

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
BUSINESS LITIGATION SESSION

----- X
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.
----- X

CHRISTOPHER KIMBALL and CPK MEDIA,
LLC

Counterclaim-Plaintiffs,

v.

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

Counterclaim-Defendant,

and

AMERICA'S TEST KITCHEN LIMITED
PARTNERSHIP,

Additional Defendant on the Counterclaim.
----- X

Civil Action
No. 16-3325

JURY TRIAL DEMANDED

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2016 DEC -1 P 4: 25
MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE

**ANSWER AND AFFIRMATIVE DEFENSES OF
CHRISTOPHER KIMBALL, MELISSA BALDINO, AND CPK MEDIA, LLC,
AND COUNTERCLAIM OF CHRISTOPHER KIMBALL AND CPK MEDIA, LLC**

Defendants Christopher Kimball (“Kimball”), Melissa Baldino (“Baldino”) and CPK Media, LLC (“CPK Media”) (collectively, “Defendants”), by and through their undersigned attorneys, hereby answer the Complaint of America’s Test Kitchen, Inc., as the sole general partner of America’s Test Kitchen Limited Partnership (in combination with the predecessors-in-name or interest of America’s Test Kitchen Inc., which upon information and belief include WDH, Inc., and the predecessors-in-name or interest of America’s Test Kitchen Limited Partnership, which upon information and belief include Auchincloss, Wadsworth & Co. Limited Partnership and Boston Common Press Limited Partnership) (collectively, “ATK”), upon knowledge as to themselves and their own acts, and otherwise upon information and belief as to all other matters as follows:

Defendants deny the allegations in the first sentence of the first unnumbered paragraph of the Complaint. Defendants deny knowledge sufficient to form a belief as to the truth of the allegations in the second and third sentences of the first unnumbered paragraph of the Complaint. Defendants deny the allegations of the fourth sentence of the first unnumbered paragraph of the Complaint, except admit only that Kimball formerly worked, and was a public face and voice, for ATK, and remains a limited partner of ATK. Defendants deny the allegations in the fifth and sixth sentences of the first unnumbered paragraph of the Complaint.

Defendants deny the allegations in the second unnumbered paragraph of the Complaint.

Defendants deny the allegations in the third unnumbered paragraph of the Complaint. The heading immediately preceding numbered paragraph 1 of the Complaint contains no factual allegations and thus no answer is required. To the extent that this heading may be deemed to contain factual allegations, they are denied.

1. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint.

2. Defendants admit the allegations in paragraph 2 of the Complaint.

3. Defendants admit the allegations in paragraph 3 of the Complaint.

4. Defendants admit the allegations in paragraph 4 of the Complaint.

5. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint, except admit only that Ms. Gordon was formerly employed by ATK and currently works for CPK Media in its office at 177 Milk Street, Boston, Massachusetts.

6. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Complaint.

The heading immediately preceding numbered paragraph 7 of the Complaint contains no factual allegations and thus no answer is required. To the extent that this heading may be deemed to contain factual allegations, they are denied.

7. The allegations in paragraph 7 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 7 of the Complaint may be deemed to contain factual allegations, they are denied.

8. The allegations in paragraph 8 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 8 of the Complaint may be deemed to contain factual allegations, they are denied.

9. The allegations in paragraph 9 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 9 of the Complaint

may be deemed to contain factual allegations, Defendants deny knowledge or information sufficient to form a belief as to the truth of those allegations.

10. The allegations in paragraph 10 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 10 of the Complaint may be deemed to contain factual allegations, they are denied.

The headings immediately preceding numbered paragraph 11 of the Complaint contain no factual allegations and thus no answer to them is required. To the extent that these headings may be deemed to contain factual allegations, they are denied.

11. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first and last sentences of paragraph 11 of the Complaint. Defendants deny the allegations in the second sentence of paragraph 11 of the Complaint, except admit only that Kimball agreed to join Auchincloss, Wadsworth & Co. Limited Partnership in 1990 as a limited partner and to work as an employee for that partnership to turn around its struggling magazine *East West Journal*.

12. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 12 of the Complaint, except admit only that the name of Auchincloss, Wadsworth & Co. Limited Partnership, was changed multiple times and eventually became Boston Common Press Limited Partnership and, upon information and belief, is now America's Test Kitchen Limited Partnership. Defendants deny any remaining allegations in paragraph 12 of the Complaint.

13. Defendants deny the allegations in paragraph 13 of the Complaint.

14. Defendants deny the allegations in paragraph 14 of the Complaint.

15. Defendants deny the allegations in paragraph 15 of the Complaint.

The heading immediately preceding numbered paragraph 16 of the Complaint contains no factual allegations and thus no answer is required. To the extent that this heading may be deemed to contain factual allegations, they are denied.

16. Defendants deny the allegations in paragraph 16 of the Complaint, except admit only that Boston Common Press began publishing *Cook's Illustrated* in 1993—a magazine Kimball founded in 1980—and Kimball served as editor of the magazine until November 2015, when he was terminated by ATK.

17. Defendants admit the allegations in the first sentence of paragraph 17 of the Complaint. Defendants deny any allegations in paragraph 17 of the Complaint, except admit only that while Kimball was editor, *Cook's Illustrated* typically, but not uniquely within the food industry or otherwise, was 32 pages long and free of advertisements, and contained a table of contents, recipes, product reviews and recommendations, taste tests, and an editor's note from Kimball called "Letters from Vermont," which was based on his life stories and experiences.

18. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint.

19. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint.

20. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint.

21. Defendants deny the allegations in paragraph 21 of the Complaint, except admit only that *Cook's Illustrated* was successful during Kimball's tenure.

The heading immediately preceding numbered paragraph 22 of the Complaint contains no factual allegations and thus no answer is required. To the extent that this heading may be deemed to contain factual allegations, they are denied.

22. Defendants deny the allegations in paragraph 22 of the Complaint, except admit only that ATK produced a half-hour long cooking show called “America’s Test Kitchen,” which began airing on public television in 2001.

23. Defendants admit the allegations in paragraph 23 of the Complaint.

24. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 of the Complaint.

25. Defendants admit the allegations in paragraph 25 of the Complaint only to the extent that an episode of America’s Test Kitchen typically contained the items listed in subparagraphs a through e and otherwise deny any remaining allegations in paragraph 25 of the Complaint.

26. Defendants deny the allegations in paragraph 26 of the Complaint, except admit only that, before Kimball was terminated by ATK, America’s Test Kitchen was public television’s most watched cooking show.

27. Defendants deny the allegations in paragraph 27 of the Complaint, except admit only that ATK distributed via PRX the hour-long America’s Test Kitchen Radio show on public radio since 2012 and that Kimball hosted the show from approximately 2012 through October 2016.

28. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Complaint, except admit only that the

allegations in paragraph 28 were true prior to October 2016 when CPK Media's contract to produce America's Test Kitchen Radio terminated.

29. Defendants deny the allegations in paragraph 29 of the Complaint.

The heading immediately preceding numbered paragraph 30 of the Complaint contains no factual allegations and thus no answer is required. To the extent that this heading may be deemed to contain factual allegations, they are denied.

30. Defendants admit the allegations in paragraph 30 of the Complaint.

31. Defendants deny the allegations in paragraph 31 of the Complaint, except admit only that ATK published *Cook's Country* magazine starting in 2005 and produced the related Cook's Country television show starting in 2007.

32. Defendants admit the allegations in paragraph 32 of the Complaint.

33. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33 of the Complaint.

34. Defendants deny the allegations in the first and second sentences of paragraph 34 of the Complaint, except admit only that the Cook's Country television show was filmed in Kimball's renovated farmhouse in Rupert, Vermont and Kimball hosted the television show from 2008 to 2015. Defendants deny knowledge or information sufficient to form a belief as to the truth of any remaining allegations in paragraph 34 of the Complaint, except admit only that, in the immediate years prior to ATK's termination of Kimball in November 2015, Cook's Country was public television's second most watched cooking show.

35. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 of the Complaint.

The heading immediately preceding numbered paragraph 36 of the Complaint contains no factual allegations and thus no answer is required. To the extent that this heading may be deemed to contain factual allegations, they are denied.

36. Defendants deny the allegations in paragraph 36 of the Complaint, except admit only that Kimball was hired by Auchincloss, Wadsworth & Co. in 1990 and that he held different positions with that entity and its successors-in-name until terminated by ATK on November 16, 2015.

37. Defendants deny the allegations in paragraph 37 of the Complaint, except admit upon information and belief that America's Test Kitchen Limited Partnership was formerly known as Boston Common Press Limited Partnership and admit only that Kimball has been, and continues to be, a limited partner of ATK.

38. Defendants deny the allegations in paragraph 38 of the Complaint, except admit only that on January 1, 2012, Kimball held as limited partner an approximately 19.2% interest in ATK as well as a 5% Profits Interest in ATK (the "Profits Interest"), and on January 1, 2015, Kimball now holds as limited partner an approximately 8.59% interest in ATK and his 5% Profits Interest in ATK.

39. Defendants admit the allegations in paragraph 39 of the Complaint.

40. Defendants admit the allegations in paragraph 40 of the Complaint.

41. Defendants deny the allegations in paragraph 41 of the Complaint, except admit only that Kimball has received more than \$30 million in partnership distributions from ATK.

42. Defendants deny the allegations in paragraph 42 of the Complaint, except admit only that Kimball executed the Third Amended and Restated Agreement of Limited

Partnership, dated as of June 1, 2002 (the "Partnership Agreement") and refer to the Partnership Agreement, as amended, for a complete and accurate statement of its contents.

43. Defendants deny the allegations in paragraph 42 of the Complaint as materially incomplete and refer to the referenced document for a complete and accurate statement of its contents.

44. Defendants deny the allegations in paragraph 44 of the Complaint. Further responding, Kimball states that, throughout his employment with ATK, Eliot Wadsworth served as Managing Partner of the Partnership and that beginning on or around August 28, 2015 through his termination effective November 20, 2015, Kimball was stripped of his duties as an executive of ATK.

45. Defendants admit the allegations in the first sentence of paragraph 45 of the Complaint. Defendants deny any remaining allegations in paragraph 45, except admit only that Kimball served as a public face and voice of ATK.

46. Defendants admit the allegations in paragraph 46 of the Complaint.

47. Defendants deny the allegations in paragraph 47 of the Complaint and refer to the referenced document for a complete and accurate statement of its contents.

48. Defendants deny the allegations in paragraph 48 of the Complaint, except admit only that ATK hired Baldino in 2002 as Kimball's executive assistant and paid her an annual salary and benefits while she was employed by ATK.

49. Defendants admit the allegations in paragraph 49 of the Complaint.

50. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 of the Complaint and refer to any referenced document, if any exists, for a complete and accurate statement of its contents.

51. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 of the Complaint and refer to any referenced document, if any exists, for a complete and accurate statement of its contents.

52. Defendants admit the allegations in the first sentence of paragraph 52 of the Complaint with respect to ATK, as defined herein. Defendants deny knowledge or information sufficient to form a belief as to the truth of any remaining allegations in paragraph 52 of the Complaint.

53. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 of the Complaint.

54. Defendants deny the allegations in paragraph 54 of the Complaint, except admit only that, while employed by ATK, Kimball had access to its financial information, company contracts, and sponsorship programs.

55. Defendants deny the allegations in paragraph 55 of the Complaint. The heading immediately preceding numbered paragraph 56 of the Complaint contains no factual allegations and thus no answer is required. To the extent that this heading may be deemed to contain factual allegations, they are denied.

56. Defendants deny the allegations in paragraph 56 of the Complaint, except admit only that at some point in 2014 or 2105, Kimball understood that ATK sought to build a long-term succession plan for the Board and management of ATK.

57. Defendants deny the allegations in paragraph 57 of the Complaint and refer to the Boston Globe article and Chicago Tonight report for a complete and accurate statement of their contents.

58. Defendants deny the allegations in paragraph 58 of the Complaint, except admit only that Kimball agreed with the notion of a more professional Board.

59. Defendants deny the allegations in paragraph 59 of the Complaint.

60. Defendants deny knowledge or information sufficient to form a belief as to ATK's expectations. Defendants deny any remaining allegations in paragraph 59 of the Complaint.

The heading immediately preceding numbered paragraph 61 of the Complaint contains no factual allegations and thus no answer is required. To the extent that this heading may be deemed to contain factual allegations, they are denied.

61. Defendants deny the allegations in paragraph 61 of the Complaint, except admit only that, at Kimball's request, Ms. Gordon scanned and sent him documents relating to his employment with ATK and his partnership interest in ATK, all of which documents he is entitled to have, and Defendants refer to the referenced emails and documents for a complete and accurate statement of their contents.

62. Defendants deny the allegations in paragraph 62 of the Complaint and refer to the June 10, 2015 email for a complete and accurate statement of its contents.

63. Defendants deny the allegations in paragraph 63 of the Complaint and refer to the August 5, 2015 email for a complete and accurate statement of its contents.

64. Defendants deny the allegations in paragraph 64 of the Complaint and refer to the August 10, 2015 email for a complete and accurate statement of its contents. Further responding, Defendants state that Kimball did not in fact take any of the referenced email addresses.

65. Defendants deny the allegations in paragraph 65 of the Complaint, except admit only that, beginning on or about August 29, 2015, at ATK's direction and with ATK's knowledge, Kimball began to search for new office space to fulfill ATK's directive that Kimball and Baldino move out of ATK's office and set up their own office and company to possibly continue working with ATK.

66. Defendants deny the allegations in paragraph 66 of the Complaint, except admit only that, Kimball's search for office space for his and Baldino's anticipated new company was performed at ATK's direction and with ATK's knowledge, and Defendants refer to the October 1, 2015 email for a complete and accurate statement of its contents.

67. Defendants deny the allegations of paragraph 67 of the Complaint and refer to the August 28, 2015 email for a complete and accurate statement of its contents.

68. Defendants deny the allegations in paragraph 68 of the Complaint.

69. Defendants deny the allegations in paragraph 69 of the Complaint and refer to the referenced email for a complete and accurate statement of its contents.

70. Defendants deny the allegations in paragraph 70 of the Complaint and refer to the referenced documents for complete and accurate statements of their contents.

71. Defendants deny the allegations in paragraph 71 of the Complaint and refer to the referenced email for a complete and accurate statement of its contents.

72. Defendants deny the allegations in paragraph 72 of the Complaint and refer to the August 31, 2015 email for a complete and accurate statement of its contents.

73. Defendants deny the allegations in paragraph 73 of the Complaint and refer to the November 3, 2015 email for a complete and accurate statement of its contents.

74. Defendants deny the allegations in paragraph 74 of the Complaint and refer to the referenced email for a complete and accurate statement of its contents.

75. Defendants deny the allegations in paragraph 75 of the Complaint and refer to the referenced email for a complete and accurate statement of its contents.

76. Defendants deny the allegations in paragraph 76 of the Complaint, except admit only that Kimball was inquiring about scanning recipes that did not belong to ATK, and Defendants refer to the referenced emails for a complete and accurate statement of their contents.

77. Defendants deny the allegations in paragraph 77 of the Complaint. The heading immediately preceding numbered paragraph 78 of the Complaint contains no factual allegations and thus no answer is required. To the extent that this heading may be deemed to contain factual allegations, they are denied.

78. Defendants deny the allegations in paragraph 78 of the Complaint and refer to the August 24, 2015 email for a complete and accurate statement of its contents.

79. Defendants deny the allegations in paragraph 79 of the Complaint, except admit only that Kimball, with the advance knowledge of ATK partner and Board member George Denny, announced to managers that it was likely Kimball would be leaving ATK. Further responding, Kimball states that he made this announcement because he believed that he was going to be terminated based on statements made to him by Wadsworth and Denny.

80. Defendants deny the allegations in paragraph 80 of the Complaint.

81. Defendants deny the allegations in paragraph 81 of the Complaint that Kimball made “advances” or “false declarations,” or gave “false impressions that ATK was on the verge of financial ruin.” Defendants deny knowledge or information sufficient to form a belief as to the truth of any remaining allegations in paragraph 81 of the Complaint.

82. Defendants deny the allegations in paragraph 82 of the Complaint.

83. Defendants admit that Denny is a limited partner of the Partnership.

Defendants deny any remaining allegations in paragraph 83 of the Complaint and refer to the September 1, 2015 email for a complete and accurate statement of its contents.

84. Defendants deny the allegations in paragraph 84 of the Complaint and refer to the September 1, 2015 email for a complete and accurate statement of its contents.

85. Defendants deny the allegations in paragraph 85 of the Complaint and refer to the September 26, 2016 email and the Boston Globe article for a complete and accurate statement of their contents.

86. Defendants deny the allegations in paragraph 86 of the Complaint.

87. Defendants deny the allegations in paragraph 87 of the Complaint and refer to the September 28, 2015 email for a complete and accurate statement of its contents.

88. Defendants deny the allegations in paragraph 88 of the Complaint and refer to referenced emails for a complete and accurate statement of their contents.

89. Defendants deny the allegations in paragraph 89 of the Complaint.

90. Defendants deny the allegations in paragraph 90 of the Complaint, except admit only that after being told by ATK to vacate ATK's office and set up a new office and company, Kimball registered website domains, filed certificates of formation, and applied for trademarks, and Defendants refer to the referenced trademark applications for a complete and accurate statement of their contents.

91. Defendants deny the allegations in paragraph 91 of the Complaint, except admit only that on November 16, 2015, ATK sent Kimball a notice of employment termination with an effective date of November 20, 2015.

92. Defendants deny the allegations in paragraph 92 of the Complaint and refer to the November 16, 2015 employment termination notice for a complete and accurate statement of its contents.

93. Defendants deny the allegations in paragraph 93 of the Complaint and refer to the November 16, 2015 employment termination notice for a complete and accurate statement of its contents.

94. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 94 of the Complaint concerning any “investigation.” Defendants deny any remaining allegations in paragraph 94 of the Complaint.

95. Defendants deny the allegations in paragraph 95 of the Complaint and refer to the June 20, 2016 writing for a complete and accurate statement of its contents. The heading immediately preceding numbered paragraph 96 of the Complaint contains no factual allegations and thus no answer is required. To the extent that this heading may be deemed to contain factual allegations, they are denied.

96. Defendants deny the allegations in paragraph 96 of the Complaint, except admit only that on or around May 31, 2016, Kimball and CPK Media launched Milk Street Kitchen, which is now called Christopher Kimball’s Milk Street, and in or around October 2016, Christopher Kimball’s Milk Street began distributing its magazine.

97. Defendants deny the allegations in paragraph 97 of the Complaint, except admit only that individuals specifically named in paragraph 97 of the Complaint are current or former employees of, or freelancers for, CPK Media and were employees of, or freelancers for, ATK, none of whom, upon information and belief, are subject to a non-compete agreement or other contractual restrictive covenant with ATK. Further responding, Defendants state that only

four individuals specifically named in paragraph 97 of the Complaint were ATK employees when Kimball was terminated by ATK. Two of those individuals (Baldino and Gordon) were fired by ATK in November 2015, and ATK expressly consented to Kimball hiring the other two individuals (Cox and Stender).

98. Defendants deny the allegations in paragraph 98 of the Complaint.

99. Defendants deny the allegations in paragraph 99 of the Complaint, except admit only that Christopher Kimball's Milk Street targets the home cooking audience and offers similar types of multimedia products of many other companies, but with an approach unique to Christopher Kimball's Milk Street.

100. Defendants deny the allegations in paragraph 100 of the Complaint, except admit only that Christopher Kimball's Milk Street is distinguishable from America's Test Kitchen because they are in fact different and Defendants refer to www.177milkstreet.com for a complete and accurate statement of its contents.

101. Defendants deny the allegations in paragraph 101 of the Complaint and refer to www.177milkstreet.com for a complete and accurate statement of its contents.

102. Defendants deny the allegations in paragraph 102 of the Complaint.

103. Defendants deny the allegations in paragraph 103 of the Complaint and refer to www.177milkstreet.com for a complete and accurate statement of its contents.

104. Defendants admit the allegations in the first sentence of paragraph 104 of the Complaint. Defendants deny any remaining allegations in paragraph 104 of the Complaint.

105. Defendants deny the allegations in paragraph 105 of the Complaint, except admit only that all three magazines, as well as other magazines, currently have 32 pages and no

ads, and Defendants refer to *Milk Street Magazine*, *Cook's Illustrated*, and *Cook's Country* for complete and accurate presentations of their contents and layouts.

106. Defendants deny the allegations in paragraph 106 of the Complaint.

107. Defendants deny the allegations in paragraph 107 of the Complaint and refer to *Milk Street Magazine* and *Cook's Illustrated* for complete and accurate presentations of their contents.

108. Defendants deny the allegations in paragraph 108 of the Complaint and refer to the referenced review for a complete and accurate statement of its contents.

109. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 109 of the Complaint.

110. Defendants deny the allegations in paragraph 110 of the Complaint and refer to the "Swearing Hill News" email series and referenced Facebook page for a complete and accurate statement of their contents.

111. Defendants deny the allegations in paragraph 111 of the Complaint, except admit only that Christopher Kimball's Milk Street Radio podcast debuted on October 21, 2016 and Defendants refer to the podcast for a complete and accurate presentation of its contents.

112. Defendants deny the allegations in paragraph 112 of the Complaint.

113. Defendants deny the allegations in the first two sentences of paragraph 113 of the Complaint. Defendants deny knowledge or information sufficient to form a belief as to the truth of any remaining allegations in paragraph 113 of the Complaint.

114. Defendants deny the allegations in paragraph 114 of the Complaint.

115. Defendants deny the allegations in paragraph 115 of the Complaint.

116. Defendants deny the allegations in paragraph 116 of the Complaint.

117. Defendants deny the allegations in paragraph 117 of the Complaint and refer to the referenced interview for a complete and accurate statement of its contents.

