At no point did Machete give Robyn the name of any past participant who chose not to partner with Lemonis or where things may have went astray.

58. Sometime on or around April 2016, Howard submitted the relevant background checks for *The Profit’s* application process.

59. On May 3, 2016, Donnan emailed Howard stating that the background checks came back clean and that Bowery Kitchen was approved to be one of the businesses for the 2016 season of *The Profit*:

CONGRATS!!!

Your background checks came back clean and your company has been approved to be one of our businesses for this season! The next thing I need to get from you are...releases!

60. Donnan then asked Howard to sign various documents for the show. At no point did Donnan advise Howard to have an attorney review the documents or even explain what a release was or why it was needed. Howard believed that the documents were a bit daunting to sign but Donnan represented that they were required and standard documents CNBC used across the board for every non-scripted show, including “the Kardashians” and “Housewives” franchise, and that even though a lot of the language was not applicable to “The Profit,” the network was not willing to make any changes. Howard also explained to Donnan that Robyn was still hesitant to go on the show and asked Donnan for more insight on the offer process that happens on the show.

61. On or around May 5, 2016, Donnan responded by email to Howard: “The offer process is a true negotiation. What you see on tv is the actual offer and counter...The deal is made there and then and like in business, there is no going back once you reach an agreement. There is no sleeping on it.” Donna also explained they were not interested in featuring Bowery Kitchen on the show without Robyn involved. At this point, Robyn was still not keen on appearing on the show.

62. The tipping point for Robyn was when she received a phone call from Lemonis himself sometime in the beginning of May. Lemonis explained to Robyn that he liked the fact that Howard and Robyn were ex-husband and wife still in business together. He told Robyn that he really believed in their business and was not in the business of making people look bad on camera. In fact he said, “I just want to make you a success.”

63. On May 10, 2016, believing the releases to be required forms for the show based on representations made by Donnan, Howard executed and sent the forms back to Lemonis' agents. At no point in signing the release forms did Howard think, nor was he informed, he was also signing a waiver of rights or a waiver of any recourse to sue as it were represented to be a required and a standard form used on all shows.

64. On May 23, 2016, Bonnie Mae Buckner ("Buckner"), Supervising Producer at CNBC who was in charge of organizing much of the logistics for shooting *The Profit*, informed Howard and Robyn that the show wished to come and film at Bowery Kitchen as early as May 30, 2016.

2.1. The Bowery Kitchen Episode Starts Production and Airs

65. On or around June 3 or 4, 2016, filming for Bowery Kitchen's *The Profit* episode commenced and ended on or around August 26, 2016

66. Bowery Kitchen's episode of *The Profit* aired on October 18, 2016. The show depicted Howard, Robyn, and the Company as disorganized, desperate, drowning in debt, and a heartbeat away from closing the Company's doors. This, of course, was far from reality. In fact, up until that point in time, Bowery Kitchen had already established a brand and name for itself and was generating millions of dollars of revenue annually.

67. Lemonis' original pitch to Plaintiffs was to become equal business partners with Howard and Robyn and take a percentage of the Company. However, as explained in more detail below, this never actually happened.

68. Most notably, the discussion that led to the Lemonis' oral agreement to invest in Bowery Kitchen aired on the October 18, 2016 episode. The conversation and discussion

happened sometime on or around the first or second day of filming, in early to mid-June 2016, as follows:

Lemonis: You've proven that you can generate revenue. You've proven that you are a horrible merchandiser. And you've proven that you are a fighter and that you survive no matter what. So I want to make you an offer: \$350,000 for 40% of the business.

Robyn: It's been just him and I for 20 years. Now the two of us, really, together we have more of a percentage than you, but individually you own more of our business than we do individually.

Howard: I'm not interested in giving up 40%. I'm interested in giving up 30%.

Lemonis: And so just like you don't want me to have 40% so that you have 30%, I don't want you to have 35 and 35 so I have 30.

Howard: Okay...so then...then...then...

Lemonis: Because that...quite frankly, I'm writing the check that keeps the doors open.

Howard: Not necessarily...the doors could...

Lemonis: You got somebody else to write a check for 350?

Howard: I...I...No...

Lemonis: Because if you do...they are gonna take...

Howard: *We'll just keep going the way we are.*

Lemonis: *And you will not survive.*

...

Lemonis: So my offer was \$350,000 for 40%. Your counteroffer is what?

Robyn: To be equal partners, I feel it's probably more comfortable.

Lemonis: I can live with that. I'll accept your counteroffer of \$350,000 for 33%. *I want to remind you of something, when you take my check, I'm 100% in charge.*

Howard: What does that mean?

Lemonis: *You'll see...*

69. Lemonis' bully persona is typically how he convinces people to give him control. At the time, Plaintiff Howard did not know that by accepting Lemonis' "prop" check, that he never actually deposited or received, that his 20-year-old business would be in severe jeopardy. In fact, Howard and Robyn would soon learn that by accepting Lemonis' fake offer, that they would be forced to relinquish all decision-making and control over their business.

70. In fact, on or around the same day Lemonis made the above fake oral offer, Robyn was holding the check handed to her by Lemonis, when a producer came up to her and took the check away. The producer proceeded to tell Robyn not to worry, that Lemonis was the real deal, and that Lemonis was going to make her and Plaintiffs plenty more money.

71. As discussed on the episode, Lemonis was to purchase a **33% stake in Bowery Kitchen for \$350,000**. However, this deal never actually transpired—it only was discussed orally in front of the cameras and never executed behind the scenes. As discussed in more detail below, not only did Plaintiffs never actually receive the \$350,000, but, despite his representations on the show, Lemonis had no interest in being equal business partners, nor did he or his various entities ever own a single percentage of Bowery Kitchen.

72. Lemonis also made other false statements to Howard and Robyn to make them believe he wanted to grow the business, that Bowery Kitchen "could be something bigger." For example, as recorded on the show, on or around the second or third day of filming which took place in or around mid-June, Lemonis told Plaintiff Howard, Robyn and the Bowery Kitchen staff: "I did not do this for one store. I think with the right floor plan and the right system, I think there could be 20 [stores]. And I think this could be a 50 million dollar business." However, Lemonis had no such intention.

2.1.1 Discounted Liquidations, Store Shutdown and Lengthy Renovations

73. While Plaintiffs' episode was being filmed, Lemonis immediately started making changes to the store that both Howard and Robyn were not comfortable doing nor had any control over. Even though they did not necessarily agree with his changes, they trusted Lemonis' statements that he truly wanted to help them succeed, expand the business and ultimately help open more stores globally.

74. First, sometime in or around mid-June, Lemonis forced Bowery Kitchen to liquidate the store's entire inventory, worth approximately \$450,000 in retail value. Remarkably, the liquidation occurred on the second or third day of filming, on the same or next day after Lemonis agreed to invest in Bowery Kitchen. In order to clear inventory before renovations, Lemonis forced Plaintiff Howard and Robyn to host an "Everything Must Go!" sale in which they marked all items 50-70% off. Although the store's inventory was valued at close to half a million dollars, Lemonis sold everything for less than half of its value. The proceeds from this liquidation sale were used to cover a portion of the payroll, rent (which is not cheap for Chelsea Market), taxes, open invoices for merchandise with vendors, and any other overhead expenses during the renovation shutdown.

75. Furthermore, at Lemonis' direction, after the liquidation sale which lasted approximately two to three weeks, Bowery Kitchen remained empty for approximately another month until Lemonis brought in companies to renovate. During this time, Plaintiffs had still not received any money from Lemonis and were still responsible for paying rent, payroll, insurance, sales tax and other fixed expenses with no revenue coming in.

76. When Howard confronted the production staff and Lemonis' team about Bowery Kitchen being unable to make payroll or pay rent due to the store's closure during such a long

period of time, they all simply brushed him off. In fact, there were a series of emails exchanged between Howard and Lemonis' team right around the time of the liquidation sale that occurred during the filming of the show. The tense conversation and discussion that happened in or around mid to end-June went as follows:

Lemonis: Howie, I don't know how to combat some of the emails and texts I have seen.

Howard: That's just because I have been left in the dark and I just worry about my...

Lemonis: They were pretty harsh. [Reading texts/emails from Howard] If I don't hear something today, I'm going to talk this up to a bust and a bunch of bullsh*t.

Howard: Yes, I felt that it was bullsh*t.

Lemonis: [Continuing to read texts/emails from Howard] I cannot wait around and initiate all this work I'm coming into work everyday this is crazy. How am I going to make payroll this week this is bullsh*t.

77. Howard's reaction was hardly a surprise given all the decisions Lemonis made behind his back, especially because the filming and renovations had extended far beyond their original timeline and store budget, and Lemonis had still not executed any agreements memorializing any true ownership in Bowery Kitchen. Furthermore, Lemonis seldomly met or spoke with Howard and Robyn off camera. However, relying on Lemonis' statements that he was going to take their business to the next level, and relying on the producers reassurances, Plaintiffs steadfastly and frustratingly endured the process.

78. With no real inventory to sell, Bowery Kitchen was barely generating \$300 per day, despite being on the hook for payroll in the amount of \$60,000 per month, rent in the amount of approximately \$25,000 per month, and \$22,000 per month for other fixed expenses. This accumulated upwards of \$100,000 in expenses during every month of filming, which Bowery Kitchen could not afford with their revenue stream being cut off by Lemonis' actions.

79. In or around early July, Plaintiffs relayed their concerns to the Lemonis agent-producers regarding the delayed plans with filming, renovations and growing expenses. Having still not seen a penny of the agreed-upon \$350,000 and left with an empty store accumulating expenses and awaiting direction, Plaintiffs were essentially at Lemonis' mercy.

80. In or around the end of July, Lemonis then forced Plaintiff Howard and Robyn to shut down Bowery Kitchen to make renovations to the store, such as installing new cabinetry, fixtures and displays. The renovations were completed during the filming of *The Profit* so that the episode portrays Lemonis' construction as major and much-needed improvements for the business. However, a lot of the renovations Lemonis wanted were unnecessary and expensive, especially considering that Bowery Kitchen had undergone renovations a few years prior and spent a lot of money on custom cabinetry, shelves and knife magnets. Despite Howard and Robyn objecting to the renovation costs and believing the money could be better spent on things such as a new website or efforts to expand the brand, Lemonis pressed forward. Lemonis brought in River City Contractors, Inc., Precise Graphix LLC, a design company owned by Lemonis, and other project managers and designers from different companies to renovate Bowery Kitchen. Upon information and belief, Lemonis utilizes companies on *The Profit* whose use he personally benefits from or with which he has previous working relationships, and which he controls.

81. Like many proprietors on *The Profit*, Howard and Robyn were kept in the dark about how much the renovations cost and how long renovations would last. Anytime Howard or Robyn would inquire, Lemonis and production would tell them to "trust the process."

82. Although Lemonis represented that Bowery Kitchen would be shut down for "at least a week," renovations took *over a month*. The renovations occurred during three separate installments. The companies brought in by Lemonis installed new light fixtures, wood paneling,

a point-of-sale (POS) system (that never worked well), and signage for Bowery Kitchen. During this time, Plaintiffs expenses were accumulating, while revenue was dwindling due to Lemonis' essentially forced temporary closure of Bowery Kitchen. Again, Plaintiffs were told to trust the process and really had no other choice as they were at Lemonis' mercy, and under considerable duress.

2.2. As Bowery's Debt Soars, Lemonis' "Deal" Changes

83. As depicted on the show, Lemonis also wanted Howard and Robyn to establish new departments at the store, such as a glassware and textiles department and anchor these departments with well-known brands. Because the liquidation sale wiped out the store's entire inventory, Howard and Robyn were required to order items from scratch, which was very expensive considering they needed to fill up a 4,000 square foot store. Because of how behind Howard became with payroll and rent during the renovation, he and Robyn told Lemonis they would need his help financially. Lemonis was generally apathetic towards Howard and Robyn's concerns.

