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

423 AMCO, Plaintiff, -against- BSWR, INC. A/K/A BWRS, INC. D/B/A SARABETHS UPPER WEST SIDE, Defendant.	Date filed: July 27, 2026 Index No. ________________/26 **SUMMONS** Plaintiff designates New York County as the place of trial. The basis of venue is the location of the subject premises.

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorneys within twenty (20) days after service of this summons, exclusive of the day of service; or within thirty (30) days after completion of service where the service is made in any other manner than by personal delivery within the state; and in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated: New York, New York
July 27, 2026

ROSENBERG & ESTIS, P.C.
Attorneys for Plaintiff

By: ______________________________

Norman Flitt
11 Grand Central East
New York, New York 10017
(212) 867-6000

RE\29983\0001\8302025v1

TO: BSWR, INC. A/K/A BWRS, INC.
D/B/A SARABETHS UPPER
WEST SIDE
423 Amsterdam Avenue
Street Level Store
New York, New York 10024

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

423 AMCO, Plaintiff, -against- BSWR, INC. A/K/A BWRS, INC. D/B/A SARABETHS UPPER WEST SIDE, Defendant.	X	Index No. _________/26 **COMPLAINT**

Plaintiff 423 AMCO ("Landlord" or "Owner"), by and through its attorneys, Rosenberg & Estis, P.C., as and for its Complaint, allege as follows:

PARTIES

1. Landlord is the owner and landlord of the building located at 423 Amsterdam Avenue, New York, New York 10024 (the "Building").

2. Landlord is and was at all relevant times herein, a general partnership authorized and organized under the laws of the State of New York.

3. Upon information and belief, defendant BSWR, INC. A/K/A BWRS, INC. D/B/A SARABETHS UPPER WEST SIDE ("Tenant" or "Defendant") is and was at all relevant times herein, a domestic business corporation organized under the laws of the State of New York.

FACTUAL BACKGROUND

I. THE LEASE

A. The Premises and the Lease

4. Tenant entered into possession of the entire street level store and entire basement (exclusive of boiler room, gas meter room, electric meter room, and maintenance room), in the Building (collectively, the "Premises") pursuant to a Standard Form of Store Lease, dated March

RE\29983\0001\8302025v1

1, 1998, by and between Landlord, as landlord, and Tenant, as tenant (the "Initial Lease"), as modified by Agreement to Modify and Extende [sic] the Lease Agreement, dated July 27, 2004 (the "2004 LMA"), by and between Landlord, as landlord, and Tenant, as tenant, as modified by Agreement to Modify and Extend the Lease Agreement, dated "February ___, 2014" (the "2014 LMA"), by and between Landlord, as landlord, and Tenant, as tenant, as most recently modified by Agreement to Modify and Extend the Lease Agreement, dated May 10, 2020 (the "2020 LMA" together with the 2014 LMA, and 2004 LMA, and the Initial Lease, the "Lease"), by and between Landlord, as landlord, and Tenant, as tenant.

5. The Lease has a stated expiration date of February 28, 2030 (the "Expiration Date").

B. <u>Pertinent Lease Provisions</u>

6. The WITNESSETH clause of the Initial Lease provides that Tenant shall pay all debts and dues rising under the Lease in advance on the first (1st) day of each month.

7. Article 38(b) of the Initial Lease provides, in pertinent part:

> "38. Adjustments of Rents
>
> (a) As used in this Article 38 the words and terms which follow mean and include the following:
>
> (1) "Tax Year" shall mean each period of twelve months, commencing on the first day of July of each such period, in which occurs any part of the term of this lease or such other period of twelve months occurring during the term of this lease as hereafter may be duly adopted as the fiscal year for real estate tax purposes of the City of New York.
>
> (2) "Tenant's Proportionate Share" shall mean 20%.
>
> (3) "Real Estate Taxes" shall mean (i) the real estate taxes and assessments (including special or extraordinary assessments) and sewer and water rents imposed upon the building and

the land and (ii) any expenses incurred by Owner in contesting the foregoing. If, due to a future change in the method of taxation, any franchise, income, profit or other tax, however designated, shall be levied against Owner in substitution for, in whole or in part, or in lieu of any tax which would otherwise constitute a Real Estate Tax, such franchise, income, profit or other tax shall be deemed to be a Real Estate Tax for the purposes hereof and shall be deemed to be included in the term "Real Estate Taxes."

