

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

CURT MELTZER and
MELTZER MANAGEMENT SERVICES, LLC,

Plaintiffs,

- against -

KENTUCKY HI-TECH GREENHOUSES, LLC
and KENTUCKY FRESH HARVEST, LLC,

Defendants.

KENTUCKY HI-TECH GREENHOUSES, LLC,

Counterclaim Plaintiff,

- against -

CURT MELTZER and
MELTZER MANAGEMENT SERVICES, LLC,

Counterclaim Defendants.

Index No. 652396/2022

Hon. Melissa A. Crane
Part 60

**KENTUCKY HI-TECH
GREENHOUSES, LLC
ANSWER WITH
COUNTERCLAIMS TO
COMPLAINT**

Defendant/Counterclaim Plaintiff Kentucky Hi-Tech Greenhouses, LLC (“KHTG” or “Defendant”), by and through its attorneys, LOPRESTI, PLLC, states as follows for its Answer to the Complaint ([Doc. 1](#)) of Plaintiffs/Counterclaim Defendants Curt Meltzer (“Meltzer”) and Meltzer Management Services, LLC (“MMS”) (collectively “Plaintiffs”):

AS TO "PARTIES"

1. KHTG lacks information or knowledge sufficient to form a belief about the truth of the allegations in Paragraph "1", and upon that basis denies the allegations, except admits that in 2018, Meltzer unilaterally assumed the title of COO/CEO of Defendant Kentucky Fresh

Harvest, LLC (“KFH”), and on November 16, 2021, Meltzer sent a letter of resignation as purportedly the “CEO, Director and Sole Managing Member of KFH”.

2. KHTG admits the allegations contained in Paragraph "2".

3. KHTG admits the allegations contained in Paragraph "3", except adds that KHTG members include a resident of New Mexico; KHTG denies that KHTG’s principal place of business is New York County.

4. KHTG admits the allegations contained in Paragraph "4", except adds that Defendant KFH members include a resident of New Mexico.

AS TO "JURISDICTION AND VENUE"

5. Paragraph "5" states legal conclusions to which no response is necessary. To the extent that any response is necessary or that the allegations are factual, KHTG denies the allegations.

6. Paragraph "6" states legal conclusions to which no response is necessary. To the extent that any response is necessary or that the allegations are factual, KHTG denies the allegations.

7. Paragraph "7" states legal conclusions to which no response is necessary. To the extent that any response is necessary or that the allegations are factual, KHTG denies the allegations.

AS TO "RELEVANT FACTS"

8. KHTG admits the allegations in Paragraph “8”.

9. As to the allegations in Paragraph "9", KHTG admits that, when Defendant Kentucky Fresh Harvest, LLC (“KFH”) was first formed, KHTG owned a majority interest in Defendant KFH.

10. As to the allegations in Paragraph "10", KHTG admits that Meltzer is one of the original members of Defendant KFH and KHTG. The remainder of the allegations contained in Paragraph "10" are denied.

11. As to the allegations in Paragraph "11", KHTG admits that KHTG's first manager (Meltzer's business partner, Haim Oz) is no longer associated with KHTG or Defendant Kentucky Fresh Harvest, LLC ("KFH"), due to Oz's fraud, misrepresentations, malfeasance, inexperience and ineptitude, while under Meltzer's supervision, that cost KHTG and Defendant KFH millions of dollars. The remainder of the allegations in Paragraph "11" are denied.

12. KHTG denies the allegations contained in paragraph "12".

13. KHTG lacks information or knowledge sufficient to form a belief about the truth of the allegations in Paragraph "13", and upon that basis denies the allegations, except admits that KHTG held special member meetings as reflected by documents that are attached as Exhibit A to the Complaint.

14. As to the allegations contained in Paragraph "14", the IRS 1099 tax form referenced therein speaks for itself; KHTG admits certain payments were made to Meltzer's New York limited liability management company, Plaintiff Meltzer Management Services, LLC ("MMS") as directed by Meltzer; the remainder of the allegations contained in Paragraph "14" are denied.