84. The choices on the new inventory also seemed questionable and unnecessary. For example, even though Bowery Kitchen's knife department generated most of the Company's sales, Lemonis reduced this department. Additionally, Lemonis wanted Bowery Kitchen to start selling brand name aprons called Tilit, which retailed anywhere from \$48 to \$105 which is expensive for the novice at-home chef. Further, Bowery Kitchen had already been selling other non-brand textiles that were generating high profit margins, some already branded with the Bowery Kitchen name.

85. On or around August 2, 2016, Howard and Robyn notified Lemonis Defendants that they needed additional funding for the new merchandising to pay important vendors and get orders placed and released.

86. Eventually, after much begging, Lemonis agreed to additional funding to help Howard and Robyn get caught up on expenses, purchase new inventory and place orders—however this came at a price. This is a common theme with Lemonis—he does whatever he wants to others’ businesses (renovations, clearing inventory, re-branding) at the business owner’s expense until they are at his mercy because of the position he put them in.

87. Once store renovations were wrapping up, Lemonis unscrupulously pivoted from the original oral agreement of purchasing an equity interest in Bowery Kitchen. Lemonis instead requested to buy Howard out of his own company. Understandably, Howard did not want to sell his ownership in Bowery Kitchen and turned Lemonis down.

88. On or around August 3, 2016, ML LLC sent Howard and Robyn a one-page document that conveyed Lemonis’ alternative terms—to invest \$494,000 in the Company in return for 90% of the revenue streaming from online sales and newly opened stores for no equity ownership (“Alternate Term Sheet”). *See* Ex. B.

89. Most notably, the one-page Alternate Term Sheet stated the following:

Marcus Lemonis LLC has agreed to pay Bowery Kitchen Supply of \$200,000 for working capital, \$82k for payroll and rent, \$176k for [IT] infrastructure, and \$18,000 for credit cards, and \$18,000 to pay down Chase Bank Loan, and renovation etc. in exchange for...[Howard and Robyn] are exempt from having to turn over any equity of bowery Chelsea market ...not obligated to pay back any of the above said monies...entitled to 10% of all web net revenue not including shipping, taxes or returns but are not obligated to provide any capital but are provided to help with vendor lineup and department expertise...entitled to 3% of all revenue from any bowery store opened up globally...[and] entitled to receive 5% of any bowery branded products sold in the marketplace outside of the stores...”

90. At no point did Defendant Lemonis, Defendant Machete, CNBC or anyone advise Plaintiff Howard or Robyn to have an attorney review the Alternate Term Sheet before signing it. This one-page Alternate Term Sheet was eventually signed by Plaintiff Howard and Robyn in or around early August, a few days after receiving it and being pressed to sign it. However, this one-

page Alternate Term Sheet was never executed by Lemonis, Bowery Kitchen, or ML LLC and did not expressly convey, and could not convey, any rights to Bowery Kitchen's trademark or brand, which belonged to the Company itself.

91. Unsurprisingly, Howard and Robyn only received approximately \$290,000 from Lemonis. However, this amount barely covered the two months of expenses the Company had accumulated while filming the show. Even with Lemonis' funding, Bowery Kitchen was still responsible for coming up with additional capital for purchasing all new inventory to fill its 4,000 square foot store which it obtained by maxing out all of Bowery Kitchen's line of credit from banks. For example, the Company maxed out its \$120,000 business line of credit from Chase Bank and a \$30,000 to \$40,000 business line of credit from American Express which was done on an emergency basis. In addition, Bowery Kitchen's staff was also maxing out their own personal credit cards as well to help purchase items for the store. Furthermore, Bowery Kitchen had to max out favors from vendors they had done business with for over twenty years which allowed them to place purchase orders and pay the funds later. All of this was caused by the Defendants scheme of deception and fraud.

92. Once renovations were completed and inventory was somewhat replenished, on or around August 26, 2016, Bowery Kitchen finally re-opened to the public. Unfortunately, after the store re-opened, Lemonis essentially disappeared, leaving Plaintiffs with a half empty store and to deal with unpaid purchase orders, operating expenses that had risen to approximately \$400,000, and other expenses that were accumulating and overdue. The entire business had been gutted and turned upside down by Defendants fraud.

2.3. Lemonis and Camping World Steal Bowery Kitchen's Trademark

93. The show finished filming on or around August 26, 2016. Although the show makes it seem as though Lemonis comes in and saves the day, the storyline is all smoke and mirrors. In fact, as stated above, the deal and representations made on the show are all a façade. Unsurprisingly, after-the-fact, once Bowery Kitchen's episode of *The Profit* finished filming, Howard and Robyn did not hear from Defendants Lemonis or Machete. Rather, Howard and Robyn were told to contact one of Lemonis' employees, Jeremy J. Dombroski ("Dombroski"), VP and CFO of ML LLC. Dombroski would serve as liaison to Bowery Kitchen now that the show had aired.

2.3.1. Lemonis Vanishes; Dombroski Appears with Agreements to Sign

94. On January 4, 2017, Dombroski sent an email to Robyn entitled "Bowery Trademark Agreements" asking them to sign the two attached agreements "to finalize" the deal. However, what was expressed in the agreements were completely contrary to the Alternative Agreement that Howard and Robyn signed. The first agreement was a Trademark Purchase Agreement ("IP Purchase Agreement" or "IP Agreement"), and the second agreement was a Trademark License Agreement ("License Agreement") (collectively referred to as the "Agreements"). *See* Exs. C and D. As explained below, Plaintiff Howard and Robyn were completely blindsided by the unconscionable new terms of these two agreements that, of course, favored Lemonis.

95. For example, the IP Purchase Agreement, a two-page document, dated December 20, 2016, indicates that one of Lemonis' entities, ML Finance LLC ("ML Finance"), is purchasing all the rights, title, and interest to Bowery's trademarks in consideration of \$280,000. However, the terms of the agreement were contrary to the Alternate Term Sheet that Howard and Robyn had

signed. For example, the purchase agreement made no mention of the 10% royalty payable to Howard or Robyn or Bowery on any of the web net revenue. Moreover, there was no mention in the purchase agreement of the 3% royalty payable to Howard or Robyn or Bowery on all revenue from any stores opened by Lemonis or his entities. Further, there was no mention in the purchase agreement of the 5% royalty payable to Howard or Robyn or Bowery on all branded products sold by Lemonis or any licensees. Finally, the purchase agreement refers to a purchase amount of \$280,000, which failed to account for all monies Lemonis paid into the business, exposing Plaintiff Howard and Robyn to potential claims. The purchase agreement was also missing standard provisions in a contract (choice of law, notices, etc.). Overall, the terms were completely contrary to the Alternate Term Sheet, and the IP Purchase Agreement was never signed.

96. Additionally, the License Agreement, dated December 20, 2016, indicates that ML Finance LLC gave Bowery Kitchen a license to use the marks in connection with the current store and any additional stores in Amsterdam, the Netherlands; Brooklyn, New York; the North Shore of Long Island, New York; and Miami, Florida (the “Bowery Territory”). However, similar to the IP Purchase Agreement, the terms of the License Agreement were one-sided. For example, the license agreement gave Bowery Kitchen a “non-exclusive” license to use the marks in the Bowery Territory. Additionally, it set certain “quality control standards” that Bowery needed to meet for goods and services sold. It also allowed ML Finance to terminate the agreement in its sole discretion effective 90 days after giving Bowery notice. Again, like the IP Purchase Agreement, the License Agreement was never signed by Plaintiff Howard or Robyn.

97. It was clear these agreements presented terms that were much more one-sided, unjust, and untenable for Howard and Robyn, deviating substantially from what the parties had discussed.

98. While Howard and Robyn consulted with their attorneys, on January 26, 2017, Dombroski sent new drafts of the aforementioned IP Purchase Agreement and License Agreement to Robyn and asked her and Howard to have attorneys review the agreements.

99. However, the terms of the second drafts were even more untenable. For example, the IP Purchase Agreement was modified to refer to the purchase as an “advance against royalties”, implying that Howard and Robyn would need to pay this money back if they wanted to collect on any future royalties. The IP Purchase Agreement was also modified to limit royalty payments to ten (10) years and limit the agreement to a non-exclusive deal. This, again, was contrary to the Alternate Term Sheet that indicated Howard and Robyn were not obligated to pay any monies back and subject to an exclusive deal in their territories. Again, none of these terms were agreed to by Plaintiff Howard or Robyn.

100. Anytime Howard and Robyn went back to Lemonis’ team with comments or edits, new unfavorable terms were added.

2.3.2 Agreement Negotiations Go Nowhere While Lemonis Sells Bowery Kitchen Products

101. Over the next several months, there was a lot of back and forth concerning the terms of the Agreements being pressed upon Plaintiffs. Most of Plaintiffs’ issues primarily concerned the stripping of both Howard and Robyn’s rights to operate any Bowery Kitchen stores after fifteen (15) years and a carve out for products being sold by other companies owned by Lemonis that were likely to sell Bowery Kitchen products.

102. On June 5, 2017, Howard sent Dombroski an email stating, “...[I]f the contract ends would we lose our rights to stores we negotiated in the contract in New York...If so...we feel that was not the essence of the original reason we agreed to the sales of our marks. This agreement[] was to give [M]arcus a part in the business we would grow together – that’s what we

discussed. It doesn't make sense for us to promote the brand if we are no longer part in the future...the intention was a partnership not full ownership.”

103. On June 6, 2017, Dombroski met with Howard and Robyn in New York to try and come to an agreement on the terms. However, Howard and Robyn again made clear to Dombroski that the unsigned Agreements were not what they had originally agreed to.

104. On June 9, 2017, Dombroski followed up with Howard and Robyn and requested the executed legal documents stating: “I need to get these executed and behind us as soon as possible.” On the same day, Howard responded via email to Dombroski stating there was still concern regarding the carve out of royalties from two companies owned by Lemonis, Camping World and Gander Outdoors. Howard notified Dombroski via email of proof that the Bowery Kitchen's logo was already being sold in Camping World retail outlets and shown on Precise Graphix's Facebook page, without Bowery Kitchen's authorization or consent.

2.3.3 Defendants' Infringing Products

105. From June 2017 to present, Lemonis Defendants and Camping World have sold in the United States the following Bowery Kitchen branded products, each of which infringes Bowery Kitchen's intellectual property rights: “Bowery Kitchen Dish Drying Mat,” “Bowery Kitchen Child's 5-Piece Dish Set” and “Bowery Kitchen Oak Cupboard Bar,” among others (collectively, the “Infringing Products”). *See* Figures 2-4 below. Rather than innovate and develop its own packaging and unique style for its kitchen products, DOE Defendants, Lemonis Defendants and Camping World chose to affix Bowery Kitchen's trademarked recognizable brand, logo, and style in these infringing products that it sold in the United States.

- **Figure 2: Bowery Kitchen Dish Drying Mat**



- **Figure 3: Bowery Kitchen Child's 5-Piece Dish Set**



- **Figure 4: Bowery Kitchen Oak Cupboard Bar**



106. In early 2017, Howard started to receive several email inquiries from consumers about Bowery Kitchen branded products that were being sold at Camping World. The inquiries, or rather complaints, were from customers who bought these products from Camping World. At no point were Howard and Robyn notified that Bowery Kitchen branded products were being manufactured and/or sold by Camping World, let alone outside the Chelsea Market location, and with Bowery Kitchen's trademarked logo.