(4) "Real Estate Tax Base" shall mean one half of the aggregate Real Estate Taxes for the 1997/1998 and 1999 Tax Years (i.e. the Tax Year commencing July 1, 19'97and ending on June 30, 1998, and the Tax Year commencing July 1, 1998and ending June 30, 19,99.

(5) "Escalation Statement" shall mean a statement in writing signed by Owner, setting forth the amount payable by Tenant for a specified Tax Year pursuant to this Article 38.

(b) Commencing on January 1, 1999 Tenant shall pay as additional rent for each Tax Year a sum (hereinafter referred to as "Tenant's Tax Payment") equal to Tenant's Proportionate Share of the amount by which the Real Estate Taxes for such Tax Year exceed the Real Estate Tax Base, Tenant's Tax Payment for each Tax Year shall be due and payable in two equal installments, in advance, on the first day of each July, and January during each Tax Year, used upon the Escalation Statement furnished prior to the commencement of such Tax Year, until such time as a new Escalation Statement for a subsequent Tax Year shall become effective. If an Escalation Statement is furnished to Tenant after the commencement of a Tax Year in respect of which such Escalation Statement is rendered, Tenant shall, within 15 days thereafter, pay to Owner an amount equal to the amount of any underpayment of Tenant's Tax Payment with respect to such Tax Year and, in the event of an overpayment, Owner shall permit Tenant to credit against subsequent payments under this paragraph the amount of Tenant's overpayment. If there shall be any increase in Real Estate Taxes for any Tax Year, whether during or after such Tax Year, Owner shall furnish a revised Escalation Statement for such Tax Year, and Tenant's Tax Payment for such Tax Year shall be adjusted and paid substantially in the same manner as provided in the preceding sentence. If during the term of this Lease, Taxes are required to be paid (either to the appropriate taxing authorities or as tax escrow payments to a superior mortgagee) in full or in monthly, or other installments, on any other date or dates than as presently required, then at Owner's option, Tenant's Tax Payments shall be correspondingly accelerated or revised so that said Tenant's Tax Payments are due at least 30 days prior to the date payments are due to the taxing authorities or the superior mortgagee. The benefit of any discount for any early payment or prepayment of Taxes shall accrue solely to the benefit of Owner and such discount shall not be subtracted from Taxes. If the real estate tax fiscal year of The City of New York shall be changed during the term of this Lease, any Real Estate Taxes for such fiscal year, a part of which is included within a particular Real Estate Tax Year and a part of which is not so included, shall be apportioned on the basis of the number of days in such fiscal year included in the particular Tax Year for the purpose of making the computations under this paragraph.

(c) In the event that (i) the date of the expiration or other termination of this lease shall be a day other than the last day of a Tax Year or (ii) there is any increase in the size of the demised premises, then in such event in applying the provisions of this Article 38 with respect to any Tax Year in which such event shall have occurred, appropriate adjustments shall be made to reflect the occurrence of such event on a basis consistent with the principles underlying the provisions of this Article 38 taking into consideration (y) the portion of such Tax Year which shall have elapsed prior to the date of such expiration or termination and, (z) in the case of any such increase, the portion of the demised premises to which the same relates.

(d) Payments shall be made pursuant to this Article 38 notwithstanding the fact that an

Escalation Statement is furnished to Tenant after the expiration of the term of this lease.

