

THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL FORDE, MARC DEFIFE, )  
JOHN KOUTOUPIS, and FRANK PHILLIPS, )  
individually and derivatively on behalf of )  
CHICAGO CUT STEAKHOUSE, LLC, )  
an Illinois limited liability company, )  
Plaintiffs, )  
v. ) Case No.  
DAVID FLOM, MATTHEW MOORE, )  
and CHICAGO RESTAURANT MANAGEMENT )  
GROUP, LLC, an Illinois limited )  
liability company, )  
Defendants. )

**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF**

Plaintiffs Michael Forde, Marc Defife, John Koutopis, and Frank Phillips, individually and derivatively on behalf of Chicago Cut Steakhouse, LLC (collectively, "Plaintiffs"), by and through their attorneys, Forde Law Offices, LLP, for their complaint against Defendants David Flom, Matthew Moore, and Chicago Restaurant Management Group, LLC, state as follows:

**NATURE OF ACTION**

1. This is an action by members of Chicago Cut Steakhouse, LLC ("CCS") to enforce their basic and undisputed statutory right to inspect the books and records of the limited liability company (LLC) in which they invested and are members. Plaintiffs have repeatedly requested the right to inspect the books and records of their own LLC. Yet Defendants, who manage CCS, have refused without any justification to make those books and records available to Plaintiffs, in blatant violation of their statutory and fiduciary duties.

2. The restaurant would not exist but for the investors, who were the sole source of equity funding for the then-new restaurant, and still own 49% of it, on information and belief. Yet Defendants have demonstrated a determination, for reasons known only to them, to provide the investors with as little financial information about the restaurant as possible. This secrecy has heightened the Plaintiffs' desire to know the true financial situation of the restaurant and LLC. Plaintiffs file this action after years of requesting more information from Defendants, and Defendants' empty promises to provide it.

### **THE PARTIES**

#### **Plaintiffs**

3. Plaintiff Michael Forde is an individual residing in Cook County, Illinois. He is a member of Chicago Cut Steakhouse, LLC, and has been since 2009.

4. Plaintiff Marc Defife is an individual residing in Westchester County, New York. He is a member of Chicago Cut Steakhouse, LLC, and has been since 2009.

5. Plaintiff John Koutoupis is an individual residing in Cook County, Illinois. He is a member of Chicago Cut Steakhouse, LLC, and has been since 2009.

6. Plaintiff Frank Phillips is an individual residing in Cook County, Illinois. He is a member of Chicago Cut Steakhouse, LLC, and has been since 2009.

7. Derivative Plaintiff Chicago Cut Steakhouse, LLC is an Illinois limited liability company with its principal office located in Cook County, Illinois.

#### **Defendants**

8. Defendant David Flom is an individual residing in Cook County, Illinois. On information and belief, he is a manager and member of Chicago Restaurant Management Group, LLC, which is the manager of Chicago Cut Steakhouse, LLC.

9. Defendant Matthew Moore is an individual residing in Cook County, Illinois. On information and belief, he is a manager and member of Chicago Restaurant Management Group, LLC, which is the manager of Chicago Cut Steakhouse, LLC.

10. Defendant Chicago Restaurant Management Group, LLC is an Illinois limited liability company. On information and belief, it is the manager of Chicago Cut Steakhouse, LLC.

### **JURISDICTION AND VENUE**

11. This Court has jurisdiction over the Defendants pursuant to 735 ILCS § 5/2-209(a)(1) and (a)(7) because this case arises from the transaction of business within Illinois and the making or performance of a contract substantially connected with this State. In addition, this Court has jurisdiction over the Defendants pursuant to 735 ILCS § 5/2-209(b) because each Defendant is either a resident of Illinois, an Illinois limited liability company formed under the laws of Illinois, and/or is a natural person or corporation doing business within Illinois.

12. Venue is proper pursuant to 735 ILCS § 5/2-101 because Defendants Flom and Moore reside in Cook County, Illinois, and because Chicago Restaurant Management Group, LLC has its principal office in and is doing business in Cook County, Illinois, and because its managers and members reside in Cook County, Illinois.

