

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
BUSINESS LITIGATION SESSION

AMERICA'S TEST KITCHEN INC., as the Sole General  
Partner of America's Test Kitchen Limited Partnership,

Plaintiff,

v.

CHRISTOPHER KIMBALL, CPK MEDIA, LLC,  
MELISSA BALDINO, CHRISTINE GORDON, and  
DEBORAH BROIDE doing business as Deborah Broide  
Publicity,

Defendants.

**COMPLAINT**

America's Test Kitchen offers home cooks a novel proposition: the relentless testing of recipes by a kitchen of cooks will ultimately deliver the best recipes and in-depth writing about the recipe development process teaches readers the fundamentals of cooking. Home cooks throughout the United States trust America's Test Kitchen recipes, cooking techniques and product reviews for the perfect meatloaf, chocolate chip cookie, Thanksgiving turkey, and much more. These recipes, techniques and reviews are showcased on America's Test Kitchen's public television and radio programs, magazines, books, websites and cooking school. Christopher Kimball, a former executive and a current owner of America's Test Kitchen, made a handsome living as the public face and voice of this concept. He purveyed a brand that became synonymous with trust. But America's Test Kitchen has recently discovered that the trust it placed with Mr. Kimball was misplaced.

Mr. Kimball spent the last year of his employment with America's Test Kitchen creating a new venture which literally and conceptually ripped off America's Test Kitchen. To quickly break into the marketplace with a viable and recognizable company, Mr. Kimball stole confidential information from America's Test Kitchen, solicited America's Test Kitchen's employees and outside relationships and misappropriated corporate opportunities belonging to America's Test Kitchen. He has carefully made "Christopher Kimball's Milk Street" in the image of "America's Test Kitchen" to convince potential customers that his new venture is a revamped and enhanced version of America's Test Kitchen. Along the way he has received substantial assistance from former America's Test Kitchen contributors, including employees Melissa Baldino and Christine Gordon; and consultant Deborah Broide.

This case is not about legitimate competition -- it is about a profoundly disloyal fiduciary. America's Test Kitchen seeks damages for Mr. Kimball's various acts of disloyalty as aided and abetted by others; and permanent injunctive relief to prevent Mr. Kimball and his new company from exploiting information, assets, and opportunities stolen from America's Test Kitchen.

### **PARTIES**

1. America's Test Kitchen Inc. ("ATK Inc.") is a corporation organized under the laws of Delaware and has a principal place of business at 17 Station Street, Brookline, Massachusetts. It is the sole General Partner of America's Test Kitchen Limited Partnership ("ATK"), the entity that owns and operates the suite of America's Test Kitchen multimedia publications and productions. ATK Inc. has authority to assert the rights of ATK.

2. Upon information and belief, Christopher Kimball resides at 23 Buckingham Street, Cambridge, Massachusetts and is a founder of CPK Media, LLC.

3. CPK Media, LLC (“CPK Media”) is a limited liability company organized under the laws of Delaware and has a principal place of business at 177 Milk Street, Boston, Massachusetts. On information and belief, CPK Media owns and operates “Christopher Kimball’s Milk Street” business and related multimedia publications and productions.

4. Upon information and belief, Melissa Baldino is the wife of Mr. Kimball, resides at 23 Buckingham Street, Cambridge, Massachusetts, and is an employee of CPK Media.

5. On information and belief, Christine Gordon resides at 23 Woodridge Lane, Exeter, New Hampshire, was formerly employed by ATK, and currently works in CPK Media’s offices at 177 Milk Street, Boston, Massachusetts.

6. On information and belief, Deborah Broide does business as Deborah Broide Publicity, resides at 8 Columbus Avenue, Montclair, New Jersey, and has contracted to perform services within the Commonwealth of Massachusetts, including for ATK.

### **JURISDICTION AND VENUE**

7. The Court has personal jurisdiction over Christopher Kimball and Melissa Baldino pursuant to M.G.L. c. 223A, § 2 as persons domiciled in Massachusetts and pursuant to § 3 as persons who transacted business in Massachusetts, contracted to supply services in Massachusetts, and caused tortious injury by an act or omission in Massachusetts.

8. The Court has personal jurisdiction over CPK Media pursuant to M.G.L. c. 223A, § 2 as a company with a principal place of business in Massachusetts and pursuant to § 3 for transacting business in Massachusetts, contracting to supply services in Massachusetts, and causing tortious injury by an act or omission in Massachusetts.

9. The Court has personal jurisdiction over Christine Gordon and Deborah Broide pursuant to M.G.L. c. 223A, § 3 as persons who transacted business in Massachusetts, contracted

to supply services in Massachusetts, and caused tortious injury by an act or omission in Massachusetts.

10. Venue is appropriate pursuant to M.G.L. c. 223, § 1.

### **FACTUAL ALLEGATIONS**

#### **A. America's Test Kitchen**

11. ATK's predecessor, Auchincloss, Wadsworth & Co. Limited Partnership, was founded by current ATK Board member and partner, Eliot Wadsworth, in approximately 1990. Mr. Wadsworth hired Mr. Kimball and others to focus on publishing a sophisticated consumer publication about alternative health, called Natural Health. At the time of his hiring, Mr. Kimball was unemployed and working on a possible magazine launch. Mr. Wadsworth recruited other partners to help him in funding the new business.

12. Eventually, over time with additional intervening name changes, the name of the venture was changed to Boston Common Press Limited Partnership ("Boston Common Press") and then later to America's Test Kitchen Limited Partnership. The partners of Boston Common Press and ATK provided all of the capital for the businesses. Mr. Kimball never personally invested any money in the venture under any name. Despite this lack of capital investment and the involvement of others, Kimball frequently misrepresents himself as the sole founder of ATK, which he is not.

13. ATK mainstreamed the concept of a test kitchen devoted to developing foolproof recipes for the home cook.

14. ATK subjects a food recipe to rigorous testing to develop a progressively better way of preparing the recipe. ATK subjects a recipe to upwards of 100 rounds of testing. Through

relentless testing and food science, ATK aims to expose a recipe's fundamental problems and offer solutions, often surprising ones, for a perfected version of that recipe.

15. ATK developed and owns a number of products, productions, and publications founded on the test kitchen concept. They include magazines (e.g. *Cook's Illustrated*® and *Cook's Country*®), television shows (e.g. America's Test Kitchen® and Cook's Country®), a radio show (America's Test Kitchen Radio®), books (e.g., *Cook's Science*®), podcasts (ATK Radio™), online education and websites, including americastestkitchen.com, cooksillustrated.com, cookscountry.com, cooksscience.com, and onlinecookingschool.com.

i. Cook's Illustrated®

16. ATK's predecessor-in-name, Boston Common Press, launched the test kitchen concept with the publication of *Cook's Illustrated* in 1993. Mr. Kimball served as editor until November 2015.