107. Sometime in or around July 2017, Howard and Robyn also found out that a Bowery Kitchen retail store was being operated inside a Camping World retail store, with poor quality products being sold and without Plaintiffs permission.

108. On or around July 12, 2017, Howard contacted Dombroski and requested a comprehensive list of what and where Lemonis and Camping World were selling Bowery Kitchen products. Dombroski punted and provided a weak excuse, claiming that he had no control over Camping World because it was a separate entity and could not provide Howard with a list.

Knowing that Lemonis Defendants and Camping World would be in hot water over this issue, Dombroski broached the topic of the agreements again, stating they would be willing to increase the royalty terms to thirty (30) years.

109. Shortly thereafter, on July 19, 2017, Dombroski further stated that Camping World should be excluded from the deal because it is a public entity and he did not have access to their information, which was strange considering Lemonis is Camping World's President and CEO.

110. On or around August 2017, Lemonis texted Howard letting him know that he would be changing all the signage in Camping World to "Bowery Supplies and Accessories," as Howard did not own the name. However, upon information and belief, this never happened, and Lemonis' claims were unfounded.

2.3.4 Dombroski Gives Ultimatum to Sign Agreements or Pay Consequences

111. On August 14, 2017, Dombroski emailed Howard and Robyn and once again asked for executed documentation. Howard could sense Lemonis' deal was sour—even worse—he was receiving complaints from customers about the poor quality of some of the products such as table clothes, dry mats, bowls, etc. being sold by Camping World that the customers believed belonged to Plaintiff Bowery Kitchen.

112. In the same email, Dombroski threatened them with a Form IRS 1099 ("1099") for \$591,792 if they did not sign the Agreements stating, "If we are unable to come to terms...within 5 business days then we will be forced to abandon the deal and issue you a 1099 for \$591,792. This 1099 will be issued for the 2016 tax year and will [be] taxable as ordinary income." The 1099 was purportedly the total amount of "services" that Defendant Lemonis provided to Bowery Kitchen: airfare, car rentals, parking and meal expenses, the Bowery Kitchen renovations, construction, supplies, design/manufacture décor package, and legal fees for drafting of the IP

Purchase and License Agreements—all forced upon Plaintiffs and which Plaintiffs either questioned or rejected.

113. Although Howard and Robyn both felt backed into a corner by Lemonis and Lemonis' people, they still could not bring themselves to sign either of the Agreements. By this point, Howard and Robyn's relationship had significantly deteriorated as a result of this catastrophe.

114. Despite Howard and Robyn disputing the fact they "owed" any money to Lemonis, on or around August 15, 2017, Lemonis texted Howard and asked him whether he wanted the 1099 sent to his home or office address. Howard stated he had a problem with the amount Dombroski told him, to which Lemonis responded "590 to you...It will do you good."

115. On August 22, 2017, Howard emailed Dombroski concerning the various inquiries that he had received from customers who had purchased Bowery Kitchen items from Camping World with the Bowery Kitchen name, logo, and packaging. Ultimately, Howard told Dombroski that both he and Robyn were not interested in either agreement without serious changes. Eventually, Lemonis sent Howard a handwritten 1099. Upon information and belief, Lemonis never formally filed the 1099 with the IRS, and instead used it as leverage to try to force Howard to sign the agreements.

116. Essentially, because Howard and Robyn were not agreeable to executing the Agreements due to their unreasonable terms, Lemonis threatened Howard and Robyn with a 1099 to pay for everything and anything that was done at Bowery Kitchen on *The Profit*, despite telling Howard and Robyn they would not have to pay a dime of the money back.

117. Even though a deal was never executed, upon information and belief, Camping World continues to sell Bowery Kitchen products in its stores.

118. In March 2020, Howard and Robyn were forced to close Bowery Kitchen's doors to the public. Lemonis destroyed Plaintiffs' long term family business and their lives. Plaintiffs could not recover emotionally and financially after their dealings and experience with Lemonis and *The Profit*. Howard and Robyn were left with debt, a tarnished reputation with vendors and long-term customers, ruined business relationships, and shattered dreams.

119. Plaintiff later learned that this was part of Lemonis Defendants' fraudulent pattern and practice in his dealings with businesses that appeared on *The Profit*. Lemonis would spend money on the businesses making it seem like the money he spent would either be part of his investment or otherwise covered by him, only to present them with a bill that would automatically give him a debt position over the company that he would then use to try to strong-arm the victim or steal from the business. Unfortunately, by the time Plaintiffs learned this, it was too late and they fell victim to Lemonis' conniving schemes.

CAUSES OF ACTION

FIRST CAUSE OF ACTION: FEDERAL TRADEMARK INFRINGEMENT **UNDER 15 U.S.C. §1114**

[By Plaintiff Bowery Kitchen Against Defendants Lemonis, ML LLC and Camping World]

120. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

121. Plaintiff Bowery Kitchen owns a federal trademark registration for the Bowery Kitchen Supply logo.

122. Lemonis Defendants' and Camping World's line of Bowery Kitchen branded products has infringed the Registered Trademark by affixing the identical names and logo in Lemonis Defendants' and Camping World's products at Camping World and other retail outlets.

123. Lemonis Defendants' and Camping World's use of the Bowery Kitchen name and logo in the sale of their infringing product line were done without the consent or authorization of Plaintiff Bowery Kitchen.

124. Lemonis Defendants' and Camping World's use of their infringing product lineup is causing confusion, and causing mistake, and deceiving the consumer as to the affiliation, connection, or association of Lemonis Defendants and Camping World with Plaintiff Bowery Kitchen, and as to the origin, sponsorship, or approval by Plaintiff Bowery Kitchen of Lemonis Defendants' and Camping World's goods, services, or commercial activity.

125. Lemonis Defendants' and Camping World's use of infringing Bowery Kitchen branded products enables Lemonis Defendants and Camping World to benefit unfairly from Bowery Kitchen's reputation and success, thereby giving Lemonis Defendants and Camping World sales and commercial value they otherwise would not have.

126. Before Lemonis Defendants' and Camping World's first use of the infringing product lineup, Lemonis Defendants and Camping World were acutely aware of Bowery Kitchen's business and had either actual notice and knowledge, or constructive notice of, Bowery Kitchen's Registered Trademark, especially given Lemonis Defendants' attempt to contract a License Agreement with Bowery Kitchen to purchase the mark.

127. Lemonis Defendants' and Camping World's unauthorized use of the infringing Bowery Kitchen branded products is deceiving and causing confusion or mistake among consumers as to the origin, sponsorship or approval of Lemonis Defendants' and Camping World's products and/or causing confusion or mistake as to any affiliation, connection or association between Bowery Kitchen and Lemonis Defendants' and Camping World's or its related retail outlet, in violation of 15 U.S.C. § 1114(a). Such confusion includes the inquiries Plaintiffs

received from customers dissatisfied with the poor quality of Lemonis Defendants' and Camping Worlds infringing Bowery Kitchen branded products.

128. Bowery Kitchen is informed and believes, and on that basis alleges, that Lemonis Defendants' and Camping World's infringement of Bowery Kitchen's Registered Trademark as described herein was, has been, and continues to be intentional, willful and without regard to Bowery Kitchen's rights.

129. Bowery Kitchen is informed and believes, and on that basis alleges, that Lemonis Defendants and Camping World have gained profits by virtue of their infringement of Bowery Kitchen's Registered Trademark.

130. Bowery Kitchen is suffering irreparable harm from Lemonis Defendants' and Camping World's infringement of Registered Trademark insofar as Bowery Kitchen's invaluable goodwill is being eroded by Lemonis Defendants' and Camping World's continuing infringement.

131. Bowery Kitchen has no adequate remedy at law to compensate it for the loss of business reputation, customers, market position, confusion of potential customers and goodwill flowing from Lemonis Defendants' and Camping World's infringing activities. Pursuant to 15 U.S.C. § 1116, Bowery Kitchen is entitled to an injunction against Lemonis Defendants' and Camping World's continuing infringement of Bowery Kitchen's Registered Trademark. Unless enjoined, Lemonis Defendants' and Camping World's will continue their infringing conduct.

132. In the alternative, if the Alternate Term Sheet is deemed to be valid, Plaintiff Bowery Kitchen is owed a percentage of all sales of Bowery Kitchen branded products as stated in the Alternate Term Sheet.

133. Because Lemonis Defendants' and Camping World's actions have been committed with intent to damage Bowery Kitchen and to confuse and deceive the public, Bowery Kitchen is

entitled to treble its actual damages or Lemonis Defendants' and Camping World's profits, whichever is greater, and to an award of costs and, this being an exceptional case, reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a) and § 1117(b) together with prejudgment and post-judgment interest.

**SECOND CAUSE OF ACTION: FEDERAL UNFAIR COMPETITION AND FALSE
DESIGNATION OF ORIGIN**

[By Plaintiff Bowery Kitchen Against Defendants Lemonis, ML LLC and Camping World]

134. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

135. Without Plaintiff Bowery Kitchen's consent, Lemonis Defendants and Camping World have used and continue to use in commerce Bowery Kitchen's Registered Trademark in connection with the advertising and promotion of Camping World's products and services.

136. The use of Bowery Kitchen's Registered Trademark has caused and is likely to continue to cause confusion, mistake, and deception as to the affiliation, connection, or association with, or sponsorship or approval by, Bowery Kitchen. In fact, customers at Camping World who have purchased products bearing Bowery Kitchen's Registered Trademark have already associated these products with Bowery Kitchen and have contacted Plaintiff Howard to complain about these purchased products and their low quality.

137. Lemonis Defendants' and Camping World's conduct as alleged herein is willful, as they have continued to use Bowery Kitchen's Registered Trademark despite receiving several emails about the unauthorized use from Plaintiff Howard and despite being aware of Bowery Kitchen's rights to its intellectual property and mark, especially given Lemonis Defendants' attempt to contract a License Agreement with Bowery Kitchen to purchase the mark.

138. Lemonis Defendants' and Camping World's conduct is intended to and is causing confusion, mistake or deception as to the affiliation, connection, or association of Lemonis Defendants and Camping World with Bowery Kitchen.

139. Lemonis Defendants and Camping World's conduct as alleged herein constitutes unfair competition and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

140. Lemonis Defendants and Camping World's conduct is causing immediate and irreparable harm and injury to Bowery Kitchen, and to its goodwill and reputation, and will continue to both damage Bowery Kitchen and confuse the public unless enjoined by this Court. Bowery Kitchen has no adequate remedy at law for this irreparable harm.

141. Plaintiff Bowery Kitchen is entitled to, among other relief, injunctive relief and an award of actual damages, the Lemonis Defendants' and Camping World's profits, enhanced damages and profits, reasonable attorneys' fees, and costs of the action under Sections 34 and 35 of the Lanham Act, 15 U.S.C. §§ 1116, 1117, together with prejudgment and post-judgment interest.

THIRD CAUSE OF ACTION: COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION
[By Plaintiff Bowery Kitchen Against Defendants Lemonis, ML LLC and Camping World]

142. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

143. Plaintiff Bowery Kitchen has rights in Bowery Kitchen's Registered Trademark and common law rights to the mark prior to its registration. Lemonis Defendants' and Camping World's Bowery Kitchen branded products have infringed Bowery Kitchen's Registered

Trademark and unregistered common law mark by using identical or similar names in Lemonis Defendants' and Camping World's products.

144. Lemonis Defendants' and Camping World's unauthorized use of Bowery Kitchen's Registered Trademark and unregistered mark has caused and is likely to cause confusion, or to cause mistake, or to deceive the consumer as to the affiliation, connection or association of Lemonis Defendants and Camping World with Bowery Kitchen, or as to the origin, sponsorship, or approval by Bowery Kitchen of Lemonis Defendants' and Camping World's goods, services or commercial activities.

