

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

PETER SIMON, as a minority shareholder in The City Foundry Inc. and Industry City Distillery, Inc., and DR. DOUGLAS SIMON and RICHARD WATTS,

Plaintiffs,

-against-

DAVID KYREJKO, ZACHARY BRUNER, together, Majority Shareholders in The City Foundry Inc. and Industry City Distillery, Inc., THE CITY FOUNDRY INC. INDUSTRY CITY DISTILLERY, INC., ANDREW KYREJKO, KEN GREENE, and JAY BIRNBAUM,

Defendants.

Index No. 156277/2014

SECOND AMENDED COMPLAINT

Plaintiffs Peter Simon (“**Simon**”) Dr. Douglas Simon (“**Dr. Simon**”) and Richard Watts (“**Watts**”), by their attorneys, Kennedy Berg LLP for their Complaint against defendants David Kyrejko (“**Kyrejko**”), Zachary Bruner (“**Bruner**”), The City Foundry Inc. (“**The City Foundry**”), Industry City Distillery Inc. (“**Industry City Distillery**”) Andrew Kyrejko (“**A. Kyrejko**”), Ken Greene (“**Greene**”) and Jay Birnbaum (“**Birnbaum**”) allege as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action to hold liable Kyrejko and Bruner for their scheme to eliminate all of their co-founders in the business of two companies, The City Foundry and Industry City Distillery, entities engaged in developing, manufacturing and selling various lines of locally distilled spirits. Kyrejko and Bruner, both of whom have fine arts degrees and little business experience, are self-dealing to gain control of The City Foundry and Industry City Distillery, at the expense of the co-founders, shareholders and employees of both companies.

2. It was Peter Simon, an original co-founder of The City Foundry and Industry City Distillery, who dedicated three years to raising investment capital, operating the day-to-day business, securing buyers and distributors for Industry City Distillery Vodka and becoming the public face of the entire spirits business. Had Kyrejko and Bruner focused on producing vodka to keep pace with the demand that Simon, another former co-founder, Richard Watts (“**Watts**”) and other shareholders and employees had generated, Industry City Distillery likely would be profitable, today. Instead of staying in the lab and producing vodka, however, Kyrejko, in particular, was extraordinarily guarded about the vodka-making processes that he claimed to have uniquely engineered. In fact, when Simon and others hired a lab assistant to mimic Kyrejko’s duties to double the volume of vodka being produced, Kyrejko flatly refused to teach her the distillation process. He acted so unprofessionally toward her that he forced her to sit idly in the lab. Within months, she left the business.

3. In late 2013, Kyrejko and Bruner forced Watts, and another key shareholder and employee named Max Hames (“**Hames**”) out of The City Foundry and Industry City Distillery business. When Simon, Watts and Hames protested, Kyrejko petulantly threatened to leave the business with certain key aspects of the vodka-making process still his secret. Kyrejko also threatened the physical destruction of the entire manufacturing space and all of the equipment and technology in it.

4. On December 7, 2013, Dr. Simon delivered lawful notice to Industry City Distillery of his intention to convert his \$150,000 loan into Industry City Distillery shares. Rather than honor the notice, Kyrejko and Bruner schemed to get rid of Simon and devalue Dr. Simon’s Note. Kyrejko and Bruner proposed to Simon that: a) all intellectual property owned by Industry City Distillery be transferred to The City Foundry; b) Industry City Distillery be

operated exclusively by Simon, without the necessary know-how to distill Industry City Distillery's lead products; and c) Simon's involvement in The City Foundry be eliminated. Simon rejected their offer.

5. At the same time, Kyrejko and Bruner were raising money, not to be used for the benefit of The City Foundry and Industry City Distillery, but rather solely to bolster their scheme to take over The City Foundry and devalue Industry City Distillery. Apparently, Kyrejko and Bruner were convinced that because they collectively had a majority of the voting rights under The City Foundry and Industry City Distillery Founders Agreements, they were permitted to disregard the rights of minority shareholders and sabotage Industry City Distillery until they could wrest exclusive control of the companies from Simon.

6. In April 2014, Bruner, Kyrejko and the Simons reached an agreement to settle this dispute. As Bruner's and Kyrejko's own lawyer confirmed, there was agreement on all material terms. Beginning in January 2014 and continuing through June 2014, however, Bruner and Kyrejko sought the advice of Greene and Birnbaum, family friends of the Bruners in upstate New York who are more than double Bruner's and Kyrejko's age. Instead of following the advice of their own lawyers, most of which was voluntarily disclosed by Bruner to non-lawyers Greene and Birnbaum, Bruner and Kyrejko followed Greene's and Birnbaum's misguided directives.

7. Greene's and Birnbaum's vitriolic view of the Simons, who they do not know and have never met, was highlighted by: (1) Birnbaum's shepherding Bruner and Kyrejko through dishonestly "setting up" Simon and improperly terminating of him; (2) Greene's and Birnbaum's persuading Bruner and Kyrejko do disavow their agreement to settle this dispute with the Simons; (3) Birnbaum's counseling Bruner to instruct Greene, Birnbaum and Kyrejko to destroy

an email, authored by Bruner in a moment of candor, crediting Simon with building the ICD and TCF businesses; and (4) Greene's and Birnbaum's conclusion – which was contrary to Bruner's and Kyrejko's own lawyer's advice -- that settling this case was riskier than litigating it.

8. On June 6, 2014, at Greene's and Birnbaum's urging Kyrejko and Bruner dishonored their agreement to resolve this matter. In fact, Greene and Birnbaum firmly believed that this case would not survive a motion to dismiss. That incorrect calculus has caused all parties to incur legal fees and clog this Court with a case that was actually settled.

9. On June 23, 2014, based on advice obtained from Birnbaum's lawyer and deliberately manipulated by Birnbaum, Kyrejko and Bruner gave notice of two "Special Meetings" of the Board of Directors of both Industry City Distillery and The City Foundry, to be held on June 24, 2014. Kyrejko and Bruner called the meeting, claiming that the purpose of it was to terminate Peter Simon's employment from both entities. Simon, who has stood ready, willing and able to continue his duties at Industry City and The City Foundry, demanded that the meeting be postponed. Kyrejko and Bruner refused, holding the purported Special Meetings on June 24, 2014, as the only two founders of ICD and TCF in attendance. On June 24, 2014, Kyrejko and Bruner purported to terminate Simon's employment from ICD and TCF – completing their disloyal scheme.

10. At bottom, by betraying their co-founders, shareholders and employees, Kyrejko and Bruner deliberately devalued the entire spirits business, once valued at roughly \$3 million, in a transparent power-grab. After conducting limited discovery, additional claims were revealed. Plaintiffs assert claims for breach of fiduciary duty, fraud, fraud in the inducement, civil conspiracy, quantum meruit, defamation, breach of contract, declaratory judgment and tortious interference. Plaintiffs reserve the right to add other shareholders to this action and assert a

claim for judicial dissolution. Plaintiffs will seek damages at trial in an amount not less than \$5 million.

PARTIES

11. Plaintiff, Dr. Douglas Simon is an individual, who resides on Oxford Road, New Rochelle, New York. Dr. Simon holds a Convertible Promissory Note against Industry City Distillery.

12. Plaintiff, Peter Simon is an individual, who resides on Oxford Road, New Rochelle, New York. Simon is a founding member, shareholder and employee of The City Foundry Inc. and Industry City Distillery, Inc.

13. Plaintiff, Richard Watts is an individual, who resides on Stratford Road, in Brooklyn, New York. Watts is a founding member and shareholder of The City Foundry Inc. and Industry City Distillery, Inc. Watts asserts claims solely in his capacity as shareholder in the companies.

14. Defendant, David Kyrejko is an individual, who resides at 33 35th Street, Ste. 6A, Brooklyn, New York 11232. Kyrejko is a founding member of The City Foundry Inc. and Industry City Distillery, Inc.

15. Defendant Zachary Bruner is an individual, who resides at 568 39th Street, Apt. 1R, Brooklyn, New York 11232. Bruner is a shareholder and employee of The City Foundry Inc. and Industry City Distillery, Inc., who, though added later, was given the title “Founder.”

16. Defendant The City Foundry, Inc. is a New York Corporation. Its principal place of business is 33 35th Street, Brooklyn, New York 11232.

17. Defendant Industry City Distillery, Inc. is a New York Corporation. Its principal place of business is 33 35th Street, Brooklyn, New York 11232.

18. Defendant Andrew Kyrejko is an individual, who resides at 420 West 42nd Street, New York, New York 10036. A. Kyrejko holds himself out as “a nimble strategist who excels at partnering with startups and global organizations to create brands, products, services and experiences.” A. Kyreko advises ICD and TCF.

19. Defendant Ken Greene is an individual, who resides at 57 Sunset Boulevard, Pittsford, New York 14534-2142. Green is an entrepreneur who owns restaurants.

20. Defendant Jay Birnbaum is an individual, who resides at 57 Knollwood Drive, Rochester, New York 14618-3512. Birnbaum is a commercial landlord.

JURISDICTION AND VENUE

21. This Court has jurisdiction over this matter pursuant to CPLR §§ 301 and 302. Venue is proper in this county under CPLR § 503(c). All parties agreed to be bound by the law of New York State under Section 10 of Dr. Simon’s Convertible Promissory Note and Section 9 of Simon’s Secured Note Payable.

22. Venue is proper in Supreme Court, County of New York because Section 10 of Dr. Simon’s Convertible Promissory Note reads as follows: “Each party irrevocably submits to the exclusive jurisdiction of any state [or] Federal court located within the Borough of Manhattan, City of New York in the State of New York, for purposes of any suit, action or other proceeding arising out of this Note.”