15. As to the allegations contained in Paragraph "15", KHTG admits that payments were made to Meltzer's New York limited liability management company, Plaintiff MMS, as directed by Meltzer for approximately two years. All remaining allegations contained in Paragraph "15", including but not limited to any characterization as to any "agreement of the parties", are denied.

16. As to the allegations contained in Paragraph "16", KHTG admits that KHTG and Plaintiff Meltzer appear to have ratified an agreement between KHTG and Plaintiff Meltzer regarding Meltzer's compensation. The remainder of the allegations contained in Paragraph "16" are denied.

17. As to the allegations contained in Paragraph "17", KHTG is without sufficient information or knowledge with which to form a belief as to Meltzer's "role" with regard to KHTG or Defendant Kentucky Fresh Harvest, LLC ("KFH"). The remainder of the allegations contained in Paragraph "17" are denied.

18. KHTG denies the allegations contained in paragraph "18".

19. As to the allegations contained in Paragraph "19", KHTG is without sufficient knowledge or information with which to form a belief as to whether Mr. Back "was the second-highest paid person at KFH" and upon that basis that allegation is denied. All remaining allegations contained in Paragraph "19" are denied.

20. KHTG denies the allegations contained in Paragraph "20".

21. KHTG denies the allegations contained in Paragraph "21".

22. KHTG denies the allegations contained in Paragraph "22".

23. As to the allegations contained in Paragraph "23", KHTG admits that Meltzer loaned \$70,000 to Defendant KFH in or around October 2021. KHTG is without sufficient knowledge or information with which to form a belief as to whether Meltzer took out a line of credit at a high interest rate. All remaining allegations contained in Paragraph "23" are denied.

24. As to the allegations contained in Paragraph "24", KHTG admits that upon information and belief, Defendant KFH has repaid \$30,000 of the loan referenced therein. All remaining allegations in Paragraph "24" are denied.

25. KHTG denies the allegations contained in paragraph "25".

26. KHTG denies the allegations contained in paragraph "26".

27. As to the allegations contained in Paragraph "27", KHTG admits that Meltzer informed Defendant KFH that he would resign as the purported "CEO" and then did so effective November 29, 2021; Exhibit "B" attached to the Complaint speaks for itself. All remaining allegations in Paragraph "27" are denied.

28. KHTG denies the allegations contained in paragraph "28".

AS TO CAUSES OF ACTION

COUNT I

(Breach of Contract)

29. KHTG denies the allegations contained in paragraphs "29, 30, 31, 32, 33".

COUNT II

(Unjust Enrichment)

30. This cause of action has been dismissed pursuant to the Court's decision dated January 12, 2023 ([Doc. 34](#)). To the extent that any response is necessary or that the allegations are factual, KHTG denies the allegations.

COUNT III

(Quantum Meruit)

31. This cause of action has been dismissed pursuant to the Court's decision dated January 12, 2023 ([Doc. 34](#)). To the extent that any response is necessary or that the allegations are factual, KHTG denies the allegations.

COUNT III (sic)

(Promissory Estoppel)

32. This cause of action has been dismissed pursuant to the Court's decision dated January 12, 2023 ([Doc. 34](#)). To the extent that any response is necessary or that the allegations

are factual, KHTG denies the allegations.