17. *Cook's Illustrated* is a bi-monthly publication. A typical issue contains the following features:

- a. An industry unique 32-page count and 3-column layout;
- b. An industry unique "no ads" reader experience;
- c. A table of contents insert;
- d. A Page 1 editor's note. When Mr. Kimball served as editor, Page 1 featured "Letters from Vermont," folksy, nostalgic odes penned by Mr. Kimball celebrating Vermont traditions, virtues, and characters;
- e. Recipes (e.g., "The Best Pan-Seared Salmon," "Perfect Sticky Buns"). The heart of the magazine. Narrated as case studies that begin with a statement of the recipe's problems or challenges and apply food science to solve these problems and create a "foolproof" version of the recipe. The recipes section also recommends ingredient substitutions, provides warnings to the home cook, and includes sidebars on general cooking techniques and topics in food science;

- f. Product Reviews (e.g., “The Best Gas Grill under \$500”);
- g. Taste tests (e.g., air-chilled chickens taste better than water-chilled chickens) (*Cook’s Illustrated* September 2012);
- h. A Page 32 “Equipment Corner” that reviews and recommends kitchen equipment and gadgets (e.g., flat whisks and barbeque basting brushes).

18. *Cook’s Illustrated* operates on a subscription model. It currently has total print, digital, and web circulation of more than 1 million paid subscribers.

19. *Cook’s Illustrated* has its own website, [www.cooksillustrated.com](http://www.cooksillustrated.com). The website contains recipes, equipment reviews, taste tests, buying guides, and instructional videos.

20. ATK owns all copyrighted material relating to *Cook’s Illustrated*.

21. *Cook’s Illustrated* proved an immediate success and helped fuel the growth of ATK.

ii. America’s Test Kitchen Television and Radio Shows

22. ATK brought *Cook’s Illustrated* to public television in 2001 in a half-hour long cooking show called “America’s Test Kitchen®”

23. Mr. Kimball hosted the television show from 2001 through 2016.

24. America’s Test Kitchen is currently set in ATK’s 2,500 square foot test kitchen in Brookline, Massachusetts.

25. A typical episode contains the following segments:

- a. Two recipe segments with lively demonstration of why a recipe does not work and a smart improvement;
- b. A “Tasting Lab” segment where a tasting panel and (previously) Mr. Kimball perform taste tests of various products.
- c. An “Equipment Corner” segment that reviews and ranks kitchen equipment;

d. A “Science” segment that explains the chemistry behind fundamental cooking techniques;

e. A “Gadget Guru” segment that features reviews of kitchen gadgets.

26. America’s Test Kitchen has become public television’s most watched cooking show. In a typical month over 7 million unique viewers tune in to *America’s Test Kitchen* on TV.

27. ATK also has run an hour-long America’s Test Kitchen public radio show, America’s Test Kitchen Radio®, since 2012. Mr. Kimball hosted America’s Test Kitchen Radio from approximately 2012 through 2016.

28. Like the television show, America’s Test Kitchen Radio features recipe science, product and equipment reviews, and cooking tips. It also features interviews with players in the food industry and questions from callers.

29. ATK owns all copyrighted material related to America’s Test Kitchen and America’s Test Kitchen Radio.

iii. Cook’s Country®

30. Cook’s Country extended the America’s Test Kitchen brand to more casual country cooking.

31. ATK has published *Cook’s Country* magazine since 2005 and has produced the related Cook’s Country television show since 2008.

32. *Cook’s Country* magazine is a bi-monthly publication that alternates with *Cook’s Illustrated*. It shares many of the same features as *Cook’s Illustrated* rendered with more color and informality.

33. *Cook’s Country* also operates on a subscription model. It currently has total print, digital, and web circulation of 400,000 paid subscribers.

34. The Cook's Country television show was filmed in a renovated farmhouse in Rupert, Vermont. Mr. Kimball hosted the television show from 2008 through 2016. It shares the same basic structure and cast of America's Test Kitchen with a focus on comfort food. Cook's Country has become public television's second most watched cooking show. In a typical month over 6 million unique viewers tune in to *Cook's Country* on TV.

35. ATK owns all copyrighted material related to *Cook's Country* magazine and Cook's Country television.

**B. Christopher Kimball**

36. Eliot Wadsworth hired Mr. Kimball to work for ATK's predecessor in 1990. Since then, Mr. Kimball has held various positions of trust and confidence with ATK.

37. Mr. Kimball is a long-time limited partner of ATK, formerly known as Boston Common Press Limited Partnership, among other former names. Mr. Kimball remained a limited partner of ATK after his departure from ATK's employment.

38. Before his divorce in approximately 2012, Mr. Kimball owned approximately 19.2% of the partnership interests. Following his divorce, he now holds a reduced approximate 8.59% partnership interest in ATK.

39. Mr. Kimball's ex-wife, Adrienne Kimball, holds a 8.59% partnership interest in ATK.

40. The Kimball Children's Trust 2006 holds a 2% partnership interest in ATK.

41. Since ATK's inception, Mr. Kimball has received more than \$30 million in total partnership distributions from ATK. In 2016, he has already received approximately \$772,000 million in partnership distributions from ATK.



42. Mr. Kimball executed the Third Amended and Restated Agreement of Limited Partnership (“Partnership Agreement”). The Partnership Agreement, as duly amended from time to time, governs, in part, Mr. Kimball’s rights and duties as a “continuing limited partner” of ATK.

43. Mr. Kimball also has held himself out to his ATK partners, employees, and the public as ATK’s “founder” and first “CEO” and “Publisher” (the typical title of the CEO of a publishing company).

44. Irrespective of formal title, Mr. Kimball functioned as the CEO of ATK from its inception until the appointment of a new CEO in September 2015 and as a key executive until his departure on November 16, 2015. Throughout his tenure with ATK, Kimball also acted as a *de facto* general partner by exercising control over all aspects of ATK’s business, staff, and creative content.

45. Mr. Kimball’s employment responsibilities included serving as editor-in-chief of ATK’s magazines and host of ATK’s television and radio shows. In these roles, Mr. Kimball served as the public face and voice of ATK. These roles also afforded Mr. Kimball autonomous control over the creative direction and output of ATK.

46. In exchange for Mr. Kimball’s employment services, ATK paid Mr. Kimball an annual base salary, benefits, and bonuses. In 2015, ATK paid Mr. Kimball \$312,981 in salary and \$768,250 in bonuses. This compensation is in addition to the distributions he received as a limited partner.

47. Mr. Kimball’s January 1, 2003 employment agreement provides that “[d]uring the term of your employment, you agree that you will devote your full time and best efforts to the business of the Partnership, except to the extent otherwise agreed by you and the General Partner

in writing..." It further provides that "[w]e have agreed that your current working hours are acceptable to the General Partner and tantamount to a full time effort."

48. In 2003, ATK hired Melissa Baldino as Mr. Kimball's executive assistant. In 2006, Mr. Kimball elevated Ms. Baldino to various positions and eventually to executive producer of ATK's television and radio shows. ATK paid Ms. Baldino an annual salary and benefits. Mr. Kimball also hired Ms. Baldino's sister and her father.

49. In 2013, Ms. Baldino and Mr. Kimball married.

50. Ms. Baldino's employment agreement imposed the following obligations, among others, on Ms. Baldino:

- a. "I will not disclose or use at any time without the prior written consent of BCP [Boston Common Press], either during or subsequent to my employment, any secret, proprietary or confidential information of BCP, which I obtain during my employment..."
- b. "I will deliver to BCP, upon termination of my employment, all drawings, manuals, letters, notes, notebooks, reports, charts, records, plans, lists, tapes, films, graphics, computer media and all other material of a secret, proprietary or confidential nature, including copies, that relate to BCP's business and are in my possession or control."
- c. "I will not during my employment with BCP directly or indirectly engage or assist any other person to engage in any activity competitive with any business conducted or contemplated by BCP without the express written permission of BCP."
- d. "I will not during my employment with BCP cause or attempt to cause any employee or consultant of BCP to cease to be employed by or cease to make his or her services available to BCP."