118. Defendants admit the allegations in the first and second sentences of paragraph 118 of the Complaint. Defendants deny any remaining allegations in paragraph 118 of the Complaint, except admit only that in April 2016, APT agreed to distribute CPK Media's new public television show in 2017.

119. Defendants deny the allegations in the first sentence of paragraph 119 of the Complaint. Defendants admit any remaining allegations in paragraph 119 of the Complaint.

120. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 120 of the Complaint. Defendants deny the allegations in the second sentence of paragraph 120 of the Complaint, except admit only that CPK Media and DGA Productions filmed three shows for Christopher Kimball's Milk Street Television in October 2016. Defendants deny any remaining allegations in paragraph 120 of the Complaint and refer to the referenced Facebook page and photos for a complete and accurate statement or image of their contents.

121. Defendants deny the allegations in the first sentence of paragraph 121 of the Complaint, except admit only that, upon information and belief, WGBH notified ATK CEO David Nussbaum in or around March 2016, prior to signing a contract with CPK Media in May 2016, that WGBH would be the presenting station of Christopher Kimball's Milk Street Television. Defendants admit the allegations in the second sentence of paragraph 121 of the Complaint. Defendants deny the allegations in the third sentence of paragraph 121 of the Complaint. Further responding, Defendants state that upon information and belief, WGBH, as with other stations, presents many competing shows, including cooking shows.

122. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 122 of the Complaint. Defendants deny any remaining allegations in paragraph 122 of the Complaint, except admit only that public television stations will be able to air new episodes of Christopher Kimball's Milk Street Television in 2017.

123. Defendants deny the allegations in the first sentence of paragraph 123 of the Complaint. Defendants deny the allegations in the second sentence of paragraph 123 of the Complaint, except admit only that PRX has distributed ATK Radio to public radio stations since 2012. Defendants admit the third sentence of paragraph 123 of the Complaint. Defendants deny any remaining allegations in paragraph 123 of the Complaint.

124. Defendants deny the allegations in paragraph 124 of the Complaint, except admit only that in November 2015, despite being terminated by ATK, Kimball and Baldino offered to produce ATK Radio through the new company they anticipated starting. Further responding, Defendants refer to the "Radio Deal Memo" for a complete and accurate statement of its contents.

125. Defendants deny the allegations in paragraph 125 of the Complaint, except admit only that on April 15, 2016, they provided the six-months' notice required by the "Radio Deal Memo" but offered to continue producing ATK Radio through the end of 2016 and to continue collaborating with ATK for CPK Media's anticipated new radio program, and that, after ATK failed to respond to CPK Media's offer, CPK Media developed its new radio program, which debuted on public radio on October 22, 2016.

126. Defendants deny the allegations in paragraph 126 of the Complaint, except deny knowledge or information sufficient to form a belief as to PRX's purported "earlier promises to ATK."

127. Defendants deny the allegations in paragraph 127 of the Complaint. The headings immediately preceding numbered paragraph 128 of the Complaint contain no factual allegations and thus no answers are required. To the extent that these headings may be deemed to contain factual allegations, they are denied.

128. Defendants repeat and re-allege their answers to paragraphs 1 through 128 of the Complaint as if fully set forth herein.

129. Defendants deny the allegations in paragraph 129 of the Complaint, except admit only that Kimball had access to some confidential information while employed by ATK.

130. Defendants deny the allegations in paragraph 130 of the Complaint.

131. Defendants deny the allegations in paragraph 131 of the Complaint.

132. Defendants deny the allegations in paragraph 132 of the Complaint.

133. Defendants deny the allegations in paragraph 133 of the Complaint.

134. Defendants deny the allegations in paragraph 134 of the Complaint.

135. Defendants deny the allegations in paragraph 135 of the Complaint.

136. Defendants deny the allegations in paragraph 136 of the Complaint.

137. Defendants deny the allegations in paragraph 137 of the Complaint.

The headings immediately preceding numbered paragraph 138 of the Complaint contain no factual allegations and thus no answers are required. To the extent that these headings may be deemed to contain factual allegations, they are denied.

138. Defendants repeat and re-allege their answers to paragraphs 1 through 137 of the Complaint as if fully set forth herein.

139. Defendants deny the allegations in paragraph 139 of the Complaint.

140. Defendants deny the allegations in paragraph 140 of the Complaint.

141. Defendants deny the allegations in paragraph 141 of the Complaint.

142. Defendants deny the allegations in paragraph 142 of the Complaint.

The headings immediately preceding numbered paragraph 143 of the Complaint contain no factual allegations and thus no answers are required. To the extent that these headings may be deemed to contain factual allegations, they are denied.

143. Defendants repeat and re-allege their answers to paragraphs 1 through 142 of the Complaint as if fully set forth herein.

144. Defendants admit the allegations in paragraph 144 of the Complaint.

145. Defendants deny the allegations in paragraph 145 of the Complaint.

146. Defendants deny the allegations in paragraph 146 of the Complaint.

147. Defendants deny the allegations in paragraph 147 of the Complaint.

148. Defendants deny the allegations in paragraph 148 of the Complaint.

149. Defendants deny the allegations in paragraph 149 of the Complaint.

The headings immediately preceding numbered paragraph 150 of the Complaint contain no factual allegations and thus no answers are required. To the extent that these headings may be deemed to contain factual allegations, they are denied.

150. Defendants repeat and re-allege their answers to paragraphs 1 through 149 of the Complaint as if fully set forth herein.

151. Defendants deny the allegations in paragraph 151 of the Complaint.

152. Defendants deny the allegations in paragraph 152 of the Complaint.

153. Defendants deny the allegations in paragraph 153 of the Complaint.

The headings immediately preceding numbered paragraph 154 of the Complaint contain no factual allegations and thus no answers are required. To the extent that these headings may be deemed to contain factual allegations, they are denied.

154. Defendants repeat and re-allege their answers to paragraphs 1 through 153 of the Complaint as if fully set forth herein.

155. Defendants deny the allegations in paragraph 155 of the Complaint.

156. Defendants deny the allegations in paragraph 156 of the Complaint, including that the referenced doc is an employment agreement, and refer to that document for a complete and correct statement of its contents.

157. Defendants deny the allegations in paragraph 157 of the Complaint.

158. Defendants deny the allegations in paragraph 158 of the Complaint.

159. Defendants deny the allegations in paragraph 159 of the Complaint.

The headings immediately preceding numbered paragraph 160 of the Complaint contain no factual allegations and thus no answers are required. To the extent that these headings may be deemed to contain factual allegations, they are denied.

160. Defendants repeat and re-allege their answers to paragraphs 1 through 159 of the Complaint as if fully set forth herein.

161. Defendants deny the allegations in paragraph 161 of the Complaint.

162. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 162 of the Complaint, except Baldino admits only that

she received compensation and benefits from ATK until she was terminated by ATK on November 16, 2015.

163. Defendants deny the allegations in paragraph 163 of the Complaint.

164. Defendants deny the allegations in paragraph 164 of the Complaint.

The headings immediately preceding numbered paragraph 165 of the Complaint contain no factual allegations and thus no answers are required. To the extent that these headings may be deemed to contain factual allegations, they are denied.

165. Defendants repeat and re-allege their answers to paragraphs 1 through 164 of the Complaint as if fully set forth herein.

166. Defendants deny the allegations in paragraph 166 of the Complaint.

167. Defendants deny the allegations in paragraph 167 of the Complaint.

168. Defendants deny the allegations in paragraph 168 of the Complaint.

169. Defendants deny the allegations in paragraph 169 of the Complaint.

The headings immediately preceding numbered paragraph 170 of the Complaint contain no factual allegations and thus no answers are required. To the extent that these headings may be deemed to contain factual allegations, they are denied.

170. Defendants repeat and re-allege their answers to paragraphs 1 through 169 of the Complaint as if fully set forth herein.

171. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 171 of the Complaint.

172. Defendants deny the allegations in paragraph 172 of the Complaint.

173. Defendants deny the allegations in paragraph 173 of the Complaint.

The headings immediately preceding numbered paragraph 174 of the Complaint contain no factual allegations and thus no answers are required. To the extent that these headings may be deemed to contain factual allegations, they are denied.

174. Defendants repeat and re-allege their answers to paragraphs 1 through 173 of the Complaint as if fully set forth herein.

175. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 175 of the Complaint.

176. Defendants deny the allegations in paragraph 176 of the Complaint.

177. Defendants deny the allegations in paragraph 177 of the Complaint.

The headings immediately preceding numbered paragraph 178 of the Complaint contain no factual allegations and thus no answers are required. To the extent that these headings may be deemed to contain factual allegations, they are denied.

178. Defendants repeat and re-allege their answers to paragraphs 1 through 177 of the Complaint as if fully set forth herein.

179. The allegations in paragraph 179 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 179 of the Complaint may be deemed to contain factual allegations, they are denied.

180. Defendants deny the allegations in paragraph 180 of the Complaint, except admit only that CPK Media is engaged in the conduct of trade or commerce.

181. Defendants admit the allegations in paragraph 181 of the Complaint.

182. Defendants deny the allegations in paragraph 182 of the Complaint.

183. Defendants deny the allegations in paragraph 183 of the Complaint.

184. Defendants deny the allegations in paragraph 184 of the Complaint.

185. Defendants deny the allegations in paragraph 185 of the Complaint.

186. Defendants deny the allegations in paragraph 186 of the Complaint.

187. Defendants deny the allegations in paragraph 187 of the Complaint.

188. Defendants deny the allegations in paragraph 188 of the Complaint.

189. Defendants deny the allegations in paragraph 189 of the Complaint.

The WHEREFORE paragraph, including its subparagraphs A through L, immediately after numbered paragraph 189 of the Complaint contains no factual allegations and thus, no answer is required. To the extent the WHEREFORE paragraph, or any of subparagraphs A through L, immediately after numbered paragraph 189 of the Complaint may be deemed to contain factual allegations, they are denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Each claim in the Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

ATK's claims are barred, in whole or in part, by the doctrines of waiver, acquiescence, and estoppel.

THIRD AFFIRMATIVE DEFENSE

ATK's claims are barred, in whole or in part, by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

ATK's claims are barred, in whole or in part, by its own consent or ratification.

FIFTH AFFIRMATIVE DEFENSE

ATK's claims are barred, in whole or in part, by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

ATK's claims are barred, in whole or in part, because ATK has suffered no damages or otherwise been harmed by any conduct of Defendants.

SEVENTH AFFIRMATIVE DEFENSE

ATK's claims are barred, in whole or in part, because ATK has failed to satisfy and meet the requirements of M.G.L. c. 93A.

EIGHTH AFFIRMATIVE DEFENSE

ATK's claims are barred, in whole or in part, because ATK failed to mitigate its alleged damages.

NINTH AFFIRMATIVE DEFENSE

ATK's claims are barred, in whole or in part, because Defendants at all relevant times engaged in all relevant activities in good faith.