(e) In case the Real Estate Taxes for any Tax Year or part thereof shall be reduced before Tenant shall have paid Tenant's Proportionate Share of any excess thereof in respect of such Tax Year, pursuant to Paragraph (b) hereof, the Real Estate Taxes for such Tax Year shall be deemed to include any expenses, including counsel fees, incurred by Owner in connection with reducing the assessed valuation and/or in obtaining such reduction.

(f) In no event shall the annual rental rate ever be reduced by operation of this Article 38 and the rights and obligations of Owner and Tenant under the provisions of this Article 38 with respect to any additional rent shall survive the termination of this lease.

(g) Owner's failure to render an Escalation Statement with respect to any Tax Year shall not prejudice Owner's right to thereafter render an Escalation Statement with respect thereto or with respect to any subsequent Tax Year.

(j) Each Escalation Statement shall be conclusive and binding upon Tenant unless within 30 days after receipt of such Escalation Statement Tenant shall notify Owner that it disputes the correctness of such Escalation Statement, specifying the particular respects in which such Escalation Statement is claimed to be incorrect. Any dispute relating to any Escalation Statement not resolved within 90 days after the giving of such Escalation Statement may be submitted to arbitration by either party pursuant to Article 57 hereof. Pending the determination of such dispute, Tenant shall pay additional rent in accordance with the Escalation Statement that Tenant is disputing, without prejudice to Tenant's position."

8. Article 4 of the 2014 LMA provides, in pertinent part:

"4. Paragraph #38 of the Lease Agreement dated March 1.1998 which refers to additional rent due resulting from increased real estate taxes will remain in full force and effect with the original years as specified."

9. Article 4 of the 2020 LMA provides, in pertinent part:

> "4. Paragraph #38 of the Lease Agreement dated March 1, 1998 and paragraph 4 of the Agreement to Modify dated February 1, 2014 which refers to additional rent due resulting from increased real estate taxes will remain in full force and effect except for the change of the base year to 2019/2020 and elimination of the 2 1/2% limitation specified in part #51 (3) (b) (iii)."

10. Article 5 of the 2020 LMA provides, in pertinent part:

> "Paragraph #51 of the Lease Agreement dated March 1, 1998 and paragraph 5 of the Agreement to Modify dated February 1, 2014 are deleted in their entirety and replaced with the following:
>
> Commencing with operations specified in paragraph 1 above BSWR, Inc, agrees to pay in addition to the increases specified in paragraph 4 the following "Base rents" for the balance of the lease;:
>
> a. $10,000.00 per month ($120,000.00 per year) or 8% (eight percent) of monthly sales (not to exceed 8% of annual Percentage Lease Year sales) whichever is higher.
> b. An additional 1% (one percent of sales until the rent abated in paragraph 3 is repaid.
> c. Percentage Rent Lease Year shall mean each period of twelve consecutive calendar months, commencing on first calendar day of the month Base rent begins and ending on the last day of the calendar month that is twelve months later, during the term of the Lease.
> d. Percentage Rent Rate shall mean 9% of Gross Sales. Gross Sales shall not include sales tax.
> e. Tenant shall report Gross Sales as defined within thirty days of end of each month.
> f Thirty days after the end of the Percentage Lease Year the final rent adjustment will be made for that percentage lease year. Balance if any up or down will be paid or refunded as the case my be at that time.

> g. Landlord will have the right to audit sales once each year upon giving 30 days notice and Tenant shall present all information reasonably requested."

11. The default provisions of the Lease are set forth in Article 17(1) and 17(2) of the Initial Lease, which provide, in pertinent part, that:

> "(1) If Tenant defaults in fulfilling any of the covenants of this lease or if the demised premises become vacant or deserted; or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if this lease be rejected under Section 365 of Title II of the U.S. Code (Bankruptcy Code); then, in any one or more of such events, upon Owner serving a written five (5) days notice upon Tenant specifying the nature of said default and upon the expiration of said five (5) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said five (5) day period, and if Tenant shall not have diligently commenced curing such default within such five (5) day period, and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default, then Owner may serve a written three (3) days notice of cancellation of this lease upon Tenant, and upon the expiration of said three (3) days, this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such three (3) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.
>
> (2) If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid [sic]: or if Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required; then and in any of such events Owner may without notice, re-enter the demised premises either by force or

otherwise, and dispossess Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of demised premises and remove their effects and hold the premises as if this lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end."