145. Lemonis Defendants' and Camping World's use of the infringing product lineup enables Lemonis Defendants and Camping World to benefit unfairly from Bowery Kitchen's reputation and success, thereby giving Lemonis Defendants and Camping World sales and commercial value they otherwise would not have.

146. Prior to Lemonis Defendants' and Camping World's first use of the infringed marks, Lemonis Defendants and Camping World were aware of Bowery Kitchen's business and had either actual notice and knowledge, or constructive notice of Bowery Kitchen's Registered Trademark and other unregistered marks, especially given Lemonis Defendants' attempt to contract a License Agreement with Bowery Kitchen to purchase the mark.

147. Lemonis Defendants' and Camping World's unauthorized use of the infringing product lineup is likely, if not certain, to deceive or to cause confusion or mistake among consumers as to the origin, sponsorship or approval of Lemonis Defendants' and Camping World's product lineup and/or to cause confusion or mistake as to any affiliation, connection or association between Bowery Kitchen and Lemonis Defendants and Camping World, in violation of 15 U.S.C. § 1125(a).

148. Bowery Kitchen is informed and believes, and on that basis alleges, that Lemonis Defendants' and Camping World's infringement of Bowery Kitchen's Registered Trademark and unregistered mark, as described herein, has been and continues to be intentional, willful and without regard to Bowery Kitchen's rights in its Registered Trademark and unregistered common law marks.

149. Bowery Kitchen is informed and believes, and on that basis alleges, that Lemonis Defendants and Camping World have gained substantial profits by virtue of their infringement of Bowery Kitchen's Registered Trademark and unregistered common law marks.

150. Bowery Kitchen will suffer and is suffering irreparable harm from Lemonis Defendants' and Camping World's infringement of Bowery Kitchen's Registered Trademark and unregistered common law marks insofar as Bowery Kitchen's invaluable goodwill is being eroded by Lemonis Defendants' and Camping World's continuing infringement. Bowery Kitchen has no adequate remedy at law to compensate it for the loss of business reputation, customers, market position, confusion of potential customers and goodwill flowing from the Lemonis Defendants' and Camping World's infringing activities.

151. Bowery Kitchen is entitled to an injunction against Lemonis Defendants' and Camping World's continuing infringement of Bowery Kitchen's Registered Trademark. Unless enjoined, Lemonis Defendants and Camping World will continue its infringing conduct.

152. In the alternative, if the Alternate Term Sheet is deemed to be valid, Plaintiff Bowery Kitchen is owed a percentage of all sales of Bowery Kitchen branded products as stated in the Alternate Term Sheet.

153. Because Lemonis Defendants' and Camping World's actions have been committed with intent to damage Bowery Kitchen and to confuse and deceive the public, Bowery Kitchen is

entitled to treble its actual damages or Lemonis Defendants' and Camping World's profits, whichever is greater, and to an award of costs and, this being an exceptional case, reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a) and § 1117(b), together with prejudgment and post-judgment interest.

**FOURTH CAUSE OF ACTION: CONTRIBUTORY FEDERAL TRADEMARK
INFRINGEMENT**

UNDER 15 U.S.C. §1125(a)

**[By Plaintiff Bowery Kitchen Against Defendants Lemonis, ML LLC, and DOES 1 through
10]**

154. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

155. As previously alleged, Lemonis Defendants and Defendant Camping World have engaged in direct trademark infringement by using and infringing upon Bowery Kitchen's Registered Trademark.

156. Upon information and belief, Lemonis Defendants and DOES 1 through 10 took affirmative acts to assist Camping World in its direct and vicarious trademark infringement by providing and supplying Camping World with Bowery Kitchen's Registered Trademark and/or manufacturing products bearing Bowery Kitchen's Registered Trademark name and logo with knowledge, expectation and/or intention that Camping World retailers and distributors would use Bowery Kitchen's Registered Trademark in connection with the sale of such products.

157. At the time Lemonis Defendants and DOES 1 through 10 supplied Camping World with the Infringed Mark and/or manufactured products bearing the Infringed Mark, Lemonis Defendants and DOES 1 through 10 were acutely aware of Bowery Kitchen's business and had either actual notice and knowledge, or constructive notice of, Bowery Kitchen's Registered Trademark being used as signage on the inside and outside of the Bowery Kitchen store and on

the store's website, especially given Lemonis Defendants' attempt to contract a Purchase and License Agreement with Bowery Kitchen for its marks.

158. At the time Lemonis Defendants and DOES 1 through 10 supplied Camping World with the Infringed Mark and/or manufactured products bearing the Infringed Mark, they knew or should have known that Camping World intended to use the Bowery Kitchen Registered Trademark in connection with the sale of such products.

159. Lemonis Defendants and DOES 1 through 10 have not been granted the right to use the Registered Trademark.

160. Given the foregoing and upon information and belief, Lemonis Defendants and DOES 1 through 10 continue to supply Camping World retailers with the Infringed Mark and products bearing the Infringed Mark despite having actual or constructive knowledge that Camping World's use of the Infringed Mark would infringe on Bowery Kitchen's Registered Trademark.

161. By supplying the Infringed Mark and/or manufacturing products bearing Bowery Kitchen's Registered Trademark, Lemonis Defendants and DOES 1 through 10 caused, enabled, and/or assisted Camping World to infringe on Bowery Kitchen's Registered Trademark.

162. On information and belief, Lemonis Defendants and DOES 1 through 10 have intentionally induced or contributed to or knowingly participated in the infringement of Bowery Kitchen's rights in the Registered Trademark by Camping World's retail outlets.

163. On information and belief, Lemonis Defendants and DOES 1 through 10 have taken no remedial actions to mitigate the infringing conduct of Camping World even though Plaintiff Howard informed Lemonis Defendants of the infringed products being sold at Camping World.

164. Lemonis Defendants' and DOES 1 through 10's assisting and/or enabling Camping World to infringe Bowery's Registered Trademark has caused and/or are likely to cause confusion or mistake among consumers as to the origin, sponsorship or approval of Camping World's products and/or to cause confusion or mistake as to any affiliation, connection or association between Bowery Kitchen and Camping World or its related retail outlet.

165. Bowery Kitchen is informed and believes, and on that basis alleges, that Lemonis Defendants and DOES 1 through 10 have acted intentionally, willfully and have profited from the infringement of Bowery Kitchen's Registered Trademark by Camping World's retailer and distributor customers.

166. Further, the infringement of Bowery Kitchen's Registered Trademark is causing immediate and irreparable harm and injury to Bowery Kitchen, and to its goodwill and reputation and will continue to both damage Bowery Kitchen and confuse the public unless enjoined by the court. Bowery Kitchen has no adequate remedy at law for this irreparable harm.

167. Lemonis Defendants and DOES 1 through 10's conduct as alleged herein constitutes contributory trademark infringement, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

168. Because Lemonis Defendants' and DOES 1 through 10's actions have been committed with intent to damage Bowery Kitchen and to confuse and deceive the public, Bowery Kitchen is entitled to, among other relief, injunctive relief and an award of actual damages, Lemonis Defendants' and DOES 1 through 10's profits, enhanced damages and profits, reasonable attorneys' fees, and costs of the action under Section 34 and 35 of the Lanham Act, 15 U.S.C. §§ 1116 and 1117. Together with prejudgment and post-judgement interest.

**FIFTH CAUSE OF ACTION: CONTRIBUTORY FEDERAL UNFAIR COMPETITION
AND FALSE DESIGNATION OF ORIGIN**
**[By Plaintiff Bowery Kitchen Against Defendants Lemonis, ML LLC, and DOES 1 through
10]**

169. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

170. As previously alleged, Lemonis Defendants and Camping World have engaged in direct unfair competition and false designation of origin by using and infringing upon Bowery Kitchen's Registered Trademark.

171. Upon information and belief, Lemonis Defendants and DOES 1 through 10 took affirmative acts to assist Camping World in its direct and vicarious trademark infringement by providing and supplying Camping World with Bowery Kitchen's Registered Trademark and/or manufacturing products bearing Bowery Kitchen's Registered Trademark name and logo with knowledge, expectation and/or intention that Camping World retailers and distributors would use Bowery Kitchen's Registered Trademark in connection with the sale of such products.

172. At the time Lemonis Defendants and DOES 1 through 10 supplied Camping World with the Infringed Mark and/or manufactured products bearing the Infringed Mark, Lemonis Defendants and DOES 1 through 10 were acutely aware of Bowery Kitchen's business and had either actual notice and knowledge, or constructive notice of, Bowery Kitchen's Registered Trademark being used as signage on the inside and outside of the Bowery Kitchen store and on the store's website, especially given Lemonis Defendants' attempt to contract a Purchase and License Agreement with Bowery Kitchen for its marks.

173. At the time Lemonis Defendants and DOES 1 through 10 supplied Camping World with the Infringed Mark and/or manufactured products bearing the Infringed Mark, Lemonis

Defendants and DOES 1 through 10 were acutely aware that Camping World intended to use Bowery Kitchen's Registered Trademark in connection with the sale of such products.

174. Lemonis Defendants and DOES 1 through 10 have not been granted the right to use the Registered Trademark.

175. Given the foregoing and upon information and belief, Lemonis Defendants and DOES 1 through 10 continue to supply Camping World retailers with the Infringed Mark and/or manufacture products bearing the Infringed Mark despite having actual or constructive knowledge that Camping World's use of the Infringed Mark would infringe on Bowery Kitchen's Registered Trademark.

176. By supplying the Infringed Mark and/or manufacturing products bearing Bowery Kitchen's Registered Trademark, Lemonis Defendants and DOES 1 through 10 caused, enabled, and/or assisted Camping World to infringe on Bowery Kitchen's Registered Trademark.

177. Lemonis Defendants' and DOES 1 through 10's assisting and/or enabling Camping World to infringe Bowery's Registered Trademark has caused and/or are likely to cause confusion or mistake among consumers as to the origin, sponsorship or approval of Camping World's products and/or to cause confusion or mistake as to any affiliation, connection or association between Bowery Kitchen and Camping World or its related retail outlet.

178. Further, the infringement of Bowery Kitchen's Registered Trademark is causing immediate and irreparable harm and injury to Bowery Kitchen, and to its goodwill and reputation and will continue to both damage Bowery Kitchen and confuse the public unless enjoined by the court. Bowery Kitchen has no adequate remedy at law for this irreparable harm.

179. Lemonis Defendants and DOES 1 through 10's conduct as alleged herein constitutes contributory unfair competition and false designation, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

180. Bowery Kitchen is entitled to, among other relief, injunctive relief and an award of actual damages, and Lemonis Defendants' and DOES 1 through 10's profits, together with prejudgment and post-judgment interest.

**SIXTH CAUSE OF ACTION: CONTRIBUTORY TRADEMARK INFRINGEMENT
AND UNFAIR COMPETITION UNDER COMMON LAW**
**[By Plaintiff Bowery Kitchen Against Defendants Lemonis, ML LLC, and DOES 1 through
10]**

181. Plaintiffs repeat and realleged each and every allegation contained in the preceding paragraphs as if fully set forth herein.

182. As previously alleged, Lemonis Defendants and Defendant Camping World have engaged in direct trademark infringement by using and infringing upon Bowery Kitchen's Registered Trademark.

183. Upon information and belief, Lemonis Defendants and DOES 1 through 10 took affirmative acts to assist Camping World in its direct and vicarious trademark infringement by providing and supplying Camping World with Bowery Kitchen's Registered Trademark and/or manufacturing products bearing Bowery Kitchen's Registered Trademark name and logo with knowledge, expectation and/or intention that Camping World retailers and distributors would use Bowery Kitchen's Registered Trademark in connection with the sale of such products.