TENTH AFFIRMATIVE DEFENSE

ATK is not statutorily or otherwise entitled to an award of costs, expenses, attorneys' fees, or enhanced, punitive or treble damages.

ELEVENTH AFFIRMATIVE DEFENSE

ATK's alleged damages are subject, in whole or in part, to offset.

TWELFTH AFFIRMATIVE DEFENSE

ATK's claims are barred, in whole or in part, by its prior breach of contract.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendants are entitled to their attorneys' fees and costs pursuant to MGL c. 231, § 6f because ATK's claims are wholly insubstantial, frivolous, and not advanced in good faith.

ADDITIONAL DEFENSES

Defendants hereby give notice that they intend to rely upon such other and further defenses as may become available or apparent during pretrial proceedings in this case and hereby reserve their rights to amend this answer and assert such defenses.

COUNTERCLAIM

Defendants/Counterclaim-Plaintiffs Christopher P. Kimball (“Kimball”) and CPK Media, LLC (“CPK Media”) bring this Counterclaim against Plaintiff/Counterclaim-Defendant America’s Test Kitchen Inc. and Additional Defendant on the Counterclaim America’s Test Kitchen Limited Partnership, and allege as follows:

PARTIES

1. Counterclaim-Plaintiff Kimball is a resident of Cambridge, Massachusetts, and a founder of CPK Media.
2. Counterclaim-Plaintiff CPK Media is a Delaware limited liability company with its principal place of business at 177 Milk Street, Boston, Massachusetts.
3. CPK Media is a national multimedia company dedicated to culinary arts education and developing innovative new recipes for home cooking. CPK Media is engaged in, among other things, the business of culinary education through television and radio programs, digital content, cookbooks, magazines, and live cooking demonstrations and classes. CPK Media competes with many established companies in the markets it serves. CPK Media’s publications, productions, and other products have a distinctive style that draws from numerous cultural influences.

4. Upon information and belief, Counterclaim-Defendant America's Test Kitchen Inc. is a corporation organized under the laws of Delaware with a principal place of business at 17 Station Street, Brookline, Massachusetts.

5. Upon information and belief, America's Test Kitchen Inc. was previously known as WDH, Inc.

6. Upon information and belief, America's Test Kitchen Limited Partnership is a limited partnership organized under the laws of Massachusetts with a principal place of business at 17 Station Street, Brookline, Massachusetts.

7. Upon information and belief, America's Test Kitchen Limited Partnership was previously known as Boston Common Press Limited Partnership ("BCP").

8. Upon information and belief, America's Test Kitchen Inc. is, and at all relevant times, has been, the sole general partner of America's Test Kitchen Limited Partnership.

JURISDICTION AND VENUE

9. This Court has personal jurisdiction over America's Test Kitchen Inc. pursuant to M.G.L. c. 223A, §§ 2 and 3 because it is a corporation with a principal place of business in Massachusetts, transacts business in Massachusetts, contracts to supply services in Massachusetts, and caused and continues to cause tortious injury by an act or omission in Massachusetts.

10. This Court has personal jurisdiction over America's Test Kitchen Limited Partnership pursuant to M.G.L. c. 223A, §§ 2 and 3 because it is a partnership organized under the laws of the Commonwealth of Massachusetts, has its principal place of business in Massachusetts, transacts business in Massachusetts, contracts to supply services in

Massachusetts, and caused and continues to cause tortious injury by an act or omission in Massachusetts.

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

12. Venue is proper in the Business Litigation Session of Suffolk County pursuant to Superior Court Administrative Directive No. 09-1, effective January 19, 2009, because CPK Media has its usual place of business in Suffolk County and this case meets the presumptive intake criteria for this Court.

FACTUAL BACKGROUND

The Partnership Agreement

13. ATK is governed by a Third Amended and Restated Agreement of Limited Partnership, dated as of June 1, 2002 (the “Partnership Agreement”).

14. Kimball is a limited partner of the Partnership.

15. The Partnership Agreement defines “Profits Interest” as “the percentage interest of a Partner in residual distributions of the Partnership which may be granted by the General Partner pursuant to Section 3.02.”

16. The Partnership Agreement provides that “[i]n the case of a new or the additional contributions of an existing Limited Partner, the General Partner and such Limited Partner may agree that such Limited Partner shall not make any Initial Capital Contribution and that such Limited Partner’s Interest in the Partnership shall be limited to a Profits Interest; and from time to time the General Partner may increase the Profits Interest of any Limited Partner.”

17. Eliot Wadsworth II (“Wadsworth”), as President of WDH, Inc., and Kimball entered into a letter agreement dated as of January 1, 2003 (the “Letter Agreement”). In exchange for the Letter Agreement, Kimball provided adequate consideration.

18. On January 1, 2003, WDH, Inc. was the general partner of BCP.

19. One of the stated purposes of the Letter Agreement was “to clarify certain understandings [ATK and Kimball had] reached with respect to . . . [Kimball’s] status as a partner of the Partnership.”

20. In the Letter Agreement, Kimball was granted the Profits Interest.

21. Kimball was granted the Profits Interest in his capacity as limited partner of the Partnership.

22. The Letter Agreement provides:

Upon the occurrence of a Capital Transaction, including a Terminating Capital Transaction as defined in the Partnership Agreement, and upon the occurrence of a sale or transfer of 50% or more of the limited partnership interests of the Partnership, you shall be entitled to receive in respect of your Profits Interest, an amount equal to (i) in the case of a Terminating Capital Transaction or Capital Transaction, 5% of the amount by which the Net Proceeds to the Partners, as hereinafter defined, exceeds \$60,000,000 and (ii) in the case of a sale or transfer of 50% or more of the limited partnership interests of the Partnership, 5% of the amount by which the Net Proceeds to the Partners exceeds the product of \$60,000,000 and the percentage of the limited partnership interests being sold, expressed as a decimal. The Net Proceeds to the Partners arising from Capital Transactions or sales of limited partnership interests prior to a Terminating Capital Transaction shall be aggregated to determine whether the \$60,000,000 threshold has been achieved with respect to any transaction.

23. The Letter Agreement further provides that, in addition to his Profits Interest, Kimball “shall continue to hold [his] interest as a limited partner of the Partnership, which as of the date of this Agreement represents 19.9001% interest in the Partnership, before giving effect to the Profits Interest described in this agreement.”

24. Kimball agreed in the Letter Agreement “to be bound by the terms of the Partnership Agreement, as the same may be amended from time to time, with respect to [his] Profits Interest.”

25. The Letter Agreement does not provide a mechanism for termination or revocation of Kimball's Profits Interest.

26. The Partnership Agreement does not provide a mechanism for termination or revocation of Kimball's Profits Interest.

27. Kimball never agreed in writing or otherwise not to solicit employees of the Partnership in his capacity as employee or limited partner of ATK.

28. Kimball never agreed in writing or otherwise not to compete with the Partnership in his capacity as employee or limited partner of ATK.

29. The Letter Agreement does not contain a non-compete or non-solicitation of employees provision.

30. The Partnership Agreement does not contain a non-compete or non-solicitation of employees provision.

31. The Partnership Agreement provides that "[t]he Partners and any Affiliates of any Partners may engage in and possess interests in other business ventures and investment opportunities of every kind and description, independently or with others, including serving as general partner of other partnerships and participating in the venture capital and operating company investment and management businesses in any and all respects. Neither the Partnership nor the other Partners shall have any rights in or to such ventures or opportunities or the income or profits thereof."

32. Upon information and belief, the Partnership currently has approximately 12 limited partners.

33. Upon information and belief, the limited partners include, individually and/or through a trust or entity, Kimball, Wadsworth, George Denny III (“Denny”), and John Halpern (“Halpern”), as well as others.

ATK Expands its Board and Refuses to Commit to Kimball’s Future Employment

34. In 2014, Wadsworth, Denny, Kimball, and Halpern were considering the future of ATK, including whether to sell ATK.

35. In or around April 2014, they agreed that it was in the partners’ interest to hold onto ATK for the long term.

36. At the time, Kimball was the primary public face of ATK’s media presence.

37. In or around Spring 2014, Kimball, Wadsworth, Denny, and Halpern agreed that the Partnership would establish a succession plan to ensure ATK would survive if something happened to Kimball.

38. In or around Spring 2015, Kimball requested that he and ATK enter into an employment contract with a guaranteed term of employment. Kimball’s employment compensation had not changed since approximately 2003.

39. On June 4, 2015, Wadsworth emailed Kimball denying Kimball’s requests for an employment contract with a fixed term and increases to his compensation. Wadsworth also advised Kimball that David Nussbaum would be joining the Board of Directors of the Partnership (the “Board”).

40. Upon information and belief, Nussbaum was the CEO of content and e-commerce company F+W Media Inc. and, prior to that, was CEO of Penton Media, both of

which were owned in part by private equity firm ABRY Partners, a founding member of which also joined ATK's Board around the same time as Nussbaum.

41. In his June 4, 2015 email to Kimball regarding the process of determining Kimball's future role with ATK, Wadsworth wrote, "If this process becomes confrontational, a lot of damage can be done in a short time. Please do not let that happen. To repeat, no one has more to lose than you."

ATK Directs Kimball to Leave and Form His Own Company

42. The Board met on or around late July 2015 or early August 2015. Nussbaum and two other new Board members attended the meeting. It was clear to Kimball during that Board meeting that Nussbaum was now in charge and the Board wanted to take ATK in a new direction.

43. Following the late July or early August 2015 Board meeting, Wadsworth sent Kimball an email directing Kimball to terminate ATK's non-profit outreach providing culinary classes at the Boston Public Market and to terminate a consultant, and stating that there would be a lot of changes that they would discuss during an August 24, 2015 meeting.

44. On August 24, 2015, Kimball met with Wadsworth and Denny.

45. On August 24, 2015, Wadsworth sent an email to Kimball summarizing their meeting, in which Wadsworth wrote that "it is the board's intention to replace you as CEO as soon as our search produces an appropriate candidate. We anticipate that the process will take between 30-100 days." Wadsworth also wrote to Kimball that "as soon as reasonably possible, [Kimball and his wife and ATK employee Melissa Baldino ("Baldino")] make arrangements to relocate [their] work space out of the company offices so as to accommodate the needs of the

incoming CEO.” Simultaneously, Wadsworth asked Kimball to execute an agreement not to compete or solicit staff.

46. During the August 24, 2015 meeting, Wadsworth and Denny requested that Kimball and Baldino form a media production group to handle television, radio, and live events for ATK as ATK’s subcontractor.

47. At the August 24, 2015 meeting, Wadsworth, Denny, and Kimball also discussed Kimball’s request that ATK buy him out of his Profits Interests “in light of the intention that BCP not be sold in the foreseeable future, and the possibility that [Kimball’s] association could be terminated.”

48. In response to Kimball’s request, Wadsworth wrote that he “would be pleased to communicate [Kimball’s] thoughts on valuation to the full board.” Wadsworth added that, personally, he “would recommend to the board that [it] require a non-compete agreement running longer into the future.”

