

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

PAMELA RENFRO,
individually, and derivatively on behalf of

RENFRO-HERRALD HOSPITALITY, LLC,
50 South Avenue
Fairport, NY 14450

**ANSWER WITH
COUNTERCLAIMS**

Index No. E2020010270

Plaintiffs,

v.

ANGELA HERRALD, DAVID STEITZ, AND
HERRALD-STEITZ PROPERTIES, LLC,
11 West Church Street
Fairport, NY 14450

Defendants.

Defendants Angela Herralld (“Herralld”), David Steitz (“Steitz”), and Herralld-Steitz Properties, LLC (“Properties LLC”) (collectively “Defendants”), by and through their undersigned counsel, as and for their answer (“Answer”) to the allegations set forth in the Complaint dated December 29, 2021, filed by Plaintiff Pamela Renfro, individually and derivatively on behalf of Renfro-Herralld Hospitality, LLC (“Plaintiff”), states as follows:

1. In response to the allegations contained in Paragraph 1 of the Complaint, Defendants admit that “[t]his is a civil action ... commenced by plaintiff Pamela Renfro (‘Renfro’) against defendants”. Defendants deny the allegation that they entered into a joint venture with Plaintiff and otherwise deny the remaining allegations.

2. Based upon information and belief, Defendants admit the allegations contained in Paragraph 2 of the Complaint.

3. Defendants admit the allegations contained in Paragraph 3 of the Complaint.

4. Defendants admit the allegations contained in Paragraph 4 of the Complaint.

5. Defendants admit the allegations contained in Paragraph 5 of the Complaint.

6. Defendants admit the allegations contained in Paragraph 6 of the Complaint.

7. Defendants admit the allegations contained in Paragraph 7 of the Complaint.

8. Defendants admit the allegations contained in Paragraph 8 of the Complaint.

9. Defendants admit the allegations contained in Paragraph 9 of the Complaint.

10. Defendants admit that Plaintiff lived “almost across the street” from them until approximately December 2020 and otherwise deny the remaining allegations contained in Paragraph 10 of the Complaint.

11. Defendants admit that in approximately July 2015 Herrald learned that the real property located at 11 West Church Street, Fairport, New York (the “Property”) was for sale. Defendants deny that “Renfro and Herrald identified” the Property as “real estate for sale” and otherwise deny the remaining allegations contained in Paragraph 11 of the Complaint.

12. Defendants admit that the Property also sometimes is referred to as the “Newman-Dean House” and refer to the Fairport Historic Preservation Commission for its true and complete designation of the Property. Defendants otherwise deny the remaining allegations contained in Paragraph 12 of the Complaint.

13. In response to the allegations contained in Paragraph 13 of the Complaint, Defendants admit that prior to Herrald and Steitz’s purchase of the Property, “Renfro and Herrald discussed the potential for acquiring the Property” and that Plaintiff personally was unable and therefore uninterested in purchasing the Property. Defendants further admit that prior to Herrald and Steitz’s purchase of the Property, “Renfro and Herrald discussed the potential for

... operating it [*i.e.*, the Property] as an inn for overnight lodging and events.” Defendants otherwise deny the remaining allegations contained in Paragraph 13 of the Complaint.

14. Defendants deny the allegations contained in Paragraph 14 of the Complaint.

15. Defendants deny the allegations contained in Paragraph 15 of the Complaint.

16. Defendants admit the allegations contained in Paragraph 16 of the Complaint.

17. Defendants admit the allegations contained in Paragraph 17 of the Complaint.

18. Defendants admit that initially it was represented to Canandaigua National Bank Mortgage Company that the Property would not be owner-occupied and it would be leased to an entity that would operate an Inn. Defendants otherwise deny the remaining allegations contained in Paragraph 18 of the Complaint.

19. Defendants deny the allegation that they formed a joint venture with Plaintiff and therefore deny the they memorialized terms of a joint venture in the “Business Plan” or any other document. Defendants otherwise deny the remaining allegations contained in Paragraph 19 of the Complaint.

20. Defendants admit that between 2015 and 2016 Herrald drafted several different conceptual plans to operate an Inn on the Property, and that during this same time-period Renfro drafted several different conceptual financial projections regarding the operation of an Inn. Defendants otherwise deny the remaining allegations contained in Paragraph 20 of the Complaint.

21. Defendants admit that between 2015 and 2016 Herrald drafted several different conceptual plans to operate an Inn on the Property, and that during this same time-period Renfro drafted several different conceptual financial projections regarding the operation of an Inn.

Defendants deny that the different conceptual plans culminated “in a final version dated March 14, 2016” as alleged in Paragraph 21 of the Complaint.

22. Defendants deny the allegations contained in Paragraph 22 of the Complaint.

23. Defendants deny the allegations contained in Paragraph 23 of the Complaint.

24. In response to the allegations contained in Paragraph 24 of the Complaint, Defendants admit that attorney Mark M. Campanella provided legal services for the formation of Herrald-Steitz Properties, LLC (“Properties LLC”) and Renfro-Herrald Hospitality, LLC (“Hospitality LLC”). Defendants deny that a joint venture was discussed with Plaintiff or attorney Campanella, that a joint venture was formed, that they participated in a joint venture with Plaintiff, that attorney Campanella represented the so-called “Joint Venture Participants”, or that any legal steps were undertaken by attorney Campanella or anyone else to effectuate a joint venture among Defendants and Plaintiff.

25. In response to the allegations contained in Paragraph 25 of the Complaint, Defendants admit that Properties LLC was formed to hold title to and own the Property so that it was separate from and not a part of Hospitality LLC. Defendants admit that Hospitality LLC was formed to operate a business separate from and not a part of Properties LLC. Defendants deny that a joint venture was discussed with Plaintiff, that a joint venture was formed, that they participated in a joint venture with Plaintiff, that a “Joint Venture structure” was “adopted by the Joint Venture Participants”, and that Properties LLC and Hospitality LLC were formed as part of a joint venture. Properties LLC and Hospitality LLC were formed, in part, to keep ownership of the Property completely separate from the operation of a business by Hospitality LLC.

26. In response to the allegations contained in Paragraph 26 of the Complaint, Defendants admit that attorney Campanella created and, upon information and belief, filed the

Articles of Organization for Properties LLC and Hospitality LLC with the New York Secretary of State on or about February 11, 2016. Defendants deny that attorney Campanella was, or ever was referred to as, “Joint Venture Counsel”.

27. Defendants deny that a joint venture was discussed with Plaintiff, that a joint venture was formed, that they participated in a joint venture with Plaintiff, and that Plaintiff contributed any capital to a joint venture with Defendants. Defendants otherwise deny the remaining allegations contained in Paragraph 27 of the Complaint.

28. Defendants admit that the deed to the Property was transferred from Herrald, Steitz and Eva Steitz to Properties LLC on or about April 16, 2016, and refer to the Monroe County Clerk records for the true and complete information regarding the recordation information relevant to the deed. Defendants deny that attorney Campanella was, or ever was referred to as, “Joint Venture Counsel” and otherwise deny the remaining allegations contained in Paragraph 28 of the Complaint.

29. In response to the allegations contained in Paragraph 29 of the Complaint, Defendants deny that a “Joint Venture agreement [was] memorialized in the Business Plan”. Defendants admit that at various times Hospitality LLC paid rent to Properties LLC for use of the Property. Defendants otherwise deny the remaining allegations contained in Paragraph 29 of the Complaint.

30. Defendants deny the allegations contained in Paragraph 30 of the Complaint.

31. Defendants deny the allegations contained in Paragraph 31 of the Complaint.

32. Defendants deny the allegations contained in Paragraph 32 of the Complaint.

33. Defendants deny the allegations contained in Paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

35. Defendants deny that Plaintiff made any cash contributions to a joint venture to operate a business on the Property. Defendants do not have sufficient information to admit or deny the remaining allegations contained in Paragraph 35 of the Complaint, and therefore deny such allegations.

36. Defendants deny that “Robin and James Drago” loaned Hospitality LLC \$10,000 or any other amount of money, and further deny that such the so-called “Drago Loan” was memorialized in a valid or enforceable promissory note. Hospitality LLC did not authorize the so-called “Drago Loan” or agree to repay such a loan. Defendants do not have sufficient information to admit or deny the allegation that Plaintiff obtained a personal loan from “Robin and James Drago”. Defendants otherwise deny the remaining allegations contained in Paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in Paragraph 37 of the Complaint.