184. At the time Lemonis Defendants and DOES 1 through 10 supplied Camping World with the Infringed Mark and/or manufactured products bearing the Infringed Mark, Lemonis Defendants and DOES 1 through 10 were acutely aware of Bowery Kitchen's business and had either actual notice and knowledge, or constructive notice of, Bowery Kitchen's Registered

Trademark being used as signage on the inside and outside of the Bowery Kitchen store and on the store's website, especially given Lemonis Defendants' attempt to contract a Purchase and License Agreement with Bowery Kitchen for its marks.

185. At the time Lemonis Defendants and DOES 1 through 10 supplied Camping World with the Infringed Mark and/or manufactured products bearing the Infringed Mark, they knew or should have known that Camping World intended to use the Bowery Kitchen Registered Trademark in connection with the sale of such products.

186. Lemonis Defendants and DOES 1 through 10 have not been granted the right to use the Registered Trademark.

187. Given the foregoing and upon information and belief, Lemonis Defendants and DOES 1 through 10 continue to supply Camping World retailers with the Infringed Mark and products bearing the Infringed Mark despite having actual or constructive knowledge that Camping World's use of the Infringed Mark would infringe on Bowery Kitchen's Registered Trademark.

188. By supplying the Infringed Mark and/or manufacturing products bearing Bowery Kitchen's Registered Trademark, Lemonis Defendants and DOES 1 through 10 caused, enabled, and/or assisted Camping World to infringe on Bowery Kitchen's Registered Trademark.

189. On information and belief, Lemonis Defendants and DOES 1 through 10 have intentionally induced or contributed to or knowingly participated in the infringement of Bowery Kitchen's rights in the Registered Trademark by Camping World's retail outlets.

190. On information and belief, Lemonis Defendants and DOES 1 through 10 have taken no remedial actions to mitigate the infringing conduct of Camping World even though Plaintiff Howard informed Lemonis Defendants of the infringed products being sold at Camping World.

191. Lemonis Defendants' and DOES 1 through 10's assisting and/or enabling Camping World to infringe Bowery's Registered Trademark has caused and/or are likely to cause confusion or mistake among consumers as to the origin, sponsorship or approval of Camping World's products and/or to cause confusion or mistake as to any affiliation, connection or association between Bowery Kitchen and Camping World or its related retail outlet.

192. Further, the infringement of Bowery Kitchen's Registered Trademark is causing immediate and irreparable harm and injury to Bowery Kitchen, and to its goodwill and reputation and will continue to both damage Bowery Kitchen and confuse the public unless enjoined by the court. Bowery Kitchen has no adequate remedy at law for this irreparable harm.

193. Lemonis Defendants and DOES 1 through 10's conduct as alleged herein constitutes contributory trademark infringement and unfair competition in violation of New York law or other applicable state common law.

194. Bowery Kitchen is entitled to, among other relief, injunctive relief and an award of actual damages, and Lemonis Defendants' and DOES 1 through 10's profits, together with prejudgment and post-judgment interest.

**SEVENTH CAUSE OF ACTION: DECEPTIVE PRACTICES UNDER SECTION 349 OF
NEW YORK'S GENERAL BUSINESS LAW**

[By Plaintiffs Against Defendants Lemonis, ML LLC and Camping World]

195. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

196. Plaintiffs are "persons" within the meaning of N.Y. Gen. Bus § 349(h).

197. Defendants Lemonis, ML LLC and Camping World is a "person, firm, corporation or association or agent of employee thereof" within the meaning of N.Y. Gen. Bus. § 349(b).

198. “Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service” are unlawful. N.Y. Gen. Bus. § 349.

199. The acts of Lemonis Defendants and Camping World described above constitute fraudulent and unlawful business practices as defined by Section 349 of the New York General Business Law. Lemonis Defendants and Camping World engaged in deceptive acts or practices in the conduct of business, trade and commerce by willfully and knowingly using Bowery Kitchen’s Registered Trademark without permission and misleadingly in a material way. Lemonis Defendants’ and Camping World’s use of the Infringed Mark is likely to cause confusion as to the source of Lemonis Defendants’ and Camping World’s products and is likely to cause others to be confused or mistaken into believing that there is a relationship between Lemonis Defendants, Camping World and Plaintiff Bowery Kitchen or that Lemonis Defendants’ and Camping World’s products are affiliated with or sponsored by Bowery Kitchen. Such confusion has in fact occurred, as shown by the complaints received by Plaintiffs regarding the deficient quality of the products that included the infringing use of Bowery Kitchen’s Registered Trademark.

200. Bowery Kitchen has valid and protectable prior rights in Bowery Kitchen’s Registered Trademark. The Bowery Kitchen brand and logo is inherently distinctive, and, through Bowery Kitchen’s use, has come to be associated solely with Bowery Kitchen as the source of the products on which it is used.

201. Plaintiffs suffered injury as a result of Lemonis Defendants’ and Camping World’s deceptive use of Bowery Kitchen’s Registered Trademark, including harm to Bowery Kitchen’s reputation due to the poor quality of the deceptive use, and the humiliation and stress Plaintiffs suffered as a result of receiving complaints from people who purchased the deceptively labeled products.

202. By its acts, Lemonis Defendants and Camping World have engaged in deceptive acts and practices in the conduct of their businesses and causing injury in New York State to Plaintiffs' business and goodwill and causing harm to the public in New York State.

203. Lemonis Defendants and Camping World will, on information and belief, continue to infringe upon Plaintiffs' rights under Section 349 of the New York General Business Law unless enjoined by this Court, causing further irreparable injury to Plaintiff for which there is no adequate remedy at law.

EIGHTH CAUSE OF ACTION: FRAUD
[By Plaintiffs Against Defendants Lemonis, ML LLC and Machete]

204. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

205. Lemonis Defendants and Machete knowingly made numerous misrepresentations of material facts to Plaintiffs and/or failed to disclose material information which rendered the representations false to Plaintiffs, as this is part of their pattern and overall scheme with businesses who appear on the show in the past and beyond this case.

206. Lemonis Defendants' false material misrepresentations and/or failures to disclose described above include but are not limited to: (1) representing that Plaintiffs and Lemonis would be equal business partners in managing and expanding Bowery Kitchen; (2) representing to Plaintiffs that Lemonis would be investing in Plaintiffs' business in order to help expand the business and brand with multiple stores and millions more in revenue; (3) representing that Lemonis would direct and manage Bowery Kitchen in a way that would benefit Plaintiffs Howard and Bowery Kitchen; (4) representing to Plaintiffs to trust the process during the lengthy store liquidation, renovations, and filming even though the store was barely making \$300 per day and accumulating hundreds of thousands of dollars of expenses and debt per month; (5) representing

to Plaintiffs that they would receive royalties from any Bowery Kitchen branded products; (6) representing to Plaintiffs they would not need to pay back any of the money Lemonis invested in the Company; and (7) representing to Plaintiffs that Camping World would stop selling products with the Bowery Kitchen name and/or mark and start selling products bearing a different name.

207. Machete's false material misrepresentations and/or failures to disclose described above include but are not limited to: (1) representing to Plaintiffs to trust Defendant Lemonis and his expertise as he knew what he was doing and would help their business; and (2) representing to Plaintiffs that Lemonis would make them more profitable.

208. Lemonis Defendants and Machete intended Plaintiffs to rely on these representations so that Plaintiffs would agree to be featured on the show and allow Lemonis Defendants control and access to their business; however, none of these statements were true when made. Lemonis Defendants and Machete knew these misrepresentations were false and that they intended to use Bowery Kitchen to enrich themselves at the detriment of Plaintiff Howard and the Company itself. Lemonis Defendants further knew that they would force debt upon Bowery Kitchen leaving Plaintiffs to deal with the consequences.

209. Lemonis Defendants and Machete knew or should have known that Plaintiffs would rely upon representations that Lemonis would grow the Company business and brand because this is what Lemonis and Machete said he would do.

210. Upon information and belief, Lemonis Defendants and Machete intended that Plaintiffs rely on their misrepresentations and fraudulent omissions of material facts.

211. The sole purpose for Lemonis Defendants' and Machete's misrepresentations to Plaintiffs was to get them to appear and go along with the process on *The Profit*, and to allow Lemonis to take their corporate assets and goodwill, and take their business as his own to build

Lemonis' other brands without regard to the consequences that Plaintiffs would be left with, such as debt and no assets.

212. Plaintiffs believed and justifiably relied on those misrepresentations because they had no reason not to believe Lemonis Defendants and Machete especially because of Lemonis' claimed reputation in the industry and representations by Machete of Lemonis' business acumen and success with other participants on the show. Plaintiffs were induced by Lemonis Defendants and Machete in agreeing to be featured on the show, allowing Lemonis Defendants into their business, and continuing to do business with them to Plaintiffs' detriment.

213. As a proximate result of Lemonis Defendants' and Machete's acts described above, Plaintiffs have been damaged in an amount to be proven at trial, but at least millions of dollars.

214. In committing the above-described acts, Lemonis Defendants and Machete acted with fraud, oppression, and malice. Given Lemonis Defendants' and Machete's conduct that was willfully and wantonly reckless or malicious and their high degree of moral culpability, punitive damages are appropriate and warranted.

NINTH CAUSE OF ACTION: FRAUDULENT INDUCEMENT
[By Plaintiffs Against Defendants Lemonis, ML LLC and Machete]

215. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

216. Lemonis Defendants and Machete knowingly made numerous material misrepresentations to Plaintiffs and/or failed to disclose material information to Plaintiffs in order to induce them into signing applications and releases to be on *The Profit*, induce Plaintiffs into allowing Lemonis to invest in the Company, and induce Plaintiffs into giving Lemonis control over the Company.

217. As the only natural persons involved in the ownership of Defendant ML LLC, when Lemonis made representations to Plaintiffs he did so in his individual capacity and on behalf of ML LLC, as its owner and agent.

218. As discussed above, Machete is the agent of the Lemonis Defendants and was authorized to make representations to Plaintiffs during their initial phone calls and Skype interviews in March 2016, over the course of preparing to film the show, and during the filming of Plaintiffs' episode in June 2016.

219. Lemonis Defendants and Machete false material misrepresentations and/or failures to disclose described above include but are not limited to: (1) Machete representing to Plaintiffs that Defendant Lemonis helps small businesses and that Lemonis would help Plaintiffs' business by appearing on *The Profit*; (2) Machete representing to Plaintiffs that the offer made on the show was real and a true negotiation; (3) Lemonis representing to Plaintiffs that he was interested in helping Plaintiffs' business succeed and believed in their business; and (4) Lemonis representing that he was not in the business of making people look bad on television.

220. At all relevant times, Lemonis Defendants and Machete knew these misrepresentations were false and that Lemonis intended to use Bowery Kitchen as a vehicle for self-enrichment at the detriment of Plaintiff Howard and the Company itself, as this is part of their pattern and overall scheme with businesses who appear on the show in the past and beyond this case. Defendant Lemonis further knew that he would force debt upon Bowery Kitchen leaving Plaintiff Howard to deal with the consequences.

221. Lemonis Defendants and Machete made these representations and fraudulent omissions of material facts to Plaintiffs so that they would sign releases and applications to be on *The Profit*, agree to be featured on the show and allow Lemonis to invest in and control the

business, knowing that they were untrue, with the intention of inducing reliance and forbearance from further inquiry.