COUNT IV

(New York Labor Law §§ 193/198)

33. Paragraphs "55, 56, 57, 58, 59 and 60" state legal conclusions to which no response is necessary. To the extent that any response is necessary or that the allegations are factual, KHTG denies the allegations, and states that at all relevant times Meltzer was employed by, and paid by Meltzer's own New York limited liability management company, Plaintiff Meltzer Management Services, LLC ("MMS"), as directed by Meltzer, and as evidenced by the IRS 1099 tax form referenced in Paragraph "14" of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs have failed to state a cause of action against Defendant upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by accord and satisfaction, frustration of purpose, estoppel, repudiation, fraud, laches, payment, release, statute of frauds, and waiver.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of unclean hands, and/or illegality.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs failed to satisfy certain conditions precedent to any entitlement to the relief sought in the Complaint.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs failed to use reasonable means to prevent the alleged damage and failed to use reasonable means to mitigate their damages.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovery of damages or other relief to the extent they or others failed to perform conditions precedent, concurrent, or subsequent under pertinent agreements.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs violated the terms of the alleged agreement(s), if any, excusing Defendant from performing any duties or obligations set forth therein.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' recovery, if any, should be barred or reduced in the proportion that Plaintiff's culpable conduct bears to the total culpable conduct found to have caused any damages.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by failure of consideration.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to any recovery because the alleged damages, if any, are speculative.

ELEVENTH AFFIRMATIVE DEFENSE

The actions of Plaintiff(s) served as an anticipatory breach of any alleged agreement that Defendant and Plaintiff(s) may have entered into.

TWELVTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the applicable statute of limitations.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by documentary evidence.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by res judicata and/or the doctrine of collateral estoppel.

FIFTEENTH AFFIRMATIVE DEFENSE

To the extent any liability is established, Plaintiffs' claims, in whole or in part, are subject to a setoff for amounts due to Defendant and/or damages caused by Plaintiffs.

SIXTEENTH AFFIRMATIVE DEFENSE

The venue selected by Plaintiffs is improper.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendant reserves the right to assert additional defenses upon discovery of further information concerning Plaintiffs' claims.

COUNTERCLAIMS**The Parties**

1. Counterclaim-Plaintiff Kentucky Hi-Tech Greenhouses, LLC ("KHTG") is a Kentucky limited liability company that maintains an office in Lincoln County, Kentucky.
2. Counterclaim-Defendant Curt Meltzer ("Meltzer") is an attorney licensed by the State of New York, who, upon information and belief, maintains a residence in New York, New York.
3. At all relevant times, Meltzer individually was a founder, an equity member, and a manager of both KHTG and Defendant Kentucky Fresh Harvest, LLC.
4. Counterclaim Defendant Meltzer Management Services, LLC ("MMS") is, upon information and belief, a sole member New York limited liability company, with Meltzer as its sole member, that maintains an office in New York, New York.

Factual Allegations

5. Meltzer and MMS brought this lawsuit against KHTG and Defendant Kentucky Fresh Harvest, LLC ("KFH") alleging that KHTG and KFH agreed to pay Meltzer (via his

company MMS) compensation for services Meltzer allegedly provided to both companies pursuant to a compensation arrangement.

6. The purpose of KHTG and KFH is to construct, maintain, and operate high technology greenhouses in Lincoln County, Kentucky.

7. At all relevant times, Meltzer held himself out as an attorney licensed to practice law in the State of New York, with an expertise as an advisor in “international business”.

8. As an equity member of both KHTG and Defendant KFH, Meltzer’s initial capital contribution to each company was nominal.

9. Equity granted to Meltzer pursuant to the company operating agreements was essentially “sweat” equity; Meltzer agreed to devote labor and time (services) to the companies as a manager, in return for equity ownership.

10. By example, Meltzer currently owns 35% of KHTG despite having made an initial capital contribution of only \$400.00. See Second Amended & Restated Limited Liability Company Operating Agreement (hereinafter the “2018 KHTG Operating Agreement”), Sec. 2.1; **Exhibit A** ([Doc. 23](#).)

11. After the formation of KHTG in about November 2014, pursuant to the KHTG operating agreement, and as amended, Meltzer was both a manager of KHTG, and the company’s “Tax Matters Partner”.