FACTS

A. The Inception of the Business

23. In early 2011, Simon met Kyrejko through mutual friends. Kyrejko told Simon of his idea for a technologically innovative and environmentally responsible liquor distillery. Simon, who worked with the notable cocktail and restaurant group, Derossi Global, was

intrigued. In addition to the innovation that Kyrejko claimed to have made, starting an environmentally conscious business greatly appealed to Simon. An entrepreneurial, yet socially conscious man, Simon had lived, studied and worked in Asia and Africa to improve the lives of people indigenous to each continent.

24. As they talked further, Kyrejko asserted to Simon that he had developed a unique vodka fermentation and distillation method that transformed raw beet sugar into 80-proof vodka. By incorporating processes derived from industrial and scientific production of alcohol, Kyrejko claimed that his systems were more efficient, cleaner environmentally and led to better taste control, as compared to traditional spirit production. After further discussion, Kyrejko and Simon agreed to become partners, founding the spirits business they initially called The City Foundry.

25. At its inception, Simon invested \$60,000 into The City Foundry and agreed to loan The City Foundry an additional \$60,000. On January 8, 2011, Simon, as Lender, entered into a Secured Note Payable with The City Foundry.

26. By March 2011, The City Foundry, Inc. was incorporated. Simon took on The City Foundry sales, business operations and investor relations responsibilities. In addition, because Simon was better-suited to interact with people, he became the public face of the business. Kyrejko's obligation was to distill and bottle the vodka, while working to improve the vodka recipe.

27. Simon and Kyrejko signed The City Foundry Shareholders Agreement on June 21, 2011. Despite having already committed \$120,000 to The City Foundry, Simon agreed to dedicate himself to the company as a minority shareholder. The City Foundry issued 200 shares, distributing 51 to Kyrejko and 20 to Simon (which could never be diluted below 10%). Kyrejko

and Simon agreed that both parties' consent would be required for all day-to-day company decisions. On July 21, 2011, Dr. Simon posted a Distilled Spirits Bond with the Department of Treasury, in the amount of \$18,000, so that ICD could produce and sell its vodka. The bond is due on July 31, 2016.

28. After signing the Shareholders Agreement, Simon quickly secured The City Foundry's first physical space for production, and mastered the federal and state distillery and alcohol laws. Defying a liquor license process that is normally lengthy and bureaucratic, Simon secured all necessary licenses and permits for The City Foundry to manufacture and sell vodka in short order. From time to time, Simon infused the business with loans and advances to cover any shortages in capital.

B. The City Foundry is Reconstituted and Industry City Distillery is Formed

29. By late August 2011, Kyrejko began including his friends in the business, at first utilizing each of their specific expertise. Richard Watts, a talented designer, was brought in to design the website, publicize and market the vodka. Shortly after Watts joined, in the summer of 2011, Kyrejko brought in Bruner to be head machinist. At first, all four members of the team pitched in where necessary to get the work done.¹ By March 2012, the group was on the verge of making its first sale of the vodka they dubbed Industry City Distillery Vodka.

30. In March 2012, the structure of the business was reorganized. The City Foundry was reconceived as a research and development company -- the incubator for other businesses to be launched in the future. The reorganization also was designed to reflect the contributions of each new person, to structure Industry City Distillery as a subsidiary of The City Foundry and to raise money.

¹ The group also brought in Max Hames, who made invaluable contributions and was publicly described as a founder.

31. As of March 9, 2012, two agreements, The Industry City Distillery Inc. Founders Agreement and The City Foundry Inc. Founders Agreement were signed by each of Simon, Kyrejko, Bruner and Watts. Each shareholder was named an Industry City Distillery Founder and Board Member with equal voting power. Important management decisions of the company, such as terminating employees, selling the company and increasing the size of the Board, required three out of four votes.² The know-how, including the fermentation and distillation methodology and all of the technology used to produce the vodka, was owned by Industry City Distillery.

32. Reflecting their respective length of service and monetary contributions to the company, Kyrejko was granted 2,000 shares in Industry City Distillery, and Simon was granted 1,200 shares. Bruner was given 490 shares and Watts 400. The City Foundry, as the parent corporation, owned 1,000 shares of Industry City Distillery. Under the Industry City Distillery Agreement, each owner stood to increase his share ownership under a vesting schedule, which was based on the amount of time each served at the company. Last, appropriate leases and licenses were transferred from The City Foundry to Industry City Distillery.

33. On the same day, March 9, 2012, The City Foundry Shareholders' Agreement was superseded by The City Foundry Founders' Agreement. Each of Simon, Kyrejko, Bruner and Watts was granted 50 shares in The City Foundry. In most other respects, The City Foundry Agreement mirrored the Industry City Distillery Founders Agreement. Important management decisions of the company required the votes of three out of four board members. Each shareholder stood to increase his shares based on a vesting schedule. The primary distinction

² In the event that the number of voting Board members was reduced to three, a vote of two out of three Board members was deemed controlling.

between the two agreements was that The City Foundry did not own any of the intellectual property that Industry City Distillery did.

34. In short, with a more comprehensive parent-subsiary corporate structure in place, Industry City Distillery Vodka was poised to launch in March 2012.

C. Industry City Starts Selling

35. Industry City Distillery began selling bottles of Industry City Distillery Vodka in April 2012. Its Industry City Distillery No. 2 Vodka was quickly in demand. By May, a liquor distributor called 2Fly Wines became interested in purchasing Industry City Distillery No. 2 Vodka, in bulk. A May 25, 2012 Letter of Intent, signed by 2Fly Wines representative Jonathan Lynch, reads as follows: “I am writing this letter to express my sincere interest in purchasing Industry City Distillery Vodka for distribution in Connecticut, with future consideration for the Massachusetts and Rhode Island markets.”

36. Praising the “quality, care and craftsmanship” of the vodka, 2Fly Wines committed to buying enough vodka per month to make Industry City Distillery, together with its other sales, profitable in short order. Lynch further wrote, “Once production has increased, it is the intent of 2Fly Wines to purchase No. 2 Vodka at a rate of two to three pallets (128 to 192 crates) per month...” To encourage timely production, 2Fly Wines even promised to make an upfront payment for the first three months.

37. Industry City Distillery was also garnering local press attention. Seizing on its all-purpose, Brooklyn-based manufacturing plant, Simon and Watts promoted the vodka as Brooklyn’s own. Astor Wines, an early buyer, put Industry City Distillery on the cover of its promotional materials under the heading “Drink Local: 5 Amazing New York Distilleries.” New York Spirits magazine put Industry City Distillery No. 2 Vodka on its cover, as did Tasting

Table NYC. CBS New York ran a print and television piece on Industry City Distillery, with Simon as the spokesman. Fox News ran a television piece as well.

38. Local press led to national press. Forbes Magazine listed the Industry City Distillery team as one of its “top 30 under 30” entrepreneurs. The New York Times ran a piece about the business on the front page of its Metropolitan section.

39. Still, early into the launch, Industry City Distillery was unable to meet its financial obligations because of Kyrejko’s and Bruner’s failure to meet the company’s production obligations. In June 2012, Industry City Distillery drafted a business plan identifying as its primary fundraising goal, securing \$150,000 in investment capital. The founders concluded that \$150,000 was needed to cover the cost of production to reach 4,000 bottles per month, a key benchmark that would make Industry City Distillery profitable. In the short term, Simon and Bruner loaned Industry City Distillery money to cover its May and June 2012 expenses. Simon loaned the company an additional \$22,000. Bruner loaned it \$19,000.

40. Demand for Industry City No. 2 Vodka was not the problem -- production was. It is for this reason that a \$150,000 investment in Industry City Distillery was attractive to outside investors. In July 2012, an investor brought in by corporate counsel, appeared willing to invest the \$150,000 necessary to boost production, based on a \$1.5 million valuation of Industry City Distillery. Yet, the investor demanded an equity position in both TCF and ICD. Though strapped for cash, the shareholders did not want to give the investor an equity position in both companies. Dr. Simon then stepped in, offering to make a \$150,000 loan (at a below market interest rate and on extremely favorable, non-commercial terms) to Industry City Distillery, based on a \$3 million valuation of ICD.

41. On August 31, 2012, Dr. Simon and each of the founding members of Industry City Distillery signed a \$150,000 Convertible Promissory Note. The Note accrued 3% interest and was due and payable on August 31, 2017. Beginning on February 28, 2014, Dr. Simon had the option to give notice and convert the Note into Industry City Distillery shares.³ Dr. Simon's loan resulted in Kyrejko, Bruner and all shareholders being protected from the dilution that an ordinary investor would require.

42. All things being equal, in the fall of 2012, Industry City Distillery was positioned to meet demand for Industry City Vodka. All things, however, were not equal.

D. Kyrejko Undermines Industry City Distillery with His Uneven Behavior

43. Though there had been hints along the way of Kyrejko's tyrannical personality, including that he had run off an intern and two friends of the co-founders who were trying to assist him in increasing the production of vodka, the founders had dismissed his actions as those of an eccentric artist, lacking in interpersonal skills. Still, in August and September 2011, Kyrejko's behavior had spiraled so out of control that Bruner arranged for a facilitator to communicate to Kyrejko on behalf various employees, and vice versa. It did not work. Kyrejko drove out employee after employee. Even at this early stage, Bruner, whether because of intimidation or naiveté, always supported Kyrejko.

44. In the fall of 2012, with Simon meeting with distributors vying to be the primary seller of Industry City Distillery Vodka in New York, and Industry City so poised to become successful, Kyrejko imploded. The founders used Dr. Simon's loan, in part, to hire a lab assistant for Kyrejko, dedicated to mirroring his work and doubling production of vodka. But, Kyrejko refused to disclose the vodka-making process to her. He asserted that the process was

³ In addition, Dr. Simon's conversion right is also triggered by an equity financing event in Industry City Distillery, in an amount over \$250,000.

far “too experimental” to teach anyone. Kyrejko’s assertion was the opposite of what he said to buyers and distributors, other employees and most important, Simon at the inception of The City Foundry. By December 2012, the lab assistant left the company because of Kyrejko’s petulance.