51. Ms. Baldino acknowledged in her employment agreement that "a violation of this agreement by me could cause irreparable damage to BCP and that in the event of a violation by me BCP shall have, in addition to any and all claims for monetary damages, the right to a temporary restraining order, preliminary injunction, permanent injunction, order of specific

performance and other equitable relief to prevent the violation of any obligations under this agreement.”

52. In November 2009, ATK hired Christine Gordon as Mr. Kimball’s executive assistant. ATK paid Ms. Gordon an annual salary and benefits through 2015.

53. In her employment agreement, Ms. Gordon acknowledged that “a violation of this agreement by me could cause irreparable damage to BCP and that in the event of a violation by me BCP shall have, in addition to any and all claims for monetary damages, the right to a temporary restraining order, preliminary injunction, permanent injunction, order of specific performance and other equitable relief to prevent the violation of any obligations under this agreement.”

54. By virtue of his employment as its most senior executive, Mr. Kimball enjoyed unrestricted access to ATK’s confidential information. He had access to secure databases, customer lists and email addresses, subscriber information, recipes, media contacts, financial information, company contracts, and sponsorship programs.

55. By virtue of his employment as its most senior executive, Mr. Kimball formed relationships with ATK’s sponsors, vendors, distributors, production companies, media outlets, consultants, and freelancers.

C. **Mr. Kimball’s Breach of Trust and Disloyalty to His Partners and ATK Employees**

56. Beginning in approximately 2013, ATK’s Board and Kimball began to have discussions about building a long-term succession plan for the Board and management to address the growth of the company and a rapidly changing marketplace. The plan involved reinforcing the management capacity of ATK through the hiring of professional executives, including a formal COO and CEO, and Board members who had more media industry experience.

57. Mr. Kimball openly and candidly acknowledged his management indifference and shortcomings to the Board and to third-parties. In 2009, Mr. Kimball stated in a Boston Globe article that “I’m a terrible manager. I don’t do it.” More recently, Mr. Kimball stated in an interview with Chicago Tonight that he was “probably not the guy” to run a company that had grown to ATK’s size and that “ATK should be run by somebody who likes to go to meetings and run businesses.”

58. By 2015, ATK and Mr. Kimball had agreed that new Board members with industry experience would assist in governance and that new management would free Mr. Kimball of the daily agitations of running a business and allow him to focus on ATK’s creative output.

59. Notwithstanding his management disinclinations and agreement with the Board, Mr. Kimball secretly resented giving up any control of the business. Rather than addressing the issue professionally with his partners and the Board, however, Kimball engaged in a conspiracy to build a competing venture while ATK worked to formalize a preliminary agreement in which Kimball would continue to serve as a leader and the external face of ATK.

60. Through a recent forensic review of ATK emails, ATK learned that Mr. Kimball stole confidential information, put in place measures to hide his activities, spent company funds on personal items and items for his new business, and secretly secured space for (using ATK’s name) and otherwise developed his competing venture. ATK expects discovery to add to this email trail.

*i. Mr. Kimball Uses ATK Resources and Consultants to Misappropriate ATK Information*

61. On June 1, 2015, Ms. Gordon emailed ATK’s IT “Help Desk”: “chris asked me to scan some confidential documents – do you know if the production scanner keeps a copy of

everything? or is there a way to ask it to not keep a copy?" On June 3, 2015, Mr. Kimball emailed Ms. Gordon and asked her to "scan those documents today please and forward to me." That same day Ms. Gordon emailed Mr. Kimball his employment agreement and various partnership documents.

62. On June 10, 2015, Mr. Kimball emailed Tom Hagopian, an IT consultant for ATK: "I want a private gmail account that is not part of the company servers/systems."

63. On August 5, 2015, Mr. Kimball emailed Tom Hagopian again: "Just want to make sure that if I use a gmail address, that my company has no access to this account. They can only get access to may ATK account, right?"

64. On August 10, 2015, Mr. Kimball emailed Mr. Hagopian: "I want to capture email addresses from folks who respond to my letter from VT to see photos that I post." These email addresses refer to customers of *Cook's Illustrated* and *Cook's Country* print and/or online magazines. They belong to ATK, not Mr. Kimball. As a marketing asset, the emails hold significant value to ATK, and would hold significant value to a rival startup. In fact, ATK assigns a certain value to each customer email address.

65. In August and September, 2015, Ms. Gordon contacted real estate brokers for commercial space in the Boston and Cambridge area. Specifically, Ms. Gordon requested sufficient capacity "for test kitchen." To give brokers a clear picture of the proposed use for the new space, Ms. Gordon invited them to view ATK's website. Ms. Gordon continued to correspond with brokers through at least October 5, 2015. She did so while on ATK company time and while fraudulently claiming that she represented ATK.

66. On October 1, 2015, Ms. Gordon received a lease proposal over email. The subject line of the email read: "America's Test Kitchen – 40 West Third." The proposal listed the

tenant as “TBD (d/b/a America’s Test Kitchen).” It listed the use as “office, film studio, and test kitchen.” Ms. Gordon solicited this proposal on behalf of Mr. Kimball’s new company – not ATK.

67. On August 28, 2015, Mr. Kimball received an email from Deborah Broide of Deborah Broide Publicity, a public relations consultant engaged by, and paid by, ATK. Ms. Broide wrote:

I’m sure you’ve thought of this already (and since your ATK email and your personal email are both google based, I’m sure this has already been done via the Cloud or something). Still, just in case – you want to be sure that you have all your ATK business contact info accessible via your personal gmail account, too.

Also, I’m not sure if Christine has your work related contact info (things that you wouldn’t have) but if so, you want to get all of that stuff too. I don’t know if Christine knows anything or not (you asked me to keep everything confidential. I’ve been very careful about that), but she may have info or lists etc. that you might want (and faster) because of this latest development (I truly can’t believe they would go through with it, but who knows).

68. Ms. Broide advised Mr. Kimball to take ATK business contact information and lists in connection with Mr. Kimball’s “confidential” plans.

69. Mr. Kimball forwarded Ms. Broide’s email to Ms. Gordon on the same day. Ms. Gordon responded on the same day: “I’ll have lee [her husband] back up my computer this weekend.”

70. Over that weekend, on August 29, 2015, Mr. Kimball emailed Ms. Gordon: “It seems likely that Melissa and I are going to be fired next week so let’s get a moving company in Monday (two guys) with boxes to pack up my stuff and remove it to storage. Want to get ahead of the partners!” ATK had no intention of firing Mr. Kimball or his wife, nor had it expressed such an intention to him. To the contrary, the Board had repeatedly expressed ATK’s “deep desire” to keep Mr. Kimball.

71. Mr. Kimball's August 29th email also stated that "I have first round funding in place so we need to move fast on the office space." Upon information and belief, Mr. Kimball was referring to funding he had put in place for what would become CPK Media and Christopher Kimball's Milk Street.