38. Defendants deny that Hospitality LLC was loaned money by “Robin and James Drago” and therefore deny that any loan proceeds “were deposited to the Hospitality LLC checking account”. Defendants otherwise deny the remaining allegations contained in Paragraph 38 of the Complaint.

39. Defendants deny that Hospitality LLC was loaned money by “Robin and James Drago” and therefore deny that any loan proceeds “were paid out by Hospitality LLC”. Defendants otherwise deny the remaining allegations contained in Paragraph 39 of the Complaint.

40. In response to the allegations contained in Paragraph 40 of the Complaint, Defendants deny that Renfro contributed cash to a joint venture, deny that the Drago Loan contributed cash to a joint venture, deny that Hospitality LLC agreed to the Drago Loan, and

deny that Herrald and Renfro individually engaged a Kickstarter campaign. Defendants admit that a Kickstarter campaign raised monies for Hospitality LLC.

41. In response to the allegations contained in Paragraph 41 of the Complaint, Defendants deny that they took any actions as “Joint Venture Participants”, that a joint venture was discussed with Plaintiff, that a joint venture was formed, that they participated in a joint venture with Plaintiff, and that they solicited funds as part of a Kickstarter campaign as “Joint Venture Participants.” Defendants refer to the “webpage, promotional video, press release, media articles” for their true and accurate content.

42. In response to the allegations contained in Paragraph 42 of the Complaint, Defendants admit that \$46,409 was raised pursuant to a Kickstarter campaign.

43. In response to the allegations contained in Paragraph 43 of the Complaint, Defendants refer to Hospitality LLC’s checking account statements for a true and complete record of transactions on or about October 3, 2016.

44. In response to the allegations contained in Paragraph 44 of the Complaint, Defendants refer to the record of transactions related to the Kickstarter campaign for a true and complete record of donations and donors.

45. In response to the allegations contained in Paragraph 45 of the Complaint, Defendants refer to Hospitality LLC’s checking account statements for a true and complete record of transactions. Defendants deny that all of the Kickstarter contributions were “disbursed toward the costs of renovations of the Property and start-up expenses for the Inn operation.”

46. In response to the allegations contained in Paragraph 46 of the Complaint, Defendants deny that they took any actions as “Joint Venture Participants”, that a joint venture was discussed with Plaintiff, that a joint venture was formed, that they participated in a joint

venture with Plaintiff, and renovations were undertaken by “Joint Venture Participants.” While Defendants admit that some renovations to the Property were accomplished over time, they deny Plaintiff’s characterization of the specific tasks listed as “renovations.”

47. Defendants deny the allegations contained in Paragraph 47 of the Complaint.

48. Defendants deny the allegations contained in Paragraph 48 of the Complaint.

49. Defendants deny the allegations contained in Paragraph 49 of the Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of the Complaint.

51. Defendants admit that a certificate of occupancy was issued for the house on the Property on December 2, 2016. Defendants otherwise deny the remaining allegations contained in Paragraph 51 of the Complaint.

52. Defendants admit the allegations contained in Paragraph 52 of the Complaint.

53. In response to the allegations contained in Paragraph 53 of the Complaint, Defendants deny that the “Business Plan” was for a “Joint Venture” and that “Hospitality LLC was to have a long-term lease arrangement with Properties LLC” as part of a joint venture. Defendants admit that Hospitality LLC agreed to lease the Property from Properties LLC, but the lease was not pursuant to a joint venture. Defendants otherwise deny the remaining allegations contained in Paragraph 53 of the Complaint.

54. Defendants deny the allegations contained in Paragraph 54 of the Complaint.

55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

56. Defendants deny the allegations contained in Paragraph 56 of the Complaint.

57. Defendants deny the allegations contained in Paragraph 57 of the Complaint.

58. Defendants deny the allegations contained in Paragraph 58 of the Complaint.

59. Defendants deny the allegations contained in Paragraph 59 of the Complaint.

60. Defendants deny the allegations contained in Paragraph 60 of the Complaint.

61. In response to the allegations contained in Paragraph 61 of the Complaint, Defendants admit that Hospitality LLC made direct payments of property taxes on the Property between December 2016 through November 2020, that Hospitality LLC made direct payments of property and casualty insurance premiums on the Property from January 2017 through November 2020, and that Hospitality LLC paid fees charged by a property tax negotiator.

62. In response to the allegations contained in Paragraph 62 of the Complaint, Defendants deny that Hospitality LLC paid for capital improvements. Defendants admit that Hospitality LLC paid some amounts necessary to bring Hospitality LLC into compliance with governmental requirements to operate a business.

63. In response to the allegations contained in Paragraph 63 of the Complaint, Defendants admit that insurance proceeds were utilized to repair damage to the roof of the barn on the Property.

64. In response to the allegations contained in Paragraph 64 of the Complaint, Defendants deny that they took any actions as “Joint Venture Participants”, that a joint venture was discussed with Plaintiff, that a joint venture was formed, that they participated in a joint venture with Plaintiff, and that they applied for a special use permit as “Joint Venture Participants.” Defendants otherwise deny the remaining allegations contained in Paragraph 64 of the Complaint.

65. In response to the allegations contained in Paragraph 65 of the Complaint, Defendants deny that they took any actions as “Joint Venture Participants”, that a joint venture was discussed with Plaintiff, that a joint venture was formed, that they participated in a joint venture with Plaintiff, and that they signed or submitted an application as “Joint Venture

Participants.” Defendants otherwise deny the remaining allegations contained in Paragraph 65 of the Complaint.

66. In response to the allegations contained in Paragraph 66 of the Complaint, Defendants deny that they took any actions as “Joint Venture Participants”, that a joint venture was discussed with Plaintiff, that a joint venture was formed, that they participated in a joint venture with Plaintiff, and that they applied for a building permit as “Joint Venture Participants.” Defendants otherwise deny the remaining allegations contained in Paragraph 66 of the Complaint.

67. Defendants admit that BME Associates and Charles Smith were engaged to prepare a drainage study and architectural drawings as alleged in Paragraph 67 of the Complaint. Defendants otherwise deny the remaining allegations contained in Paragraph 67 of the Complaint.

68. Defendants admit the allegations contained in Paragraph 68 of the Complaint.

69. Defendants admit the allegations contained in Paragraph 68 of the Complaint.

70. In response to the allegations contained in Paragraph 70 of the Complaint, Defendants deny that they took any actions as “Joint Venture Participants”, that a joint venture was discussed with Plaintiff, that a joint venture was formed, that they participated in a joint venture with Plaintiff, and that “Renfro and Steitz” appeared at a Village of Fairport Planning Board meeting as “Joint Venture Participants.” Defendants admit that Steitz appeared at a Village of Fairport Planning Board Meeting on or about September 4, 2018.

71. In response to the allegations contained in Paragraph 71 of the Complaint, Defendants refer to the Village of Fairport Planning Board minutes for a true and accurate account of its actions.

72. In response to the allegations contained in Paragraph 72 of the Complaint, Defendants refer to the Village of Fairport Planning Board minutes for a true and accurate account of its actions.

73. In response to the allegations contained in Paragraph 73 of the Complaint, Defendants deny that a joint venture was discussed with Plaintiff, that a joint venture was formed, that they participated in a joint venture with Plaintiff, and that any actions could have enhanced the value of a non-existent joint venture. Defendants are without knowledge or belief as to whether any acts either enhanced or decreased the value of the Property and, to the extent a response is required, deny all such allegations.

74. In response to the allegations contained in Paragraph 74 of the Complaint, Defendants admit that Hospitality LLC paid for professional services rendered by BME Associates and Charles Smith, and that Hospitality LLC paid some construction costs related to the Barn on the Property from the proceeds of a line of credit, a commercial term loan, and its operating account.

75. Defendants deny the allegations contained in Paragraph 75 of the Complaint.

76. In response to the allegations contained in Paragraph 76 of the Complaint, Defendants deny that a joint venture was discussed with Plaintiff, that a joint venture was formed, that they participated in a joint venture with Plaintiff, and that “an Operating Agreement for Hospitality LLC ... [was] prepared by Joint Venture Counsel.” Defendant Herrald admits that she executed an operating agreement for Hospitality LLC in or about March 2016.