45. Industry City Distillery also used Dr. Simon’s loan to hire a Project Manager/Marketer to organize deadlines and manage the facility, all in an effort to meet production and increase profits. Kyrejko refused to be managed. He refused to even meet with the Project Manager. Following Kyrejko’s lead, Bruner was extremely critical of her marketing skills. She, too, was gone by December 2012. Production suffered. No contract with 2Fly Wines was signed as a result of Kyrejko’s refusal to focus on production, or even to teach others to do it for him.

46. In response to Kyrejko’s failure to produce the vodka to meet demand, Simon further increased his duties. Though Kyrejko refused to disclose to Simon the entire manufacturing process, Simon began running the stills and blending and bottling the vodka. Kyrejko concentrated his efforts on continually changing the manufacturing process. It seemed, for Kyrejko, that his refusal to focus on what was in demand reflected his self-indulgent fear that the company might succeed with Kyrejko’s role being more limited than he had envisioned.

47. In March 2013, Simon recommended to the team that a distributor, called T. Edwards Wines, be awarded the right to buy and distribute its Industry City Distillery Vodka, in New York. On March 28, 2013, the team prepared a projected production schedule to establish T. Edwards Wines’ pricing for its bulk purchase of Industry City Distillery Vodka. In the schedule, Industry City Distillery projected that it would produce 500 bottles in May, 1,000 in June, 2,000 in July and August, and 4,000 thereafter.

48. Around the same time, with Kyrejko unfocused on production, Industry City Distillery was in need of more capital. Bruner arranged for a \$30,000 loan from his uncle, Charles Miersch (“**Miersch**”). On March 4, 2013, Miersch loaned Industry City Distillery \$30,000, at 6% interest, with four interest payments owed each year. After Bruner secured the Miersch loan on terms less favorable than Dr. Simon’s Note, Kyrejko began insinuating himself into other co-founders’ business.

49. In October 2013, Kyrejko attacked Watts. In advance of a Friday meeting, Watts delivered an updated version of the website to the co-founders for their review and comment. Watts’ website updates were routine; and, as he had done previously, Watts established a one week timeline to receive all comments and to make all necessary changes to the site. Prior to the meeting, however, Kyrejko used the Industry City Distillery computer system to change the timeline – establishing the next day, a Saturday, as Watts’ deadline to make all changes to the website. At the meeting, Kyrejko attacked Watts personally, yelling that Watts was “lazy,” among many other pejoratives. Watts’ website design later won critical acclaim.

50. Shortly after the meeting, corporate counsel asked to meet with Watts. Much to Watts’ surprise, corporate counsel asked that Watts leave the business. When Hames learned that Watts had been asked to leave, he was furious with Kyrejko and Bruner. In turn, because of Kyrejko’s and Bruner’s antagonistic behavior towards Watts and Hames, as well as shortcuts used by Kyrejko and Bruner in the vodka production process to cover their inability to produce sufficient quantities of Beet sugar vodka, Hames left the business. In late December 2013, Watts and Hames signed Separation and Mutual Release Agreements. Hames was given back-wages.

Watts retained most of his Industry City Distillery shares, selling 1% of them to Bruner for \$18,000, using a \$1.8 million valuation of Industry City Distillery.⁴

51. In response to Simon's objections to Kyrejko's treatment of Watts and Hames, Kyrejko threatened to leave the business and take his still secret manufacturing process with him. When that threat did not elicit the desired response, Kyrejko threatened to destroy all of the equipment in the space. While Simon was not happy with how Kyrejko and Bruner treated Watts and Hames, because Simon had invested so much time, money and effort in both The City Foundry and Industry City Distillery, he felt obligated to continue to make the business work.

52. Citing the production failure, T. Edwards Wines was no longer willing to pay "upfront" money to Industry City Distillery. T. Edwards Wines feared that promotion of Industry City Distillery Vodka would be met with production shortages that would anger key sales accounts, and lead to a decrease in sales.

53. Despite that the company was in disarray, in November 2013, Dr. Simon gave notice that he intended to convert his note into a 5% ownership share in Industry City Distillery. Dr. Simon reasoned that by converting his Note, he would demonstrate his support for the team and the business (helping to improve ICD's balance sheet). Kyrejko and Bruner immediately began writing angry emails about Dr. Simon's decision to convert the note. Dr. Simon confronted Kyrejko and Bruner, explaining that they misunderstood his actions. Dr. Simon's explanation fell on deaf ears, because Kyrejko and Bruner had other plans for The City Foundry and Industry City Distillery.

54. On December 24, 2013, Kyrejko and Bruner sent Simon a detailed proposal. In it, they insisted that they take control of the parent corporation, The City Foundry, transferring all

⁴ The Release Watts signed was a limited one, carving out his rights as a TCF and ICD shareholder.

intellectual property from Industry City Distillery to The City Foundry. Kyrejko and Bruner wrote to Simon as follows:

ICD has reached the point where it is nearly (with substantial assistance still necessary from TCF) capable of being a self-sustaining entity, able to bring in profits, attention, and interest along the lines initially envisioned of TCF's spinoff entities ... We suggest that The City Foundry be comprised of Zac and Dave moving forward and that, Peter, your role in distillery be expanded so as to give you the freedom you need to develop it fully.

This proposal was unacceptable to Simon, who would have been left with a parent company-competitor, possessing identical technology and no distillers to produce vodka for Industry City Distillery.

55. Kyrejko and Bruner also wrote: "One of the core (though unofficial) tenets of TCF is 'you keep what you kill.' That is, ones [sic] involvement in bringing ideas to fruition directly determines the benefits one derives from the subsequent project." This assertion is the opposite of what the founders in The City Foundry and Industry City Distillery sought to achieve. Both The City Foundry and Industry City Distillery were always intended to be a collaborative effort, a partnership among four friends. Simon rejected Kyrejko's and Bruner's proposal out of hand.

56. Shortly after Simon rejected Kyrejko's and Bruner's written proposal, Simon confronted Kyrejko about his motives, asking him whether he and Bruner were hiding something. Kyrejko told Simon that he would "never stab" Simon "in the back," rather he would stab Simon "in the face." Kyrejko's subsequent non-confrontational actions undermine his bravado. The Simons filed this lawsuit in June 2014 to stop Kyrejko's and Bruner's power-grab. In their Complaint, plaintiffs asserted claims for breach of fiduciary duty, fraud, fraud-in-the-inducement, civil conspiracy and quantum meruit. Plaintiffs then amended the Complaint, as

discovery taken revealed additional claims for: Defamation, breach of contract, declaratory judgment and tortious interference.

E. Plaintiffs' Suit Reveals Additional Claims

57. First, third-party discovery in this case exposed that Kyrejko did stab Simon in the back. Spirits Strategist for T. Edwards Wines, Scott Rosenbaum (“**Rosenbaum**”) testified at his deposition that Kyrejko disparaged Simon’s professional acumen in the Spirits industry in a conversation in roughly June of 2014. Rosenbaum testified that during a conversation with Kyrejko, unprovoked, Kyrejko said that Simon was “inept” at his job, and “not forthcoming” with various ICD and TCF documents to his co-founders. Kyrejko falsely branded Simon a liar and incompetent to Rosenbaum, who works in the New York spirits industry. These malicious statements constitute defamation *per se*.

58. Second, on September 12, 2014, nearly three months after this lawsuit was filed, defendant Bruner showed up at Simon’s counsels’ office after hours to hand delivered a letter entitled “Notice of Termination and Repurchase Notice” and “Stock Purchase Agreement” on behalf of The City Foundry.

59. In the letter, Defendants wrote: “This Notice confirms the termination of your Service with [The City Foundry] on June 24, 2014 (the “Termination Date”). . . . as of the Termination Date you had unvested 50 shares of common stock of the Company (the “Unvested Shares”) . . . the Company hereby gives you written notice of its exercise of the Repurchase Right to purchase all of your Unvested Shares at a purchase price of \$0.0001 for each such Unvested Share. The Repurchase Closing Shall take place on September 19, 2014.”

60. Simon immediately contested the pretextual termination of his employment, opposed the attempt to repurchase his shares and demanded that any purported “closing” be postponed until this dispute is resolved. Defendants refused.

61. Six weeks later, on October 20, 2014, Defendants sent to Simon’s counsel a nearly identical letter from Industry City Distillery, purporting to terminate Simon’s employment at ICD and repurchase Simon’s “unvested 555.74 shares of common stock.” Again, Simon contested the validity of the Notice and demanded that it be postponed. Defendants again refused. Defendants’ actions constitute a breach of the ICD and TCF Founders Agreements.

62. The purported buy back is invalid. By defendants’ actions, eliminating the original co-founders, a “change of control,” as defined under Section 2(b) of the Founders Agreement, occurred. All of Peter Simon’s previously unvested TCF and ICD shares vested. All of defendants’ actions following the improper termination of Simon violate Section 9 of both the ICD and TCF contract, as neither agreement contemplated management of ICD and TCF without at least three out of five of the original co-founders managing ICD and TCF.

63. Third, on October 15, 2014, defendants took the position that they did not own a spinoff of TCF, called Brooklyn Cider Works (“**BCW**”). Consistent with TCF being an incubator for other, related spirit projects, it formed BCW in May 2013. Numerous documents, including corporate records filed with New York State and an email from TCF’s in-house lawyer, identify BCW as being 100% owned by TCF.⁵ Brooklyn Cider Works has unresolved debts and liabilities for which defendants are responsible. Defendants’ efforts to saddle Peter

⁵ BCW lists its business address at the same address as The City Foundry: 33 35th Street, 6A, Brooklyn, New York 11232. According the New York State Department of State, Division of Corporations, BCW lists The City Foundry as the entity to whom process shall be served and listed its “DOS Process” address as: “The City Foundry Inc., 33 35th Street, 6A, Brooklyn, New York 11232.”