72. On August 31, 2015, Mr. Kimball emailed Mr. Hagopian: "I have deleted Melissa's business email address in the contact file but it still exists in the email software – how get rid of it?" When Mr. Hagopian explained how to "search" Ms. Baldino's email, Mr. Kimball responded: "I want to DELETE her business email, not find it."

73. On November 3, 2015, Ms. Broide emailed Mr. Kimball:

Please keep a copy of this for the new company. This is my list (culled from 24 years at ATK). This list is on the main server at ATK, although I haven't updated it in about 3 months (I have the updates though).

I just want to make sure that you have this list, too. I'm going to send you **two more** list [sic] (also stuff I created) for the new company. Again, these are lists are [sic] created for ATK. I don't think the national list is on the ATK server though.

(emphasis in original).

74. The subject line of Ms. Broide's email read "Core media list please review." These lists resided on ATK's password-protected server. They belonged to ATK. So did the "updates" that Ms. Broide had kept for herself and Mr. Kimball. To the extent Ms. Broide helped create these lists, she did so as a paid consultant for ATK. These media lists hold significant value to ATK, a multi-media company.

75. Mr. Kimball responded to Ms. Broide's email: "Thanks for all the lists – will archive. Hopefully nothing is going to happen to you – seems like an episode of Mission Impossible!" Mr. Kimball took ATK's media contact lists for use in his new venture. His allusion to "Mission Impossible" betrays his knowledge of surreptitious wrongdoing.

76. Also on November 3, 2015, Mr. Kimball emailed Mr. Hagopian: “I am scanning hundreds of recipes and want to annotate them by hand and then organize/store them in some Pinterest style program.” In the same email, he wrote: “Also, need to chat with you soon about setting up the new office.” Mr. Kimball sent a similar email to Ms. Gordon the same day that read: “Need to figure out the best way to scan, annotate, save and organize recipes.”

77. Mr. Kimball did not disclose any of these activities to ATK or his partners. To the contrary, during this time, he worked with the ATK Board on a “preliminary agreement” in which Mr. Kimball would serve “a continued leadership role” in ATK.

*ii. Mr. Kimball Develops A Competing Venture While Purporting to Work with His Partners on a New Arrangement for ATK*

78. On August 24, 2015, Eliot Wadsworth, President and board member of ATK Inc. and fellow partner to Kimball, emailed Mr. Kimball to confirm “points we agreed on this afternoon.” Mr. Wadsworth expressed ATK’s “deep desire to retain [Mr. Kimball’s] continued involvement with the business in areas where [his] skills and experience can make a contribution” and offered to maintain Mr. Kimball’s current level of compensation in salary and bonuses.

79. That same day, Mr. Kimball announced in a senior management meeting that he had been “fired” and would be starting a new company.

80. The next day, Mr. Kimball announced to ATK staff that he had been fired and that the Board and the new CEO would ruin the company. He also began secretly soliciting ATK employees to join him in his new venture. Specifically, that afternoon, Mr. Kimball called individual employees into his office to tell them that he was starting a new company and that he wanted to offer them positions in the new company. Mr. Kimball had not been fired, nor had he



been told he would be fired, at the time he made this announcement and began soliciting ATK employees.

81. In response, ATK called an urgent board meeting. ATK resolved to protect its employees from Mr. Kimball's advances. It called an all staff meeting to assure people that Mr. Kimball had not been fired and held "town hall" meetings to ease the tension created by Mr. Kimball's false declarations and false impression that ATK was on the verge of financial ruin.

82. ATK has suffered millions of dollars in damages to date. To retain key employees, ATK paid millions of dollars in bonuses and salary increases. But for Mr. Kimball's solicitations, ATK would not have had to pay retention bonuses. ATK has also been forced to spend significant money in legal fees and in the development and execution of a strategy to respond to Mr. Kimball's actions and CPK Media's unfair competition.

83. On September 1, 2015, Mr. Denny, an officer and director of ATK Inc. and one of Mr. Kimball's partners, emailed Mr. Kimball that "[w]e have been told that you have been meeting individually with employees to advise them that you are leaving to start a new company and recruiting them to join you." He continued: "If true, this would be at odds with your email to me, as well as with your fiduciary and legal duties to the company."

84. Mr. Denny's September 1st email reminded Mr. Kimball of his "legal duty to safeguard and not misappropriate any confidential or trade secret information and all intellectual property belonging to the company." He also urged Mr. Kimball to commit to "good faith" discussions concerning his relationship with ATK and to consider Mr. Wadsworth's August 24th offer to stay with the company.

85. On September 26, 2016, Mr. Kimball emailed ATK's Chief Creative Officer, Jack Bishop: "I'm not interested in going head to head with ATK – too much at stake financially and

I'm not that lame!" Coincidentally, in a 2016 interview with the Boston Globe, Mr. Kimball insisted that "it would be kind of lame to do the same thing again" in denying that his Milk Street venture would recreate America's Test Kitchen.

86. Despite these pronouncements, Mr. Kimball spent the Fall of 2015 (while being paid by ATK), developing a company which is identical to ATK in all respects and recruiting ATK's existing employees, consultants and partners to join him.

87. On September 28, 2015, Mr. Kimball emailed Mr. Hagopian: "First of all, no, I won't be coming into the office much. Am starting new company however and would love to have you work with us. Building out a major kitchen shortly but temp space until then." Mr. Kimball also mentioned wanting to hire someone "to build out my digital platform."

88. On October 12, 2015, Mr. Kimball mistakenly emailed David Nussbaum: "Need a top notch cookbook designer – have a few folks up here who are only so-so. Thoughts? Have a bunch of ideas for the books but want to start working on design concepts as well." Mr. Kimball acknowledged that he sent this email to the "wrong recipient."

89. The cookbook which Mr. Kimball referred to was not for ATK – it is a competing cookbook for which he has received an advance and is currently writing.

90. During this time, Mr. Kimball registered website domains through GoDaddy.com, LLC., filed certificates of formation with Delaware for CPK Media, LLC, and CPK Holdco, LLC. and also applied for trademarks for his new venture for "The Motley Kitchen" and "Christopher Kimball's The Kitchen." Goods and services in these trademark applications were identified as: "Digital media, namely, DVDs, downloadable video recordings, and downloadable electronic publications in field of food and cooking; downloadable electronic data files featuring

recipes; downloadable television and radio programs in the field of food and cooking provided via video-on demand service...”

91. After months of expressing to Mr. Kimball its “strong desire that you remain employed with the Partnership and work toward the continued success of America’s Test Kitchen,” ATK acknowledged the futility of this outreach. On November 16, 2015, ATK sent Mr. Kimball a notice of termination. Mr. Kimball’s termination became effective November 20, 2015.

92. The termination letter stated, as its basis, that “The Board and management have become aware of efforts by you to establish your own business, including repeated contacts and solicitations by you of other Partnership employees and with persons having important commercial relationships with BCP.”

93. ATK’s notice also requested Mr. Kimball to “return all Partnership property in your possession or control to Rob Ristagno by no later than November 20, including your laptop and other electronic devices paid for by the Partnership, and all electronic and physical records reflecting copyrighted material, intellectual property, business data, plans and opportunities belonging to BCP.”