### **BACKGROUND**

#### **Creation of Chicago Cut Steakhouse**

13. In 2009, Defendants Flom and Moore solicited investors for what was at the time a concept they had for a new steakhouse to be called Chicago Cut Steakhouse. They formed Chicago Cut Steakhouse, LLC (“CCS”) and approached a number of individuals including Plaintiffs about investing in the restaurant by becoming members of CCS. Defendants ultimately

raised in excess of \$3,000,000 from Plaintiffs and other investors to open the restaurant.

Plaintiffs invested significant funds and became members of CCS in 2009. They have remained members ever since.

14. When Defendants were soliciting investments in CCS, they provided potential investors with a “Confidential Private Placement Memorandum” (“the PPM”). The PPM stated in relevant part:

#### **FIDUCIARY DUTY OF MANAGER**

The Manager, in addition to its duties and obligations to the Members set forth in the Operating Agreement, is accountable to the Members as a fiduciary and must act with integrity and in good faith in promoting the Members’ Units. The Members must rely solely upon the business integrity and fiduciary responsibilities of the Manager with respect to these business dealings.

The Manager will use its best efforts to conduct Company operations in a fair and equitable manner and to commit the required time and resources for the Company’s implementation and administration.

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#### **ACCOUNTING**

The Company intends to retain an independent accounting firm to prepare its financial statements. The Company will furnish Members a quarterly sales report prepared by the Manager and an annual financial statement prepared by an independent accounting firm.

A true and correct copy of the PPM will be filed separately under seal to address any confidentiality concerns of Defendants.

15. CCS is governed by an Operating Agreement, as well as by the Illinois Limited Liability Company Act, 805 ILCS 180/1-1 et seq. (“the Act”). The Operating Agreement names Defendant Chicago Restaurant Management Group, LLC (“CRMG”) as the manager of CCS. On information and belief, Defendants Flom and Moore are the managers and sole members of CRMG.

16. The Operating Agreement provides in relevant part:

**4. ACCOUNTING AND TAXES**

**4.1. Books and Records.**

a. The Company shall maintain accurate books and records of account in which are to be entered all matters relating to the business and operations of the Company, including all income, expenditures, assets and liabilities thereof.

b. Such books and records of account shall be adequate to provide each Member with all such financial information as may be needed by such Member for purposes of satisfying the financial reporting obligations of such Member.

c. Each Member is entitled to any information reasonably necessary for the Member for the preparation of such Member's federal or state tax returns but not later than thirty (30) days before any such returns are due.

d. The Company shall keep at its principal place of business the information and records as specified in and required by the [Illinois Limited Liability] Company Act.

**4.2. Rights of Inspection.** To the extent required by the [Illinois Limited Liability] Company Act, each Member and/or his, her or its authorized representatives shall have the right to inspect, examine and copy (at such Member's expense) the books, records, files, securities and other documents of the Company during the regular business hours of the Company upon giving reasonable notice.

A true and correct copy of the Operating Agreement is attached hereto as Exhibit 1.

17. The Act provides in relevant part:

**Sec. 1-40. Records to be kept.**

(a) Each limited liability company shall keep at the principal place of business of the company named in the articles of organization or other reasonable locations specified in the operating agreement all of the following:

(1) A list of the full name and last known address of each member setting forth the amount of cash each member has contributed, a description and statement of the agreed value of the other property or services each member has contributed or has agreed to contribute in the future, and the date on which each became a member.

(2) A copy of the articles of organization, as amended or restated, together with executed copies of any powers of attorney under which any articles, application, or certificate has been executed.

(3) Copies of the limited liability company's federal, State, and local income tax returns and reports, if any, for the 3 most recent years.

(4) Copies of any then effective written operating agreement and any amendments thereto and of any financial statements of the limited liability company for the 3 most recent years.

(b) Records kept under this Section may be inspected and copied at the request and expense of any member or legal representative of a deceased member or member under legal disability during ordinary business hours . . . .

805 ILCS 180/1-40.

Sec. 10-15. Right of members and dissociated members to information.