Simon with BCW's debt is improper.⁶ An actual controversy has arisen over its ownership. Plaintiffs seek a declaratory judgment that TCF owns BCW.

64. Fourth, limited discovery has revealed that David Kyrejko's younger brother, Andrew Kyrejko, who promotes himself as "a nimble strategist who excels at partnering with startups and global organizations to create brands, products, services and experiences," was intimately involved in the scheme to eliminate Simon as a co-founder of ICD and TCF. In January 2014, Andrew Kyrejko inserted himself into the contrived "discussions" that led to the improper termination of Peter Simon from ICD and TCF. A. Kyrejko, a consultant to ICD, ignored the scope of his consultancy duties and did Bruner's and Kyrejko's bidding for them, treating Simon, a co-founder and shareholder in ICD, as though Simon reported to A. Kyrejko. Simon seeks leave to add claims for civil conspiracy and tortious interference with Simon's ICD and TCF contracts against Andrew Kyrejko.

F. This Court Grants Plaintiffs' Motion to Amend the Complaint

65. On August 7, 2015, this Court granted Plaintiffs' motion to amend the complaint to add various claims and parties. Among the claims added was one for breach of the ICD and TCF Founder's Agreements. As the Court wrote in its Order: "plaintiffs allege three separate breaches of the ICD and TCF Founder's agreements: (1) the termination of Simon violated section 9 of both the ICD and TCF agreements because the businesses were always required to include at least three original cofounders; (2) defendants elimination of the original cofounders of ICD and TCF was a 'change of control' as defined in sections 2(b) of the ICD and TCF Founder's Agreements, triggering the vesting of all cofounders unvested shares; and (3) all of

⁶ While claiming that Simon owns Brooklyn Cider Works, defendants refuse to deliver BSW's property to Simon.

defendants actions following Simon's termination violates section 9 of the ICD and TCF contracts in that they are *ultra vires*."

66. In granting the motion to add the contract claims, this Court found: "With respect to the first alleged breach, ambiguity may exist in the definition of 'change of control,' since it is unclear if the change from four founders to two created a failure of sufficient voting control to constitute a change of control requiring the vesting of shares. Regarding the second alleged breach, ambiguity arguably exists in the absence of instructions in the management of TCF and ICD with less than three original founders." As to the third breach, this Court held: "plaintiffs further allege that for the defendants to manage TCF and ICD, alone, they must amend the agreements and receive 75% of the vested share votes in both TCF and ICD – a vote, plaintiffs allege, they cannot win. As such, plaintiffs contend that every action taken since the termination of Peter Simon is *ultra vires*. Because this allegation is a direct result of Peter Simon's termination, and because it is uncontested by the defendants, it is not devoid of merit."

G. Ken Greene and Jay Birnbaum Interfere With the Settlement Agreement and Simon's TCF and ICD Agreements

67. Discovery has also revealed plaintiffs' claims against Greene and Birnbaum. As early as February 2014, Birnbaum advocated to Bruner and Kyrejko the execution of a contrived "set up" of Simon. On February 4, 2014, for example, Birnbaum wrote to Bruner and Kyrejko, as follows: "Make it look like in the divorce he is the one that has walked out the door." Bruner responded to Birnbaum, writing, "in future correspondence I'll bear in mind wording should be structured for the benefit of the case we're intending to build - Peter ***** up, walked out, and now he wants his money back." Consistent with their scheme, Bruner wrote to Simon on February 5, 2014, "Peter was clear that he wished to discontinue work with distillery in a full-time capacity as of March 1, and to work part-time training a replacement until March 15."

Simon quickly corrected the record, writing, “[t]he statement in your email below that ‘Peter was clear that he wished to discontinue work with distillery in a full-time capacity as of March 1, and to work part-time training a replacement until March 15,’ is incorrect and misrepresents the situation. You asked if I would voluntarily leave the company and I said ‘no.’”

68. On February 4, 2014, Birnbaum also wrote that Bruner and Kyrejko should falsely accuse Simon of stealing bottles of vodka. Birnbaum asserted, “I am NOT SAYING THAT PETER RIPPED YOU OFF I am saying that he may have a hard time proving that he did not.” (emphasis in original). Far from ignoring the advice, Bruner responded, “Unfortunately there’s nothing missing...Good point on the burden of proof, though. Will figure out how best to bring that up.” Bruner was asked on cross-examination what was “unfortunate” about there being no missing vodka? He responded, “It would have made things more easy” if Simon had stolen vodka. As to using Birnbaum’s assertion that it would be difficult for Simon to prove that he had not stolen vodka -- and knowing how outlandish it is even to suggest it -- Bruner testified:

Q. Right. Let's stick with the one that I'm asking you about. "Good point on the burden of proof, though, we'll figure out how best to bring that up." You were leaving open the possibility that you would accuse Peter of stealing because it would be hard for him to disprove it, correct?

A. We were leaving open many possibilities at the time. That was one.

69. On February 5, 2014, in response to Simon’s irrefutable assertion that he never volunteered to leave the business, Bruner penned a long email to Simon. It began: “Your personal efforts, and your and your father’s money, were vital in getting Industry City Distillery and The City Foundry set up and running the way they are today.” It continued, crediting Simon with having a “talent for talking to people and access to enough money to get a really cool project off of the ground,” for “keeping “things running,” and making sure “people liked us.” Yet, the email became an increasingly hostile personal attack on Simon. Bruner made numerous

threats about how he would not stand “idly by” while the company, which was flourishing but for Bruner’s and Kyrejko’s petulant power-grab, was driven “into the ground.” The email culminated with Bruner writing, “Please take your and your father’s money (enclosed), and shove it up your *** sideways.” Bruner sent the email first to Birnbaum and Greene.

70. Birnbaum responded hours later on the morning of February 5th, writing: “DO NOT SEND OUT THIS LETTER. DO NOT SEND OUT THIS LETTER. DO NOT SEND OUT THIS LETTER. Ask Ken, Dave and I to destroy it as it was written as a personal catharsis in the wee hours of the morning and does not represent any of your thinking while you are awake.” (emphasis in original). Greene also wrote that Bruner not send the email as it “exposes too much risk.” As was his want, Bruner followed Greene’s and Birbaum’s directive and did not send the email to Simon. Bruner and Kyrejko also must have realized that destroying emails is traceable.

71. On February 14, 2014, Bruner and Kyrejko exchanged various written proposals to resolve this dispute with the Simons. Again, Bruner and Kyrejko solicited guidance from Green and Birnbaum, attaching the Simons’ written settlement proposals to emails. In response, Birnbaum asserted: “This is the time to tell, not ask. (Sorry Ken, my constitution will only allow so much patience).” Birnbaum, who has never met Peter or Doug Simon, began infusing most communications to Bruner and Kyrejko with vitriolic, profane attacks on the Simons. Believing that he had confused Peter and Doug Simon in his email, which suggested that Bruner and Kyrejko “crash the company,” Birnbaum wrote, “Sorry.....got Peter and Doug confused. It was night here. In the dark all ***holes look pretty much alike.”

72. Without Birnbaum or Greene present, the parties did meet on February 21, 2014 in an attempt to resolve this dispute. Progress was made and Bruner and Kyrejko felt the

pressure that litigation would bring. Bruner reported back to Greene and Birnbaum, “We brought firecrackers to a gunfight.” Bruner was unnerved, but Greene and Birnbaum sought to assure Bruner and Kyrejko and to steer him away from settling. Birnbaum counseled, “You didn’t bring firecrackers to a gunfight!” Birnbaum continued, assuring Bruner and Kyrejko that they still had “100% of what” the Simons want. Greene, who spoke to Bruner that day, wrote to Birnbaum and asserted that Bruner was “pretty bruised today.” Greene assured Bruner, Kyrejko and Birnbaum that he would line up “aggressive” counsel.

73. Two days later, on February 22, 2014, Birnbaum offered perhaps the best advice he gave to Bruner and Kyrejko in 2014. Birnbaum wrote, “stop transmitting this kind of stuff. There are lawyers involved now and this stuff is discoverable.” Yet, in the same email -- and for the next four months -- Birnbaum did not follow his own advice. In fact, Greene and Birnbaum continued writing emails to Bruner and Kyrejko, offering among the worst guidance imaginable. Still, Bruner and Kyrejko followed Greene’s and Birnbaum’s directives to the letter.

74. Eight minutes after writing that emails are “discoverable,” Birnbaum continued attacking Simon and pushing an audit of the company to create a pretext to accuse Simon of wrongdoing. Birnbaum wrote to Bruner, Kyrejko and Greene: “I need to repeat myself here.....1. Accountants are cheaper than lawyers. Hire an accountant to audit Peter’s books. My bet is that since Peter was incompetent the audit will find discrepancies. Money discrepancies are a black-and-white thing. It will put Peter in a completely different light.” Bruner responded that while he agreed completely with Birnbaum, Bruner wanted “someone with more letters after their name” to confirm Birnbaum’s view. Birnbaum replied: “Don’t need letters in back of my name. I have something which letters don’t get you.....scars to prove that I know from where I speak... Anyway... The auditor is not to verify incompetence... Nothing questions Peter’s

intentions and honesty like an accountant questioning Peter's honesty." Bruner quickly fell into line. He wrote: "not questioning you in the least; proposing that whoever we engage should be the one to point out the Simons amateurish approach," a phrase first coined by Birnbaum and parroted by Bruner in an attempt to appease Birnbaum. .