12. Article 27 of the Initial Lease provides, in pertinent part:

> "Except as otherwise in this lease provided, a bill, statement, notice or communication which Owner may desire or be required to give to Tenant. shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the building of which the demised premises form a part or at the last known residence address or business address of Tenant or left at any of the aforesaid premises addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed, or left at the premises as herein provided. Any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice."

13. Article 18 of the Initial capped Lease provides as follows:

> "**Remedies of Owner and Waiver of Redemption:** 18. In case of any such default, re-entry, expiration and/or dispossess by summary proceedings or otherwise, (a) the rent, and additional rent, shall become due thereupon and be paid up to the time of such re-entry, dispossess and/or expiration. (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent (for a commercially reasonable period of time) or charge a higher rental than that in this lease. and/ or (c) Tenant or the legal representatives of Tenant shall also pay

Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the subsequent lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of the term of this lease. The failure of Owner to re-let the premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there, shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, attorneys' fees, brokerage, advertising and for keeping the demised premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease. Owner. in putting the demised premises in good order or preparing the same for re-rental may, at Owner's option, make such alterations, repairs, replacements, and/or decorations in the demised premises as Owner, in Owner's sole judgement. considers advisable and necessary for the purpose of re-letting the demised premises, and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability. Owner shall in no event be liable in any way whatsoever for failure to re-let the demised premises, or in the event that the demised premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rent collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant or any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by .or under any present or future laws."

14. Article 19 of the Initial Lease provides as follows:

> "**Fees and Expenses:** 19. If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed. or performed under or by virtue of any of the terms or provisions in any article of this lease, then, unless otherwise provided elsewhere in this lease, Owner may immediately or at any time thereafter and. without notice perform the obligation of Tenant thereunder, and if Owner, in connection therewith or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including but not limited to attorney's fees, in instituting, prosecuting or defending any actions or proceeding, such sums so paid or obligations incurred with interest and costs shall be deemed to be additional rent hereunder and shall be paid by Tenant to Owner within five (5) days of rendition of any bill or statement to Tenant therefor, and if Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Owner as damages."

15. Article 24, the "No Waiver" clause of the Initial Lease, provides:

> "**No Waiver:** 24. The failure of Owner to seek redress for violation of. or to insist upon the strict performance of any covenant or condition of this lease or of any tat the Rules or Regulations set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Owner of rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Owner unless such waiver be in writing signed by Owner. No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and

> Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed in acceptance of a surrender of said premises and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of said premises prior to the termination of the lease and the delivery of keys to any such agent or employee shall not operate as a termination of the lease or a surrender of the premises."

C. **The Lease is Terminated as a Result of Tenant's Defaults**

16. By service of the Five (5) Business Day Notice of Default dated June 11, 2026 (the "Default Notice"), Landlord notified Tenant that Tenant has violated Article 5 of the 2020 LMA, the Lease, and a substantial obligation of its tenancy by: (a) failing to report Gross Sales within thirty (30) days of end of each month, and (b) failing to pay base rent in the amount of $10,000.00 per month ($120,000.00 per year) or 8% (eight percent) of monthly sales (not to exceed 8% of annual Percentage Lease Year sales) whichever is higher, and an additional 1% (one percent) of sales until the rent abated in paragraph 3 of the 2020 LMA is repaid, and additional rent as defined in the Lease, including, but not limited to, real estate taxes as described in paragraph 4 of the 2020 LMA.