94. Mr. Kimball and Ms. Baldino did not return their company laptops or the ATK proprietary information that they downloaded prior to their departure. Mr. Kimball and Ms. Baldino represented that they purchased their laptops; however an investigation has revealed that they sought and received reimbursement for these laptops and therefore the laptops are ATK property.

95. Mr. Kimball failed to return ATK’s copyrighted material, intellectual property, and confidential business information. In fact, on June 20, 2016, Mr. Kimball falsely represented

in writing to ATK that “[n]either Melissa nor I have any BCP information nor have I used any” and “Both Melissa and I discarded all BCP business, email, and other records after leaving ATK.” The email record refutes these statements.

**D. Christopher Kimball Launches Milk Street Using ATK’s Business Partners and Proprietary Information**

96. Mr. Kimball and CPK Media publicly launched Milk Street Kitchen (now promoted as Christopher Kimball’s Milk Street) shortly after the termination of his employment with ATK.

97. The masthead of the charter issue of *Milk Street Magazine* reveals that at least 15 former and current ATK employees and freelancers now work for Milk Street. They include Melissa Baldino, former ATK executive television and radio producer; Matthew Card, former recipe developer and staff writer for *Cook’s Illustrated*, freelance article recipe and article developer for *Cook’s Illustrated* and *Cook’s Country*, and on-air personality for season three of America’s Test Kitchen; Jennifer Baldino Cox, former arts director for ATK marketing group; Erika Bruce, former recipe developer and staff writer for *Cook’s Illustrated*, freelance recipe developer for *Cook’s Country*, instructor for ATK’s online cooking school, and cast member on seasons six and seven of America’s Test Kitchen; Dawn Yanagihara, freelance recipe developer who *currently* cross-tests all *Cook’s Illustrated* recipes before publication; Catrine Kelty, freelance food stylist for *Cook’s Country* *currently* responsible for *Cook’s Country* signature photography; Stephanie Stender, former ATK co-executive television and radio producer; Christine Gordon; and Deborah Broide.

98. This astonishing continuity in work force ensures the across-the-board replication of ATK by Milk Street in television and radio production; magazine format, design, and content; recipe development techniques; and cooking schools.

99. Milk Street targets ATK's home cook audience. It offers the same multimedia product lineup of public television (to be distributed by American Public Television ("APT") and to be produced by DGA Productions), public radio (distributed by Public Radio Exchange ("PRX")), magazine, website, and cooking school. It promises the home cook recipes and techniques "adapted" and "tested" for them.

100. Kimball preemptively attempts to distinguish Milk Street from America's Test Kitchen by claiming Milk Street focuses on recipes and techniques from other parts of the world. On Milk Street's website ([www.177milkstreet.com](http://www.177milkstreet.com)), Mr. Kimball writes that he "still loves the cooking of New England – apple pie is still my favorite recipe of all time – but the American repertoire is only part of the story." However, since its inception, ATK has written about recipes and techniques from around the world, especially in *Cook's Illustrated*. Indeed, while at ATK, Kimball openly compared Northern European cooking (as a melting pot cuisine) with the "rest of world" which uses more spices and less heat – the very concept he now touts as the foundation of Milk Street.

101. Mr. Kimball promotes Milk Street as a cosmopolitan reboot of America's Test Kitchen. He exploits Milk Street's unmistakable resemblance to America's Test Kitchen while claiming superficial variations, which subtly denigrate ATK. Mr. Kimball writes on Milk Street's homepage:

For the last 25 years, I have promised the home cook that the recipes would work. Now I am promising that a different set of recipes, a new approach to cooking can elevate the quality of your cooking far beyond anything you thought possible.

102. Mr. Kimball sells himself as America's Test Kitchen ("For the last 25 years, I have promised...") so that ATK's audience will instantly recognize his new company as a

revamped America's Test Kitchen with "a different set of recipes" and "a new approach to cooking."

103. In the "Frequently Asked Questions" page of Milk Street's website, America's Test Kitchen Radio and its related podcasts are referred to as "*our* weekly public radio show and podcasts." Elsewhere, CPK Media advertises Milk Street Radio as having "some of the same contributors as ATK Radio."

104. Christopher Kimball's Milk Street debuted *Milk Street Magazine* in October 2016. It demonstrates the extent to which Mr. Kimball intends to reprise ATK's products in format, design, and content.

105. In format, *Milk Street Magazine* runs 32 pages, the same page count of *Cook's Illustrated* and *Cook's Country*, which Mr. Kimball previously recognized as unique. It has no ads. It adopts the *Cook's Illustrated* layout. It moves from a table of contents insert to a Page 1 "editor's note" letter (introducing the character of "Charlie Bentley," a familiar personality in "Letters from Vermont"), to recipe features, to a Page 32 "Tools" review, to a stylized back cover.

106. In design, *Milk Street Magazine* employs layout and font nearly identical to *Cook's Illustrated*.

107. In content, *Milk Street Magazine*'s recipe section employs the same narrative arc of the *Cook's Illustrated* case study approach. First, a problem is diagnosed (e.g., "Creamy pasta sauces pose two problems..."). Next, food science explains the problem. Finally, a solution and better version of the recipe is presented (using goat cheese instead of Parmesan). *Milk Street Magazine* contains "Milk Street Basics" sidebars on cooking techniques, food science, and food history. *Milk Street Magazine* contains taste tests. Its first taste test recommends air-chilled

chickens. *Milk Street Magazine* offers “foolproof” recipes with a surprise ingredient or technique. Its first one: pie crust using something called tangzhong. One of *Cook’s Illustrated’s* most popular recipes is foolproof pie dough (secret ingredient: vodka). *Milk Street Magazine* does equipment reviews.

108. In its recent review of *Milk Street Magazine*, the Milwaukee Journal Sentinel commented on its “familiar feel”: “The recipe-based stories, book and equipment reviews, sidebars called ‘Milk Street Basics’ and step-by-step photos have a familiar feel, but Kimball says the new magazine, which will publish bimonthly starting in 2017, was not modeled after *Cook’s Illustrated*, the magazine he co-founded back in 1993...”

109. Another industry reviewer in an email to ATK described *Milk Street Magazine* as “Cook’s Illustrated with more fish sauce.” Another reviewer emailed ATK: “Mr. Kimball has borrowed liberally from his old playbook.”

110. Mr. Kimball has created a “Swearing Hill News” email series to funnel readers of *Cook’s Illustrated* and its “Letters from Vermont” feature to his new publication. He initially named this email series “Letters from Vermont,” until ATK objected. Swearing Hill is located near Rupert, Vermont. Swearing Hill News serves up the same nostalgic Kimball paeans to Vermont and Vermonters. Milk Street’s Facebook Page states: “Christopher Kimball’s writing about his small Vermont town returns in his all-new email series, ‘Swearing Hill News.’” Similarly: “Good news for all of you who’ve been hankering for Christopher Kimball’s personal letters from his Vermont hometown: he’ll be premiering a new series of them in early August.” Mr. Kimball is passing off *Cook’s Illustrated* and one of its features as one of his own, and directing readers to Milk Street to find it again.

111. Christopher Kimball's Milk Street Radio podcast, which debuted on October 21, 2016, also copies the look and feel of America's Test Kitchen radio – even the logos are similar in design and format – in an effort to convince programmers and listeners that Milk Street Radio is a re-branding of America's Test Kitchen radio.