75. By early March 2014, Birnbaum and Greene were certain that resolving the dispute was not the proper course. Birnbaum's and Greene's assessment was based on their conclusions that this case was "unlikely to survive a dismissal motion." Bruner and Kyrejko, however, continued to negotiate with the Simons and progress continued to be made. In mid-March 2014, counterproposals were exchanged and even Birnbaum began to soften, a tad. He advised that if there were a "handshake deal," that Bruner and Kyrejko should close "with the speed of a bullet." At the same time, Birnbaum's bizarre hatred of the Simons did not abate. He suggested that Bruner and Kyrejko obtain a third-party valuation of ICD and offer it for sale to the Simons, but only as a ploy. "It is what I call a miss-direction shot," Birnbaum wrote. "The Simons don't know why you would be offering it or how you got the valuation. It MAY either drive them nuts or drive them to counter your value at a more greedy valuation at which point you can turn it around and accept it from them. Again, just to **** with their head...There is a third upside... That kind of torture to an enemy is a mitzvah."⁷

76. Following Birnbaum's and Greene's directives again, Bruner and Kyrejko mostly went radio silent in the negotiations with the Simons. Still, in April 2014, Bruner and Kyrejko agreed to the Simons' request for one final settlement meeting because their lawyer had advised that litigation would bring "two years of hell." Even before the final settlement meeting

⁷ In this email strand, Birnbaum's also wrote: "it is time you young men learn about a Jay special. Peter and Doug deserve one." The "Jay special," as it turned out was a "chain saw enema," leading Bruner to retort, "I just hope the time comes when I can offer to shove something so far up Peter's *** it'll take Doug and his entire team of residents to get it back out."

occurred, Birnbaum steered Bruner and Kyrejko away from agreeing to settle. Birnbaum wrote, “If you want this past you then settle. Peter will be rewarded for being an ungracious ****hole...I think if you look through my past emails I will find that you guys have legal advice that the Simons couldn’t survive a dismissal motion. That sound like two years of hell?” Birnbaum continued, again having never met the Simons, “On his own Peter hasn’t shown me that he can run an ice cube business at the equator.” Birnbaum concluded, “do you know that if some **** swings at you it is permissible to swing back?” Greene, too, was advising against settling, arguing that “proposal after proposal and revision after revision is really negotiating with yourselves.”

77. In late April 2014, the parties did meet in New York City at Bruner’s and Kyrejko’s lawyers’ offices, without Birnbaum and Greene. Bruner, Kyrejko and the Simons reached an agreement to settle this dispute. All material terms were agreed to and the parties shook hands. Bruner testified that when he shakes hands with people on a deal, he stands by that deal.

78. Bruner waited two days and finally wrote to Greene and Birnbaum to tell them of the settlement. Bruner wrote: “Meeting went in a direction that I’m not sure either party expected – we negotiated for full buyout of Peter’s shares...It feels like a lot of money, but also very much the right call – lets us get on with building the business again.” Far from congratulating Bruner and Kyrejko, Birnbaum and Greene immediately began suggesting ways to extract further concessions out of the Simons through renegotiations.

79. On April 27, 2014, unsolicited, Birnbaum wrote, “something has been bothering me about this overnight and I know what it is.” Birnbaum then detailed to Bruner and Kyrejko that the “claw back” provision in the settlement should be renegotiated. In response, Bruner

assured Birnbaum and Greene that he was following their lead. Bruner wrote: “Currently all still negotiable, although we left with handshake on the previously mentioned terms. If we receive something exactly as described that’ll be one thing. If they change any of the terms, then yep, we’re back to square one (and we could be back to square one anyway at any point). Basically, I see us walking away from any payout deal which involves the potential of any future involvement of the Simons in any of our operations.” Having agreed at the settlement meeting to the claw back provision that included the Simons’ non-controlling future involvement in the business, Bruner was already bending to Birnbaum’s and Greene’s will.

80. Birnbaum pounced. He wrote: “You shook hands on a general framework of what you understood and what you understood the Simons understood.... When in doubt blame the lawyers. You can say that you want to agree to some aspect but the lawyers won’t let you.” In a follow-up email, again unsolicited, Birnbaum wrote: “Never, never forget the Simons are taking something from you. It is your concern if you want to give it, but Peter has not earned the sweat off your **** so anything, anything that they get over the dead nuts obligation is to give it is taking from you.”

81. On May 14, 2014, Simon’s lawyer Ira Greene (no relation to Ken Greene) delivered the settlement agreement to defendants’ lawyers. On May 23, 2014, Bruner cut and paste his lawyer’s advice about the written settlement agreement and sent it to Greene, Birnbaum and Kyrejko. Bruner quoted his lawyer as saying, “from my brief look at the settlement documents, they seem to reflect the handshake deal we made at the meeting.” As Bruner was disclosing his lawyer’s advice to Birnbaum and Greene and waiving the attorney-client privilege, Bruner simultaneously was threatening to fire his lawyer for his having given honest, but unwanted advice. In fact, one week earlier, Greene and Birnbaum convinced Bruner and

Kyrejko to back out of the deal -- no matter how consistent the written document was with the agreement that was reached.

82. Throughout May 2014, Birnbaum and Greene were hell-bent on preventing Bruner and Kyrejko from honoring their word to the Simons -- and the vitriol escalated. Having been hundreds of miles away from the actual negotiations and still having never met the Simons, on May 15, 2014, Birnbaum wrote to Bruner and Kyrejko the following: “Peter and Doug have no intention of treating you realistically or fairly. With people like that there is no working something equitable out. Doug can go **** himself until 2017.” Peter “would not know what to do in a cat house on dollar day with a fist full of hundreds.” As to Greene, he responded to Birnbaum’s email by writing:

I just finished reading the ‘bend over’ document from the Simons. Ouch.

If you agree to these terms (I understand you’re not intending to), I would like you to understand how unreasonable they are.

This is not a document I would sign. Moreover, I would not even negotiate from it. It’s too onerous! I would reject it outright and let them know their greed has given the resolve necessary to see them in court.

On May 15, 2014, Birnbaum wrote to Bruner and Kyrejko, as follows:

So, at least me, begs you, grovels to you – walk away from this deal. Don’t even use it as an agenda to negotiate this further. This deal is awful. These papers are awful.

I think that it was the 16th Amendment to the Constitution that abolished slavery. These papers nullify the amendment as it pertains to you both PERSONALLY. The Simons have you so locked up that I’m not even sure that you could get married and buy that house with the white picket fence unless you buy it for cash and keep the house only in your wife’s name. Really.

...Picture this... A 63-year-old fat man on his knees begging you to run, not walk away from this lien on your financial freedom.

83. Bruner responded to Birnbaum that he and Kyrejko had “zero intention of even opening a pen in the vicinity of these papers.” Still, Bruner did not inform the Simons of his decision. Instead, he concluded that “everyone else is looking in one direction, and we’ve got some breathing room to strategize, build equipment, and to build our PR assets....”

84. Greene, for his part, agreed with Birnbaum. On May 20, 2014, Greene wrote, “Overall I agree with Jay’s comments from last week.” Greene then advised Bruner and Kyrejko to wait until they are sued to hire a litigator, not to terminate Simon from the companies but rather to reallocate his job duties at a Board Meeting. Greene concluded, “I’m glad you got to the point, recognizing that the Simons are unreasonable and will never be satisfied. The deal they want, is far riskier than litigation!”

85. Birnbaum and Greene kept close tabs on Bruner and Kyrejko, crafting the message to dishonor the settlement agreement. On May 23, 2014, Bruner wrote, “was originally going with Jay’s how to torture them idea, but think a definitive and relatively speedy no is probably best here. That said, I think we’re less on the ‘***** you, strong response to follow’ side than just ‘thanks but no thanks, were getting back to work’ – it’s clear that a ***** you will get us sued.” Birnbaum’s view was that it was “probably smarter” to take Bruner’s approach, but “more fun” to use Birnbaum’s approach. To give Bruner and Kyrejko comfort, Birnbaum advised them to pay Simon \$60,000, then, he was certain that the Simons would have no valid claims. Greene agreed completely with Birnbaum’s assessment.

86. On June 5, 2014, Birnbaum wrote to Bruner and Kyrejko to ensure that they did not waiver in what Birnbaum wanted them to do. Birnbaum began, “Someday Zac, you and Dave will make great wives.” Birnbaum then listed, from his perspective, the comparative positions of Bruner and Kyrejko, on the one hand, and the Simons on the other. Birnbaum

concluded: (a) Simon has not made a demand for repayment of his loan; (b) Bruner and Kyrejko do not owe Doug Simon any money until 2017; (c) Simon is out of the business; (d) Simon has not raised the one issue that gives Bruner and Kyrejko pause, vesting; (e) Bruner and Kyrejko still had not been sued by the Simons; plus, any lawsuit, Birnbaum reiterated, would not survive a dismissal motion; and (f) Bruner and Kyrejko attempted to settle the matter but to no avail. Putting to one side that virtually none of Birnbaum's assertions were true, he concluded, "Yet, you are complaining about not making progress. Thus, my comment that someday you will make great wives."

87. The next day, June 6, 2014, Bruner's and Kyrejko's lawyer sent the Simons' lawyer an email, which read in pertinent part: "Ira, after much thought David and Zach have decided not to move forward with the settlement agreement that was discussed." In emails to Bruner and Kyrejko over the next two days, Birnbaum and Greene were gleeful.

88. Yet, from the correspondence between Bruner, Kyrejko, Greene and Birnbaum, it is apparent that Bruner's and Kyrejko's lawyer disagreed with the advice being given by Greene and Birnbaum. For example, on June 8, 2014, Bruner wrote that his lawyer had advised that it was not clear whether Simon's shares were continuing to vest because the definition of "continuous service" was ambiguous in the controlling agreements. Birnbaum was quick to assure Bruner and Kyrejko that any ambiguity in the definition of "continuous service" favored Bruner and Kyrejko because, Birnbaum was certain, any ambiguity "defaulted" to the literal definition of continuous service in Black's Law Dictionary. To support his legal assertion, Birnbaum sent the Wikinvest definition of "continuous service" to Bruner and Kyrejko, probably because there is no Black's Law Dictionary definition of the term.