77. Defendant Herrald admits the allegations contained in Paragraph 77 of the Complaint.

78. In response to the allegations contained in Paragraph 78 of the Complaint, Defendants deny that a joint venture was discussed with Plaintiff, that a joint venture was formed, that they participated in a joint venture with Plaintiff, and that Hospitality LLC was “within the context of the Joint Venture as a whole.” Defendant Herrald admits that Hospitality LLC was formed solely to operate an “inn” business with no ownership or other interests in Properties LLC or the Property.

79. In response to the allegations contained in Paragraph 79 of the Complaint, Defendants refer to the operating agreement of Hospitality LLC for its true and complete contents, and otherwise deny the remaining allegations contained in Paragraph 79 of the Complaint.

80. In response to the allegations contained in Paragraph 80 of the Complaint, Defendants refer to the operating agreement of Hospitality LLC for its true and complete contents, and otherwise deny the remaining allegations contained in Paragraph 80 of the Complaint.

81. In response to the allegations contained in Paragraph 81 of the Complaint, Defendants refer to the operating agreement of Hospitality LLC for its true and complete contents, and otherwise deny the remaining allegations contained in Paragraph 81 of the Complaint.

82. In response to the allegations contained in Paragraph 82 of the Complaint, Defendants refer to the operating agreement of Hospitality LLC for its true and complete contents, and otherwise deny the remaining allegations contained in Paragraph 82 of the Complaint.

83. In response to the allegations contained in Paragraph 83 of the Complaint, Defendants refer to the operating agreement of Hospitality LLC for its true and complete contents, and otherwise deny the remaining allegations contained in Paragraph 83 of the Complaint.

84. In response to the allegations contained in Paragraph 84 of the Complaint, Defendants are without knowledge or belief as to whether the allegations are true or false, and to the extent a response is required, deny all such allegations.

85. In response to the allegations contained in Paragraph 85 of the Complaint, Defendants are without knowledge or belief as to whether the allegations are true or false, and to the extent a response is required, deny all such allegations.

86. In response to the allegations contained in Paragraph 86 of the Complaint, Defendants deny that Renfro devoted her entire time and attention to the operation of the Inn business. Defendants admit that Renfro operated “a near-by AirBNB in the Village of Fairport” that competed directly with Hospitality LLC in breach of Renfro’s fiduciary duties. Defendants otherwise deny the remaining allegations contained in Paragraph 86 of the Complaint.

87. Defendants deny the allegations contained in Paragraph 87 of the Complaint.

88. Defendants deny the allegations contained in Paragraph 88 of the Complaint.

89. Defendants deny the allegations contained in Paragraph 89 of the Complaint.

90. Defendants deny the allegations contained in Paragraph 90 of the Complaint.

91. In response to the allegations contained in Paragraph 91 of the Complaint, Herrald admits that she has a hobby of repurposing and refinishing furniture. Herrald has offered repurposed furniture for sale and has provided repurposed and refurbished furniture to

Hospitality LLC without charge. Defendants otherwise deny the remaining allegations of Paragraph 91 of the Complaint.

92. Defendants deny the allegations contained in Paragraph 92 of the Complaint.

93. In response to the allegations contained in Paragraph 93 of the Complaint, Defendants deny that there was an agreement between Hospitality LLC and any one of the Defendants pursuant to which any Defendant was obligated to pay rent to Hospitality LLC or Renfro, deny that any rent ever was owed by Defendants to Hospitality LLC or Renfro, deny that a business was conducted in the barn on the Property by Defendants, and otherwise deny the remaining allegations contained in Paragraph 93 of the Complaint.

94. Defendants deny the allegations contained in Paragraph 94 of the Complaint.

95. Defendants deny the allegations contained in Paragraph 95 of the Complaint.

96. Defendants deny the allegations contained in Paragraph 96 of the Complaint.

97. Defendants deny the allegations contained in Paragraph 97 of the Complaint.

98. Defendants deny the allegations contained in Paragraph 98 of the Complaint.

99. Defendants deny the allegations contained in Paragraph 99 of the Complaint.

100. In response to the allegations contained in Paragraph 100 of the Complaint, Defendants deny that a joint venture was discussed with Plaintiff, that a joint venture was formed, that they participated in a joint venture with Plaintiff, that an EIDL loan was sought to “ensure that the Joint Venture would have adequate cash to sustain the Inn operation through any reduction of business caused by the pandemic,” and that “Herrald, Steitz and Renfro applied for an EIDL loan”.

101. In response to the allegations contained in Paragraph 101 of the Complaint, Defendants refer to the EIDL loan documents for the true and complete terms of the loan, and otherwise deny the remaining allegations contained in Paragraph 101 of the Complaint.

102. Defendants deny the allegations contained in Paragraph 102 of the Complaint.

103. In response to the allegations contained in Paragraph 104 of the Complaint, Defendants deny that “Herrald and Steitz initiated conversations with Renfro” regarding the impact of the pandemic on the Inn’s profits and revenues. Defendants admit that Renfro initiated conversations with Defendants regarding, among other things, the loss of reservations as a result of the pandemic and proposed that Hospitality LLC suspend lease payments to Properties LLC. Defendants otherwise deny the remaining allegations contained in Paragraph 103 of the Complaint.

104. In response to the allegations contained in Paragraph 104 of the Complaint, Defendants deny that they initiated the conversations with Renfro during the time frame referenced, and otherwise deny the remaining allegations contained in Paragraph 104 of the Complaint.

105. Defendants deny the allegations contained in Paragraph 105 of the Complaint.

106. Defendants deny the allegations contained in Paragraph 106 of the Complaint.

107. Defendants deny the allegations contained in Paragraph 107 of the Complaint.

108. In response to the allegations contained in Paragraph 108 of the Complaint, Defendants admit that based on the financial information provided by Renfro, Hospitality LLC would have been unable to pay rent or meet its other operational expenses beyond October 31, 2020. Based on the financial information provided by Renfro, Herrald expressed to Renfro that

Hospitality LLC should not accept reservations after November 1, 2020, and Renfro and Herrald agreed that Hospitality LLC no longer was a viable business.

109. In response to the allegations contained in Paragraph 109 of the Complaint, Defendants refer to the document referenced for its true and complete content, and otherwise deny the remaining allegations contained in Paragraph 109 of the Complaint.

110. In response to the allegations contained in Paragraph 110 of the Complaint, Defendants refer to the document referenced for its true and complete content, and otherwise deny the remaining allegations contained in Paragraph 110 of the Complaint.

111. Defendants admit that Herrald was a “50% member of Hospitality LLC, and a signatory of the Hospitality LLC Operating Agreement”, but otherwise deny the remaining allegations contained in Paragraph 111 of the Complaint.

112. Paragraph 112 of the Complaint contains only a characterization of Plaintiff’s claims to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 112 of the Complaint.

113. Paragraph 113 of the Complaint contains only a characterization of Plaintiff’s claims to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 113 of the Complaint.

114. In response to the allegations contained in Paragraph 114 of the Complaint, Defendants admit that Renfro improperly and without authorization solicited offers to purchase the Property and deny the remaining allegations contained in Paragraph 114 of the Complaint.

115. In response to the allegations contained in Paragraph 115 of the Complaint, Defendants admit that Renfro improperly and without authorization solicited offers to purchase the Property and deny the remaining allegations contained in Paragraph 115 of the Complaint.

116. In response to the allegations contained in Paragraph 116 of the Complaint, Defendants admit that Renfro improperly and without authorization solicited offers to purchase the Property and deny the remaining allegations contained in Paragraph 116 of the Complaint.

117. In response to the allegations contained in Paragraph 117 of the Complaint, Defendants admit that Renfro improperly and without authorization solicited offers to purchase the Property and deny the remaining allegations contained in Paragraph 117 of the Complaint.

118. In response to the allegations contained in Paragraph 118 of the Complaint, Defendants deny that a joint venture existed, deny the existence of any financial obligations of a so-called joint venture, and otherwise deny the remaining allegations contained in Paragraph 118 of the Complaint.

119. In response to the allegations contained in Paragraph 119 of the Complaint, Defendants refer to the petition referenced for its true and complete content, and otherwise deny the remaining allegations contained in Paragraph 119 of the Complaint.

120. In response to the allegations contained in Paragraph 120 of the Complaint, Defendants refer to the petition referenced for its true and complete content.