112. Mr. Kimball also performed live shows throughout the country during which he announced to the audience that “we won Emmy’s,” referring to Milk Street Kitchen instead of ATK. He also presented old clips of ATK employees during the shows and a slide entitled “Science” – clearly referring back to ATK’s “Cook’s Science.”

113. The intended impact of this deliberate replication is to usurp ATK’s goodwill for the benefit of Milk Street Kitchen. The harm to ATK is immediate and irreparable. As just one example, the fan Facebook page for *Cook’s Illustrated* and America’s Test Kitchen was changed from “Cook’s Illustrated and America’s Test Kitchen Fans” to “Cook’s Illustrated, America’s Test Kitchen and Milk Street Kitchen Fans” shortly after the issuance of the charter issue of Milk Street magazine. The group which includes over 7,000 members now also discuss Milk Street magazine as if it is an extension of ATK.

114. Mr. Kimball’s appropriation of America’s Test Kitchen extends to company assets, employees, opportunities and relationships.

115. Mr. Kimball has taken with him ATK’s “business contact information,” “core media” lists, and recipes.

116. Discovery into Mr. Kimball’s private email accounts will likely reveal additional instances of corporate theft.

117. Mr. Kimball has taken with him a number of ATK production people, editors, writers, recipe developers, designers, and freelancers. In a recent interview, Mr. Kimball



acknowledged: “The benefit is I’ve done all this before, and I have people I’ve worked with before.”

118. For example, APT has exclusively distributed America’s Test Kitchen to public television stations from the show’s inception in 2001. APT is a leading distributor of public television programming. Upon information and belief, Mr. Kimball and Ms. Baldino met with an APT executive about their competing venture prior to their departure from ATK. APT has agreed to distribute Mr. Kimball’s new public television show in 2017.

119. Upon information and belief, Mr. Kimball and Ms. Baldino also met with executives from ATK’s production company, DGA Productions, about their competing venture prior to their departure from ATK. DGA Productions has been involved in creating the look of ATK’s television shows since their inception. The current principal at DGA Productions has been director of photography for *America’s Test Kitchen* for more than a decade (his predecessor performed this role in early seasons of the show). The current principal at DGA Productions has been director of *Cook’s Country* since 2009. DGA Productions has edited *Cook’s Country* since its first season in 2008 and has supplied equipment and staff for both television productions since 2001.

120. On November 3, 2016, DGA Productions informed ATK that it would be severing relations with ATK even though ATK expressed a strong desire to continue the contract, which had paid DGA millions of dollars over the past 16 years. Milk Street has engaged DGA Productions to create its television show, which is currently in production and scheduled for launch in September 2017. This continuity in production ensures that Milk Street Kitchen will retain the look, feel, and character of ATK’s television show. Milk Street’s Facebook page posts a “behind the scenes” clip of Mr. Kimball’s new show and comments: “Working on a new TV

show with old friends.” A former ATK host appears with Mr. Kimball and DGA Productions is tagged to the post. Released photos of the filming of Milk Street’s public radio program reveal that three out of five cast members are former ATK employees (two of whom appeared on camera) and that everything from the cast poses to the overall design replicates America’s Test Kitchen.

121. Mr. Kimball selected ATK’s longstanding presenting television station, WGBH, as the presenting station of Milk Street Kitchen. WGBH was the presenting station for ATK since 2001. Upon information and belief, Mr. Kimball convinced WGBH to accept Milk Street’s show knowing that WGBH could not effectively present both competing shows.

122. Public television stations have contractual rights to air America’s Test Kitchen through 2017 and Cook’s Country through 2018, including repeats of shows hosted by Mr. Kimball. In the meantime, public television stations will begin airing new Milk Street Kitchen shows hosted by Mr. Kimball in 2017. As a result, WGBH would have been presenting the three shows simultaneously with Mr. Kimball appearing as host across all three. As a result, ATK was forced to change its presenting station for the 2017 season.

123. Mr. Kimball also interfered with ATK’s longtime exclusive distributor of ATK Radio, PRX. PRX has exclusively distributed ATK Radio to public radio stations since the show’s inception in 2012. PRX operates one of public radio’s largest distribution marketplaces and its programming reaches millions of listeners worldwide. In 2016, concluding that Milk Street Radio competed directly with ATK Radio, PRX told ATK that it would not market both shows and therefore would not be renewing its agreement with ATK and would allow it to terminate on December 31, 2016.

124. Mr. Kimball orchestrated the bait and switch of Milk Street Radio for ATK Radio. In November 2016, Mr. Kimball offered to produce ATK Radio through his new company, CPK Media. On assurances that Mr. Kimball had no plans to compete against ATK, ATK accepted these services. The terms of this affiliation were memorialized in a "Radio Deal Memo," dated November 19, 2015.

125. After convincing ATK to place the production of ATK Radio in his hands, Mr. Kimball used this arrangement as a bridge to Milk Street, exploiting the guaranteed revenue stream and personal airtime and ensure the immediate viability and relevance of Milk Street. In April 2016, Mr. Kimball provided 6-months' notice that he would cease the production of ATK Radio effective October 15, 2016. Mr. Kimball's new radio show will debut on public radio on October 22, 2016.

126. Upon information and belief, Mr. Kimball convinced PRX to accelerate the debut of Milk Street Radio to October 22, 2016 despite PRX's earlier promises to ATK to not air the competing show until after the expiration of its contract with ATK on December 31, 2016.

127. Mr. Kimball's actions have caused ATK to cease the full-scale production of ATK Radio after the 2016 season and to reconfigure and relaunch its radio product through a different partnership.

### **COUNT I**

#### **(Misappropriation of Trade Secrets under M.G.L. c. 93, § 42 and Misappropriation of Trade Secrets and Confidential Information under Massachusetts Common Law - Christopher Kimball/Deborah Broide/CPK Media)**

128. ATK repeats and incorporates by reference the allegations contained in Paragraphs 1 through 127 of the Complaint.

129. Mr. Kimball and Ms. Broide had access to ATK's confidential information and trade secrets by virtue of their position of trust and confidence with ATK.

130. ATK has at all relevant times taken reasonable steps to preserve the confidentiality of its proprietary information and trade secrets, including, among other precautionary measures, restricting access to such information and requiring employees to acknowledge in writing their confidentiality obligations to ATK.

131. Mr. Kimball abused his access to ATK's confidential information and trade secrets to steal information and assets for the benefit of CPK Media, including customer lists, media contact and other business contact lists, and recipes that ATK has invested significant resources, time, and money into developing and which have significant commercial value.

132. Ms. Broide abused her access to "the main server at ATK" containing ATK's confidential information and trade secrets by providing Mr. Kimball with a "core media" list "culled from 24 years at ATK." Ms. Broide also sent Mr. Kimball two more media contact lists "created for ATK." ATK engaged and paid Ms. Broide to develop media contacts and other PR relationships for ATK's benefit.

133. Mr. Kimball and Ms. Broide disclosed ATK's confidential information and trade secrets to CPK Media without ATK's knowledge, authorization or consent.

134. At all relevant times, CPK Media knew and was charged with knowledge that Mr. Kimball and Ms. Broide had access to and obtained ATK's confidential information and trade secrets while they were still employed by and in a position of trust and confidence with ATK.