49. From the August 24, 2015 meeting between Wadsworth, Denny, and Kimball, until Kimball’s employment was terminated as of November 20, 2015, Kimball’s job duties for ATK were significantly reduced and were limited to hosting ATK’s television and radio shows, publicity, and live events. Kimball was no longer in a managerial position at ATK, no employees, other than his executive assistant, reported to him, and he had no day-to-day responsibilities or interactions with the staff.

50. Kimball’s new, reduced role as of August 24, 2015 did not require his presence in ATK’s office. While he continued to work for ATK in his reduced role from August 24, 2015 until his employment termination became effective on November 20, 2015, Kimball performed his work for ATK almost exclusively outside of the ATK office.

51. One day later, on Tuesday, August 25, 2016, Denny wrote to Kimball demanding that “[a]s quickly as possible, [Kimball and Baldino] . . . move out of the building, but no later than the end of November.” Denny also advised Kimball that “[t]he longer term agreement with the production/consulting company will need to be approved by the board, and hopefully, the new CEO.” Denny further wrote that, “the goal would be to make a formal announcement of the new CEO and [Kimball’s] new role working with BCP in a new production company, at the same time.”

52. Three days later, on Friday, August 28, 2015, Denny wrote to Kimball,

The Board has charged me with documentation of our verbal agreement, and I asked Jon Gabriel to draw up a standard non-compete, non-solicit, and non-disparagement contract to implement that understanding. Jack and Rob will continue to report to you until the new CEO is in place. In order for us to attract a new CEO and give him/her the space required to do their job, you and Melissa must leave the building by the end of November. In exchange, the company will agree to pay your full salaries and bonus for 2015. We would like to finish the process with signed agreements by September 2nd.

Any discussion of your sales interest must wait until we have a better understanding of our budget priorities for future years.

The Board wants to work constructively with you concerning your future duties and compensation and define a role which is rewarding and enjoyable for everyone.

Of course, if we are unable to reach mutually acceptable language on the short-term contract, you must resign, receiving no further compensation.

53. Kimball and Baldino were not willing to sign non-compete agreements.

Therefore, based on Denny’s August 28, 2015 email to Kimball and the terms and deadlines presented therein, Kimball and Baldino assumed they would be fired within the next few days.

54. On Saturday, August 29, 2015, at approximately 6:30 PM, Denny sent Kimball terms for Kimball and Baldino to continue their working relationship with ATK for the remainder of 2015 (the "Draft Interim Agreement").

55. The Draft Interim Agreement expressly directed that Kimball and Baldino "both move out of the Company's office as soon as reasonably practicable, and by no later than November 30, 2015."

56. The Draft Interim Agreement also intended to preclude Kimball and Baldino from competing with ATK, soliciting any ATK employees, interfering with any current or prospective business relationships of ATK, or disparaging ATK.

57. The Draft Interim Agreement required Kimball and Baldino to execute and return it by Tuesday, September 2, 2015.

58. Neither Kimball nor Baldino signed the Draft Interim Agreement.

59. In or around August 29, 2015, pursuant to ATK's directives that they move out of ATK's office and set up their own offices to continue working with ATK through a new company, Kimball and Baldino began looking for new office space.

60. Kimball responded to the Board on or around September 1, 2015. Kimball expressed concern that the current situation was likely to result in great damage to the brand they had built together over 25 years. He also indicated that he had no problem with a new CEO or some of the other changes proposed by the Board.

61. On Tuesday, September 1, 2015, Denny responded to Kimball via email and reiterated that "it would be best if you and Melissa could work off-site through at least Labor Day weekend." Labor Day was Monday, September 7, 2015.

62. Upon information or belief, on or around September 3, 2015, Kimball advised the Board that he was committed to a mutually-beneficial solution. He further advised the Board that there was no question he would start a new business; rather, the question that needed a solution was how that transition would work and how it could work to their mutual benefit.

63. In an email dated September 4, 2015, Denny again acknowledged that Kimball was going to form a “new company” and that ATK wanted to “reach a long-term contract” with Kimball and Baldino “to produce radio, TV, events, and written materials.”

64. Denny reiterated that ATK would require a “non-compete, non-poach and non-disparagement contract.”

65. Upon information and belief, Kimball responded to Denny’s email on or around September 5, 2015, and advised that he was going to start a new company and that, for obvious reasons, a non-compete was a non-starter as he launched a new business.

66. Throughout September and October 2015, negotiations continued between Kimball and ATK regarding Kimball’s and his anticipated new company’s future relationship with ATK. ATK’s negotiations continued to focus on their demand that Kimball and Baldino accept a non-compete agreement and other contractual restrictive covenants with ATK (employment terms to which they were not previously subject).

67. Upon information and belief, in his September 5, 2015 response to Denny, Kimball reiterated that he would like to leave under the best possible circumstances and do his best for ATK in terms of both transition and on an ongoing basis.

68. On October 5, 2015, the new ATK CEO, David Nussbaum wrote in an email to Baldino that “Chris knows now I think we are moving closer to an agreement for you both to do your own thing, while shooting and producing ATK/CC for us.”

69. On October 7, 2015, Denny sent Kimball ATK’s “final offer sheet” (the “October 7th Offer”).

70. In Denny’s October 7, 2015 email attaching the October 7th Offer, Denny referred to Kimball’s and Baldino’s anticipated new company as “KimballCo” and wrote to Kimball

Enclosed is our final offer sheet. When you get a chance to review it you will see that we accept most of your proposal including the absence of a non-compete or exclusivity clause. We will pay you a million dollars for part-time work, ask you to continue to be our public face on PBS, and limit our mutual commitment to a one-year contract with a transition episode. Melissa is asked to train her replacement as Executive Producer. We give KimballCo the option to continue the ATK radio/podcast if you want to pay its costs and receive its underwriting revenue. You and Melissa will have access to the BCP office and kitchen to perform your production responsibilities after you have relocated to the new KimballCo premises.

71. The October 7th Offer contained the following clause: “Office Space. KimballCo would establish its headquarters separate from the BCP premises as soon as reasonably practical, but would be given access to the BCP test kitchen and other settings for the PBS television shows during the Term.”

72. The October 7th Offer included the following provision: “Confirmation. KimballCo, Mr. Kimball and Ms. Baldino would confirm they do not intend to operate the KimballCo business in a manner that would be damaging to the ATK brand / business and to the significant investment and upside opportunity that Mr. Kimball and his family would continue to hold.”

73. In the October 7th Offer, ATK also proposed that ATK “would be provided a right of first refusal on any investment opportunities KimballCo offers to third parties during the Term” of the anticipated memorandum of understanding between ATK and KimballCo.

74. Upon information and belief, on or around October 12, 2015, Kimball sent Denny and Wadsworth a communication in response to Denny’s October 7, 2015 email and the October 7th Offer, in which Kimball reiterated his and Baldino’s commitment to the continued growth of ATK. Kimball also advised Denny and Wadsworth that he and Baldino intended to continue making a radio show whether under the ATK brand or otherwise. Kimball further advised that they were willing to continue producing the ATK radio show under the ATK brand for the foreseeable future, but if ATK was not interested in that, Kimball and Baldino would like to take rights to the show (absent the ATK brand and trademark) with them to their anticipated new business.

75. Upon information and belief, in his October 12, 2015 communication to Denny and Wadsworth, Kimball also explained that the “Confirmation” provision was a form of non-compete and, as discussed at length, Kimball and Baldino could not agree to a non-compete or any similar restrictions. However, Kimball emphasized that ATK’s and Kimball’s economic interests were and would continue to be aligned with the continued growth of ATK, especially considering Kimball’s family’s 20% equity interest in the Partnership.

76. Upon information and belief, in his October 12, 2015 communication to Denny and Wadsworth, Kimball and Baldino expressly requested that ATK agree that Kimball’s and Baldino’s anticipated new business could hire six ATK employees.

77. Upon information and belief, in his October 12, 2015 communication to Denny and Wadsworth, Kimball and Baldino rejected ATK's proposed right of first refusal to invest in Kimball's and Baldino's anticipated new business.

78. On or around October 20, 2015, Nussbaum had breakfast with Kimball and lunch with Baldino.

79. During the October 20, 2015 breakfast and lunch, Kimball and Baldino reiterated to Nussbaum their concern that ATK would suffer damage if ATK did not implement a sound, gradual transition plan to separate from Kimball and Baldino.

80. At her October 20, 2015 lunch with Nussbaum, Baldino provided him with an outline of different ideas for transitioning ATK away from her and Kimball in ways that would protect ATK's brand.

81. On October 20, 2015, Nussbaum wrote an email to Kimball summarizing their discussion at breakfast, in which he stated that ATK "no longer wants to sustain losses on the radio show" and summarized their "compromise" that Kimball's and Baldino's anticipated new business would continue doing the show "under the ATK banner." Nussbaum further wrote that Kimball "would move out of [his] office by the end of October." In addition, Nussbaum wrote that ATK wanted a non-solicitation of employees agreement, but that ATK would expressly permit certain employees to leave ATK to join Kimball's and Baldino's anticipated new business. Nussbaum also acknowledged Kimball's objection to the "Confirmation" provision in the October 7th Offer.

82. Nussbaum's October 20, 2015 instruction that Kimball move out of his office by the end of October was a change in position from a statement Nussbaum made to Kimball earlier in October 2015 that Kimball could keep his ATK office for a few years.

83. On October 21, 2015, Kimball wrote to Nussbaum requesting “permission to chat with a tiny handful of folks before giving [Nussbaum] two other names” of ATK employees he would like his anticipated new business to hire. Kimball also wrote, “as I said, I eagerly support your success at ATK since I control 20% of the equity.” Kimball reiterated, “Just to confirm, the non-compete language in the form of ‘Confirmation’ does have to come out per earlier conversations and not re-appear under a different guise. As you know, this is a key issue for us.”

84. As directed by ATK, Kimball officially relocated to a temporary office in around late October 2015.

85. Baldino continued to work for ATK out of ATK’s office until she was terminated on November 16, 2015.

ATK Continues Its Plans to Terminate ATK’s Relationship with Kimball

86. On October 28, 2015, Nussbaum informed Kimball that the Board had met and was “still struggling with [his] refusal to sign any kind of non-compete. We need more time to consider this request as we are not comfortable signing a deal that is silent on non-compete and non-solicit.”

87. Upon information and belief, despite Nussbaum’s October 28, 2015 representations to Kimball that the Board was continuing to consider the proposed deal on Kimball’s and Baldino’s terms without a non-compete, ATK already had engaged a crisis PR firm, Denterlein, to manage ATK’s media campaign regarding Kimball’s departure from ATK.

88. Upon information and belief, on or around November 3, 2015, Nussbaum circulated to various Denterlein and ATK employees draft internal and external announcements of Kimball’s departure from ATK.

89. On November 16, 2015, Nussbaum, as Chairman of the Board and CEO of the Partnership, sent Kimball a letter terminating Kimball's employment with ATK (the "Termination Notice").