89. Unbowed, on June 9, 2014, Birnbaum solicited advice from his own lawyer, Carolyn Nussbaum at Nixon Peabody, in Rochester. Asking Ms. Nussbaum not to spend official time on the question, likely meaning without charging him, Birnbaum explained the fact pattern as he understood it in one paragraph. Ms. Nussbaum asked for more information and the applicable contracts, but offered some general advice to Birnbaum. She told him that Bruner and Kyrejko needed to terminate Simon under the applicable contracts as an employee, officer, director and then as a shareholder. She also warned that it was risky to have only two directors. Birnbaum promptly twisted Nussbaum's advice, ignoring that she rightly wrote that she first needed to see the specific contracts. Based on Nussbaum's advice, Birnbaum explained to Bruner and Kyrejko how to terminate Simon. That is exactly what Bruner and Kyrejko did. On June 24, 2014, Simon was terminated, improperly, as an employee from ICD and TCF. Simon has never been terminated as an officer, director or shareholder in ICD and TCF.

90. Simon moves to add Birnbaum and Greene for interfering with the settlement agreement, which caused Simon to lose the agreed upon deal to settle, reflected accurately in the written settlement agreement according to Bruner's and Kyrejko's own lawyer. In addition, Simon incurred costs that began in June 2014 that are increasing monthly. Alternatively, Simon asserts a claim for tortious interference with prospective business relations. Finally, Simon asserts a claim for tortious interference with his ICD and TCF agreements against Birnbaum, who twisted the legal advice he received from Carolyn Nussbaum of Nixon Peabody to induce Bruner and Kyrejko to improperly terminate Simon from ICD and TCF.

**First Cause of Action
(Breach of Fiduciary Duty Against Kyrejko and Bruner)**

91. Plaintiffs re-allege each and every allegation as if set forth in full.

92. Together Kyrejko and Bruner, as majority shareholders, directors and corporate officers in The City Foundry and Industry City Distillery, owed Simon and Dr. Simon, fiduciary duties, including duties of loyalty and care. Defendants breached their fiduciary duties to plaintiffs by putting their own personal interests ahead of the corporate interests of all shareholders, founders and Note holders.

93. Specifically, Kyrejko and Bruner conspired to force out other founders for their own personal gain. In so doing, they increased their personal stakes in both The City Foundry and Industry City Distillery by: (1) eliminating the voting rights of Watts in order to control the management of The City Foundry and Industry City Distillery; (2) eliminating Watts and Hames' participation and influence in the business to increase their shares in both entities; (3) threatening to transfer the intellectual property owned by Industry City Distillery to The City Foundry; (4) attempting to eliminate Simon's voting right and reducing his share of ownership in each entity; (5) engaging in corporate waste of the money from Dr. Simon's \$150,000 Note; (6) engaging in corporate waste and abuse with respect to Simon and the money he loaned and advanced to ICD and TCF; and (7) attempting to dishonor Dr. Simon's right to convert his Note and devaluing his interest in Industry City Distillery.

94. Each of Kyrejko's and Bruner's actions was taken without fully disclosing to other founders the fact that Kyrejko and Bruner were raising investment capital, not for the benefit of all shareholders in The City Foundry and Industry City Distillery, but in furtherance of their scheme to take over the business and oppress the minority shareholders by substantially defeating expectations that, objectively viewed, were both reasonable under the circumstances and were central to the Simons' decision to join the venture.

95. Despite his obligation to put the rights of Industry City Distillery ahead of his own, Kyrejko deliberately sabotaged the business of Industry City Distillery because he did not want all co-founders to share in its success. Kyrejko deliberately: (a) failed to focus on his primary objective, producing vodka to meet the demand of company customers; (b) failed to disclose to Industry City Distillery and Simon the complete process that he claimed to have invented; (c) failed to train any Industry City Distillery employee hired solely to aid Kyrejko in increasing production of Industry City Distillery Vodka; (d) ignored his lab assistant, treating her unprofessionally until he drove her from the business; and (e) drove away numerous other employees, and an intern.

96. Defendants were faithless servants with respect to the business and affairs of The City Foundry and Industry City Distillery. Kyrejko and Bruner are personally liable to plaintiffs for their intentional conduct, consistent with New York law.

97. As a direct and proximate result of defendants' breach of their fiduciary duties to plaintiffs, plaintiffs suffered (and continue to suffer) injury and damage in an amount to be determined at trial. Plaintiffs will seek all damages allowable under the faithless servant doctrine and exemplary damages for defendants' intentional conduct.

**Second Cause of Action
(Fraud in the Inducement Against Kyrejko)**

98. Plaintiffs re-allege each and every allegation as if set forth in full.

99. From March 2011 through June 21, 2011, Kyrejko made a series of false and misleading statements and omissions of material fact to induce Simon to enter into The City Foundry Shareholders Agreement. These misstatements and omissions include:

- a. From March 2011 through June 21, 2011, Kyrejko overstated the method he claimed to have invented to distill vodka using beet sugar.

- b. From March 2011 through June 21, 2011, Kyrejko overstated his ability to produce vodka in a timely manner.
- c. On June 21, 2011, Kyrejko misrepresented that Simon's ownership in The City Foundry would not be diluted below 10%.

100. Kyrejko never had any intention of accurately representing the true nature of the methods he used to ferment, distill and produce vodka. Instead, Kyrejko made these false representations with the intention that Simon would rely on them and enter into the Shareholders Agreement.

101. Simon justifiably relied on Kyrejko's statements by, among other things, contributing \$60,000 to The City Foundry, loaning The City Foundry an additional \$60,000, working to secure a physical space for The City Foundry, arranging for corporate counsel to advise The City Foundry and obtaining the appropriate liquor licenses for The City Foundry.

102. As a direct and proximate result of Kyrejko's fraud in the inducement in the execution of the Shareholders Agreement, Simon suffered (and continues to suffer) injury and damage in an amount to be determined at trial. Simon will seek exemplary damages for defendant's fraud.

**Third Cause of Action
(Fraud Against Kyrejko and Bruner)**

103. Plaintiffs re-allege each and every allegation as if set forth in full.

104. Beginning in the fall of 2013 and continuing to this day, Kyrejko and Bruner have omitted and concealed material facts from plaintiffs to ensure that plaintiffs were unaware of defendants' attempts to take over The City Foundry and marginalize Industry City Distillery. Defendants' omissions include:

- a. In December 2013, defendants drove Watts and Hames from both The City Foundry and Industry City Distillery without revealing to Simon that: They drove Watts and Hames out of the business in order to gain a majority foothold in both The City Foundry and Industry City Distillery and that they planned to force out Simon as well.
- b. On December 7, 2013, defendants objected to Dr. Simon's attempt to convert his Note into shares of Industry City Distillery, while at same time failing to repay the Note, all the while concealing their plan to transfer Industry City Distillery's intellectual property to The City Foundry and raise money to divide the two businesses and marginalize Simon's and Dr. Simon's interest in Industry City Distillery.
- c. On December 24, 2013, defendants made a proposal to Simon to separate his involvement from The City Foundry, while transferring Industry City Distillery's intellectual property to The City Foundry, without revealing that Kyrejko and Bruner were raising money to continue the business without Simon.
- d. In April 2014, Kyrejko and Bruner agreed to settle this dispute.

105. Defendants never had any intention of honoring their duty to disclose to Simon and Dr. Simon the omitted and concealed facts because defendants' true intention was to take over The City Foundry and marginalize Industry City Distillery, at the expense of Simon and Dr. Simon. Defendants also never any attention to honor their promise to resolve this dispute.

106. Given the unilateral nature of the fraud, plaintiffs' reliance is presumed to be reasonable because plaintiffs were precluded from taking any action to stop defendants from

forcing their partners out and secretly raising money to benefit the entity they controlled. The facts underlying plaintiffs' fraud claim were exclusively known to defendants, at all relevant times and defendants precluded plaintiffs from discovering them.

107. As a direct and proximate result of defendants' fraud, plaintiffs suffered (and continue to suffer) injury and damage in an amount to be determined at trial. Plaintiffs will seek exemplary damages for defendants' fraud.

**Fourth Cause of Action
(Civil Conspiracy Against Dave Kyrejko, Bruner and Andrew Kyreyko to Commit Fraud,
Breach of Fiduciary Duty and Tortious Interference)**

108. Plaintiffs re-allege each and every allegation as if set forth in full.

109. Defendants have engaged in and continue to engage in a civil conspiracy against plaintiffs.

110. The objective of the conspiratorial acts was to use The City Foundry and Industry City Distillery for their own personal gain and oppress the minority shareholders. Kyrejko, acting in concert with Bruner, engaged in a series of unlawful, overt acts, including but not limited to: (1) forcing out of The City Foundry and Industry City Distillery Watts and Hames, (2) attempting to force out of The City Foundry and Industry City Distillery Simon, (3) failing to honor Dr. Simon's attempt to convert his note into Industry City Distillery shares, or be repaid in full; and (4) raising money to control The City Foundry without the involvement of any other founders, at the expense of Industry City Distillery.

111. Scheming with Andrew Kyrejko, Bruner and Kyrejko contrived a pretext to terminate Peter Simon from ICD and TCF. This scheme is revealed by a series of emails in January 2013. Andrew Kyrejko deliberately interfered with Simon's ICD and TCF contracts.

112. Kyrejko's, Bruner's and A. Kyrejko's conduct was in furtherance of their objective to eliminate Peter Simon from The City Foundry and Industry City Distillery and wrest

control of TCF and ICD from all other co-founders for their own personal gain. The civil conspiracy was in furtherance of the fraud, breach of fiduciary duty and tortious interference.

113. As a direct and proximate result of defendants' civil conspiracy, plaintiffs suffered (and continue to suffer) injury and damage in an amount to be determined at trial. Plaintiffs will seek exemplary damages for defendants' conspiracy to commit fraud and breach, fiduciary duty and tortious interference.