135. On information and belief, CPK Media knew that it could not lawfully receive ATK's confidential information and trade secrets or use them for any purpose.

136. CPK Media has knowingly benefitted from ATK's confidential information and trade secrets which Mr. Kimball and Ms. Broide obtained by way of their relationship of trust

and confidence with ATK. CPK Media's misappropriation of ATK's confidential information and trade secrets accelerated CPK Media's entry into and competitive viability in ATK's marketplace.

137. The misappropriation of ATK's confidential information and trade secrets and confidential information by Mr. Kimball, Ms. Broide, and CPK Media has caused and will cause substantial harm to ATK, including lost profits.

**COUNT II**  
**(Breach of Fiduciary Duty as ATK Employee – Christopher Kimball)**

138. ATK repeats and incorporates by reference the allegations contained in Paragraphs 1 through 137 of the Complaint.

139. Mr. Kimball occupied a position of trust and confidence while employed with ATK.

140. In this position of trust and confidence, Mr. Kimball owed a duty of loyalty to ATK.

141. Mr. Kimball violated that duty by, among other actions, stealing company information and trade secrets, including customer email addresses, media contact and other business contact lists, and recipes; soliciting company employees to join him at his new venture and taking company employees with him to his new venture; misappropriating opportunities and relationships that belong to ATK; and devoting his company time, and causing other ATK employees to devote their company time, to establishing a competing business.

142. Mr. Kimball's violation of his fiduciary duty has caused substantial harm to ATK, including, but not limited to, substantial retention bonuses it paid to key employees in response to Mr. Kimball's improper solicitations; lost profits as a result of a competitor improperly

exploiting ATK's goodwill and company information and opportunities in which it has invested significant resources, time, and money; and the lost value of paid employee time.

**COUNT III**  
**(Breach of Fiduciary Duty as ATK Partner – Christopher Kimball)**

143. ATK repeats and incorporates by reference the allegations contained in Paragraphs 1 through 142 of the Complaint.

144. Mr. Kimball is and was during all relevant times a limited partner of ATK.

145. As de facto CEO and a senior manager of ATK, Mr. Kimball exercised control over ATK.

146. In these capacities, Mr. Kimball owed a fiduciary duty of utmost good faith and loyalty to ATK and his partners. In his continuing capacity as limited partner of ATK, he continues to owe this duty to ATK and his partners.

147. Mr. Kimball violated that duty by, among other actions, stealing company information and trade secrets, including customer email addresses, media contact and other business contact lists, and recipes; soliciting company employees to join him at his new venture and taking company employees with him to his new venture; misappropriating opportunities and relationships that belong to ATK; and devoting his company time, and causing other ATK employees to devote their company time, to establishing a competing business.

148. Mr. Kimball continues to violate that duty by promoting his own self-interests to the detriment of ATK and his partners and by intentionally harming ATK and his partners.

149. Mr. Kimball's violation of his fiduciary duty has caused substantial harm to ATK to date, including, but not limited to, substantial retention bonuses paid to key employees in response to Mr. Kimball's improper solicitations; lost profits as a result of a competitor

improperly exploiting ATK's goodwill and company information and opportunities in which it has invested significant resources, time, and money; and the lost value of paid employee time.

**COUNT IV**  
**(Unjust Enrichment – Christopher Kimball and CPK Media)**

150. ATK repeats and incorporates by reference the allegations contained in Paragraphs 1 through 149 of the Complaint.

151. ATK conferred a benefit upon Mr. Kimball by granting him access to ATK's confidential information and trade secrets, including ATK's customer lists, media contacts and other business contact lists, and recipes that ATK has invested significant resources, time, and money into developing and from which ATK derives significant commercial value.

152. Mr. Kimball and CPK Media had appreciation or knowledge of the benefit being conferred upon Mr. Kimball by ATK as evidenced by, among other things, the foregoing facts demonstrating that Mr. Kimball not only secretly engaged in the theft and misappropriation of ATK's confidential information and trade secrets, but that he actively attempted to conceal and destroy any traces of his efforts to engage in such theft and misappropriation and then lied to ATK in writing about having done so.

153. Mr. Kimball's and CPK Media's acceptance or retention of ATK's confidential information and trade secrets under the circumstances would be inequitable without payment for their value.

**COUNT V**  
**(Breach of Contract – Christopher Kimball)**

154. ATK repeats and incorporates by reference the allegations contained in Paragraphs 1 through 153 of the Complaint.

155. Mr. Kimball had an employment agreement with ATK.

156. Mr. Kimball's employment agreement required him, during the term of his employment, to "devote [his] full time and best efforts to the business of the Partnership, except to the extent otherwise agreed by [him] and the General Partner in writing, and that any material change in [his] current working hours may result in a reduction of [his] compensation by the General Partner." The agreement also provided that Mr. Kimball's "current working hours are acceptable to the General Partner and tantamount to a full time effort." The parties never agreed in writing to reduce Mr. Kimball's working hours or requirements from a full time effort.

157. Mr. Kimball failed to devote his full time and best efforts to the business of ATK during 2015. Mr. Kimball failed to provide ATK with the benefit of a full time effort.

158. Instead, Mr. Kimball used company time and employees to begin CPK Media and Christopher Kimball's Milk Street.

159. Mr. Kimball's breach of his employment agreement has caused substantial harm to ATK, including the annual salary and benefits paid to Mr. Kimball.

**COUNT VI**  
**(Repayment of Employment Compensation – Christopher Kimball)**

160. ATK repeats and incorporates by reference the allegations contained in Paragraphs 1 through 159 of the Complaint.

161. Beginning in the summer of 2015 at the latest, Mr. Kimball enlisted Ms. Baldino, Ms. Gordon, and Ms. Broide to support his new venture.

162. During this period of time, ATK paid compensation and benefits to Ms. Baldino and Ms. Gordon as employees and compensation to Ms. Broide as a consultant.

163. ATK did not receive the value of the services diverted by Mr. Kimball to his new venture.



164. Mr. Kimball must reimburse ATK for the value of the services he received from Ms. Baldino, Ms. Gordon, and Ms. Broide in connection with his new venture.

**COUNT VII**  
**(Aiding and Abetting Breach of Fiduciary Duties – Melissa Baldino, Christine Gordon, and Deborah Broide)**

165. ATK repeats and incorporates by reference the allegations contained in Paragraphs 1 through 164 of the Complaint.

166. Mr. Kimball breached his fiduciary duty to ATK by, among other conduct, committing the acts described in Counts I, II and III above.

167. Melissa Baldino, Christine Gordon, and Deborah Broide knew that Mr. Kimball was committing these acts in violation of his fiduciary duty to ATK. They knew that Mr. Kimball was committing these acts in a private, secretive manner to avoid detection by ATK.

168. Ms. Baldino, Ms. Gordon, and Ms. Broide knowingly and actively participated in Mr. Kimball's breaches or substantially assisted and encouraged his breaches. They downloaded proprietary company information for Mr. Kimball's benefit. At least Ms. Broide and Ms. Baldino helped Mr. Kimball obtain confidential information about ATK's customers. At least Ms. Broide supplied Mr. Kimball with confidential media contact lists. At least Ms. Baldino helped Mr. Kimball divert the PRX distributor relationship and opportunity. At least Ms. Gordon and Ms. Baldino helped Mr. Kimball find new commercial space from which to launch his competitive business. At least Ms. Gordon backed up her work computer for Mr. Kimball's benefit. ATK expects discovery to reveal additional instances of participating in, or assisting and encouraging, Mr. Kimball's breaches of fiduciary duty.