90. In the Termination Notice, Nussbaum wrote "the Board is hereby terminating your employment agreement. The last day of your employment with [the Partnership] will be this Friday, November 20, 2015."

91. Nussbaum also wrote, "[c]oncomitant with termination of your employment agreement, the profits interest in the Partnership as referenced therein is hereby terminated."

92. ATK also refused to pay Kimball any further compensation, a severance, or his 2015 bonus.

93. On November 16, 2015, the Partnership also terminated Baldino's employment with ATK.

94. ATK offered to pay Baldino severance only if she would agree, for 12 months following termination, to give ATK 10 days' advance notice of each new business activity she planned to undertake and to "provide [ATK] with other pertinent information concerning such business activity as the Company may reasonably request in order to determine [her] continued compliance with [her] obligations under" a proposed severance agreement. Baldino did not accept ATK's severance offer.

95. From around late August 2015 through their termination on November 16, 2015, Kimball and Baldino believed that ATK desired to terminate their ATK employment. Nevertheless, Kimball and Baldino continued to perform all job duties given to them by ATK, including filming the Cook's Country television show in September 2015.

96. Even after ATK terminated their employment in November 2015, Kimball and Baldino, at ATK's request, continued to perform work on behalf of ATK through the end of 2015 and early 2016.

97. At ATK's request, Kimball continued to make television and other public appearances on behalf of ATK through early 2016. Kimball made these public appearances with the knowledge and consent of Nussbaum. Kimball made these public appearances without compensation from ATK.

98. In March 2016, Kimball made a public appearance in St. Louis, Missouri, for which he shared an appearance and fee with ATK, though under no obligation to do so.

Despite Termination, Kimball and Baldino Work with ATK to Save ATK Radio

99. On November 16, 2015, after Jack Bishop of ATK had just terminated her over the phone, Baldino (during that same call) asked Bishop about the fate of ATK's radio show *America's Test Kitchen Radio* ("ATK Radio"). Bishop told Baldino that ATK was dropping the show, and Baldino expressed concern over that decision.

100. On or around November 17, 2015, Kimball emailed Nussbaum that the termination of *ATK Radio* might be detrimental to ATK's public media platforms because ATK has many joint licenses involving both TV and radio.

101. On or around November 19, 2015, Kimball and Nussbaum executed an agreement by which ATK's radio show would continue to be produced by Kimball and Baldino through their anticipated new company (the "Radio Agreement").

102. In the Radio Agreement, Nussbaum agreed that Kimball's and Baldino's anticipated new company could hire two specific ATK employees, Stephanie Stender and

Jennifer Cox, and that ATK employees or contributors, Jack Bishop, Lisa McManus, Dan Souza, Bridget Lancaster, Stephen Meuse, and Adam Gopnik, would work on the radio shows.

103. The Radio Agreement provided that either party could terminate the Radio Agreement with six months' advance notice.

104. From approximately mid-November through the end of December 2015, Kimball and Baldino contributed their time to producing *ATK Radio* at no cost to ATK.

105. Neither Kimball, Baldino, nor CPK Media received any underwriting compensation in connection with *ATK Radio* for 2015.

106. Kimball and Baldino did not have a final business plan in place for their anticipated new business until January 2016.

107. Kimball and Baldino did not have any third-party financing in place for their anticipated new business until late January 2016.

108. Had Kimball and Baldino reached an agreement with ATK concerning a continued relationship beyond the Radio Agreement, the nature of CPK Media's business might have been different.

109. On or around April 15, 2016, Kimball provided the contractually-required six months advanced notice to ATK that CPK Media was terminating the Radio Agreement. The effective date of the termination was October 15, 2016.

110. At that time, Kimball and CPK Media offered to continue the Radio Agreement until the end of 2016 and to keep an ATK segment if ATK so chose.

111. Nussbaum did not respond to Kimball's April 2016 offer until the two of them met with Bishop on June 9, 2016, at which point, Nussbaum first informed Kimball of ATK's plans to continue *ATK Radio* without Kimball or CPK Media.

112. Upon information and belief, ATK's decision to continue *ATK Radio* on its own was made in response to seeing an article published by the New York Times on June 1, 2016, which announced Kimball's and Baldino's new venture, now known as Christopher Kimball's Milk Street.

113. On June 10, 2016, Nussbaum sent Kimball and CPK Media a letter confirming the termination of the Radio Agreement, effective as of October 15, 2016.

114. Upon information and belief, on June 10, 2016, ATK notified PRX, the distributor of *ATK Radio*, that ATK intended to continue a radio show independent from Kimball and CPK Media.

115. Until the termination of the Radio Agreement effective October 15, 2016, Kimball and CPK Media continued to work with ATK pursuant to the Radio Agreement.

ATK Unlawfully Interferes With Kimball, CPK Media, and their Business Partners

116. In the November 16, 2015 Termination Notice, ATK wrote to Kimball that "the Board and management have become aware of efforts by [Kimball] to establish [his] own business, including repeated contacts and solicitations by [Kimball] of other Partnership employees and with persons having important commercial relationships with BCP. These actions have been to the detriment of BCP's business."

117. ATK did not provide any details concerning its accusations in the Termination Notice or explain how Kimball's actions—which were taken at ATK's direction and with ATK's knowledge—violated any duties Kimball owed to ATK.

118. On November 16, 2015, ATK's counsel sent Kimball's counsel a letter, which stated in part that Kimball "must not interfere with or take unfair business advantage of the commercial and business relationships that BCP enjoys with sponsors, vendors, customers

and employees.” The letter further stated that ATK “is aware of efforts by Mr. Kimball to solicit certain key employees and to interfere tortuously with specific contractual arrangements BCP has with third parties. Mr. Kimball must cease and desist those efforts immediately.” The letter provided no details as to what these purported efforts were or why ATK consider them “tortuous.”

119. In the November 16, 2015 letter, ATK’s counsel also wrote to Kimball’s counsel that “BCP will regard any attempt to [sic] Mr. Kimball to compete with BCP’s programming, publications or services as a theft of corporate opportunities rightfully conceived, pursued and fully developed by the Partnership while he was the principal fiduciary of BCP and its investors.”

120. Finally, in the November 16, 2015 letter to Kimball’s counsel, ATK’s counsel wrote that “[w]hile threatening litigation is never pleasant, Mr. Kimball and any persons backing him financially or otherwise need to understand that BCP and its Board of Directors will undertake such actions as necessary to protect their rights. I would ask that you advise Mr. Kimball that he show any such persons a copy of this letter, and should they have any doubts as to the Boards’ resolve they are free to contact me directly.”

121. On December 2, 2015, Kimball’s counsel responded to ATK’s counsel’s November 16, 2015 letter, writing in part:

your letter accuses Mr. Kimball of improper conduct involving solicitation of key employees and interference with BCP’s contractual relationships with third parties, and warns him to cease and desist from those activities immediately. As we have told you in the past when you have made similar vague accusations without offering any specific examples, Mr. Kimball strongly disagrees that he has engaged in any such conduct. If you are interested in having a productive discussion of this issue so that we may assist our clients in avoiding a courtroom conflict, we again ask that you offer specific instances of the improper conduct to which you are referring.

122. On December 23, 2015, ATK's counsel responded to Kimball's counsel's December 2, 2015 letter, noting the following three actions that Kimball had taken purportedly "in breach of his obligations to [ATK]":

- An appearance on [a television] show on December 8, 2015 originally booked through BCP, while he was employed, using an ATK recipe not created by him;
- Trademark registration applications that he filed while employed with BCP and during what we thought were good faith, fair dealing negotiations over a continued relationship with BCP; and
- At least one domain name registration, again while employed in a fiduciary capacity at BCP.

123. The December 8, 2015 television appearance was made by Kimball on behalf of ATK, without compensation from ATK, with ATK's prior notice and consent. Kimball's use of the referenced recipe on the show also was approved in advance by ATK.

124. Kimball's registration of trademarks and domain names were made in connection with the anticipated new company that ATK directed him to form.

125. Neither ATK nor its counsel offered any details as to how Kimball's (a) television appearance and use of a recipe, all with ATK's consent; or (b) registration of trademarks and domain names for a company ATK directed him to start breached his obligations to ATK.

126. Even though ATK's allegations of Kimball's breaches of duty were baseless, CPK Media was required to disclose ATK's written threat of litigation in its disclosure statements to potential investors. ATK's threat of litigation has impacted the willingness of investors to invest in CPK Media and directly contributed to CPK Media's loss of millions of dollars in investment funding.

127. On June 20, 2016, Nussbaum sent Kimball an email stating: “We insist that you immediately notify PRX that you and CPK Media/Milk Street Kitchen are withdrawing any requests to produce the [radio] program or have any other radio content distributed by PRX during the term of ATK’s distribution agreement with PRX. We also insist that you, Ms. Baldino, and CPK Media/Milk Street Kitchen cease any further direct or indirect interference with ATK’s business relationships, including PRX, WBGH [sic] and any other ATK partner.”

128. In his June 20, 2016 email to Kimball, Nussbaum based his demand that CPK Media/Milk Street Kitchen cease and desist from working with PRX, WBGH, or others with whom ATK also works on false accusations against Kimball, Baldino, and CPK Media.

129. For example, in his June 20, 2016 email, Nussbaum claimed that Kimball “voluntarily chose to leave ATK” and that Kimball “represented to [ATK] on several occasions that [Kimball’s new venture] would not directly compete with ATK.”

130. On or around June 21, 2016, Kimball responded to Nussbaum correcting many of the false accusations in Nussbaum’s June 20, 2016 email to Kimball. Kimball also included documentary evidence to prove the falsity of Nussbaum’s accusations.

131. Upon information and belief, Nussbaum knew statements in his June 20, 2016 cease-and-desist email to Kimball were false, but sent the email to Kimball anyway to interfere with CPK Media’s business.

132. Upon information and belief, since at least June 2016, ATK has closely monitored Kimball’s and CPK Media’s activities.

133. ATK has sent threatening letters to at least one of CPK Media’s anticipated business partners in an effort to interfere with CPK Media’s business relationships.

134. On or around September 29, 2016, ATK sent a letter to PRX, stating “[i]t has come to our attention that PRX is independently working with ATK Radio’s current host, Christopher Kimball, to promote and distribute a directly competing radio show entitled Christopher Kimball’s Milk Street Radio.” ATK also wrote that “[a]lthough PRX has refused to allow ATK to preview the show, we have learned through third parties that it replicates the format, look and feel of ATK Radio.”

135. In ATK’s September 29, 2016 letter to PRX, ATK wrote that “PRX’s role in simultaneously promoting and distributing Milk Street Radio and ATK Radio violates the express terms and spirit of the Distribution Agreement” between PRX and ATK. “It also violates PRX’s obligations of good faith and fair dealing in delivering to ATK the full and untarnished benefit of the Distribution Agreement.” And ATK concluded its letter as follows:

ATK hereby demands that PRX honor its previous representations that it would not simultaneously promote and distribute ATK Radio and Milk Street Radio. Please be advised that if PRX does not abide by its obligations, ATK will hold PRX responsible for any resulting damage, including but not limited to damages resulting from any reduction in station carriage and ATK’s inability to meet sponsorship obligations.