**Fifth Cause of Action
(Quantum Meruit Against The City Foundry and Industry City Distillery, Inc.)**

114. Plaintiffs re-allege each and every allegation as if set forth in full.

115. Simon performed in good faith numerous services on behalf of The City Foundry and Industry City Distillery. Defendants freely accepted the services with the understanding that Simon was to remain a founder, shareholder and employee, or be fairly compensated.

116. Simon is entitled to the reasonable value of the services performed on behalf of The City Foundry and Industry City Distillery, from January 2011 to today.

117. As a direct and proximate result of defendants' actions, Simon suffered (and continues to suffer) injury and damage in an amount to be determined at trial.

**Sixth Cause of Action
(Defamation Per Se Against Kyrejko and Bruner)**

118. Plaintiffs re-allege each and every allegation as if set forth in full.

119. In roughly June of 2014, defendant Kyrejko attacked Simon in his professional capacity to Scott Rosenbaum ("**Rosenbaum**"), of T. Edwards Wines. Rosenbaum testified that, at some point after June of 2014, Kyrejko told him that Simon had been "inept" at his job, and "not forthcoming" with ICD and TCF documents. Kyrejko falsely branded Simon a liar and an incompetent professional to Rosenbaum, a third party.

120. These statements are defamation *per se* because they maliciously impugn Simon's business reputation and practices in his trade or profession.

121. As a direct and proximate result of defendant's defamation, plaintiff Simon suffered (and continues to suffer) injury and damage in an amount to be determined at trial. Plaintiffs will seek exemplary damages for defendant's defamation.

**Seventh Cause of Action
(Breach of Contract and Breach of the Duty of Good Faith and Fair Dealing Against The
City Foundry and Industry City Distillery, Inc.)**

122. Plaintiffs re-allege each and every allegation as if set forth in full.

123. As of March 9, 2012, two agreements, The Industry City Distillery Inc. Founders Agreement and The City Foundry Inc. Founders Agreement, were signed by Simon. Simon performed all of his obligations under both agreements. Yet, defendants purported to terminate Simon's employment at TCF and ICD in June 2014. The termination was entirely pretextual. Simon has stood ready, willing and able to work at ICD and TCF since June 2014.

124. Separately, on September 12, 2014, Simon was presented with a "Notice of Termination and Repurchase Notice" purporting to "confirm" that Simon was terminated from The City Foundry on June 24, 2014, and attempting to repurchase Simon's "unvested 50 shares of common stock." Simon contested the validity of: the termination, the attempt to repurchase his shares and demanded that any purported "closing" be postponed until this dispute is resolved. Defendants refused.

125. On October 20, 2014, Simon was presented with a "Notice of Termination and Repurchase Notice" purporting to "confirm" that Simon was terminated from Industry City Distillery on June 24, 2014, and attempting to repurchase Simon's "unvested 555.74 shares of common stock" of the ICD Founders Agreement. Again, Simon contested the validity of the Notice and demanded that the purported "closing" be postponed. Defendants again refused.

126. By defendants' actions, eliminating the original co-founders in ICD and TCF, a "change of control" as defined under Section 2(b) of the ICD and TCF Founders Agreement, occurred. All of Peter Simon's TCF and ICD shares vested.

127. All of defendants' actions following the improper termination of Simon violate Section 9 of both the ICD and TCF contract, as neither agreement contemplated management of ICD and TCF without at least three out of five of the original co-founders managing ICD and TCF.

128. Inherent in every contract in the State of New York is an implied covenant of good faith and fair dealing. The covenant includes the assurance that a party to the contract will not take measures to undermine the other contracting party's ability to appreciate the benefits of the contract.

129. Defendants, without an honest belief that Simon had done anything to warrant termination, purported to terminate him from ICD and TCF in June 2014. Defendants' attempts to buy back Simon's shares violated Section 2 of both the ICD and TCF Agreements, and were done without an honest basis to do so, as their actions resulted in a "change of control" in both ICD and TCF. Every action taken by defendants following the termination of Simon is *ultra vires*, as the ICD and TCF Agreements require the participation of three out of five of the original co-founders. Defendants' bad faith and malicious misconduct constitutes a violation of the implied covenant of good faith and fair dealing contained in the ICD and TCF Founders Agreements.

130. As a direct and proximate result of defendants' breach, Simon suffered and continues to suffer injury and damage in an amount to be determined at trial.

**Eighth Cause of Action
(Declaratory Judgment Against The City Foundry)**

131. Plaintiffs re-allege each and every allegation as if set forth in full.

132. On October 15, 2014, defendants took the position that they did not own a spinoff of TCF, called Brooklyn Cider Works. Yet, there are numerous documents, including corporate records filed with New York State and an email from TCF's in-house lawyer identifying Brooklyn Cider Works as being owned by TCF.

133. Still, an actual controversy has arisen over its ownership. Brooklyn Cider Works has unresolved debts and liabilities for which defendants are responsible. Defendants' attempts to saddle Peter Simon with Brooklyn Cider Work's debt is improper.

134. Plaintiff Peter Simon seeks a declaratory judgment that The City Foundry owns Brooklyn Cider Works.

**Ninth Cause of Action
Tortious Interference With Contract And Prospective Business Relations**

135. Plaintiffs re-allege each and every allegation as if set forth in full.

136. Effective March 9, 2012, Simon signed the ICD and TCF Founders Agreements. As a founder, officer, board member, director, shareholder, and employee of ICD and TCF, Simon had numerous rights, including voting on management decisions of the companies.

137. David Kyrejko's younger brother, defendant Andrew Kyrejko, was not a founder, officer, or employee of either ICD or TCF. He was an independent consultant who signed a 12-day contract on February 20, 2013, during which time his responsibilities were limited to providing "consulting services." A. Kyrejko was aware of Peter Simon's contracts with both ICD and TCF and his role as a co-founder in both entities. In fact, Simon signed A. Kyrejko's consultancy agreement on behalf of both ICD and TCF.

138. Nowhere in A. Kyrejko's agreement with ICD and TCF was he permitted to evaluate Simon's job performance or insert himself into management decisions of ICD and TCF. Yet, in January 2014 that is exactly what A. Kyrejko did. In emails to Simon, copying Bruner and Kyrejko dated January 10, 2014, A. Kyrejko used the pretext of a draft version of a market plan -- circulated by Simon to defendants Bruner and David Kyrejko -- to interfere with Simon's ICD and TCF contracts, inserting himself into management decisions about Simon's job performance as though Simon reported to A. Kyrejko.

139. In the emails, A. Kyrejko accused Simon of circulating a plan that was "too premature and too fragmented," while telling defendant Bruner that it was a "privilege" to review his ideas. A. Kyrejko berated Simon, claiming that Simon has not "learned from your surroundings, previous experiences ... your colleagues." A. Kyrejko also said: "No version of any marketing plan (or any other type of strategic plan) presented by you can be taken seriously or given the green light" unless Simon would "plan to improve the way you work (and track your progress)." Andrew Kyrejko made sure to mention to Simon that the other defendants, including his older brother, "can stand by ... the work they've done." The entire email exchange was a pretextual farce.

140. Still, Simon defended himself. He asserted that the marketing plan was a draft and just a "placeholder" for his thoughts. Simon further asserted that "it seems apparent that no one understands what a draft is or how to give feedback that isn't a broad attack on my character, ideas or abilities." Andrew Kyrejko then asked Simon: "Do you think I gave you advice so you could squander it entirely?"

141. A. Kyrejko wrote: "Sorry that we're not going to hold your hand and lay it out clear as day." As a consultant A. Kyrejko was hired to work for Simon. Instead, he deliberately

interfered with the management of the business of ICD and TCF in order to further defendants Kyrejko's and Bruner's plan to eliminate Simon from ICD and TCF, about which A. Kyrejko undoubtedly knew. The emails created a further division between Simon and Bruner and Kyrejko, leading to the pretextual termination of Simon from ICD and TCF. In so doing, A. Kyrejko ignored the management structure of ICD and TCF and maliciously and fraudulently interfered with Simon's ICD and TCF contracts by misrepresenting Simon's job performance to defendants Kyrejko and Bruner, with intent to harm Simon by contributing to his termination from ICD and TCF, and depriving him of future business and profits.

142. As a direct and proximate result of defendant Andrew Kyrejko's actions, Simon suffered (and continues to suffer) economic injury and damage in an amount to be determined at trial.

Tenth Cause of Action

(Breach of the Settlement Agreement and Breach of the Duty of Good Faith and Fair Dealing Against Bruner, Kyrejko, The City Foundry and Industry City Distillery, Inc.)

143. Plaintiffs re-allege each and every allegation as if set forth in full.

144. In late April 2014, at an in-person meeting between the parties and their respective counsel, the parties reached agreement on all material terms to settle their underlying dispute. Neither party reserved the right to revoke the settlement agreement they had agreed to, and, after reaching a settlement, the parties shook hands, a gesture Bruner testified means there is a deal.

145. Yet, almost immediately, Birnbaum and Greene began to counsel Bruner and Kyrejko to disavow the agreement that had been reached. In response, Bruner assured Birnbaum and Greene that defendants were following their advice. He wrote: "Currently all still negotiable, although we left with handshake on the previously mentioned terms. If we receive

something exactly as described that'll be one thing. They change any of the terms, then Yep, were back to square one (and we could be back to square one anyway at any point).”

146. On May 14, 2014, Simon’s lawyer delivered the draft settlement agreement to defendants’ lawyers. On May 23, 2014, Bruner copied his lawyer’s advice and sent it to Greene, Birnbaum and Kyrejko; defendants’ attorney had written that, “from my brief look at the settlement documents, they seem to reflect the handshake deal we made at the meeting.”

147. One week earlier, however, Greene and Birnbaum had convinced Bruner and Kyrejko to dishonor the settlement agreement no matter how consistently the written papers reflected what had been previously agreed. Birnbaum wrote: “You shook hands on a general framework of what you understood and what you understood the Simons understood.... When in doubt blame the lawyers. You can say that you want to agree to some aspect but the lawyers won’t let you.”