17. Tenant was also notified that it has violated the Lease and a substantial obligation of its tenancy by failing to: (a) report Gross Sales within thirty (30) days of end of each month and (b) pay base rent in the amount of $10,000.00 per month ($120,000.00 per year) or 8% (eight percent) of monthly sales (not to exceed 8% of annual Percentage Lease Year sales) whichever is higher, and an additional 1% (one percent of sales until the rent abated in paragraph 3 of the 2020

LMA is repaid, and additional rent as defined in the Lease, including, but not limited to, real estate taxes as described in paragraph 4 of the 2020 LMA.

18. The Default Notice provided for a cure date of June 22, 2026 (the "Cure Date"), whereby Tenant was required to cure the aforementioned defaults by (a) reporting to Landlord the Gross Sales of the Premises for the last twelve (12) months; and (b) paying the rent in the amount of $10,000.00 per month ($120,000.00 per year) or 8% (eight percent) of monthly sales (not to exceed 8% of annual Percentage Lease Year sales) whichever is higher, and an additional 1% (one percent of sales until the rent abated in paragraph 3 of the 2020 LMA is repaid, and additional rent as defined in the Lease, including, but not limited to, real estate taxes as described in paragraph 4 of the 2020 LMA.

19. The Default Notice further provided that upon Tenant's failure to cure said defaults on or before the Cure Date, Landlord may avail itself of all of its rights and remedies under the Lease and applicable provisions of law, including, without limitation, seeking to recover possession of the Premises in accordance with Article 17 of the Lease and/or applicable law.

20. Tenant failed to cure the defaults specified in the Default Notice by the Cure Date of June 22, 2026.

21. As a result, Landlord served Tenant with a Three (3) Day Notice of Cancellation dated July 1, 2026, (the "Cancellation Notice"), informing Tenant that, as a result of its failure to cure the lease violations specified in the Default Notice by the Cure Date of June 22, 2026, and pursuant to Article 17 of the Initial Lease, Landlord was electing to cancel and terminate the Lease, effective as of July 13, 2026 (the "Termination Date").

22. The Cancellation Notice further provided that, effective as of the Termination Date, the Lease and the term and all rights of Tenant under the Lease shall end and expire, but Tenant shall remain liable for damages as set forth in the Lease and pursuant to applicable law.

23. The Cancellation Notice advised Tenant that it was required to quit, vacate, and surrender possession of the Premises to Landlord on or before the Termination Date, and that upon Tenant's failure to quit, vacate, and surrender possession thereof, Landlord may exercise its rights and remedies available under the Lease, at law or in equity.

24. The Cancellation Notice further provided that it was sent "without prejudice to Landlord's rights and remedies, and that Landlord reserves the right to seek and collect any and all amounts due under the Lease or that may become due under the Lease including, without limitation, any and all costs, late fees, interest and/or legal fees permitted by the Lease and/or applicable law."

25. Tenant remains in occupancy of the Premises beyond the Termination Date without Landlord's consent.

26. Landlord has not received any payments of rent, additional rent, percentage rent and/or use and occupancy from Tenant subsequent to the Termination Date.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Lease)

27. Landlord repeats and realleges paragraphs "1" through "26" above as if fully set forth herein.

28. The Lease is a valid and binding contract between the parties.

29. Tenant has defaulted under the Lease as specified above and presently owes Landlord $43,432.16 in past due rent, additional rent and percentage rent, representing a balance

of $7,810.72 for May 2026, $17,810.72 for June 2026 and $17,810.72 for July 2026 (the "Arrears").

30. Landlord has complied with all obligations on Landlord's part to be performed under the Lease.

31. As a result of Tenant's default as aforesaid, Landlord is entitled to a money judgment against Tenant for the Arrears in the amount of $43,432.16. plus interest.