121. Defendants admit that Herrald was a “50% member of Hospitality LLC, and a signatory of the Hospitality LLC Operating Agreement”, but otherwise deny the remaining allegations contained in Paragraph 121 of the Complaint.

122. Paragraph 122 of the Complaint contains only a characterization of Plaintiff’s claims to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 122 of the Complaint.

123. Defendants admit the allegations contained in Paragraph 123 of the Complaint.

124. Defendants deny the allegations contained in Paragraph 124 of the Complaint.

125. Defendants deny the allegations contained in Paragraph 125 of the Complaint.

126. Defendants deny the allegations contained in Paragraph 126 of the Complaint.

127. Defendants deny the allegations contained in Paragraph 127 of the Complaint.

128. Defendants deny the allegations contained in Paragraph 128 of the Complaint.

129. Defendants admit the allegations contained in Paragraph 129 of the Complaint.

130. Paragraph 130 of the Complaint contains only a characterization of Plaintiff's claims to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 130 of the Complaint.

131. In response to the allegations contained in Paragraph 131 of the Complaint, Defendants admit that all guests properly recorded in the reservation system were contacted and offered a refund for cancelled reservations.

132. Paragraph 132 of the Complaint contains only a characterization of Plaintiff's claims to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 132 of the Complaint.

133. Paragraph 133 of the Complaint contains only a characterization of Plaintiff's claims to which no response is required. To the extent a response is required, Defendants admit that Plaintiff "is the Tax Partner of Hospitality LLC, and has primary responsibility for the accounting functions of Hospitality LLC, and preparation of the tax returns of the entity", and otherwise deny the allegations contained in Paragraph 133 of the Complaint.

134. In response to the allegations contained in Paragraph 134 of the Complaint, Defendants refer to the "Communication" for its true and complete contents.

135. Paragraph 135 of the Complaint contains only a characterization of Plaintiff's claims to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 135 of the Complaint.

136. Paragraph 136 of the Complaint contains only a characterization of Plaintiff's claims to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 136 of the Complaint.

137. Defendants deny the allegations contained in Paragraph 137 of the Complaint.

138. Paragraph 138 of the Complaint contains only a characterization of Plaintiff's claims to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 138 of the Complaint.

AS TO THE FIRST CAUSE OF ACTION

139. Defendants incorporate the previous responses to Paragraphs 1 through 138 of the Complaint as if fully set forth herein.

140. Paragraph 140 of the Complaint contains only a characterization of Plaintiff's claims to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 140 of the Complaint.

141. Paragraph 141 of the Complaint merely states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 141 of the Complaint.

AS TO THE SECOND CAUSE OF ACTION

142. Defendants incorporate the previous responses to Paragraphs 1 through 141 of the Complaint as if fully set forth herein.

143. Paragraph 143 of the Complaint merely states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 143 of the Complaint.

144. Paragraph 144 of the Complaint merely states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 144 of the Complaint.

AS TO THE THIRD CAUSE OF ACTION

145. Defendants incorporate the previous responses to Paragraphs 1 through 144 of the Complaint as if fully set forth herein.

146. Paragraph 146 of the Complaint merely states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 146 of the Complaint.

147. Paragraph 147 of the Complaint merely states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 147 of the Complaint.

148. Paragraph 148 of the Complaint merely states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 148 of the Complaint.

AS TO THE FOURTH CAUSE OF ACTION

149. Defendants incorporate the previous responses to Paragraphs 1 through 148 of the Complaint as if fully set forth herein.

150. Paragraph 150 of the Complaint merely states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 150 of the Complaint.

151. Paragraph 151 of the Complaint merely states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 151 of the Complaint.

AS TO THE FIFTH CAUSE OF ACTION

152. Defendants incorporate the previous responses to Paragraphs 1 through 151 of the Complaint as if fully set forth herein.

153. Paragraph 153 of the Complaint merely states a legal conclusion to which no response is required. Moreover, the Fifth Cause of Action was dismissed pursuant to an Order entered by the Court on June 28, 2021. To the extent a response is required, Defendants deny the allegations contained in Paragraph 153 of the Complaint.

154. Paragraph 154 of the Complaint merely states a legal conclusion to which no response is required. Moreover, the Fifth Cause of Action was dismissed pursuant to an Order entered by the Court on June 28, 2021. To the extent a response is required, Defendants deny the allegations contained in Paragraph 154 of the Complaint.

AS TO THE SIXTH CAUSE OF ACTION

155. Defendants incorporate the previous responses to Paragraphs 1 through 155 of the Complaint as if fully set forth herein.

156. Paragraph 156 of the Complaint merely states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 156 of the Complaint.

157. Paragraph 157 of the Complaint merely states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 157 of the Complaint.

158. Paragraph 158 of the Complaint merely states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 158 of the Complaint.

159. Paragraph 159 of the Complaint merely states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 159 of the Complaint.

160. Paragraph 160 of the Complaint merely states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 160 of the Complaint.

161. Defendants aver that the remaining allegations contained in the Complaint, including the “WHEREFORE” clause contained on pages 24-26, contain only a characterization of the relief requested by Plaintiff to which no response is required. To the extent a response to the remaining allegations is required, Defendants deny that Plaintiff is entitled to any of the relief requested in the Complaint.

162. Defendants further deny any and all allegations contained in the Complaint not expressly denied herein.

AFFIRMATIVE DEFENSES

163. Plaintiff’s claims should be dismissed because the Complaint fails to state a claim upon which relief can be granted.

164. Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel, laches, and/or waiver.

165. Plaintiff's claims are barred, in whole or in part, by the failure to mitigate damages she may have suffered.

166. Plaintiff's claims are barred, in whole or in part, by an offset against the amounts Plaintiff owes Defendants.

167. Defendants reserve the right to add additional affirmative defenses as warranted by the proceedings in this case.

COUNTERCLAIMS

Counter-Claimants Herrald-Steitz Properties, LLC ("Properties LLC"), David Steitz ("Steitz"), and Angela Herrald ("Herrald"), individually and derivatively on behalf of Renfro-Herrald Hospitality, LLC (collectively "Counter-Claimants"), by and through their undersigned counsel, as and for their Counter-Claim ("Counter-Claim"), allege the following against Counter-Defendant Pamela Renfro ("Renfro") and Hospitality LLC:

PARTIES

1. Properties LLC is a New York limited liability company located in Monroe County, New York.

2. Herrald is an individual who resides in Monroe County, New York.

3. Steitz is an individual who resides in Monroe County, New York.

4. Hospitality LLC is a New York limited liability company located in Monroe County, New York.

5. Renfro is an individual who resides in Monroe County, New York.

JURISDICTION

6. Pursuant to C.P.L.R. Section 503, this action is properly venued in this Court.

FACTS

7. Herrald and Steitz are married and the parents of four young children. Herrald and Steitz are academics, both hold doctorate degrees, and Steitz is a Professor in Psychology at Nazareth College, Herrald is a stay-at-home parent.

8. In or about 2015, as neighbors, Renfro shared with Herrald her idea of starting a bed-and-breakfast in Fairport.

9. Renfro also shared with Herrald an “early business plan” that she (*i.e.*, Renfro) had written regarding the bed-and-breakfast.

10. Renfro’s early business plan (of which Herrald had no prior knowledge) stated that an investor would buy the house and property on which Renfro’s contemplated bed-and-breakfast would operate and, eventually, sell the property to the bed-and-breakfast business.

11. Renfro’s early business plan never came to fruition.

12. Thereafter, in the summer of 2015, Herrald and Steitz went for a walk with their children and noticed a “for sale” sign on a property located at 11 W. Church Street in the Village of Fairport (the “Property”).

13. Herrald shared with Renfro that she had noticed the “for sale” sign on the Property.

14. Renfro told Herrald that while she was interested in reviving her old dream of operating an Inn, she financially was unable and unwilling to purchase the Property.

15. Renfro told Herrald and others that if Herrald and Steitz purchased the Property, she (*i.e.*, Renfro) would become a long-term tenant and pay rent that would cover the costs of holding, maintaining and renovating the Property.

16. Because Renfro was unwilling and unable to purchase the Property, Renfro and Herrald rewrote Renfro's early business plan and very deliberately removed from it the purchase and ownership of a property as part of the bed-and-breakfast business that Renfro contemplated.