148. Bruner responded to Birnbaum that he and Kyrejko had “zero intention of even opening a pen in the vicinity of these papers.” Still, Bruner did not inform the Simons of his decision. Instead, he concluded that “everyone else is looking in one direction, and we’ve got some breathing room to strategize, build equipment, and to build our PR assets....”

149. On June 6, 2014, Bruner’s and Kyrejko’s lawyer sent the Simons’ lawyer an email, which read in pertinent part: “Ira, after much thought David and Zach have decided not to move forward with the settlement agreement that was discussed.”

150. Inherent in every contract in the State of New York is an implied covenant of good faith and fair dealing. The covenant includes the assurance that a party to the contract will not take measures to undermine the other contracting party's ability to appreciate the benefits of the contract.

151. Defendants, Bruner, Kyrejko, TCF and ICD, reached an agreement with plaintiffs regarding all material terms of a settlement in this action. Without an honest belief that the terms of the Settlement Agreement, when reduced to writing, differed from those the parties agreed to, defendants breached the Settlement Agreement. The breach was done without an honest basis to do so.

152. As a direct and proximate result of defendants' breach, plaintiffs suffered and continues to suffer injury and damages, including legal fees, in an amount to be determined at trial.

Eleventh Cause of Action

(Tortious Interference with the Settlement Agreement Against Jay Birnbaum and Ken Greene

153. Plaintiffs re-allege each and every allegation as if set forth in full.

154. In late April 2014, Simon and defendants Bruner, Kyrejko, TCF and ICD reached agreement on all material terms to settle their underlying dispute. Neither party reserved the right to revoke the settlement agreement they had agreed to, and, after reaching a settlement, the parties shook hands, which Bruner testified is a gesture meant to signify that he intends to stand by a deal.

155. Birnbaum and Greene knew of the Settlement Agreement because Bruner sent it to them in February 2014. Yet, almost immediately, Birnbaum and Greene began to counsel Bruner and Kyrejko to disavow the agreement that had been reached.

156. Birnbaum wrote to Bruner and Kyrejko: "you shook hands on a general framework of what you understood and what you understood Simons understood.... When in doubt blame the lawyers. You can say that you want to agree to some aspect of the lawyers will let you." In a follow-up email, Birnbaum provided his view of motivation to encourage Bruner

and Kyrejko to disavow the settlement agreement. “Never, never forget the Simons are taking something from you,” Birnbaum wrote, “it is your concern if you want to give it, but Peter has not earned the sweat off your **** so anything, anything that they get over the dead nuts obligation is to give it is taking it from you.” Birnbaum wrote to Bruner and Kyrejko, as follows:

So, at least me, begs you, grovel to you – walk away from this deal. Don’t even use it as an agenda to negotiate this further. This deal is awful. These papers are awful.

I think that it was the 16th amendment to the Constitution that abolished slavery. These papers nullify the amendment as it pertains to you both personally. The Simons have you so locked up that I’m not even sure that you could get married and by that house with the white picket fence unless you buy it for cash and keep the house only in your wife’s name. Really...

...Picture this... A 63-year-old fat man on his knees begging you to run, not walk away from this lien on your financial freedom.

157. Greene, for his part, agreed with Birnbaum. On May 20, 2014, Greene wrote, “Overall I agree with Jay’s comments from last week.” Greene then advised Bruner and Kyrejko to wait until they are sued to hire a litigator, not to terminate Simon from the companies but rather to reallocate his job duties at a Board Meeting and he concluded, “I’m glad you got to the point, recognizing that the Simons are unreasonable and will never be satisfied. The deal they want is far riskier than litigation!”

158. On June 6, 2014, Bruner’s and Kyrejko’s lawyer sent the Simons’ lawyer an email, which read in pertinent part: “Ira, after much thought David and Zach have decided not to move forward with the settlement agreement that was discussed.”

159. As a direct and proximate result of defendants Birnbaum and Greene’s intentional interference with the Settlement Agreement, plaintiffs suffered (and continue to suffer) injury

and damage in an amount to be determined at trial. Plaintiffs will seek exemplary damages and attorney's fees for defendants' tortious interference.

Twelfth Cause of Action

(In the Alternative, Tortious Interference with Prospective Economic Advantage Against Jay Birnbaum and Ken Greene)

160. Plaintiffs re-allege each and every allegation as if set forth in full.

161. In late April 2014, following the handshake settlement reached by Simon and defendants Bruner, Kyrejko, TCF and ICD, Simon had a reasonable expectation of economic advantage that the underlying dispute between the parties would be settled.

162. Defendants Birnbaum and Greene had knowledge of Simon's expectation of economic advantage, as evidence in part by Birnbaum's email to Kyrejko, Bruner and Greene, stating "you shook hands on a general framework of what you understood and what you understood Simons understood."

163. Through wrongful means and without justification, defendants Birnbaum and Greene intentionally interfered with Simon's reasonable expectation of economic advantage. Over the course of several months, Birnbaum and Greene used malicious, defamatory language to disparage the Simons and Birnbaum counseled Bruner and Kyrejko to "set up" Simon by dishonestly accusing him of stealing to force him out of ICD and TCF, all in an effort to convince Bruner, Kyrejko, TCF and ICD to disavow the Settlement Agreement contemplated by the parties.

164. In the absence of Birnbaum's and Greene's intentional interference with the Settlement Agreement, defendants would have complied with the terms of the Settlement Agreement, and Simon would have realized its economic advantage.

165. As a direct and proximate result of defendants Birnbaum and Greene's intentional interference with the Settlement Agreement, plaintiffs suffered (and continue to suffer) injury and damage in an amount to be determined at trial. Plaintiffs will seek exemplary damages and attorney's fees for defendants' tortious interference.

Thirteenth Cause of Action

(Tortious Interference with the ICD and TCF Agreements Against Jay Birnbaum)

166. Plaintiffs re-allege each and every allegation as if set forth in full.

167. As of March 9, 2012, two agreements, The Industry City Distillery Inc. Founders Agreement and The City Foundry Inc. Founders Agreement, were signed by Simon. Simon performed all of his obligations under both agreements. Yet, defendants purported to terminate Simon's employment at TCF and ICD in June 2014. The termination was entirely pretextual. Simon has stood ready, willing and able to work at ICD and TCF since June 2014.

168. Birnbaum knew of the Founders Agreements because Bruner sent it to him February 2014. As early as February 2014, advised Bruner and Kyrejko to "set up" Simon to make it appear as if Simon left the companies of his own volition, and Birnbaum suggested that Bruner and Kyrejko falsely accuse Simon of stealing from ICD and TCF.

169. On June 9, 2014, Birnbaum solicited the advice of his own attorney as to how best to terminate Simon. Birnbaum's attorney requested more information and the applicable contracts, but Birnbaum twisted her response to induce Bruner and Kyrejko to terminate Simon, which they did on June 24, 2014.

170. Birnbaum intentionally procured a breach of the ICD and TCF Founders Agreements by convincing Bruner and Kyrejko to terminate Simon, improperly, as an employee from ICD and TCF. Simon has never been terminated as an officer, director or shareholder in ICD and TCF.

171. As a direct and proximate result of defendants Birnbaum's intentional interference with the Founders Agreements, Simon suffered (and continues to suffer) injury and damage in an amount to be determined at trial. Plaintiffs will seek exemplary damages and attorney's fees for Birnbaum's tortious interference.

Prayer for Relief

WHEREFORE, plaintiffs demand judgment as follows:

- (a) As to Cause of Action One an award of damages for compensatory, actual and exemplary damages, including but not limited to, the diminished value of plaintiffs' The City Foundry and Industry City Distillery shares;
- (b) As to Cause of Action Two an award of damages for compensatory, actual and exemplary damages, including but not limited to, the diminished value of plaintiffs' The City Foundry and Industry City Distillery shares;
- (c) As to Cause of Action Three an award of damages for compensatory, actual and exemplary damages, including but not limited to, the diminished value of plaintiffs' The City Foundry and Industry City Distillery shares;
- (d) As to Cause of Action Four an award of damages for compensatory, actual and exemplary damages, including but not limited to, the diminished value of plaintiffs' The City Foundry and Industry City Distillery shares;
- (e) As to Cause of Action Five an award of damages for the reasonable value of Simon's services to The City Foundry and Industry City Distillery, from January 2011 to today;
- (f) As to Cause of Action Six an award for compensatory, actual and exemplary damages, including but not limited to, the harm to Peter Simon's business reputation;

- (g) As to Cause of Action Seven compensatory and actual damages for defendants attempts to improperly strip Peter Simon of his ICD and TCF shares and pretextual termination of him from ICD and TCF;
- (h) As to Cause of Action Eight a declaratory judgment that The City Foundry owns BCW;
- (i) As to Cause of Action Ninth an award for compensatory, actual and exemplary damages;
- (j) As to Cause of Action Ten an award of damages for compensatory, actual and exemplary damages, including but not limited to, the diminished value of plaintiffs' The City Foundry and Industry City Distillery shares;
- (k) As to Cause of Action Eleven an award of damages for compensatory, actual and exemplary damages, including but not limited to, attorney's fees related to defendants' tortious interference;
- (l) As to Cause of Action Twelve an award of damages for compensatory, actual and exemplary damages, including but not limited to, attorney's fees related to defendants' tortious interference;
- (m) As to Cause of Action Thirteen an award of damages for compensatory, actual and exemplary damages, including but not limited to, the diminished value of plaintiffs' The City Foundry and Industry City Distillery shares;
- (n) Statutory pre-judgment interest; and
- (o) All other relief that the Court deems just and proper.

Demand for Jury Trial

Plaintiffs demand a trial by jury on all claims triable to a jury asserted in this complaint.

Dated: New York, New York
June 23, 2016

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