222. Plaintiffs were ignorant of the falsity of the representations and justifiably relied on the misrepresentations and fraudulent omissions of material facts when they signed paperwork such as releases and applications for *The Profit*, agreed to appear on *The Profit*, allowed Lemonis Defendants to invest in their business, and allowed Lemonis control over the Company and make decisions on its behalf. Plaintiffs would not have signed releases or applications to be on the show, agreed to be on *The Profit*, give Lemonis control, or allow Lemonis to invest in their business if they knew Lemonis Defendants' and Machete's representations were false.

223. Lemonis Defendants' and Machete's actions were willful, wanton, malicious and oppressive.

224. As a direct and proximate result of Lemonis Defendants' and Machete's fraud, Plaintiffs have been harmed in an amount to be proven at trial, but at least millions of dollars, and Plaintiffs further seek punitive damages to deter Lemonis Defendants and Machete from continuing their fraudulent business practices.

TENTH CAUSE OF ACTION: FRAUDULENT CONCEALMENT
[By Plaintiffs Against Defendant Lemonis]

225. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

226. In New York, a confidential relationship may arise between parties to a business relationship when the requisite high degree of dominance and reliance existed prior to the transaction giving rise to the alleged wrong. Here, Lemonis had a special and confidential relationship with Plaintiffs because not only was he acting as an superior business partner and advisor, but also Plaintiffs relied on Lemonis' self-promoting statements about his knowledge and

business acumen in expanding their business and making it profitable. Lemonis also owed a fiduciary duty to Plaintiffs because he invited them on the show and asked them to entrust him to run their company and entrust that he would act in the best interest of the company. Plaintiffs' trust was reposed in Lemonis and his agents and that trust was betrayed because Lemonis and his agents had ulterior motives that they concealed. New York law also recognizes a duty to disclose where a party has made a partial or ambiguous statement, whose full meaning will only be made clear after complete disclosure. Thus, a duty to disclose was owed to Plaintiffs by virtue of Lemonis' ambiguous statements to "trust the process" regarding the changes made to the store, including selling off inventory and the cost of the unnecessary renovations he was conducting. Because of this confidential and fiduciary relationship, Lemonis had a duty not to conceal material information from Plaintiffs.

227. Lemonis failed to disclose and concealed material facts described above including but not limited to: (1) failing to disclose his ulterior motive, that is, to force Plaintiffs to become substantially indebted to Lemonis and Lemonis Defendants; (2) failing to disclose the true meaning of "trust the process" in responding to Plaintiffs concerns regarding the delayed filming, no sales, and the costs of the renovations, when in reality his process was to have Plaintiffs deal with the consequences of having a store with no inventory and rising debt that he left them with; and (3) failing to disclose that it was not Lemonis' true intention to be a fiduciary or equal partner in the business as promised to Plaintiffs but instead to destroy the company as part of his scheme, to try to push Plaintiff Howard out of his own business, and infringe on Bowery Kitchen's trademark and name and appearance so he could start selling products to enrich himself and his other entities. These misrepresentations and omissions were material, because if revealed to Plaintiffs, Plaintiffs

would not have entertained Lemonis' offers to become "business partners" thereby giving him control and access to the business.

228. Lemonis concealed these material facts so that Plaintiffs would agree be featured on the show and allow Lemonis to gain control and access to their business. Lemonis' misrepresentations and omissions were false and Lemonis knew these misrepresentations and omissions were false and that he intended to use Bowery Kitchen to enrich himself at the detriment of Plaintiffs, as this is part of his pattern and overall scheme with businesses who appear on the show in the past and beyond this case. Lemonis further knew his omissions were false and instead of acting in the best interest of Plaintiffs, he was forcing debt upon Bowery Kitchen and left Plaintiffs to deal with the consequences.

229. Upon information and belief, Lemonis intended that Plaintiffs rely on his fraudulent omissions of material facts.

230. The sole purpose for Lemonis' omissions to Plaintiffs was to get them to appear and go along with the filming and actions on *The Profit*, take their intellectual property, corporate assets and goodwill, and take their business as his own to build his other brands and entities without regard to the consequences that Plaintiffs would be left with, such as debt and no assets.

231. Plaintiffs believed and justifiably relied on those misrepresentations and omissions in continuing to film the show, allowing Lemonis control over and access to their business and continuing to do business with Lemonis all to Plaintiffs' detriment. Their belief in Lemonis' misrepresentations and omissions were based, in part, due to Lemonis' own statements, Lemonis' false image expressed on *The Profit* and on the show, Machete's statements to Plaintiff Howard and Robyn that Lemonis knew what he was doing, and also based on the show's portrayal of past applicant's success in working with Lemonis and going on the show.

232. As a direct and proximate result of Defendant Lemonis' actions described above, Plaintiffs have suffered actual damages in an amount to be proven at trial, but at least millions of dollars. Plaintiffs seek attorney's fees, costs, and any other just and proper relief available under the law.

233. In committing the above-described acts, Lemonis acted with fraud, oppression, and malice. Given Lemonis' conduct that was willfully and wantonly reckless or malicious and his high degree of moral culpability, punitive damages are appropriate and warranted.

ELEVENTH CAUSE OF ACTION: FRAUDULENT MISREPRESENTATION
[By Plaintiffs Against Defendant Lemonis, ML LLC and Machete]

234. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

235. Lemonis Defendants and Machete knowingly made numerous misrepresentations of material facts to Plaintiffs and/or failed to disclose material information which rendered the representations false to Plaintiffs.

236. Lemonis Defendants' false material misrepresentations and/or failures to disclose described above include but are not limited to: (1) representing that Plaintiffs and Lemonis would be equal business partners in managing and expanding Bowery Kitchen; (2) representing to Plaintiffs that Lemonis would be investing in Plaintiffs' business in order to help expand the business and brand with multiple stores and millions more in revenue; (3) representing that Lemonis would direct and manage Bowery Kitchen in a way that would benefit Plaintiffs Howard and Bowery Kitchen; (4) representing to Plaintiffs to trust the process during the lengthy store liquidation, renovations, and filming even though the store was barely making \$300 per day and accumulating hundreds of thousands of dollars of expenses and debt per month; (5) representing to Plaintiffs that they would receive royalties from any Bowery Kitchen branded products; (6)

representing to Plaintiffs they would not need to pay back any of the money Lemonis invested in the Company; and (7) representing to Plaintiffs that Camping World would stop selling products with the Bowery Kitchen name and/or mark and start selling products bearing a different name.

237. Machete's false material misrepresentations and/or failures to disclose described above include but are not limited to: (1) representing to Plaintiffs to trust Defendant Lemonis and his expertise as he knew what he was doing and would help their business; and (2) representing to Plaintiffs that Lemonis would make them a lot of money.

238. Lemonis Defendants and Machete knew these misrepresentations were false and/or made these misrepresentations recklessly without knowledge of its truth, as this is part of their pattern and overall scheme with businesses who appear on the show in the past and beyond this case.

239. Lemonis Defendants and Machete knew or should have known that Plaintiffs would rely upon representations that Lemonis would grow the Company business and brand because this is what Lemonis and Machete said he would do.

240. Lemonis Defendants' and Machete's misrepresentations were made with the intention that Plaintiffs rely on them in order to get Plaintiffs to appear and go along with the filming and business decisions on *The Profit*, for Plaintiffs to allow Lemonis to invest and allow Lemonis control of the Company, to take their corporate assets and goodwill, and take their business as his own to build Lemonis' other brands and entities without regard to the consequences that Plaintiffs would be left with, such as debt and no assets.

241. Plaintiffs believed and justifiably relied on those misrepresentations because they had no reason not to believe Lemonis Defendants and Machete especially because of Lemonis' reputation in the industry and representations by Machete of Lemonis' business acumen and

success with other participants on the show. Plaintiffs were induced by Lemonis Defendants and Machete in agreeing to be featured on the show, allowing Lemonis Defendants into their business, allowing Lemonis control over the business, continuing to film the show and continuing to do business with them to Plaintiffs' detriment.

242. As a proximate result of Lemonis Defendants' and Machete's acts described above, and Plaintiffs reliance on Lemonis Defendants' and Machete's misrepresentations, Plaintiffs have been damaged in an amount to be proven at trial, but at least millions of dollars.

243. In committing the above-described acts, Lemonis Defendants and Machete acted with fraud, oppression, and malice. Given Lemonis Defendants' and Machete's conduct that was willfully and wantonly reckless or malicious and their high degree of moral culpability, punitive damages are appropriate and warranted.

TWELFTH CAUSE OF ACTION: PROMISSORY FRAUD
[By Plaintiffs Against Defendant Lemonis, ML LLC and Machete]

244. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set herein.

245. Lemonis Defendants and Machete made numerous promissory representations to Plaintiffs that were false at the time they were made.

246. Lemonis Defendants' false promises described above include but are not limited to: (1) promising that Plaintiffs and Lemonis would be equal business partners in managing and expanding Bowery Kitchen; (2) promising to Plaintiffs that Lemonis would be investing in Plaintiffs' business in order to help expand the business and brand with multiple stores and millions more in revenue; (3) promising that Lemonis would direct and manage Bowery Kitchen in a way that would benefit Plaintiffs Howard and Bowery Kitchen; (4) promising Plaintiffs that the lengthy store liquidation and renovations was just a part of the process during filming even though the

store was barely making \$300 per day and accumulating hundreds of thousands of dollars of expenses and debt per month; (5) promising to Plaintiffs that they would receive royalties from any Bowery Kitchen branded products; (6) promising to Plaintiffs they would not need to pay back any of the money Lemonis invested in the Company; and (7) promising to Plaintiffs that Camping World would stop selling products with the Bowery Kitchen name and/or mark and start selling products bearing another name.

247. Machete's false promissory misrepresentations described above include but are not limited to: (1) promising to Plaintiffs that Lemonis would help their business as he had done with past participants on *The Profit*; and (2) promising Plaintiffs that Lemonis would make them a lot of money.

248. Lemonis Defendants and Machete made these false representations with knowledge and belief that the promissory representations were false at the time they were made and/or acted with reckless disregard of its truth.

249. Lemonis Defendants and Machete intended to induce Plaintiffs to rely on these promissory representations to enter into agreements to be featured on the show and allow Lemonis Defendants access to their business and allow Lemonis control over their business to Plaintiffs detriment; however, none of these promises were true when made.

250. It was foreseeable for someone in Plaintiffs position to act in reliance on these promissory representations that Lemonis would grow the Company business and brand because this is what Lemonis and Machete promised and represented to them.

251. Plaintiffs believed and justifiably relied on those promissory misrepresentations, as evidenced by Plaintiffs entering into agreements to appear on the show, and allowing Lemonis Defendants control and access to their business, because they had no reason not to believe Lemonis

Defendants and Machete especially because of Lemonis' reputation in the industry and representations by Machete of Lemonis' business acumen and success with other participants on the show. Plaintiffs reasonably expected that Lemonis Defendants' and Machete's promises would be performed and relied on those expectations by agreeing to be featured on the show, allowing Lemonis Defendants access and control over their business, continuing to film the show and continuing to do business with Lemonis and Machete to Plaintiffs' detriment.

252. As a direct and proximate result of Lemonis Defendants' and Machete's acts and their knowing misrepresentations described above and Plaintiffs reliance on the same, Plaintiffs have been damaged in an amount to be proven at trial, but at least millions of dollars.

253. In committing the above-described acts, Lemonis Defendants and Machete acted with fraud, oppression, and malice. Given Lemonis Defendants' and Machete's conduct that was willfully and wantonly reckless or malicious and their high degree of moral culpability, punitive damages are appropriate and warranted.