17. Instead, because Renfro was unwilling and unable to purchase the Property, the new business plan made clear that operating the bed-and-breakfast would be completely separate from owning the Property.

18. Renfro and Herrald determined that the owner of the Property would lease the Property to the operator of the bed-and-breakfast business.

19. Renfro and Herrald determined that they would form separate legal entities to accomplish this relationship.

20. Renfro and Herrald determined that the only relationship between the entity that owned the Property and the entity that operated the bed-and-breakfast business would be lessor-lessee.

21. While Herrald and Steitz had only one income and already were obligated to pay a mortgage on the house in which they and their four children lived, they thought owning the Property would be a good investment and provide some financial security for their family.

22. In November 2015, Herrald and Steitz, with the support of family, purchased the Property.

23. Renfro never provided any monies toward the purchase of the Property.

24. Renfro is not, and never was, on the deed for the Property.

25. Renfro is not, and never was, on the mortgage for the Property.
26. Renfro has no ownership interest in the Property and never did.
27. Renfro never has paid the mortgage on the Property.
28. Renfro never has paid taxes or insurance on the Property.
29. Herrald and Renfro formed Renfro-Herrald Hospitality, LLC (“Hospitality LLC”)

specifically to operate the Inn.

30. Simultaneously, Herrald and Steitz formed Herrald-Steitz Properties LLC (“Properties LLC”) specifically to own the Property separate and apart from Hospitality LLC.

31. Herrald and Renfro are the only members of Hospitality LLC.

32. Herrald and Renfro each hold a fifty-percent ownership interest in Hospitality LLC.

33. Pursuant to the Hospitality LLC Operating Agreement, Renfro was allocated 100% of the profits and losses of Hospitality LLC.

34. Hospitality LLC never realized a profit.

35. Hospitality LLC was formed to operate a business.

36. Hospitality LLC does not, nor did it ever, own any real property.

37. Herrald and Steitz formed Properties LLC and are its only members.

38. Properties LLC holds title to the Property.

39. Renfro is not a member of, and has no ownership interest in, Properties LLC.

40. Renfro never invested or loaned any monies to Properties LLC.

41. Renfro never had authority to make decisions or act as an agent for Properties LLC.

42. As members of Hospitality LLC, Renfro and Herrald determined that Hospitality LLC would lease the Property from Properties LLC pursuant to a long-term lease.

43. Hospitality LLC agreed and became obligated to pay rent to Properties LLC for use of the Property.

44. Properties LLC was not obligated, nor did it ever agree, to pay any monies to Hospitality LLC or Renfro.

45. Hospitality LLC did not pay all the rent it agreed to pay and owed to Properties LLC.

46. Hospitality LLC owes Properties LLC unpaid rent.

47. Herrald, Renfro and Steitz did not form a joint venture or partnership to operate a business or own the Property.

48. Hospitality LLC operated a business (*i.e.*, an Inn) on the Property for several years until financial pressures made it financially unfeasible.

49. Some of the financial pressure stemmed from the impact of federal, state, and local government restrictions that were implemented to address the COVID-19 pandemic.

50. Renfro publicly acknowledged the negative impact these restrictions had on Hospitality LLC.

51. Financial problems also resulted from Renfro's mismanagement of Hospitality LLC.

52. Financial problems also resulted from Renfro's improper self-dealing, conversion and dishonesty.

53. In or about August 2020, Renfro informed Herrald that Hospitality LLC would be unable to pay rent or meet other operational expenses beyond October 2020.

54. During a meeting at which Steitz was present, Herrald and Renfro, as the only members of Hospitality LLC, agreed that Hospitality LLC no longer was a viable business.

55. Herrald and Renfro agreed to close the Inn and winddown Hospitality LLC.

56. When Hospitality LLC closed, Herrald and Steitz became obligated to pay both the mortgage on their existing home as well as the mortgage on the Property.

57. Herrald and Steitz were unable to pay both mortgages.

58. As a result of the financial burden placed on Herrald and Steitz, they were forced to sell their existing home in Fairport and move into the Property.

59. Herrald and Steitz did not want to sell their home and move into the Property, in part, because it would have required three of their children to change elementary schools.

60. Following the decision to close the Inn, Renfro suddenly and shockingly demanded that Properties LLC sell the Property and share the proceeds of the sale with her.

61. Through her lawsuit, Renfro still makes these demands even though she paid nothing to purchase the Property, has no ownership interest in the Property, and does not currently pay any expenses for the Property.

62. Renfro wrongfully and hostilely claims she is entitled to reimbursement of monies spent by Hospitality LLC.

63. Renfro also wrongfully and hostilely claims she is entitled to a portion of the alleged appreciation in the value of the Property.

64. Renfro's demands are completely unfounded and contrary to the terms of Hospitality LLC's operating agreement.

65. Renfro's demands also are not supported by the lease agreement between Hospitality LLC and Properties LLC.

66. Renfro's demands are not supported by any agreement, written or oral.
67. There is no agreement pursuant to which Properties LLC owes any monies to Hospitality LLC or Renfro.
68. There is no agreement pursuant to which Herrald or Steitz owe any monies to Hospitality LLC or Renfro.
69. When Renfro's demands to sell the Property and pay her were declined, she embarked on a campaign to discredit, intimidate, and ruin Herrald, Steitz and their family.
70. Renfro filed this lawsuit and placed an improper *lis pendens* on the Property.
71. Renfro's improper *lis pendens* has prevented Herrald, Steitz, and Properties LLC, from refinancing the mortgage on the Property.
72. Since agreeing to close the Inn, Renfro has recanted on her agreement, defamed and denigrated Herrald and Steitz in social media, public filings, and throughout the community.
73. People have visited the Property and harassed and intimidated Herrald, Steitz and their children based upon the false claims Renfro has made about them.
74. Since filing her frivolous lawsuit, Renfro's husband, Mark, often stands on his front porch, scowling at and intimidating Herrald and Steitz and their young children as they pass by on their way to and from school.
75. Renfro's hostility and the fervor with which she has dogged Herrald and Steitz with her false and surreal account of the simple and unfortunate demise of the Inn was inexplicable – until it became clear that Renfro was attempting to deflect from her gross mismanagement of Hospitality LLC and shore-up a competing hospitality business that she runs, and which she wrongfully operated throughout her commitment to Hospitality LLC.

76. As it turns out, Renfro spent much of her time as a member of Hospitality LLC committing improper acts of self-dealing and fraud.

77. For example, Renfro improperly, without authorization, and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties operated “a near-by AirBNB in the Village of Fairport” which competed directly with Hospitality LLC. See Complaint, ¶ 86.

78. Renfro improperly diverted business from Hospitality LLC to a separate “AirBNB in the Village of Fairport”. See Complaint, ¶ 86.

79. Renfro improperly utilized, diverted, and converted resources owned by Hospitality LLC to and for the “near-by AirBNB in the Village of Fairport”.

80. Renfro’s improper diversion of business from Hospitality LLC to a competing “AirBNB in the Village of Fairport” damaged Hospitality LLC and Properties LLC.

81. Renfro also improperly and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties attempted (and continues to attempt) to obligate Hospitality LLC to repay a loan that Renfro personally obtained in August 2016 from her personal friends, Robin and James Drago (the “Drago Loan”).

82. Renfro’s attempt to obligate Hospitality LLC to obtain and repay the Drago Loan were improper and fraudulent because she represented to Robin and James Drago that she had the authority to obtain the Drago Loan on behalf of Hospitality LLC, which authority she did not possess.

83. Hospitality LLC did not authorize or agree to the Drago Loan.

84. Hospitality LLC is not obligated to repay the Drago Loan.

85. Renfro also improperly and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties failed and refused to authorize Hospitality LLC to repay other loan obligations, which include:

- a. Amounts borrowed by Hospitality LLC pursuant to a line of credit extended by FSB/Evans on or about April 25, 2018; and
- b. Amounts borrowed by Hospitality LLC pursuant to a commercial term loan extended by FSB/Evans on or about January 29, 2019 (collectively, the “FSB/Evans Loans”).

86. Since Hospitality LLC closed for business, Herrald has made payments on the FSB/Evans Loans from her personal funds even though she personally is not responsible for such payments.

87. Renfro also improperly and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties failed and refused to authorize Hospitality LLC to repay credit card obligations.