12. Per Plaintiffs’ Complaint ([Doc. 1](#)), “KHTG’s only business is to operate KFH.” (Comp., ¶ 9.)

13. After the formation of Defendant KFH in about August 2015, pursuant to the KFH operating agreement, and as amended, Meltzer was also both a manager of Defendant

KFH, and KFH's "Partnership Representative" (tax matters). Second Amended & Restated Operating Agreement of Kentucky Fresh Harvest, LLC, Sec. 10.

14. At all relevant times, until September-October 2018, the managers, the "Tax Matters Partner" and/or the "Partnership Representative" in either KHTG and KFH were unpaid positions.

15. At various times, Meltzer gave himself the honorary title "COO" or "CEO" in KHTG and Defendant KFH. At no time, however, was there ever a company vote or resolution formally appointing Meltzer as "COO" or "CEO"; nor was a written executive employment agreement for Meltzer as "COO" or "CEO" ever formally approved, drafted, reviewed by counsel, or circulated.

16. Rather, between September-October 2018 and June 2019, at Meltzer's insistence, the members of KHTG voted on resolutions prepared by Meltzer (the "KHTG Resolutions") establishing what was termed the "Meltzer Compensation Arrangement." **Exhibit B**; See Exhibit "A" to Plaintiffs' Complaint ([Doc. 2.](#))

17. The KHTG Resolutions, signed by the members at the time, claim to set a "fair market value" of \$200,000.00 per year for Meltzer's "full time" "services" going back to 2015, when the company was formed, and moving forward.

18. The KHTG Resolutions make no mention of any "COO" or "CEO" or executive title. Presumably they refer to Meltzer's previously existing contractual obligations, as detailed in the KHTG operating agreements, to commit "sweat" in return for his equity in the company as a manager and Tax Matters Partner.

19. Not only was there no consideration for the Meltzer Compensation Arrangement, in effect Meltzer was "double billing".

20. The KHTG Resolutions lack even basic terms and conditions for an employment agreement. In fact, there is no job description whatsoever of what exactly Meltzer allegedly did since 2015, or what he would do moving forward; there is no description of Meltzer's title, responsibilities or duties; there are no terms for the duration of the employment or its termination; there are no terms for benefits, sick leave, personal or vacation time; there are no confidentiality, non-compete, or data protection provisions, as are customary for high level, high paid executives. Apart from declaring \$200,200.00 for "full time" services, there is no indication of how and where he worked "full time", in New York, or Kentucky – where the actual facilities and operations of the companies are actually located.

21. The KHTG Resolutions make no mention of a formal, written Employment Agreement to be approved, negotiated, drafted and/or executed, to memorialize the "Meltzer Compensation Arrangement" and Meltzer's alleged employment.

22. Regardless of the KHTG Resolutions, as set forth herein:

(i) Meltzer did not work "full time" at any relevant time (or produce any contemporaneous time records of what he allegedly did), whether as Manager, Tax Matters Partner, or self-proclaimed "COO" or "CEO";

(ii) Whatever work Meltzer did do from 2015 through his resignation on November 29, 2021, it was often done in a reckless, grossly negligent, sloppy, inept, dilatory and substandard manner; and

(iii) Meltzer consistently breached his duties and responsibilities under the KHTG Resolutions and the KHTG Operating Agreement. Such grossly negligent, reckless and wrongful acts and omissions by Meltzer would cost the companies millions in damages.

23. Compounded by the foregoing, Meltzer, as an attorney¹, while allegedly performing these services, committed malpractice and engaged in self-dealing, breaches of fiduciary duty, breaches of his duty of loyalty, duty of care, and implied duties of good faith and fair dealing, all mandated by the KHTG Operating Agreement, that cost the companies millions in damages.

24. Examples of Meltzer's wrongdoing include, but are not limited to, his self-dealing in pursuing KHTG opportunities for his own personal gain, such as opportunities in Wisconsin with a Utah company known as Green Ag Technologies, LLC ("Green Ag") while a manager of KHTG, using the assets, resources and the goodwill of KHTG, while supposedly working for KHTG "full time".