AS AND FOR A SECOND CAUSE OF ACTION
(Specific Performance)

32. Landlord repeats and realleges paragraphs "1" through "31" above as if fully set forth herein.

33. Article 5 of the 2020 LMA ("Article 5") provides as follows:

> "Paragraph #51 of the Lease Agreement dated March 1, 1998 and paragraph 5 of the Agreement to Modify dated February 1, 2014 are deleted in their entirety and replaced with the following:
>
> Commencing with operations specified in paragraph 1 above BSWR, Inc, agrees to pay in addition to the increases specified in paragraph 4 the following "Base rents" for the balance of the lease;:
>
> a. $10,000.00 per month ($120,000.00 per year) or 8% (eight percent) of monthly sales (not to exceed 8% of annual Percentage Lease Year sales) whichever is higher.
>
> b. An additional 1% (one percent of sales until the rent abated in paragraph 3 is repaid.
>
> c. Percentage Rent Lease Year shall mean each period of twelve consecutive calendar months, commencing on first calendar day of the month Base rent begins and ending on the last day of the calendar month that is twelve months later, during the term of the Lease.

> d. Percentage Rent Rate shall mean 9% of Gross Sales. Gross Sales shall not include sales tax.
>
> e. Tenant shall report Gross Sales as defined within thirty days of end of each month.
>
> f Thirty days after the end of the Percentage Lease Year the final rent adjustment will be made for that percentage lease year. Balance if any up or down will be paid or refunded as the case my (sic) be at that time.
>
> g. Landlord will have the right to audit sales once each year upon giving 30 days notice and Tenant shall present all information reasonably requested."

34. As indicated in the Default Notice, Tenant has failed to report Gross Sales within thirty (30) days of the end of each month, as required by subdivision (e) of Article 5, despite Landlord's repeated demands for compliance.

35. Tenant's failure to report Gross Sales as required under Article 5 has interfered with and prevented Landlord from exercising the right, afforded to Landlord under subdivision (g) of Article 5 "to audit sales once each year upon giving 30 days notice … ."

36. Tenant's failure to comply as aforesaid with Article 5 has also prevented Landlord from computing the rent due pursuant to subdivisions (a) and (b) of Article 5, and has effectively precluded Landlord from being able to make the "final rent adjustment" referred to in subdivision (f) of Article 5.

37. Under Article 18 of the Initial Lease, Landlord is afforded the remedy of injunction if, as here, Tenant has failed to perform any of its obligations under the Lease.

38. As Article 18 provides, the remedy of injunction is contractual and may be exercised in conjunction with or in lieu of any other remedy available to Landlord under the Lease or applicable law.

39. Given Tenant's failure to respond both to Landlord's informal demands for compliance and to the formal demand set forth in the Default Notice for the submission of such Gross Sales statements, Landlord is forced to seek injunctive relief in the form of a decree directing Tenant to specifically perform its respective obligations under Article 5 of the 2020 LMA for all periods for which Tenant was required to report Gross Sales both before and after the Termination Date for as long as Tenant remains in possession of the Premises..

40. Landlord has no adequate remedy at law and will sustain irreparable harm and injury absent the injunctive relief of specific performances requested herein.

41. Based on the foregoing, Landlord is entitled to and is hereby requesting that the Court specifically direct Tenant to comply strictly with its obligations under Article 5 of the 2020 LMA for as long as Tenant remains in possession of the Premises and uses the Premises for the operation of its restaurant, including, without limitation, the timely submission of monthly Gross Sales statements.

42. Tenant should also be directed by the Court to provide monthly statements of Gross Sales for all periods for which such statements were not provided.

AS AND FOR A THIRD CAUSE OF ACTION
(Permanent Injunction)

43. Landlord repeats and realleges paragraphs "1" through "42" above as if fully set forth herein.

44. Based on Tenant's aforementioned defaults in performing its obligations under the Lease, it is unlikely that, unless enjoined, Tenant would adhere to its obligations under the Lease, which continue through Tenant's holdover tenancy.

45. Consequently, and in accordance with the right afforded Landlord under Article 18 of the Initial Lease to the remedy of injunction, Landlord is entitled to and is here seeking an

injunction temporarily, preliminarily and permanently enjoining Tenant from continuing to violate its obligations under the Lease for as long as Tenant remains in occupancy of the Premises as a holdover and compelling Tenant to comply with all other obligations under the Lease for as long as it occupies the Premises, including but not limited to the obligation to provide insurance coverage in accordance with the requirements of the Lease and the obligation to report Gross Sales and pay percentage rent as required under Article 5 of the 2020 LMA.