136. PRX’s distribution agreement with ATK does not preclude PRX from pursuing marketing or distribution relationships with other productions. ATK knew at the time ATK sent the September 29, 2016 letter to PRX that the purported terms referenced therein did not exist in ATK’s agreement with PRX.

137. Upon information and belief, PRX has other shows that compete with one another for the same time slots and stations.

138. Upon information and belief, PRX and ATK decided that PRX would continue to serve as distributor for ATK through the end of the year, at which time ATK would pursue an alternative distribution mechanism.

139. PRX has agreed to distribute CPK Media's new radio show. However, PRX still has not executed a contract with CPK Media to distribute that show.

140. Upon information and belief, ATK has freelance independent contractors who provide certain services (the "freelancers").

141. Upon information and belief, the freelancers do not have non-competition agreements with ATK and are free to work with other companies and individuals.

142. Upon information and belief, in or around Fall 2016, ATK told freelancers that if they worked for CPK Media, they could not work for ATK.

143. Upon information and belief, as a result of ATK's threats to terminate their relationships with the freelancers, at least one freelancer who otherwise would have worked with CPK Media has refused to do so.

ATK's Defamatory Media Campaign Against Kimball and CPK Media

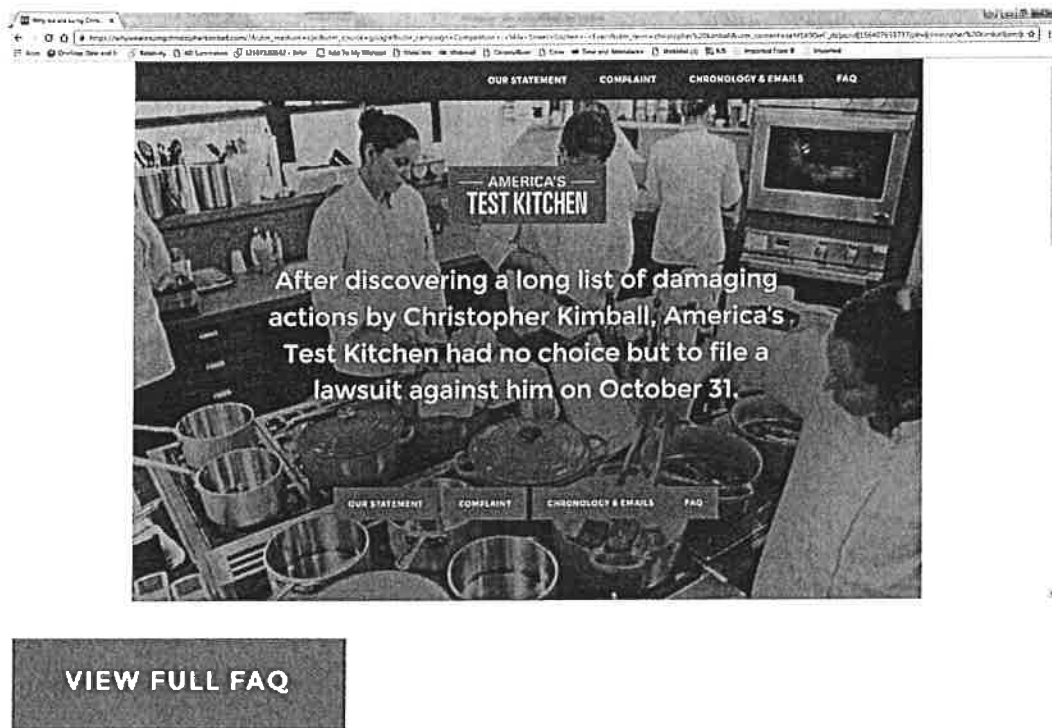
144. On October 31, 2016, only 16 days after termination of the Radio Agreement, ATK filed its lawsuit against Kimball and CPK Media.

145. Upon information and belief, the website www.whywearesuingchristopherkimball.com (the "ATK Litigation Website") was created through GoDaddy.com on or around October 28, 2016, three days before ATK filed its Complaint.

146. The ATK Litigation Website was active and available to the public at least as of November 1, 2016.

147. The ATK Litigation Website bears ATK's logo and states "©2016 America's Test Kitchen. All rights reserved."

148. The following images of the ATK Litigation Website were captured on November 21, 2016:

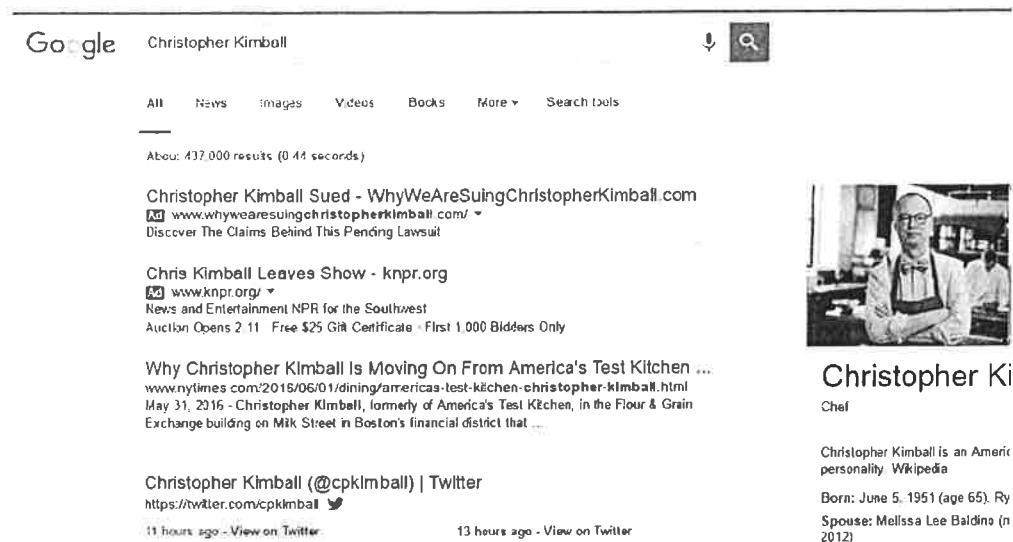


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149. Upon information and belief, ATK has purchased advertisements on Google to promote the ATK Litigation Website and its contents (the “Google Ads”).

150. Upon information and belief, the Google Ads have run nationwide since at least November 7, 2016, including, but not limited to, in: Atlanta, GA; Boston, MA; Charlotte, NC; Chicago, IL; Dallas, TX; Los Angeles, CA; Miami, FL; New York, NY; Portland, OR; Tampa, FL; and Washington, D.C.

151. For example, on December 1, 2016, a Google search for “Christopher Kimball” resulted in the following Google Ad for the ATK Litigation Website:



152. On December 1, 2016, a Google search for “Milk Street Kitchen” resulted in the same Google Ad for the ATK Litigation Website.

153. On December 1, 2016, the Google Ad for the ATK Litigation Website did not appear when the names of any of the other defendants named in the Complaint were searched.

154. The ATK Litigation Website’s homepage announces that: “After discovering a long list of damaging actions by Christopher Kimball, America’s Test Kitchen had no choice but to file a lawsuit against him on October 31.”

155. On the ATK Litigation Website, ATK states as fact the following:

- a. Kimball “poached our employees, transferred to himself relationships with critical vendors and underwriters, and took and used proprietary information to launch a business that unfairly copies ATK”;
- b. 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”;

c. 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”;

d. Kimball “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”; and

e. Kimball was “a profoundly disloyal fiduciary.”

156. Each of these statements posted on the ATK Litigation Website, which have been promoted and advertised far beyond the allegations of their Complaint, are false. ATK knew each of these statements were false at the time ATK published and advertised them on the ATK Litigation Website.

157. For example, there is no supporting evidence to the statement that 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.” The allegations in the Complaint date back only several months prior to Kimball’s termination. And although both America’s Test Kitchen and Christopher Kimball’s Milk Street are focused on cooking and producing media, Christopher Kimball’s Milk Street is focused on identifying and promoting cooking techniques developed elsewhere in the world that may be used for better home cooking whereas ATK focuses on American home cooking.

158. Stealing confidential information is a federal crime under 18 U.S.C. § 1832. The ATK Litigation Website states as fact that Kimball “stole confidential information,”

and therefore has accused Kimball of having committed a crime. This statement is false. This statement has been reused by media, which has caused harm to Kimball's reputation and brand.

159. The ATK Litigation Website also features a "Chronology and Emails" page, that encourages viewers to "[r]ead how Chris Kimball plotted his exit from America's Test Kitchen."

160. The "Chronology and Emails" page states gross misrepresentations as fact.

161. For example, the "Chronology and Emails" page states as fact that "Kimball e-mail[ed] consultant about his wife's e-mail and ensuring it is deleted from company servers."

162. Upon information and belief, these statements were intended to lead the public to believe that Kimball was inquiring about deleting actual emails.

163. However, in the email attached to this page in support of ATK's statements, Kimball unambiguously asks a consultant how to delete his wife's email *address*.

164. Also, the "Chronology and Emails" page states as fact that, on September 28, 2015, "Kimball, while still an employee and partner at ATK, tells IT consultant he is starting a new company and won't be coming into the office much."

165. Upon information and belief, this statement was intended to cause harm to Kimball and CPK Media, and to lead the public to believe that Kimball was improperly starting a new company and ceasing performing work for ATK, while still an employee and partner of ATK.

166. On the "FAQ" page of the ATK Litigation Website, ATK states as fact the following:

a. In September 2015, Kimball “secretly continued to plot a rival business”;

b. “When, in November 2015, ATK discovered that Kimball was soliciting ATK employees and establishing a new business, it had no choice but to terminate his employment”; and

c. Kimball engaged in “illegitimate competition that started under [ATK’s] roof while Kimball was being paid by ATK and ATK was being assured by Kimball he would continue in his role. Despite these assurances, Kimball poached our employees, usurped our relationships with vendors and underwriters, and took proprietary information, all in service of building a business that copies ATK.”

167. The foregoing statements, including those concerning Kimball “secretly” starting a new, competing business, are false. ATK knew, at the time it promoted the ATK Litigation Website, that these statements were false.

168. As early as August 24, 2015, ATK told Kimball to find a new office space and start his own business. Kimball also repeatedly refused to sign a non-compete in connection with his anticipated new business, which ATK referred to as “KimballCo.” Kimball openly negotiated with ATK over how many and which ATK employees Kimball’s anticipated new business could hire.

169. The “Chronology and Emails” page also states as fact that “ATK’s PR consultant Deborah Broide advises Kimball to take ATK business contacts and lists (August 28). Consultant (on November 3) forwards Kimball media lists culled from 24 years of ATK’s business.”