25. Further compounded by the foregoing, in about November 2015, and at all relevant times thereafter, Meltzer misrepresented to KHTG members that Mr. Haim Oz ("Oz"), an Israeli businessman and partner of Meltzer, was an international expert in the construction and operation of greenhouses. Meltzer advised KHTG that Oz was thus essential to the planning, construction and operations of the greenhouses, and recommended that Oz be co-manager of KHTG with Meltzer.

26. At all relevant times, until about December 2018, Meltzer recklessly, and upon information and belief, intentionally misrepresented to KHTG the aforesaid false expertise, means and abilities of Oz.

¹ At all times, Meltzer communicated with his law firm email under his "Attorney At Law" signature and address, refusing to use company emails. Meltzer, a New York lawyer not licensed to practice law in Kentucky, frequently advised KHTG and Defendant KFH (Kentucky companies governed by Kentucky law) as to legal and regulatory issues concerning Kentucky law.

27. In about January 2018, Meltzer even convinced an investor (who would come to own an interest in KHTG) to lend Oz two million dollars (\$2,000,000), representing that the project was moving forward and the loan would bring it to fruition (the “Oz Loan”). Oz would end up defaulting on that loan after only five months. Upon information and belief, Meltzer personally benefitted from the Oz Loan.

28. In about December 2018, it became apparent to other members of KHTG that Oz was an admitted con man who engaged in financial improprieties costing the companies millions in damages and causing devastating delays. Meltzer would later admit that Oz had “misrepresented himself as an expert in the field with experience, knowledge and contacts sufficient to oversee construction and operation of the greenhouses necessary for KFH to conduct business, and good management skills to oversee the project and staff” and that because of Oz, “the project quickly went overbudget and suffered significant delays”.

29. At all relevant times, Meltzer, as an attorney, as Oz’s co-manager and the Tax Matters Partner of the company (who was allegedly working “full time”), miserably failed to supervise, monitor or audit Oz’s progress or activities; Meltzer then failed to alert the other members of KHTG to Oz’s inexperience, ineptitude and malfeasance, and he failed to adequately protect KHTG and its partners from the same.

30. As a direct result of Meltzer’s aforesaid failures, and his grossly negligent, sloppy, inept, dilatory and substandard work as an attorney, manager, and Tax Matters Partner of the company, the company lost millions in damages and suffered devastating delays.

31. Despite all of the foregoing, Meltzer alleges in his Complaint that both KHTG and Defendant KFH still owe *him* money based on the KHTG Resolutions.

32. At all times, Defendant Kentucky Fresh Harvest, LLC (“KFH”) was not, and is not a party or signatory to the KHTG Resolutions.

33. In 2021, at the insistence of Meltzer, he requested that Defendant KFH adopt KFH resolutions ratifying the KHTG Resolutions and the Meltzer Compensation Arrangement. KFH expressly refused to do so.

34. By Decision and Order on Motion, dated January 12, 2023 ([Doc. 34](#)) (the “January 12, 2023 Decision”), the Court in this action stated, “For his work in his roles as CEO and COO, Meltzer agreed to accept deferred compensation from Defendants. The parties formalized the compensation arrangement through resolutions the members of **KHTG** passed after member meetings between September-October 2018 and June 2019.” (Id., p. 3; emphasis added.)

35. As a result, the January 12, 2023 Decision dismissed Plaintiffs’ quasi-contract causes of action against KHTG and KFH sounding in unjust enrichment (Count II), quantum meruit (Count III), and promissory estoppel (Count III [sic]), leaving one claim for breach of contract (Count I) and one claim under New York Labor Law §§ 193/198 (Count IV.)

COUNT I

(Declaratory Relief)

36. The allegations of paragraphs 1-35 are incorporated by reference as if fully set forth herein.

37. As reflected by the Complaint ([Doc. 1](#)) filed by Plaintiffs/Counterclaim Defendants, an actual case or controversy exists between the parties as to whether Plaintiffs/Counterclaim Defendants are entitled to compensation for services allegedly provided and, if so, in what amount.