(a) A company shall furnish information when any member demands it in a record concerning the company's activities, financial condition, and other circumstances of the company's business necessary to the proper exercise of a member's rights and duties under the operating agreement or this Act or that is otherwise material to the membership interest of a member, unless the company knows that the member already knows that information.

(b) The following rules apply when a member makes a demand for information under this Section:

(1) During regular business hours and at a reasonable location and time specified by the company, a member may obtain from the company, inspect, and copy information for a purpose consistent with subsection (a).

(2) Within 10 days after receiving a demand pursuant to subsection (a):

(A) the company shall provide the information demanded or, in a record, a description of the information the company will provide, stating a reasonable time within which it will be provided and the place where it will be provided; and

(B) if the company declines to provide any demanded information, the company shall state its reasons for declining to the member in a record.

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(f) A member or dissociated member may exercise rights under this Section through an agent or, in the case of an individual under legal disability, a legal

representative. Any restriction or condition imposed by the operating agreement or under subsection (h) applies both to the agent or legal representative and the member or dissociated member.

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(i) This Section does not limit or restrict the right to inspect and copy records as provided in subsection (b) of Section 1-40.

801 ILCS 180/10-15.

**Plaintiffs' Attempts to Obtain Financial Information About Their Own Company**

18. Since CCS was formed, Defendants have provided the members of CCS with very little information about CCS's finances. Typically, Defendants have provided CCS with only a one-page "income statement" that is prepared by an accounting firm with the qualification that it is "prepared without independent verification." In other words, the accounting firm has no idea as to whether the information is correct and is merely relying on management for the figures presented in that "income statement." This is contrary to the commitment in the PPM to provide financial statements prepared by "an independent accounting firm." Indeed, on information and belief, Defendants have never provided audited financial statements to the members. Moreover, on information and belief, Defendants have never provided the "quarterly sales report" promised in the PPM. Further, on information and belief, Defendants have never even provided members with a balance sheet showing the assets and liabilities of the company, or with any other audited financial statement.

19. From time to time, Plaintiffs and other members of the LLC have complained to Defendants about the lack of transparency and financial information provided to members. Defendants have at times promised to provide more financial information but have failed to do so. This failure to provide financial information has caused Plaintiffs to be concerned about the health of the business and the Defendants' good faith in managing it.

20. On March 30, 2018, Plaintiffs Forde and Koutoupis requested a meeting with Defendants Flom and Moore to discuss these concerns. Defendant Moore responded by saying that Defendant Flom was out of town for three weeks, until April 18, and unavailable to meet during that time. Given Flom's absence, Plaintiffs Forde and Koutoupis requested a meeting with Defendant Moore. Moore said that he would not meet with them until Flom returned on April 18. Moore did not offer any explanation for this refusal.

21. Given Defendants' refusal to meet with them for a period of weeks, on April 5, 2018, Plaintiffs and certain other members of CCS sent a request for books and records to Defendants. This letter requested certain categories of materials to which these members have a clear right under the Act and the Operating Agreement. The letter provided the 10-day deadline provided by Section 10-15 of the Act, so that the materials were due on April 15. A true and correct copy of that letter is attached hereto as Exhibit 2.

22. On April 9, Defendant Moore emailed Forde to state that, contrary to his prior statement, he and Flom could meet the next day, on April 10, and suggested doing so. This was a transparent attempt to put off having to produce the requested materials. Forde replied that Plaintiff Koutoupis was traveling that day, and that in any event, a meeting would be more productive once Defendants had produced the documents requested in the April 5 letter. A true and correct copy of this email exchange is included in Exhibit 3.