170. These lists belong to Ms. Broide, not ATK.

171. ATK knew these lists did not belong to it when it made these statements as fact.

172. The “Chronology and Emails” page also states that in November 2015, “Kimball is scanning ‘hundreds’ of ATK recipes, asking IT expert how to organize and store them.” In support of this statement on the ATK Litigation Website, ATK relies upon an email that makes no mention of ATK recipes.

173. In fact, none of the recipes scanned by Mr. Kimball belong to or came from ATK.

174. Moreover, upon information and belief, ATK’s recipes are available to the public for a subscription fee.

175. The ATK Litigation Website contains a “Contact Us” feature where the public can submit questions or inquiries to ATK.

176. Upon information and belief, ATK, or someone on its behalf, responds to these questions or inquiries, likely with additional publication of the same or additional defamatory statements concerning Kimball and CPK Media.

177. Upon information and belief, ATK published a copy of the Complaint to its employees.

178. Upon information and belief, prior to serving the defendants, ATK published a copy of the Complaint to the media, including but not limited to the Boston Globe.

179. Upon information and belief, in 2014, when Kimball was CEO of ATK, ATK had over \$22 million in profits and it distributed nearly \$20 million to its partners. Upon information and belief, this was a 14% increase over the prior year.

180. Upon information and belief, in 2015, when Nussbaum became CEO of ATK, ATK's profits were around \$18 million and it distributed only around \$12 million to its partners.

181. Upon information and belief, under Nussbaum's leadership as CEO, ATK's profits have significantly declined in 2016 and ATK intends to distribute significantly less this year to its partners.

182. Upon information and belief, the decline in ATK's profits has been caused by the current management of the Partnership, not any actions of Kimball, Baldino, or CPK Media.

183. Upon information and belief, the decline in ATK's profits has been caused in part by ATK's decision to abruptly terminate Kimball and Baldino rather than collaborate with them to gradually phase Kimball out as the main public face and voice of ATK, continue to work cooperatively with Kimball, Baldino, and CPK Media on joint or harmonious endeavors, and provide time for Baldino to train her replacement, all of which Kimball and Baldino suggested and offered to do. Upon information and belief, ATK's baseless media campaign—including the ATK Litigation Website—against Kimball and CPK Media are motivated to gain an unfair competitive advantage to try to help the Partnership's financial state under its current leadership.

184. ATK's media campaign against Kimball and CPK Media, and other interference with CPK Media's business has caused CPK Media harm, including to investors' willingness to invest in CPK Media and to radio stations' willingness to pick up CPK Media's radio show.

FIRST COUNTERCLAIM
(Defamation/Libel)

185. Kimball and CPK Media hereby repeat and re-allege the allegations set forth in the preceding paragraphs as if set forth fully herein.

186. Prior to filing this action, ATK created the ATK Litigation Website.

187. On the ATK Litigation Website, ATK has published statements as fact about Kimball, including but not limited to that he “stole” ATK’s confidential information, secretly created a competing business, “poached” employees, business relationships, and proprietary information, misappropriated ATK recipes and media lists, and deleted Baldino’s emails.

188. These statements are false, which ATK knew at the time the statements were made.

189. Some of these statements are defamatory per se, for example, the statement that he committed a crime of stealing.

190. Other of these statements are defamatory in that they reasonably can be read to discredit Kimball and CPK Media in the minds of the nationwide class of individuals who are or were fans of Mr. Kimball’s television or radio shows, magazines, or books, and/or potential clients of Mr. Kimball’s or CPK Media’s new ventures.

191. These statements have prejudiced and harmed, and will continue to prejudice and harm, Kimball’s and CPK Media’s reputation and business.

192. The defamatory statements published by ATK were made with malice, as evidenced by, at a minimum, ATK’s knowledge of their falsity, ATK’s large-scale efforts to publicize their false statements, including registering the ATK Litigation Website prior to filing the Complaint, ATK’s purchase of nationwide Google Ads for the ATK Litigation Website when

“Christopher Kimball” or “Milk Street Kitchen” are searched, publication of ATK’s Complaint to the media prior to serving it upon the defendants, and ATK’s bad faith termination of Kimball.

193. ATK has exploited this litigation, using it as an excuse for its nationwide media campaign to defame Kimball by improperly imputing criminal conduct to him and otherwise impugning his character and integrity.

194. ATK’s media campaign against Kimball and CPK Media, including the ATK Litigation Website, have harmed Kimball’s and CPK Media’s goodwill.

195. For example, on November 18, 2016, someone posted the following on Christopher Kimball’s Milk Street’s Facebook page: “For the record ATK is suing Chris because he did some shady illegal things and ATK has solid reason to file a lawsuit. You can read about it here <https://whywearesuingchristopherkimball.com/>.”

196. Kimball’s personal brand has substantial monetary value.

197. ATK’s false statements as fact, its media campaign based on knowingly false statements as fact against Kimball and Christopher Kimball’s Milk Street, and its interference with CPK Media’s business relationships has caused and will continue to cause serious economic damage to Kimball’s and CPK Media’s brand.

198. ATK’s media campaign against Kimball and Christopher Kimball’s Milk Street has caused and will continue to cause serious economic damage to CPK Media.

199. Kimball and CPK Media have suffered damages as a result of these statements, including but not limited loss of investment funds, lost profits, loss of goodwill, harm to their reputation, loss of business relationships, and loss of customers.

SECOND COUNTERCLAIM
(Tortious Interference with Advantageous Business Relationships)

200. Kimball and CPK Media hereby repeat and re-allege the allegations set forth in the preceding paragraphs as if set forth fully herein.

201. Kimball and CPK Media have business relationships for economic benefit with various third parties, including investors, freelancers, business partners, and customers.

202. Upon information and belief, ATK knew about these business relationships.

203. ATK interfered with these relationships through the improper motive of stifling a lawful competitor, CPK Media.

204. ATK interfered with these relationships through various improper means, including without limitation by defaming CPK Media and Kimball, and litigating ATK's purported disputes with CPK Media and Kimball in the press through a nationwide media campaign, including the ATK Litigation Website and Google Ads.

205. ATK further interfered with these relationships through the improper means of asserting baseless threats against Kimball and CPK Media, and CPK Media's business partners, including PRX, and various freelancers, so as to interfere with CPK Media's relationships with its business partners and freelancers, as well as investors.

206. ATK further interfered with Kimball's and CPK Media's business relationships through the improper means of commencing this lawsuit for the ulterior purpose of interfering with such relationships, as evidenced by the large scale media campaign that ATK put in place even prior to filing the Complaint or serving it upon the defendants.

207. The allegations in ATK's Complaint and the statements in ATK's media campaign and various threatening letters are baseless. When asserting them, ATK lacked a

reasonable basis to believe those allegations and statements, most of which are expressly belied by documentary evidence within ATK's possession.

208. As a result of ATK's tortious interference with Kimball's and CPK Media's business relationships, Kimball and CPK Media have been damaged in an amount to be determined at trial, but including, at a minimum, millions of dollars in investments, lost profits, loss of goodwill and reputation, and attorneys' fees.

THIRD COUNTERCLAIM
(Chapter 93A, § 11, brought by CPK Media)

209. CPK Media hereby repeats and re-alleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

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

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

212. CPK Media is engaged in the conduct of trade or commerce.

213. ATK has employed unfair methods of competition and has engaged in unfair or deceptive acts or practices.

214. Having failed to negotiate a non-compete from Kimball and CPK Media precluding them from competing with ATK, ATK is attempting to unfairly eliminate its new competitor through a nationwide media campaign of defamatory statements against Kimball and CPK Media.

215. ATK also is unfairly competing with CPK Media by tortiously interfering with CPK Media's business relationships, including without limitation by threatening CPK Media and its current and potential business partners, including PRX, investors, and contractors.

216. ATK's violations of M.G.L. c. 93A, § 11 were willful and knowing.

217. The actions constituting ATK's violations of M.G.L. c. 93A, § 11 occurred primarily and substantially in the Commonwealth.

218. These violations of M.G.L. c. 93A, § 11 have harmed and continue to harm CPK Media.

FOURTH COUNTERCLAIM
**(Declaratory Judgment for Enforcement of Kimball's Profits Interest
brought by Kimball)**

219. Kimball hereby repeats and re-alleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

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

221. Kimball and America's Test Kitchen Inc. are parties to the Partnership Agreement

222. The Partnership Agreement is a binding contract.

223. Kimball and ATK are parties to the Letter Agreement.

224. The Letter Agreement is a binding contract.

225. Kimball is entitled to the Profits Interest granted to him pursuant to the Partnership Agreement and Letter Agreement in his capacity as limited partner of the Partnership.

226. When ATK terminated Kimball's employment on November 16, 2015, it also purported to terminate his Profits Interest.

227. Nothing in the Letter Agreement or Partnership Agreement permits termination of a Profits Interest.

228. Upon information and belief, the value of Kimball's Profits Interest on or around November 16, 2015 was worth millions of dollars.

229. An actual controversy exists between Kimball and ATK concerning the status of Kimball's Profits Interest in ATK.

230. Accordingly, pursuant to M.G.L. c. 231A, Kimball requests a declaratory judgment that his Profits Interest in ATK, as described in the Letter Agreement, remains valid and enforceable.

JURY DEMAND

Kimball and CPK Media respectfully request a jury on all issues so triable.

WHEREFORE, Kimball and CPK Media respectfully request that this Court:

- A. Enter judgment in favor of Kimball and CPK Media on all of America's Test Kitchen Inc.'s claims and dismiss the Complaint against them with prejudice;
- B. Enter judgment in favor of Kimball and CPK Media, and against ATK, on the First, Second, and Third Counterclaims;
- C. Declare that Kimball's Profits Interest as described in the Letter Agreement remains valid and cannot be terminated so long as he remains a limited partner of ATK or its successors or assigns;
- D. Award damages to Kimball and CPK Media in an amount to be determined at trial against ATK, jointly and severally;
- E. Award multiple damages and reasonable attorneys' fees and costs against ATK as authorized by M.G.L. c. 93A, § 11;

- F. Permanently enjoin the use by ATK and its successors, employees, board members, attorneys, or agents of unfair methods of competition and/or unfair and deceptive acts;
- G. Permanently enjoin ATK and its successors, employees, board members, attorneys, or agents from defaming Kimball, CPK Media, and/or any of their products;
- H. Grant such other and further relief as the Court deems just and proper.

Dated: December 1, 2016
Boston, Massachusetts

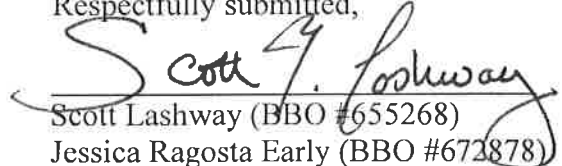
CERTIFICATE OF SERVICE

I, Jessica Ragosta Early, hereby certify that a true copy of the above document was served upon by hand delivery all parties of record in this case.

Dated: December 1, 2016


Jessica Ragosta Early

Respectfully submitted,


Scott Lashway (BBO #655268)

Jessica Ragosta Early (BBO #672878)

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