38. An actual controversy exists between the parties as to whether any agreement that may have existed between Plaintiffs/Counterclaim Defendants and KHTG for compensation is barred, in whole or in part, by the statute of frauds or other law, or is otherwise unenforceable against KHTG, whether any portion of the amount claimed is to be deferred, and whether any amounts that may be owed is subject to a set-off based on KHTG's damages caused by the Plaintiffs/Counterclaim Defendants' reckless and wrongful conduct as alleged herein, that includes, breach of contract, gross negligence, malpractice, negligent and intentional misrepresentations, theft of services, conversion, double billing, breaches of fiduciary duty, self-dealing, and breaches of the implied duty of good faith and fair dealing.

39. KHTG respectfully requests that the Court enter an Order declaring that no amounts are owed to the Plaintiffs/Counterclaim Defendants and/or that a set-off must be made against any amounts that may be determined to be owed.

COUNT II
(Breach of Contract)

40. The allegations of paragraphs 1-39 are incorporated by reference as if fully set forth herein.

41. Pursuant to the provisions of the KHTG Operating Agreement, and as amended, at all relevant times Meltzer agreed to "control and manage [KHTG]" as a manager (See, e.g., 2018 KHTG Operating Agreement, Sec. 4.2; **Exhibit A** [[Doc. 23](#)]) and to perform all duties and responsibilities as Tax Matters Partner (Id., Sec. 4.12.)

42. Pursuant to the provisions of the KHTG Operating Agreement, and as amended, at all relevant times Meltzer agreed to be bound by its terms and conditions, that include those enumerated in Powers of Managers, Standards for Managers, Manager Conflicts of Interest, Tax

Matters Partner, Bookkeeping, and Meltzer agreed to be bound by standards of care and loyalty, and fiduciary duties.

43. Pursuant to the KHTG Resolutions and the Meltzer Compensation Arrangement, at all relevant times Meltzer agreed to work on a “full time” basis worthy of a salary of \$200,200.00 per year.

44. As set forth herein, Meltzer did breach the KHTG Operating Agreement, and as amended, including the 2018 KHTG Operating Agreement, the KHTG Resolutions and the Meltzer Compensation Arrangement, by, among other things, engaging in the wrongful, reckless, and intentional conduct as alleged herein, that includes: intentional misrepresentation (as to work performed); theft of services, conversion, double billing, breaches of fiduciary duty, self-dealing, malpractice, and breach of duty of loyalty, duty of care, and implied duties of good faith and fair dealing; failure to work “full time”, or produce any time reports or accounts of such work; work product, if any, was sloppy, inept, dilatory and substandard; the reckless, and upon information and belief, intentional misrepresentations of the expertise, means and abilities of Haim Oz; failing to supervise, monitor or audit Oz’s progress or activities; failing to alert and adequately protect other KHTG members and partners as to Oz’s inexperience, ineptitude and malfeasance.

45. KHTG has suffered damages as a direct result of the aforesaid.

COUNT III

(Breach of Implied Duty of Good Faith and Fair Dealing)

46. The allegations of paragraphs 1-45 are incorporated by reference as if fully set forth herein.

47. Kentucky law and New York law imply the duty of good faith and fair dealing in any agreement between the Plaintiffs/Counterclaim Defendants and KHTG pursuant to which the

Plaintiffs/Counterclaim Defendants acted as a manager and agent of KHTG, and in the KHTG Operating Agreement, as amended.

48. The Plaintiffs/Counterclaim Defendants' above-described actions and inactions constitute bad faith, and breaches of the duty of good faith and fair dealing that they owed to KHTG.