THIRTEENTH CAUSE OF ACTION: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

[By Plaintiffs Against Defendants Lemonis, ML LLC and Camping World]

254. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

255. Plaintiffs had an existing business relationship with new and repeat customers.

256. At all relevant times, Lemonis Defendants and Camping World were aware of these business relationships. Lemonis Defendants and Camping World were aware that customers purchased and shopped at Bowery Kitchen for its variety of specialty kitchen items.

257. Lemonis Defendants and Camping World interfered with Plaintiffs' business relationships by engaging in wrongful conduct described above, such as infringing on Plaintiff

Bowery Kitchen's trademark and manufacturing products such as drymats, tablecloths, dishes, etc. with the Bowery Kitchen trademark logo and selling it at Camping World; inducing consumers to buy this product thinking it was a Bowery Kitchen product; and customers contacting Plaintiffs to complain about the poor quality of these products.

258. Lemonis Defendants and Camping World intentionally interfered with and altered the business relationship of Plaintiff and its customers by manufacturing and selling Bowery Kitchen products to deceive consumers into thinking they were purchasing a Bowery Kitchen product.

259. Lemonis Defendants and Camping World used improper and illegal means that harmed Plaintiffs' business relationship and reputation with customers. Lemonis Defendants' and Camping World's actions were dishonest, unfair and improper.

260. As a result of Lemonis Defendants and Camping World's tortious interference with its business relationship with customers, Plaintiffs suffered damages in an amount to be determined at trial.

261. Furthermore, because Defendants' conduct was willful, wanton and malicious, punitive damages should be awarded.

FOURTEENTH CAUSE OF ACTION: UNJUST ENRICHMENT
[By Plaintiffs Against Defendants Lemonis, ML LLC and Camping World]

262. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

263. Plaintiffs allege that the Company has no adequate remedy at law and bring this unjust enrichment claim against Lemonis Defendants and Camping World.

264. By their wrongful acts and omissions, as alleged herein, the Lemonis Defendants and Camping World were unjustly enriched at the expense of, and to the detriment of Plaintiffs.

Lemonis Defendants and Camping World have used the Company as a self-enrichment vehicle while forcing the Company to take actions counter to the Company's interests and to assume increasing debt.

265. Lemonis Defendants and Camping World have continued to use the Company's assets to enrich themselves at the expense of, and to the detriment of Plaintiffs by, among other things: (1) selling Bowery Kitchen products at Camping World for a profit; and (2) using Bowery Kitchen's Registered Trademark without permission in order to package, manufacture and sell Bowery Kitchen products. Through these actions, Lemonis Defendants and Camping World deprived Plaintiffs of profits that would have emanated from the sale of Bowery Kitchen products and the right to the exclusive use of Bower Kitchen's Registered Trademark.

266. Lemonis Defendants and Camping World had knowledge of the benefits conferred upon them by the Company.

267. Plaintiffs Howard, as President and co-owner of Bowery Kitchen, and Bowery Kitchen, seek restitution from Lemonis Defendants and Camping World to disgorge all profits, benefits, and other compensation obtained by Lemonis Defendants and Camping World from their wrongful conduct.

268. Further, it is against equity and good conscience to permit Lemonis Defendants and Camping World to retain what is sought to be recovered because they used the Company's assets to enrich themselves at the expense of the Company. There is no justification for Lemonis Defendants' and Camping World's actions.

269. As a result of Lemonis Defendants' and Camping World's actions, Plaintiffs have been harmed in an amount to be proven at trial, but at least millions of dollars.

FIFTEENTH CAUSE OF ACTION: RICO § 1962

[By Plaintiffs Against Defendants Lemonis, ML, LLC, Machete, Camping World and DOES 1 through 10]

270. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

271. This cause of action asserts claims against Lemonis Defendants, Machete, Camping World, and DOES 1 through 10 for violations of 18 U.S.C. § 1962(c) for conducting the affairs of the “Lemonis Enterprise” described herein, through the “pattern of racketeering activity” described herein.

272. At all relevant times, Plaintiffs, Lemonis, ML, LLC, Machete, Camping World, and DOES 1 through 10 are “persons” as defined in 18 U.S.C. §§ 1961(3) and 1962(c).

273. Plaintiffs are each a “person injured in his or her business or property by reason of a violation of” RICO within the meaning of 18 U.S.C. § 1964(c).

274. At all relevant times, Lemonis Defendants, Machete, Camping World, and DOES 1 through 10 were, and are, a “person” who conducted the affairs of the “Lemonis Enterprise” described below, through the “pattern of racketeering activity” described below. While each Defendant participates in the Lemonis Enterprise, it has an existence separate and distinct from the enterprise. Further, the Lemonis Enterprise is separate and distinct from the “pattern of racketeering activity” in which each Defendant has engaged and is engaging.

275. At all relevant times, Lemonis Defendants, Machete, Camping World, and DOES 1 through 10 were associated with, operated or controlled, the Lemonis Enterprise, and each Defendant participated in the operation and management of the affairs of the Lemonis Enterprise, through a variety of actions described herein. Each Defendant’s participation in the Lemonis Enterprise is necessary for the successful operation of the Defendants’ scheme.

The Lemonis Enterprise

276. Section 1961(4) of RICO defines an “enterprise” as “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.”

277. The following persons, and others presently unknown, have been members of and constitute an “enterprise” within the meaning of RICO, which are referred to herein collectively as the “Lemonis Enterprise:”

- a. Defendant Marcus Lemonis;
- b. Defendant ML, LLC;
- c. Defendant Machete;
- d. Defendant Camping World;
- e. DOES 1 through 10; and
- f. All respective agents and employees of Defendants.

278. The RICO “enterprise” was an association-in-fact Enterprise, as the term is defined in 18 U.S.C. §§ 1961(4) and 1962(c), consisting of Lemonis, ML, LLC, Machete, Camping World, and DOES 1 through 10 and their respective agents and employees, who associated together for the common purpose of employing the multiple deceptive, abusive and fraudulent acts described herein. The Lemonis Enterprise is an ongoing organization with an ascertainable structure, and a framework for making and carrying out decisions, that functions as a continuing unit with established duties, and that is separate and distinct from the pattern Lemonis Enterprise was used as a tool to effectuate the pattern of racketeering activity.

279. Each Defendant was responsible for and carried out separate roles in pursuit of the common purpose of the Enterprise:

- a. Marcus Lemonis' role in the Lemonis Enterprise was to use his personality, fame, purported business acumen, and fraudulent representations to bait Plaintiffs, and the other businesses he encountered through *The Profit*, to allow him to gain control, invest and obtain equity in their businesses. Lemonis represented to Plaintiffs, and other participants on "The Profit" that he was there to help their business and that he had their best interest in mind. Lemonis' role in the enterprise also included keeping Plaintiffs, and other business owners, in line by threatening to take their assets from them.
- b. ML, LLC's role in the Lemonis Enterprise was to act as the financing behind the enterprise. Part of the Lemonis Enterprise's fraudulent conduct was making Plaintiffs' business, and the other businesses the Lemonis Enterprise encountered through "The Profit," insurmountably indebted to the Lemonis Enterprise. The funding to make the unnecessary inventory purchases, renovations, and other fraudulent capital expenditures came from ML, LLC.
- c. Machete's role in the Lemonis Enterprise was to provide initial inducements to prospective businesses and business owners in order for them to appear on "The Profit." Machete would use Skype and other electronic means to communicate to small businesses and their owners telling them that appearing on "The Profit" and making a deal with Lemonis would save their business and/or help successfully expand their business. In addition, Machete produced the show "The Profit" which the Lemonis Enterprise used to advertise and sell their fraudulent scheme. Further, Machete used the Internet and television to make representations about the success the businesses featured on the show had achieved when in reality most of the

business that appeared on the show are no longer in business, were severely damaged by the show, or insurmountably saddled with debt to the Lemonis Defendants.

- d. Camping World's role in the Lemonis Enterprise was to participate in taking Plaintiffs', and other business owners', assets by manufacturing, shipping through the channels and instrumentalities of interstate commerce, and selling products bearing the business owner's markings and intellectual property, impermissibly, at Camping World retail outlets. The profits from the sale of these products are kept by Camping World and Lemonis Defendants.

280. The Lemonis Enterprise is an ongoing enterprise which engages in, and whose activities affect, interstate commerce within the meaning of 18 U.S.C. § 1962(c), by, among other things, marketing and advertising "The Profit" television show and Lemonis Defendants' and Machete's purported ability to save family business and small fledgling businesses through television, media, and Internet outlets, and using the instrumentalities of interstate commerce to make fraudulent representations to Plaintiffs and others as part of a scheme to defraud. The Lemonis Enterprise began by at least July 2013 and presently continues to operate as a single unit.

281. The overarching purpose of the Lemonis Enterprise is for each of its members to profit from defrauding small, often family owned, businesses across the Country, primarily through the guise of the television show "The Profit." Lemonis Defendants, Machete, Camping World and DOES 1 through 10, accomplished the purpose of the Lemonis Enterprise by: (1) falsely representing Lemonis as a business savior who helps failing small businesses, (2) targeting small family run businesses without general counsel or independent attorneys, (3) using means of mail and wire (defined below), such as the Internet and television, to make representations that

induce small businesses, including Plaintiffs, to appear on the television show “The Profit,” (4) using means of mail and wire (defined below), such as the Internet and television, to represent to each business that Lemonis will help the business, make the businesses profitable, and provide marketing and publicity by virtue of being on the show and part of the Lemonis family of businesses, (5) using means of mail and wire (defined below), such as the Internet and television, to represent to each business that the deals Lemonis makes on the show and the help he provides the companies on the show are real, (6) using means of mail and wire (defined below), such as the Internet and television, to represent that Lemonis has helped and improved the small businesses featured on the show when, in reality, the majority of businesses featured on the show are either now closed, severely damaged by the show, or insurmountably indebted to the Lemonis Defendants, (7) saddling the business with debt to the Lemonis Entities, both prior to finalizing the Lemonis Defendants’ investment and after, in order to give the Lemonis Enterprise leverage over the business and its owners, (8) mismanaging the business in a way that benefited the Lemonis Enterprises, to the detriment of the business and its owners, and in a way that make it insurmountably indebted to the Lemonis Defendants; (9) eventually foreclosing on the debt in order to take the business from its original owners and fold it into the Lemonis Defendants and its various companies; and (10) knowingly using without consent and stealing Plaintiffs’, and other business owners’, intellectual property and markings to manufacture and sell products bearing those markings, impermissibly, and for a profit.

Predicate Acts
(Mail and Wire Fraud and Trafficking Goods Bearing Counterfeit Marks)

282. Section 1961(1) of RICO provides that “racketeering activity” is, among other things, any act indictable under any of the provisions of 18 U.S.C. § 1341 (mail fraud), §1343 (wire fraud) and § 2320 (trafficking goods bearing counterfeit marks).

283. As set forth below, to carry out, or attempt to carry out its scheme to defraud, Lemonis Defendants, Machete, Camping World, and DOES 1 through 10 have engaged in, and continue to engage in, the affairs of the Lemonis Enterprise through the following pattern of racketeering activity, in violation of 18 U.S.C. § 1341 (mail fraud) and §1343 (wire fraud) :

- a. The Lemonis Enterprise used the mail and wire, including telephone, television, media, Skype, and the Internet, as follows:
 - i. Using the Internet and Skype to make fraudulent representations to small businesses, that Lemonis would help their business through “The Profit” and running advertising and maintaining a website including false representations portraying Lemonis as a savior of small businesses and representing that Lemonis helps small businesses. Using the Internet and television to make fraudulent representations that Lemonis has helped and improved the small businesses featured on the show when, in reality, the majority of businesses featured on the show are either now closed, severely damaged by the show, or insurmountably indebted to the Lemonis Entities. In Plaintiffs case, using Skype around March 2016 to make representations that Lemonis could help their business move to the next level, that the deals Lemonis makes on the show are real, and that the businesses Lemonis helps on the show are real and thriving. These representations are made to induce small businesses to be on the show “The Profit” and provide Lemonis Defendants and Machete the opportunity to invest in the targeted small business.