169. Ms. Baldino, Ms. Gordon, and Ms. Broide's aiding and abetting of Mr. Kimball's violation of his fiduciary duty has caused substantial harm to ATK to date, including, but not

limited to, lost profits as a result of a competitor improperly exploiting ATK's goodwill and valuable company information and the annual compensation and benefits paid to them by ATK during the period of time in which they aided and abetted Mr. Kimball.

**COUNT VIII**  
**(Breach of Contract – Melissa Baldino)**

170. ATK repeats and incorporates by reference the allegations contained in Paragraphs 1 through 169 of the Complaint.

171. Ms. Baldino had an employment agreement with ATK.

172. Ms. Baldino breached her agreement by, among other things, disclosing or using secret, proprietary and confidential information belonging to ATK during and after her employment with ATK; engaging in activities competitive with ATK during the term of her employment and assisting Mr. Kimball and others to engage in such activities; and causing or attempting to cause other ATK employees and consultants to cease employment with ATK or provide services to ATK.

173. Ms. Baldino's breach of her employment agreement has caused substantial harm to ATK to date, including, but not limited to, the substantial retention compensation it paid to key employees in response to the improper solicitation of employees; lost profits as a result of a competitor improperly exploiting ATK's valuable company information and goodwill; and the annual salary and benefits it paid to Ms. Baldino in 2015.

**COUNT IX**  
**(Breach of Contract – Christine Gordon)**

174. ATK repeats and incorporates by reference the allegations contained in Paragraphs 1 through 173 of the Complaint.

175. Ms. Gordon had an employment agreement with ATK.

176. Ms. Gordon breached her agreement by, among other things, disclosing or using secret, proprietary and confidential information belonging to ATK during and after her employment with ATK; engaging in activities competitive with ATK during the term of her employment and assisting Mr. Kimball and others to engage in such activities; and causing or attempting to cause other ATK employees and consultants to cease employment with ATK or provide services to ATK.

177. Ms. Gordon's breach of her employment agreement has caused substantial harm to ATK to date, including, but not limited to, the substantial retention compensation paid to key employees in response to the improper solicitation of employees; lost profits as a result of a competitor improperly exploiting ATK's goodwill and valuable company information; and the annual salary and benefits it paid to Ms. Gordon in 2015.

**COUNT X**  
**(M.G.L. c. 93A, § 11 – Christopher Kimball and CPK Media)**

178. ATK repeats and incorporates by reference the allegations contained in Paragraphs 1 through 177 of the Complaint.

179. M.G.L. c. 93A, § 11 declares unlawful unfair methods of competition or unfair or deceptive acts or practices employed by a person engaged in the conduct of any trade or commerce against any other person engaged in the conduct of any trade or commerce.

180. Mr. Kimball and CPK Media are engaged in the conduct of trade or commerce.

181. ATK is engaged in the conduct of trade or commerce.

182. Mr. Kimball has employed unfair methods of competition and has engaged in unfair and deceptive acts or practices.

183. While a trusted key employee and fiduciary of ATK, Mr. Kimball stole ATK's confidential information and trade secrets to exploit at his new venture, CPK Media; breached

his obligation to devote his full time and best efforts to his employer to launch a competitive venture and solicited other ATK employees to assist him on ATK time; diverted corporate opportunities belonging to ATK and his fellow partners to advance the interests of a competitive venture; and destroyed, or attempted to destroy, evidence of his wrongdoing.

184. Moreover, Mr. Kimball's new venture, Christopher Kimball's Milk Street, purposefully stokes the public misperception of an affiliation with America's Test Kitchen. It purports to sell to the same audience the same product founded on the same test kitchen concept in substantially the same style and format. Mr. Kimball brought with him to Milk Street at least 15 former and current ATK employees and freelancers to help replicate ATK across Milk Street's multimedia products. An early review of *Milk Street Magazine* has already noted its "familiar feel" and consumers have already indicated that they believe the magazine is an extension of ATK. As a startup, Christopher Kimball's Milk Street has appropriated America's Test Kitchen's goodwill and reputation to accelerate and bolster its competitive viability and to harm ATK.

185. Mr. Kimball and CPK Media have stolen ATK's valuable confidential information and trade secrets, employees, business contacts and recipes, and copied ATK's format and content in order to emulate America's Test Kitchen and trade on the goodwill associated with America's Test Kitchen, the groundwork for which was surreptitiously laid by Mr. Kimball while he was still an employee of ATK and continues while he is a limited partner of ATK.

186. CPK Media has employed unfair methods of competition and has engaged in unfair and deceptive acts or practices by exploiting the confidential business information and

trade secrets stolen by Mr. Kimball and others. Moreover, CPK Media has exploited the deliberate affiliation of Christopher Kimball's Milk Street with America's Test Kitchen.

187. Mr. Kimball's and CPK Media's violations of M.G.L. c. 93A, § 11 were willful and knowing. They were essential to the competitive plausibility of Christopher Kimball's Milk Street.

188. The actions constituting Mr. Kimball's and CPK Media's violations of M.G.L. c. 93A, § 11 occurred primarily and substantially within the Commonwealth.

189. These violations of M.G.L. c. 93A, § 11 have harmed and continue to harm ATK.

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Award damages against Christopher Kimball for his breach of fiduciary duties, breach of contract, and misappropriation of trade secrets and profitable assets belonging to ATK;

B. Award damages against Ms. Broide for her misappropriation of confidential information and trade secrets and profitable assets belonging to ATK;

C. Order the disgorgement of all profits Kimball and CPK Media derived from the theft and misappropriation of ATK's confidential information, trade secrets and business opportunities.

D. Order Christopher Kimball to disgorge some portion of his 2015 salary and to repay to ATK some portion of the compensation paid to Melissa Baldino, Christine Gordon, and Deborah Broide;

E. Award damages against Melissa Baldino, Christine Gordon, and Deborah Broide for aiding and abetting Christopher Kimball's breach of fiduciary duties;

F. Award damages against Melissa Baldino and Christine Gordon for breach of their employment agreements;

G. Award multiple damages and reasonable attorneys' fees and costs against Christopher Kimball and CPK Media as authorized by M.G.L. c. 93A, § 11;

H. Permanently enjoin the use by each and every defendant of any information, lists, customer emails, recipes, and other assets stolen from ATK;

I. Permanently enjoin the use by Mr. Kimball and/or CPK Media of unfair methods of competition and/or unfair and deceptive acts;

J. Order all Defendants to return to ATK all trade secrets and other valuable confidential information it misappropriated from ATK and for the destruction of all programs, files and devices containing any such information currently in the possession, custody and control of defendants, their affiliates and anyone acting in concert with Defendants;

K. Order the return of all computing devices of Mr. Kimball, Ms. Broide and Ms. Baldino that were paid for or are owned by ATK; and

L. Grant such other and further relief as is just or appropriate.

**JURY DEMAND**

Plaintiff respectfully requests a jury on all issues so triable.

AMERICA'S TEST KITCHEN INC.,  
as Sole General Partner of America's Test Kitchen  
Limited Partnership

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