49. KHTG has been damaged by the Defendants' breaches of the duty of good faith and fair dealing.

COUNT IV

(Gross Negligence and Wanton and Reckless Misconduct)

50. The allegations of paragraphs 1-49 are incorporated by reference as if fully set forth herein.

51. As a member, manager or officer of KHTG, Meltzer owed KHTG a duty to exercise reasonable care in performing his duties on behalf of KHTG.

52. Meltzer's above-described gross negligence and wanton and reckless misconduct includes his intentional misrepresentation (as to work performed), theft of services, conversion, double billing, breaches of fiduciary duty, self-dealing, malpractice, and breach of duty of loyalty, duty of care, and implied duties of good faith and fair dealing; his reckless, and upon information and belief, intentional misrepresentation of the expertise, means and abilities of Haim Oz, in failing to supervise, monitor or audit Oz's progress or activities, and in failing to alert and adequately protect other KHTG members and partners as to Oz's inexperience, ineptitude and malfeasance.

53. KHTG has been damaged by Meltzer's gross negligence and wanton and reckless misconduct.

COUNT V**(Breach of Fiduciary Duty)**

54. The allegations of paragraphs 1-53 are incorporated by reference as if fully set forth herein.

55. As a member, manager or officer of KHTG, Meltzer owed a fiduciary duty of good faith and loyalty to KHTG, and a duty to refrain from engaging in self-dealing.

56. Pursuant to New York and Kentucky law, Meltzer owed a duty of loyalty to account to KHTG for any profit or benefit derived by Meltzer from any transaction connected with the conduct of KHTG, without first obtaining consent from a majority of disinterested members.

57. Meltzer has breached his duty of good faith and loyalty to KHTG by, among other things, pursuing KHTG opportunities for his own personal gain while a manager of KHTG, using the assets, resources and goodwill of KHTG, while supposedly working for KHTG “full time”; and for misrepresenting the abilities of his business partner, Mr. Haim Oz, by failing to protect KHTG from the ineptitude and malfeasance of Mr. Oz.

58. KHTG has been damaged by Meltzer’s breaches of his fiduciary duties to KHTG.

COUNT VI**(Setoff)**

59. The allegations of paragraphs 1-58 are incorporated by reference as if fully set forth herein.

60. In the event the Court determines that any amounts are owed by KHTG to the Plaintiffs/Counterclaim Defendants, KHTG is entitled to a setoff for the damages sustained by it pursuant to the above claims.

REQUEST FOR RELIEF

For the foregoing reasons, Kentucky Hi-Tech Greenhouses, LLC requests that the Court enter judgment:

- a. On the Complaint, dismissing and denying all of Plaintiffs' remaining causes of action with prejudice; awarding Kentucky Hi-Tech Greenhouses, LLC its costs of this action, including reasonable attorneys' fees to the extent authorized by applicable law;
- b. On the Counterclaims, granting judgment in Kentucky Hi-Tech Greenhouses, LLC's favor and damages in an amount to be determined at trial; awarding Kentucky Hi-Tech Greenhouses, LLC its costs of this action, including reasonable attorneys' fees to the extent authorized by applicable law; and
- c. Granting Kentucky Hi-Tech Greenhouses, LLC such other and further relief as may be appropriate.

Dated: New York, New York
February 1, 2023

Respectfully submitted,

LOPRESTI, PLLC

*Attorneys for
Defendant/Counterclaim Plaintiff
Kentucky Hi-Tech Greenhouses, LLC*

By: /s/ Anthony A. LoPresti
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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2023, I electronically filed the KENTUCKY HI-TECH GREENHOUSES, LLC ANSWER TO COMPLAINT WITH COUNTERCLAIMS with the Clerk of the Court using the NYSCEF system, which will automatically send an e-mail notification of such filing to the attorneys of record who are registered NYSCEF users, including counsel of record for Plaintiffs:

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Curt Meltzer and
Meltzer Management Services, LLC*

Executed on February 1, 2023, at New York, New York.

/s/ Anthony A. LoPresti
Anthony A. LoPresti