46. Tenant will not be prejudiced or harmed by being compelled to comply with its leasehold obligations for as long as it remains in occupancy of the Premises as a holdover.

47. In contrast, Landlord has been and would be prejudiced by being deprived of the benefits of its bargain under the Lease, resulting in irreparable injury to Landlord.

48. As such, the equities clearly balance in favor of Landlord and against Tenant and justify the granting of the injunctive relief herein requested.

49. By reason of the foregoing, Landlord is entitled to an injunction, temporarily, preliminarily and permanently enjoining Tenant from continuing to violate its obligations under the Lease for as long as Tenant remains an occupancy of the Premises as a holdover, and compelling Tenant to comply with all other obligations under the Lease for as long as Tenant occupies the Premises, including but not limited to the obligation to provide insurance coverage in accordance with the requirements of the Lease and the obligation to report Gross Sales and pay percentage rent as required under Article 5 of the 2020 LMA.

50. Landlord has no adequate remedy at law and is contractually entitled to the remedy of injunction pursuant to Article 18 of the Lease.

AS AND FOR A FOURTH CAUSE OF ACTION
(Ejectment)

51. Landlord repeats and realleges paragraphs "1" through "50" above as if fully forth herein.

52. The Lease and Tenant's tenancy at the Premises expired as of the Termination Date (July 13, 2026).

53. As a result, Tenant does not have any right to remain in occupancy of the Premises beyond the Termination Date.

54. Tenant remains in possession of the Premises notwithstanding the cancellation of the Lease effective as of the Termination Date.

55. Tenant's possession of the Premises is without Landlord's consent or permission.

56. As a result of the termination of the Lease and Tenant's continued occupancy of the Premises after the Termination Date as aforesaid, Landlord is entitled to immediate possession of the Premises pursuant to Article 6 of the New York Real Property Actions and Proceedings Law and is hereby seeking a judgment of ejectment.

57. By reason of the foregoing, Landlord is seeking and entitled to obtain:

(a) a judgment declaring that Landlord is entitled to immediate possession of the Premises;

(b) the issuance of a Judgment and Order of Ejectment for the Premises removing Tenant and any other occupants therefrom, and putting Landlord into immediate vacant possession of the Premises; and

(c) an order directing the Sheriff to eject Tenant and any other occupants there in from the Premises by any means necessary and deliver legal possession of the Premises to Landlord.

AS AND FOR A FIFTH CAUSE OF ACTION
(Use and Occupancy)

58. Landlord repeats and realleges paragraphs "1" through "57" above as if fully set forth herein.

59. As a result of Tenant remaining in occupancy beyond the Termination Date without Landlord's consent, Tenant is a holdover and liable for the reasonable and fair value of its use and occupancy of the Premises at a monthly rate to be determined by the Court but no less than $17,810.72, which was the last amount of rent, additional rent and percentage rent due pursuant to the Lease.

60. Tenant has not paid any rent and/or use and occupancy since the Termination Date.

61. Landlord is therefore entitled to recover use and occupancy at a rate to be determined by the Court but no less than $17,810.72 per month for each month that Tenant remains in occupancy of the Premises beyond the Termination Date and through the date that Landlord ultimately recovers vacant possession of the Premises.

62. It is anticipated that Tenant will not make any payments to Landlord for use and occupancy or otherwise unless directed to do so by the Court and absent such court direction, arrearages in use and occupancy will accrue and continue to accrue month by month until Landlord recovers possession of the Premises.

63. Landlord hereby reserves the right, either at trial or upon a dispositive motion, to amend this cause of action to conform to the proof as to the total amount of use and occupancy then due and payable to Landlord through the date Landlord ultimately obtains possession of the Premises.

64. By reason of the foregoing, Landlord is entitled to a money judgment against Tenant in an amount to be determined by the Court, plus interest.