88. Since Hospitality LLC closed for business, Herrald fully repaid the credit card debt even though she personally is not responsible for such payments.

89. Herrald and Steitz are entitled to repayment of the amounts they personally repaid to satisfy the FSB/Evans Loans and credit card debt on behalf of Hospitality LLC because Renfro failed and refused to authorize Hospitality LLC to make such payments and because Renfro is entirely liable for all losses pursuant to the Hospitality LLC Operating Agreement.

90. Renfro also intentionally, improperly and without the authorization of Hospitality LLC made false statements to customers of Hospitality LLC regarding the reasons for its closing.

- a. In an email dated December 5, 2020, Renfro wrote to “Former Inn on Church Guests & Supporters” that “My business partners instead chose to evict the Inn so they can use this historic Fairport property – specially approved by the Village as an Inn – for their family’s personal residence.” This statement is false and was published by Renfro with the knowledge of its falsity.
- b. In an email dated December 5, 2020, Renfro wrote to “Former Inn on Church Guests & Supporters” that “Contrary to what you may have heard or read elsewhere, we are not closing due to COVID.” This statement is false and was published by Renfro with the knowledge of its falsity.
- c. In an email dated December 5, 2020, Renfro wrote to “Former Inn on Church Guests & Supporters” that “The decision to close the Inn was not mine, and it did not have to happen.” This statement is false and was published by Renfro with the knowledge of its falsity.
- d. In an email dated December 5, 2020, Renfro wrote to “Former Inn on Church Guests & Supporters” that “There were resources available, and alternative solutions presented, that would have kept the Inn open for business.” This statement is false and was published by Renfro with the knowledge of its falsity.
- e. In an email dated June 8, 2021, Renfro wrote to “all former guests” that “The Inn was not closed with my input, and was not done properly from a financial perspective.” This statement is false and was published by Renfro with the knowledge of its falsity.
- f. In an email dated June 8, 2021, Renfro wrote to “all former guests” that “All funds that I had invested, the community Kickstarter funds, the revenue that had

been reinvested into the property, plus any remaining deposits on file were converted, retained.” This statement is false and was published by Renfro with the knowledge of its falsity.

- g. In an email dated June 8, 2021, Renfro wrote to “all former guests” that “I have continued to pay for our Quickbooks (finances) and reservation systems (guest details, ability to book reservations is closed) so that all records are retained until I can return your deposits.” This statement is false and was published by Renfro with the knowledge of its falsity.

91. Renfro also improperly, without authorization, and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties comingled over \$30,000 in funds with Hospitality LLC funds.

92. Renfro comingled funds with Hospitality LLC funds for improper purposes and in contravention of express admonitions by Herralld that such comingling was improper, unacceptable, and not permitted.

93. Renfro then improperly, without authorization, and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties, caused Hospitality LLC to disburse the improperly comingled funds, as well as additional funds, to herself.

- a. For example, Renfro improperly and without authorization caused to be deposited into the Hospitality LLC operating account at least \$30,592 from “The Fairport Merchants Association”. Renfro then withdrew and personally took those funds.
- b. Renfro also improperly and without authorization caused to be deposited into the Hospitality LLC operating account at least \$1,172 from a competing AirBNB

business that she operated. Renfro then withdrew and personally took those funds.

- c. Renfro also worked for the “The Fairport Perinton Partnership” during the time she was committed to operating Hospitality LLC.
 - d. Renfro stated to Herrald that one reason she improperly and without authorization caused these funds to be deposited into the Hospitality LLC operating account was to falsely make Hospitality LLC “look more profitable”.
 - e. Upon learning of Renfro’s improper transactions, Herrald demanded that Renfro stop comingling funds with Hospitality LLC’s funds.
 - f. Renfro did not inform Herrald of these transactions at the time they were made.
 - g. These transactions that Renfro made were false and fraudulent.
 - h. Renfro did not have Herrald’s permission to make these transactions.
 - i. Upon information and belief, Renfro made these transactions for personal gain and not for a legitimate business purpose as evidenced, in part, by the fact that Renfro disbursed these funds to herself.
 - j. Renfro’s improper transactions damaged Hospitality LLC and put it at risk.
94. Hospitality LLC never disbursed or paid any amounts to Herrald.
95. Hospitality LLC never disbursed or paid any amounts to Steitz.
96. After Hospitality LLC closed its business on the Property, Renfro improperly, without authorization, and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties, “locked out” and prevented Herrald from accessing Hospitality LLC’s bank accounts, accounting information, books and records, customer contact lists, computer files, email system, and reservation system.

97. Renfro continues to prevent Herralld from accessing many of these accounts, books and records.

98. As stated, after Hospitality LLC closed its business on the Property, Renfro filed an improper Notice of Pendency (*i.e., lis pendens*) with Monroe County which placed a lien on the Property.

99. Renfro supported the Notice of Pendency with false claims.

100. Neither Renfro nor Hospitality LLC have a right to title, possession, use or enjoyment of the Property, which is owned by Properties LLC.

101. Properties LLC demanded on multiple occasions that Renfro cancel her Notice of Pendency because it is improper and preventing Properties LLC from refinancing the mortgage on the Property or selling the Property.

102. Renfro has failed and refused to cancel the Notice of Pendency which has precluded Properties LLC from refinancing the mortgage on the Property and realizing a significant savings on mortgage interest costs.

103. Renfro has failed and refused to cancel the Notice of Pendency which has precluded Properties LLC from selling the Property in a vital real estate market.

104. As a result of Renfro's refusal to cancel her improper Notice of Pendency, Properties LLC has been damaged.

105. Renfro also improperly, without authorization, and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties allowed her husband to set up and operate a woodworking business on the Property.

106. Hospitality LLC never was compensated by Renfro's husband or the business Renfro's husband improperly and without authorization operated on the Property.

107. Properties LLC never was compensated by Renfro's husband or the business Renfro's husband improperly and without authorization operated on the Property.

108. Renfro also improperly, without authorization, and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties operated a non-profit organization called "Stop the Stigma" on the Property.

109. Hospitality LLC never was compensated by Renfro or the "Stop the Stigma" business Renfro improperly and without authorization operated on the Property.

110. Properties LLC never was compensated by Renfro or the "Stop the Stigma" business Renfro improperly and without authorization operated on the Property.

111. Upon information and belief, Renfro also improperly, without authorization, and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties, converted property owned by Hospitality LLC for use at the "near-by AirBNB in the Village of Fairport" that she operated and continues to operate.

112. Renfro also improperly, without authorization, and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties, continued to incur expenses on behalf of Hospitality LLC since it ceased operations, and failed and refused to provide information about such charges to Herrald. Herrald and Steitz have paid many of these expenses from their personal funds.

113. Renfro also improperly, without authorization, and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties, has utilized Hospitality LLC funds to repay the Drago Loan.

114. In 2017, without Herrald's knowledge, Renfro improperly, without authorization, and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties, made false

statements and misrepresented Hospitality LLC's financial position to the Village of Fairport Office of Community and Economic Development in an effort to secure funding for Hospitality LLC.

115. Without Herrald's knowledge, Renfro also improperly, without authorization, and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties, hired and paid friends and relatives from Hospitality LLC funds.

116. In or about the Fall of 2020, without Herrald's knowledge, Renfro also falsely represented to different individuals and entities that the Property was for sale and available for purchase when it was not.

117. In or about the Fall of 2020, without Herrald's knowledge, Renfro also falsely represented to different individuals and entities that she had the authority to sell or broker a sale of the Property when she did not.

118. Properties LLC, Herrald, Steitz and Hospitality LLC have been damaged by the acts and omissions of Renfro.

119. Counter-Claimants bring a portion of this action to redress injuries suffered by Hospitality LLC as a direct result of wrongful acts and breaches of fiduciary duties committed by Renfro.

120. Herrald is a member and 50% owner of Hospitality LLC.

121. Renfro is the only other member and 50% owner of Hospitality LLC.

122. Herrald will fairly and adequately represent the interests of Hospitality LLC and its members in enforcing and prosecuting their rights.

123. Because Renfro is accused of committing the wrongful acts alleged herein, demanding that she or Hospitality LLC take or approve an action to redress those wrongs would be futile.