23. On April 12, Defendant Moore emailed Forde that "... we plan on giving all the documents that you have requested, but we will need more time to put them together. Unfortunately our accounting firm is extremely busy with it being tax week, so we will advise as soon as they let us when the documents are complete next week . . . ." *Id.*



24. Moore's statement that the reason for this delay was CCS's accounting firm seemed inaccurate for several reasons. First, the Act requires CCS to maintain the tax returns for the last three years at its principal office and available for inspection by members "during ordinary business hours." 805 ILCS 180/1-40. Second, most of the other requested materials should be within the control of CCS and not its accounting firm – *e.g.*, agreements between CRMG and CCS, financial statements of CCS provided to third parties (but not investors), and payments from CCS to any company owned or controlled by Defendants. Third, CCS employs a full-time controller who should have access to all of the requested documents. *Id.*

25. Nevertheless, on April 12, Forde replied that the requesting members would agree to extend the deadline for producing materials if Defendants would commit to producing them by 5:00 p.m. on April 18. *Id.*

26. Defendant Moore replied that same day, stating for the first time – and incorrectly – that the April 5 request was deficient under Section 1-40 of the Act because it did not provide a "purpose" for the request. This statement was obviously pretextual and incorrect, as Section 1-40 requires a "purpose" for requests from transferees but does not for requests for members. Moore stated that they would provide the requested materials "as soon as possible" but did not commit to a specific date. *Id.*

27. In response, Forde pointed out this misstatement of the statute and reiterated that Defendants would agree to extend the April 15 deadline for compliance on the condition that Defendants commit to providing all requested materials no later than 5:00 p.m. on April 18. Defendants did not respond to this email. *Id.*

28. On April 14, 2018, Forde yet again asked if Defendants would commit to provide the requested materials by 5:00 p.m. on April 18. And again, Defendants did not even respond to this email. *Id.*

29. Thus, Plaintiffs have proposed three times to agree to a date certain for the production of the materials. Defendants have not responded and have refused otherwise to commit to a date to ever producing the materials.

**COUNT I**  
**Individual Plaintiffs' Claim for Injunction**

30. Plaintiffs incorporate by reference Paragraphs 1 through 29 of their Complaint as if fully set forth herein.

31. The Act gives Plaintiffs the right to certain categories of documents, as set forth in Paragraph 17 *supra*.

32. Plaintiffs have requested certain categories of materials as set forth in Exhibit 2.

33. Defendants have refused to produce the materials requested despite their clear obligation to do so.

34. Defendants' failure to produce these materials is unreasonable, unjustified, vexatious, outrageous, in bad faith, and in violation of their statutory duties.

WHEREFORE, Plaintiffs respectfully request this Court to enter an order in their favor and against Defendants:

- a) Enjoining the Defendants to produce all materials requested in their April 5 letter, attached hereto as Exhibit 2;
- b) An award to Plaintiffs of all attorney's fees and costs in pursuing this matter; and

- c) Grant such other relief appropriate and necessary under the circumstances underlying this case.

**COUNT II**  
**Derivative Claim for Injunction**

35. Plaintiffs incorporate by reference Paragraphs 1 through 34 of their Complaint as if fully set forth herein.

36. Plaintiffs bring this action derivatively on behalf of CCS.

37. Demand on the manager of CCS would be futile because CCS is managed by Defendant CRMG which is owned and controlled by Defendants Flom and Moore.

38. Defendants' failure to produce the requested records, or to commit to a specific date to do so, is an intentional, reckless, knowing and bad-faith violation of their fiduciary and statutory duties to the requesting members of CCS. This is also a breach of their duty of care under 805 ILCS 180/15-3.

39. Plaintiffs expect that Defendants will look to CCS to pay their attorneys' fees in defending this action. Defendants should not be allowed to do so. This litigation is entirely unnecessary and could have easily been avoided had Defendants simply produced the materials requested. Instead, Defendants chose to avoid the request, and to postpone and avoid compliance through pretextual arguments, for reasons known only to Defendants. However, they should not have CCS bear the costs for their intentional, bad-faith violation of their duties to CCS and its members.

WHEREFORE, Plaintiffs respectfully request this Court to enter an order in their favor and against Defendants:

- a) Enjoining Defendants from seeking indemnification, reimbursement or any other support from CCS in connection with this lawsuit or the underlying matters;
- b) An award to Plaintiffs of all attorney's fees and costs in pursuing this matter; and
- c) Grant such other relief appropriate and necessary under the circumstances underlying this case.

Dated: April 16, 2018

Respectfully Submitted,

By: /s/ Michael K. Forde  
Attorney for Plaintiffs

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