AS AND FOR A SIXTH CAUSE OF ACTION
(Post-Termination Damages as Per the Lease)

65. Landlord repeats and realleges paragraphs "1" through "64" above as if fully set forth herein.

66. Article 18 of the Initial Lease provides for the damages to which Landlord is entitled because of the early termination of the Lease based on Tenant's default.

67. The damages include loss of rent, Landlord's recovery of the costs of re-renting the Premises, including brokerage fees, attorneys' fees, rent concessions and any other costs incurred with respect to such re-rental of the Premises, which charges accrue, as provided for in Article 18, on a monthly basis through the stated Expiration Date of the Lease, which is February 28, 2030.

68. Landlord is accordingly entitled to recover a money judgement against Tenant in an amount to be determined by the Court, plus interest.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Attorneys' Fees)

69. Landlord repeats and realleges paragraphs "1" through "68" above as if fully set forth herein.

70. Pursuant to Article 19 of the Initial Lease, Tenant is liable to Landlord for the reasonable attorneys' fees, costs and disbursements incurred by Landlord as a result of Tenant's defaults under the Lease, and with respect to the pursuit and prosecution by Landlord of the instant action.

71. Landlord has incurred and will incur attorneys' fees, costs and disbursements in connection with Tenant's breach of the Lease and the prosecution of this action, which are continuing to accrue as the action proceeds.

72. By reason of the foregoing, Landlord is entitled to a money judgment against Tenant in an amount to be determined by the Court but believed to be no less than $50,000 plus interest.

WHEREFORE, Landlord requests judgment against Tenant as follows:

(a) on the first cause of action, a money judgment in the amount of $43,432.16, plus interest;

(b) on the second cause of action, an order specifically directing Tenant to comply with each of its obligations under Article 5 of the 2020 LMA with respect to the reporting of Gross Sales and the payment of percentage rentals based on such Gross Sales for all periods both before and after the Termination Date of the Lease for which Tenant has not provided such Gross Sales statements, and further directing Tenant to comply strictly with its obligations under Article 5 of the 2020 LMA for as long as Tenant remains in occupancy and in business at the Premises;

(c) on the third cause of action, a judgment permanently enjoining Tenant from continuing to violate its obligations under the Lease for as long as Tenant remains in occupancy of the Premises as a holdover and compelling Tenant to comply with all other obligations under the Lease for as long as it occupies the Premises, including but limited to, the obligation to provide insurance coverage in accordance with the requirements of the Lease and the obligation to report Gross Sales and pay percentage rent as required under Article 5 of the 2020 LMA;

(d) on the fourth cause of action:

(i) a judgment declaring that Landlord is entitled to immediate possession of the Premises;

(ii) the issuance of a Judgment and Order of Ejectment to remove Tenant from the Premises and putting Landlord into immediate possession of the Premises;

(iii) an order directing the Sheriff to eject Tenant from the Premises by any means necessary so as to deliver legal possession of the Premises to Landlord;

(e) on the fifth cause of action, a money judgment against Tenant in an amount to be determined by the Court, plus interest;

(f) on the sixth cause of action, a money judgment against Tenant and an amount to be determined by the Court, plus interest;

RE\29983\0001\8302025v1

(g) on the seventh cause of action, a money judgment against Tenant in an amount to be determined by the Court, but believed to be no less than $50,000, plus interest; and

(h) awarding Landlord the costs and disbursements of this action and such other and further relief as may be just and proper.

Dated: New York, New York
July 27, 2026

ROSENBERG & ESTIS, P.C.
Attorneys for Plaintiff

By: Norman Flitt
Norman Flitt
11 Grand Central East
New York, New York 10017
(212) 867-6000

TO: BSWR, INC. A/K/A BWRS, INC.
D/B/A SARABETHS UPPER
WEST SIDE
423 Amsterdam Avenue
Street Level Store
New York, New York 10024

RE\29983\0001\8302025v1