FIRST COUNTERCLAIM
Breach of Contract Against Renfro

124. Counter-Claimants reallege the preceding paragraphs as set forth above and incorporated them herein by reference.

125. Renfro and Herrald agreed upon and executed an Operating Agreement when they formed Hospitality LLC.

126. The Operating Agreement is a binding contract.

127. Herrald has performed, or was excused from performing, the obligations created by the Operating Agreement.

128. Renfro's actions as described herein constitute a breach of the Operating Agreement by, among other things, failing to pay debts, including loans, credit cards, and rent, and be responsible for profits and losses.

129. Herrald has been damaged by Renfro's breaches of the Operating Agreement.

SECOND COUNTERCLAIM
Breach of Contract Against Hospitality LLC

130. Counter-Claimants reallege the preceding paragraphs as set forth above and incorporate them herein by reference.

131. Hospitality LLC agreed to pay Properties LLC for use of the Property.

132. Hospitality LLC's agreement with Properties LLC is a binding contract.

133. Properties LLC has performed, or was excused from performing, the obligations created by the contract with Hospitality LLC.

134. Hospitality LLC's actions as described herein, including its failure to pay Properties LLC amounts owed, constitute a breach of the contract between the entities.

135. Properties LLC has been damaged by Hospitality LLC's breaches of the contract.

THIRD COUNTERCLAIM
Breach of Fiduciary Duty

136. Counter-Claimants reallege the preceding paragraphs as set forth above and incorporated them herein by reference.

137. Renfro is a member of Hospitality LLC and, as such, is a fiduciary of Hospitality LLC and its members.

138. Renfro owes Hospitality LLC and its members the highest duty of loyalty, care, candor and good faith and fair dealing.

139. Renfro breached her fiduciary duties by, among other things:

- a. Improperly and without authorization causing deposits of at least \$30,592 to be made into the Hospitality LLC operating account from "The Fairport Perinton Merchants Association". Renfro then withdrew and personally took those funds.
- b. Improperly and without authorization causing deposits of at least \$1,172 to be made into the Hospitality LLC operating account from a competing AirBNB business that she operated. Renfro then withdrew and personally took those funds.
- c. Renfro worked for "The Fairport Perinton Partnership" during the time she was committed to operating Hospitality LLC.
- d. Renfro improperly and without authorization deposited and comingled funds into the Hospitality LLC operating account to falsely make Hospitality LLC "look more profitable".

- e. Renfro did not inform Herrald of the improper transactions at the time they were made.
- f. The transactions that Renfro made were false and fraudulent.
- g. Renfro did not have Herrald's permission to make these transactions.
- h. Renfro did not have the authority to withdraw and take these funds for her personal use.
- i. Renfro made the improper transactions for personal gain and not for a legitimate business purpose.
- j. Renfro's improper transactions damaged Hospitality LLC and put it at risk.
- k. Renfro improperly, without authorization, and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties operated "a near-by AirBNB in the Village of Fairport" which competed directly with Hospitality LLC. See Complaint, ¶ 86.
- l. Renfro improperly diverted business from Hospitality LLC to a separate "AirBNB in the Village of Fairport". See Complaint, ¶ 86.
- m. Renfro improperly utilized, diverted, and converted resources owned by Hospitality LLC to and for her "near-by AirBNB in the Village of Fairport".
- n. Renfro's improper diversion of business from Hospitality LLC to a competing "AirBNB in the Village of Fairport" damaged Hospitality LLC.
- o. Renfro also improperly and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties attempted to obligate Hospitality LLC to obtain and repay a loan that Renfro personally obtained in August 2016 from her personal friends, Robin and James Drago (the "Drago Loan").

- p. Renfro falsely represented to Robin and James Drago that she had the authority to obtain the Drago Loan on behalf of Hospitality LLC, which authority she did not possess.
- q. Hospitality LLC did not authorize or agree to the Drago Loan.
- r. Hospitality LLC is not obligated to repay the Drago Loan.
- s. Renfro also improperly and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties failed and refused to authorize Hospitality LLC to repay other loan obligations, which include:
 - i. Amounts borrowed by Hospitality LLC pursuant to a line of credit extended by FSB/Evans on or about April 25, 2018; and
 - ii. Amounts borrowed by Hospitality LLC pursuant to a commercial term loan extended by FSB/Evans on or about January 29, 2019 (collectively, the “FSB/Evans Loans”).
- t. Renfro also improperly and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties failed and refused to authorize Hospitality LLC to repay credit card obligations.
- u. Renfro caused Hospitality LLC to default on its obligation to pay Properties LLC.
- v. Renfro lied to Herrald about reservations by inserting “fake” reservations into the reservation system of Hospitality LLC.
- w. Renfro changed passwords of Hospitality LLC systems (including accounting, email, and reservation systems) and improperly and without authorization “locked out”, and continues to “lock out”, Herrald.
- x. Renfro abandoned her duties to Hospitality LLC.

- y. Renfro improperly operated other businesses from the Property.
 - z. Renfro made fraudulent statements in an effort to obtain financing for Hospitality LLC.
 - aa. Renfro made and caused to be made false entries to be made in Hospitality LLC's financial books and records.
 - bb. Renfro falsely informed third parties that Herralld was responsible for the demise of Hospitality LLC.
140. In contemplating, planning, and/or affecting the foregoing conduct, Renfro was not acting in good faith toward Hospitality LLC and its members and breached her fiduciary duties.
141. As a result of these actions by Renfro, Hospitality LLC and its members have been and will be damaged.

FOURTH COUNTERCLAIM
Defamation

142. Counter-Claimants reallege the preceding paragraphs as set forth above and incorporate them herein by reference.
143. Renfro intentionally and knowingly made the following false statements to customers of Hospitality LLC:
- a. In an email dated December 5, 2020, Renfro wrote to "Former Inn on Church Guests & Supporters" that "My business partners instead chose to evict the Inn so they can use this historic Fairport property – specially approved by the Village as an Inn – for their family's personal residence." This statement is false and was published by Renfro with the knowledge of its falsity.

- b. In an email dated December 5, 2020, Renfro wrote to “Former Inn on Church Guests & Supporters” that “Contrary to what you may have heard or read elsewhere, we are not closing due to COVID.” This statement is false and was published by Renfro with the knowledge of its falsity.
 - c. In an email dated December 5, 2020, Renfro wrote to “Former Inn on Church Guests & Supporters” that “The decision to close the Inn was not mine, and it did not have to happen.” This statement is false and was published by Renfro with the knowledge of its falsity.
 - d. In an email dated December 5, 2020, Renfro wrote to “Former Inn on Church Guests & Supporters” that “There were resources available, and alternative solutions presented, that would have kept the Inn open for business.” This statement is false and was published by Renfro with the knowledge of its falsity.
 - e. In an email dated June 8, 2021, Renfro wrote to “all former guests” that “The Inn was not closed with my input, and was not done properly from a financial perspective.” This statement is false and was published by Renfro with the knowledge of its falsity.
 - f. In an email dated June 8, 2021, Renfro wrote to “all former guests” that “All funds that I had invested, the community Kickstarter funds, the revenue that had been reinvested into the property, plus any remaining deposits on file were converted, retained.” This statement is false and was published by Renfro with the knowledge of its falsity.
144. Renfro’s false communications were published.

145. Renfro's false communications defamed Herrald and Steitz personally and professionally and damaged their personal and professional reputations and interests.

146. Renfro's false communications constitute libel and libel per se.

147. Renfro's false communications damaged Herrald and Steitz in an amount to be proven at trial.

FIFTH CAUSE OF ACTION
Unjust Enrichment

148. Counter-Claimants reallege the preceding paragraphs as set forth above and incorporate them herein by reference.

149. Renfro's actions as described herein constitute unjust enrichment of herself to the direct financial detriment of Herrald, Steitz, Hospitality LLC and Properties LLC.

150. By reason of Renfro's unjust enrichment, Herrald, Steitz, Hospitality LLC and Properties LLC have suffered damages.

SIXTH COUNTERCLAIM
Accounting

151. Counter-Claimants reallege the preceding paragraphs as set forth above and incorporate them herein by reference.

152. As a member of Hospitality LLC, Renfro was a fiduciary who expressly and impliedly was entrusted with a duty to account for money and property of Hospitality LLC.