- ii. Using the Internet to transmit documents used to give the Lemonis Defendants equity positions in these businesses. In Plaintiffs' case, using the Internet in or around August 2016 to transmit the Alternate Term Sheet that gave Lemonis Defendants control over Bowery Kitchen's brand and intellectual property rights.
 - iii. Using the Internet and telephone to make fraudulent representations that the Lemonis Enterprise was helping these businesses while they were actually mismanaging them to the detriment of the business, including using Bowery Kitchen's Registered Trademark and logo to package, manufacture and sell Bowery Kitchen branded products.
- b. The fraud would not have been possible had the Lemonis Enterprise, their entities, and their authorized agents not used the mail and wire, as described above, to send and receive the communications throughout the Country.
 - c. Lemonis Defendants, Machete, Camping World and DOES 1 through 10 conducted exchanges, payments, and monetary transfers using the wires concerning the receipt and distribution of the proceeds of Defendants' improper racketeering enterprise.

284. Furthermore and in addition to the above and as set forth below, to carry out, or attempt to carry out its scheme to defraud, Lemonis Defendants, Camping World and DOES 1 through 10 have engaged in, and continue to engage in, the affairs of the Lemonis Enterprise through the following pattern of racketeering activity, in violation of 18 U.S.C. § 2320 (trafficking goods bearing counterfeit marks):

- a. The Lemonis Enterprise engaged in trafficking goods bearing counterfeit marks, as follows:

- i. Knowingly trafficking goods or attempting to traffic goods in and out of Camping World retail stores, using a counterfeit mark that is identical or substantially indistinguishable to Bowery Kitchen's Registered Trademark and logo to package, manufacture and sell Bowery Kitchen branded products at Camping World retail outlets, impermissibly and for a profit.

285. Lemonis Defendants', Machete's, Camping World's, and DOES 1 through 10's misrepresentations and acts were knowing and intentional, and made with the intent to defraud, primarily through the show "The Profit," its marketing, website, and promotional materials and made with the intent to steal and profit off of Plaintiff's intellectual property rights without permission to manufacture and sell such goods bearing Plaintiffs' and other business owners' trademarks.

286. Plaintiffs reasonably relied on Defendants' false representations by, among other things, allowing Defendants to obtain control of Bowery Kitchen, and allowing the Defendants access to the use of Bowery Kitchen's brand and trademark, without Plaintiffs permission.

287. These multiple and frequent acts of mail and wire fraud and trafficking of goods bearing counterfeit marks establish a pattern of racketeering and, further, give context to the Defendants' racketeering activity that persisted for years.

Pattern of Racketeering Activity

288. As set forth herein, Defendants have engaged in a "pattern of racketeering activity," as defined in 18 U.S.C. § 1961(5), by committing or conspiring to commit at least three acts of racketeering activity, described above, within the past ten years.

289. Defendants have engaged in a scheme to defraud small business owners, including Plaintiffs, through fraudulent misrepresentations, knowing concealments, suppressions and

omissions of material fact in their television show “The Profit,” which has run for seven seasons, and upon information and belief, will continue for an eighth season, and featured approximately 100 businesses, e-mail and other communications, marketing materials, on their website, and in other advertisements, with the use of United States mail or interstate telecommunication systems for the purpose of executing its scheme.

290. Defendants’ scheme to defraud was knowingly made and reasonably calculated with the intent to deceive and defraud persons of ordinary prudence and comprehension, including Plaintiffs.

291. Defendants’ scheme to defraud was made with intent to induce reliance by Plaintiffs upon such misrepresentations, concealments, suppressions, or omissions.

292. Defendants’ scheme to defraud was made with the purpose of gaining millions of dollars in equity, assets, trade secrets, inventory, good will, loan interest, monies, and profits from Plaintiffs, and other small businesses, that would not have been gained but for Defendants’ acts and omissions alleged herein.

293. But for Defendants’ scheme to defraud, Plaintiffs would not have permitted Defendants to invest or have access to Bowery Kitchen and its assets, preventing Defendants’ ability to harm Bowery Kitchen from the harms alleged herein. The harms that took place would not have occurred if Plaintiffs had proceeded to operate Bowery Kitchen in the absence of Defendants as they would have either obtained financing from another source, consulting advice from a business advisor, or would have continued to operate as they previously were, where they were selling over \$3 million in revenue in a year without the added debts brought about by Defendants’ fraudulent scheme and conspiracy.

294. As detailed below, Defendants' long running fraudulent scheme and conspiracy consisted of, among other things: (1) falsely representing Lemonis as a business savior who helps failing small businesses, (2) targeting small family run businesses without general counsel or independent attorneys, (3) using means of mail and wire (defined above), such as the Internet, telephone, text messages, and television, to make representations that induce small businesses, including Plaintiffs, to appear on the television show "The Profit," (4) using means of mail and wire (defined above), such as the Internet, telephone, text messages, and television, to represent to each business that Lemonis will help the business, make the businesses profitable, and provide marketing and publicity by virtue of being on the show and part of the Lemonis family of businesses, (5) using means of mail and wire (defined above), such as the Internet, telephone, text messages, and television, to represent to each business that the deals Lemonis makes on the show and the help he provides the companies on the show are real, (6) using means of mail and wire (defined below), such as the Internet, telephone, text messages, and television, to represent that Lemonis has helped and improved the small businesses featured on the show when, in reality, the majority of businesses featured on the show are either now closed, severely damaged by the show, or insurmountably indebted to the Lemonis Entities, (7) saddling the business with debt to the Lemonis Defendants, both prior to finalizing the Lemonis Defendants' investment and after, in order to give the Lemonis Enterprise leverage over the business and its owners, (8) mismanaging the business in a way that benefited the Lemonis Enterprises, to the detriment of the business and its owners, and in a way that make it insurmountably indebted to the Lemonis Defendants, (9) eventually foreclosing on the debt in order to take the business from its original owners and fold it into the Lemonis Entities and its various companies; (10) knowingly using and stealing

Plaintiffs', and other business owners', intellectual property and markings to manufacture and sell products bearing those markings, impermissibly, and for a profit.

295. The above-described racketeering activities amount to a common course of conduct intended to deceive and harm Plaintiffs and other small business owners. Each such racketeering activity is related, has a similar purpose, involves the same or similar participants and methods of commission, and has similar results affecting similar victims, including Plaintiffs. These acts pose a threat of continued racketeering activity and constitute a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(5).

Injury to Plaintiffs

296. As a direct and proximate result of violations of 18 U.S.C. § 1962(c) by the Defendants, Plaintiffs have been injured in their property within the meaning of 18 U.S.C. § 1964(c), in that, the business is no longer open nor generating any revenue and has suffered damages as a result of Defendants impermissible use of its' trademark, in an amount to be proven at trial, but not less than nine million dollars.

297. Under the provisions of 18 U.S.C. § 1964(c), the Defendants are liable to Bowery Kitchen for three times the damages sustained, plus the costs of bringing this suit, including reasonable attorneys' fees.

SIXTEENTH CAUSE OF ACTION: DECLARATORY JUDGMENT **[By Plaintiff Howard Against Defendants Lemonis and ML, LLC]**

298. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

299. There is a substantial controversy and a live dispute between the parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory

judgement. The dispute, therefore, between Plaintiff Howard and Lemonis Defendants is a justiciable controversy appropriate for declaratory judgement under the Declaratory Judgement Act, 28 U.S.C. §§ 2201, 2202.

300. The Alternate Term Sheet is null and void for several reasons: (1) Plaintiff Howard's assent to the terms of the agreement was induced by fraud; (2) the Alternate Term Sheet fails to articulate material terms and performance; and (3) any supposed obligations of Plaintiff Howard is excused by Defendant ML LLC's failure to perform under the Alternate Term Sheet.

301. First, Plaintiff Howard's assent to the terms of the agreement was induced by fraud because he was forced to sign the Alternate Term Sheet in order to protect himself and Bowery Kitchen from the insurmountable debt that Defendant Lemonis had drowned them in.

302. Second, the Alternate Term Sheet does not articulate material terms and performance. The one-page Alternate Term Sheet is supposedly between three parties: ML LLC, Robin Coval and Howard Nourieli. Notably, it was never executed by Lemonis, Bowery Kitchen, or ML LLC. Furthermore, the material terms are vague and indiscernible as it does not expressly convey any rights to ML, LLC or Lemonis to Bowery Kitchen's trademark or brand, which belong to the Company itself.

303. Third, Plaintiff is excused from performing any supposed obligations under the Alternate Term Sheet because ML LLC has not fulfilled all of its obligations under the Alternate Term Sheet. Under the Alternate Term Sheet, ML LLC is obligated to pay Plaintiffs approximately \$494,000, an obligation which ML LLC has not performed.

304. Accordingly, Plaintiffs are entitled to a declaration that the Alternate Term Sheet is null and void, and that any purported obligations of Plaintiff Howard are excused by ML LLC's nonperformance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendants, as follows:

1. Permanently enjoining Defendants and each of their respective agents, servants, employees, officers, associates, attorneys, and all persons acting by, through, or in concert with any of them, from:
 - a. Using Plaintiff Bowery Kitchen's logo, mark or any mark confusingly similar thereto, in connection with the advertising, marketing, promoting and/or offering of products;
 - b. Committing any other act which falsely represents or which has the effect of falsely representing that the products of Lemonis Defendants and Camping World are affiliated with, connected with, offered by, created by, sponsored by, or in any other way associated with Plaintiffs Howard and Bowery Kitchen;
 - c. Otherwise infringing upon Plaintiff Bowery Kitchen's rights in its Bowery Kitchen mark;
 - d. Diluting Plaintiff Bowery Kitchen's mark; and
2. Declaring that the Alternate Term Sheet is null and void and any purported obligations of Plaintiff are excused by Defendant ML LLC's nonperformance.
3. Awarding actual damages suffered by Plaintiffs as a result of Defendants' acts;
4. Awarding treble damages in the amount of Defendants' profits or Plaintiffs' damages, whichever is greater, for willful infringement pursuant to 15 U.S.C. § 1117(b);
5. Awarding Plaintiffs statutory damages pursuant to 15 U.S.C. § 1117(c);
6. Awarding Plaintiffs all of Defendants' profits and all damages sustained by Plaintiffs as a result of Lemonis Defendants and Camping World's wrongful acts, and such other

- compensatory damages as the Court determines to be fair and appropriate pursuant to 15 U.S.C. § 1117(a);
7. Ordering an accounting by Lemonis Defendants and Camping World of all gains, profits and advantages derived from its wrongful acts;
 8. Ordering Defendants to disgorge their profits gained as a result of Defendants wrongful acts;
 9. Awarding Plaintiffs attorney's fees due the exceptional nature of Lemonis Defendants and Camping World's acts of infringement under 15 U.S.C. § 1117(a) and attorney's fees under 18 U.S.C § 1964(c);
 10. Awarding Plaintiffs all applicable costs pursuant to 15 U.S.C. § 1117(a) and 18 U.S.C § 1964(c);
 11. Awarding Plaintiffs an award of the costs and disbursements of this action, including reasonable attorneys' fees, costs and expenses;
 12. Awarding Plaintiffs such other and further relief as the Court may deem just and proper under the circumstances.

JURY TRIAL DEMANDED ON ALL CLAIMS SO TRIABLE

Dated: October 2, 2020

Gerard Fox Law P.C.

/s/ Maja Lukic
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