153. As a result of Renfro's above-described conduct, Hospitality LLC is entitled to an accounting from Renfro of all transactions by which assets of Hospitality LLC were misappropriated and/or wasted by Renfro through such conduct, and a judgment compelling Renfro to make restitution to Hospitality LLC of all misappropriated and/or wasted assets through such accounting.

SEVENTH COUNTERCLAIM
Constructive Trust

154. Counter-Claimants reallege the preceding paragraphs as set forth above and incorporate them herein by reference.

155. As a member of Hospitality LLC, Renfro was a fiduciary who expressly and impliedly promised and agreed that all transfers of assets of Hospitality LLC pursuant to the direction of, requests for payment and reimbursement made by, for the benefit of, and on behalf of, Renfro were appropriate, and Hospitality LLC transferred assets and funds at the direction of Renfro in reliance upon those promises and agreements.

156. Renfro breached her express and implied promises and agreements through her above-described conduct and, as a result, was unjustly enriched at the expense, and to the detriment of, Hospitality LLC.

157. Accordingly, Hospitality LLC is entitled to the imposition of a constructive trust upon all assets identified by the above-described accounting as having been compromised, wasted and/or misappropriated by Renfro, and a judgment compelling Renfro to make restitution to Hospitality LLC of all compromised, misappropriated and/or wasted assets of Hospitality LLC subject to such constructive trust.

EIGHTH COUNTERCLAIM
Conversion

158. Counter-Claimants reallege the preceding paragraphs as set forth above and incorporate them herein by reference.

159. Renfro improperly, without authorization, and in breach of the Hospitality LLC Operating Agreement and her fiduciary duties, converted property and monies owned by Hospitality LLC for personal use and for use by a “near-by AirBNB in the Village of Fairport”.

160. Renfro's improper conversion has damaged Hospitality LLC, Herrald, Steitz, and Properties LLC.

**NINTH COUNTERCLAIM
Declaratory Judgment**

161. Counter-Claimants reallege the preceding paragraphs as set forth above and incorporate them herein by reference.

162. Based upon the facts set forth herein above, as well as the Causes of Actions and Counterclaims, a justiciable controversy exists between Renfro, Herrald, Steitz, Hospitality LLC and Properties LLC.

163. Renfro falsely claims that a joint venture was created and exists as between Renfro, Herrald, Steitz, Hospitality LLC and/or Properties LLC.

164. A joint venture was not created nor does one exist.

165. Counter-Claimants demand judgment that a joint venture was not created nor does one exist.

**TENTH COUNTERCLAIM
Declaratory Judgment**

166. Counter-claimants reallege the preceding paragraphs as set forth above and incorporate them herein by reference.

167. Based upon the facts set forth herein above, as well as the Causes of Actions and Counterclaims, a justiciable controversy exists between Renfro, Herrald, Steitz, Hospitality LLC and Properties LLC.

168. Renfro, individually and on behalf of Hospitality LLC, falsely claims an interest in the Property and/or Properties LLC and baselessly seeks to compel a sale or liquidation of the Property.

169. Neither Renfro nor Hospitality LLC has an interest in the Property.

170. Counter-Claimants also demand judgment that neither Renfro nor Hospitality LLC has an interest in the Property or Properties LLC.

ELEVENTH COUNTERCLAIM
Intentional Interference With Prospective Economic Advantage

171. Counter-Claimants reallege the preceding paragraphs as set forth above and incorporate them herein by reference.

172. A Renfro filed this lawsuit and placed an improper *lis pendens* on the Property.

173. Renfro improperly is using the *lis pendens* that she filed as a form of attachment.

174. Herrald, Steitz and Properties LLC, had a reasonable expectation of refinancing the mortgage on the Property to obtain a lower mortgage interest rate.

175. On multiple occasions, Herrald, Steitz and Properties LLC expressly told Renfro and her attorneys that they desired and expected to refinance the Property.

176. Renfro's improper *lis pendens* has prevented Herrald, Steitz and Properties LLC, from refinancing the mortgage on the Property.

177. But for the *lis pendens* that Renfro has placed on the Property, Herrald, Steitz, and Properties LLC would have been able to refinance, and would have refinanced, the Property.

178. Herrald, Steitz, and Properties LLC repeatedly have demanded that Renfro cancel the *lis pendens* so they can refinance the Property and informed her that the *lis pendens* is preventing them from doing so.

179. Renfro repeatedly has refused to cancel the *lis pendens*.

180. Renfro's intentional filing of the improper *lis pendens* and repeated refusal to cancel it despite the demands of Herrald, Steitz, and Properties LLC, has resulted in significant economic damage to Herrald, Steitz and Properties LLC.

WHEREFORE, Counter-Claimants pray for judgment as follows:

- a. Pursuant to the First Counterclaim, an order awarding Herrald damages in an amount to be determined at trial, together with pre-judgment and post-judgment interest, costs and disbursements.
- b. Pursuant to the Second Counterclaim, an order awarding Properties LLC damages in an amount to be determined at trial, together with pre-judgment and post-judgment interest, costs and disbursements.
- c. Pursuant to the Third Counterclaim, for an order declaring that Renfro breached her fiduciary duties to Hospitality LLC.
- d. Pursuant to the Third Counterclaim, for an order awarding damages in an amount to be determined at trial, together with pre-judgment and post-judgment interest.
- e. Pursuant to the Fourth Counterclaim, for an order awarding Herrald damages in an amount to be determined at trial.
- f. Pursuant to the Fourth Counterclaim, for an order awarding Steitz damages in an amount to be determined at trial.
- g. Pursuant to the Fourth Counterclaim, for an order awarding Hospitality LLC damages in an amount to be determined at trial.
- h. Pursuant to the Fifth Counterclaim, for an order awarding Herrald, Steitz, Hospitality LLC and Properties LLC damages in an amount to be determined at trial, together with pre-judgment and post-judgment interest, costs and disbursements.
- i. Pursuant to the Sixth Counterclaim, for an order that an accounting be had of the affairs of Hospitality LLC by which Renfro be called to account for all

transactions by which Hospitality LLC assets or property were paid or pledged to, paid or pledged for the benefit of, and/or paid or pledged on behalf of Renfro, and awarding Hospitality LLC its costs, disbursements, and attorney's fees, as well as such other and further relief as the Court deems appropriate.

- j. Pursuant to the Seventh Counterclaim, an order that a constructive trust be imposed upon all such assets of Hospitality LLC compromised, misappropriated and/or wasted by Renfro through the above-described misconduct, or order that all assets of Hospitality LLC compromised, misappropriated and/or wasted by Renfro and subject to the constructive trust be restored to Hospitality LLC, and further an order awarding Hospitality LLC its costs, disbursements, and attorney's fees, as well as such other and further relief as the Court deems appropriate.
- k. Pursuant to the Eighth Counterclaim, for an order awarding Hospitality LLC and Herrald damages in an amount to be determined at trial.
- l. Pursuant to the Ninth Counterclaim, for an order and judgment declaring that a joint venture does not exist as between Herrald, Steitz, Hospitality LLC, Properties LLC and Renfro, or any of them.
- m. Pursuant to the Tenth Counterclaim, for an order and judgment declaring that neither Renfro nor Hospitality LLC has an interest in the Property or Properties LLC.
- n. Pursuant to the Eleventh Counterclaim, for an order awarding Herrald, Steitz and/or Properties LLC damages in an amount to be determined at trial.
- o. For Counter-Claimants' costs and expenses incurred in this action, including, but not limited to, experts' and attorneys' fees.

p. For such other and further relief as the Court may deem just and proper.

Dated: July 5, 2021

BOND, SCHOENECK & KING, PLLC

By: _____

Jeffrey F. Allen

Edward P. Hourihan, Jr.

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Claimants*

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Rochester, New York 14625

(585) 362-4700

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

Angela Herral, being duly sworn, deposes and says that deponent is a Defendant and Counterclaimant in this action, that deponent has read the foregoing Counterclaims and knows the contents thereof, that the same is true to the knowledge of deponent, except as to such matters which are stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

Sworn to before me this
5th day of July, 2021.

Notary Public

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

David Steitz, being duly sworn, deposes and says that deponent is a Defendant and Counterclaimant in this action, that deponent has read the foregoing Counterclaims and knows the contents thereof, that the same is true to the knowledge of deponent, except as to such matters which are stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

Sworn to before me this
5th day of July, 2021.

Notary Public