

STATE OF NEW YORK
SUPREME COURT COUNTY OF GENESEE

THE RED OSIER LANDMARK
RESTAURANT, LLC,

Plaintiff,

vs.

DAVID SNYDER, DJS II CORPORATION,
DAVID SNYDER CORPORATION, JUSTIN
NEWMARK, and NICOLE GRANATA,

Defendants.

Index No. E73026

Hon. Deborah Chimes

DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S
REQUEST FOR A TRO AND PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

Because plaintiff failed to satisfy the exacting burden of establishing any of the three requirements for a preliminary injunction by clear and convincing evidence, plaintiff's request must be denied. Plaintiff's submissions in support of the Order to Show Cause and request for a preliminary injunction lack factual support and are frivolous. This action is improperly intended to harass and annoy the Defendants. As such, it is malicious and the Court should award costs, sanctions, and attorney fees against the plaintiff.

STATEMENT OF FACTS

Defendants respectfully refer the Court to Index No. E73026 and the accompanying affirmations of Charles E. Graney, Esq., Ms. Nicole Granata, Mr. David Snyder, and Mr. Justin ("Robbie") Newmark, submitted with this Memorandum of Law, for a full recitation of the facts in this matter.

For over thirty years, Sunny's Restaurant ("Sunny's") was a popular, well-known restaurant in Batavia, New York, most recently owned and operated by Tina and Mike Rose, until it closed in 2019. See Affirmation of David Snyder ("Aff. of Snyder"), ¶ 3. In or around 2025, Mr. David Snyder decided to reopen it under the same name and in the same location, but with a fresh look and updated menu. See *id.*, at ¶ 4.

While Mr. Snyder created Sunny's new menu largely based on its old one, he also added new and original dishes and recipes. See *id.*, at ¶ 5. In or around July 2025, Mr. Snyder met with restaurant suppliers to refine Sunny's menu, sample dishes, and prepare the restaurant for reopening. See *id.*, at ¶ 6. In or around August 2025, Sunny's ran a sample test kitchen with their restaurant supplier, as part of Sunny's reopening.

See *id.*, at ¶ 7. Shortly following this, in or around August or early September 2025, Mr. Snyder largely finalized Sunny's menu to include Prime Rib, Mahi Mahi, Salmon, and Cold-Water Twin Lobster Tails. See *id.*, at ¶ 8, 12.

On or around September 13, 2025, plaintiff effectively terminated Mr. Justin ("Robbie") Newmark's employment as Chef's Assistant by suddenly sending him home during his scheduled shift and refusing to reply to Mr. Newmark's repeated inquiries about his employment status. See Affirmation of Justin Newmark ("Aff. of Newmark"), ¶ 2–5. On or around September 14, 2025, Ms. Nicole Granata, Sunny's Head Chef, terminated her long-term employment as Head Chef with plaintiff, Red Osier, due in part, to an abusive work environment. See Affirmation of Nicole Granata ("Aff. of Granata"), ¶ 4. Ms. Granata officially joined Sunny's as Head Chef on November 11, 2025. See *id.*, at ¶ 7.

By October 15, 2025, Mr. Snyder finalized Sunny's menu to specifically include the following dishes: (1) Signature Prime Rib; (2) Mahi Mahi with Mango Salsa; (3) Bourbon Glazed Salmon; and (4) Twin Cold-Water Lobster Tails. See Aff. of Snyder, ¶ 8. Sunny's Prime Rib is seasoned very differently from plaintiff's, is based on Mr. Snyder's family recipe, and has a noticeably sweeter flavor on its crust than plaintiff's. See *id.*, at ¶ 13. The bourbon glaze used for Sunny's Bourbon Glazed Salmon was independently developed by Mr. Snyder and Ms. Granata, and while not mentioned on any of plaintiff's menus, specials, or customer reviews for salmon, any bourbon glaze purportedly used by plaintiff is purchased from a supplier. See *id.*, at ¶ 14; Aff. of Granata, ¶ 9. Additionally, Mr. Snyder's restaurant supplier independently suggested he serve his Mahi Mahi with mango salsa, which Mr. Snyder purchases directly from the supplier.

See Aff. of Synder, ¶ 15. Curiously, plaintiff has not submitted any evidence as to when it served Mahi Mahi with Mango Salsa or Bourdon Glazed Salmon. See *generally* NYSCEF [Doc. 1](#), [Doc. 3](#). Lastly, Sunny's lobster tails are seasoned with a butter seasoning that Mr. Snyder and Ms. Granata independently developed and is prepared differently from any offered by plaintiff. See Aff. of Synder, ¶ 16; Aff. of Granata, ¶ 9.

On or about February 3, 2026, plaintiff filed a complaint in Genesee County Supreme Court against the defendants, alleging eleven causes of action, based predominantly on its unsupported conclusions that defendants stole and misappropriated trade secrets. See NYSCEF [Doc. 1](#). Plaintiff's complaint and supporting affirmations are bereft of evidence to support their false and provocative allegations. See NYSCEF [Doc. 1](#), [Doc. 3](#). Plaintiff simultaneously filed a request for a preliminary injunction and temporary restraining order. See NYSCEF [Doc. 8](#). This reply now follows.

ARGUMENT

I. PLAINTIFF FAILED TO MEET ITS BURDEN FOR A PRELIMINARY INJUNCTION.

New York Civil Practice Law and Rules ("NY CPLR") § 6301 permits a party to seek a preliminary injunction when the other party threatens, is about to, or does something in violation of the movant's rights that would render the judgment ineffectual or irreparably injure the movant. "A preliminary injunction is an extraordinary and drastic remedy" and "should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *St. Joseph's Hosp. Health Cntr v. American Anesthesiology of Syracuse, P.C.*, 131 F.4th 102, 106 (2d Cir. 2025) (quoting *State Farm Mut. Auto. Ins. Co. v. Tri-Borough NY Med. Practice P.C.*, 120 F.4th 59, 79 (2d Cir. 2024); 22

Convenience Shop, Inc. v. City of New York, 86 Misc.3d 788, 792 (Sup Ct, Kings County 2025) (“A preliminary injunction is a drastic remedy, which should not be granted unless the movant demonstrates “a clear right” to such relief.”).

To be entitled to a preliminary injunction, the movant must establish, by clear and convincing evidence: “(1) a probability of success on the merits, (2) a danger of irreparable injury in the absence of an injunction, and (3) a balance of the equities in the movant's favor.” *Cangemi v. Yeager*, 185 A.D.3d 1397, 1398 (4th Dep’t 2020); *Mangovski v. DiMarco*, 175 A.D.3d 947, 948 (4th Dep’t 2019). If any one of these three requirements are not satisfied, the motion *must* be denied. *Lasertron, Inc. v. Empire State Development Corp.*, 70 Misc.3d 1085, 1092 (Sup Ct, Erie 2021) (emphasis added). Here, plaintiff failed to establish *any* of these requisite elements.

A. Plaintiff’s bare and conclusory allegations are plainly insufficient.

As an initial matter, “clear and convincing evidence ... means something more than ‘preponderance of the evidence,’ and something less than ‘beyond a reasonable doubt.’” *United States v. Chimurenga*, 760 F.2d 400, 405 (2d Cir. 1985). More specifically, the clear and convincing standard requires the party bearing the burden of proof to “adduce evidence that makes it highly probable that what he or she claims is what actually happened.” *Currie v. McTague*, 83 A.D.3d 1184, 1185 (3d Dep’t 2011) (finding defendant’s mere testimony alone to be insufficient to meet this “exacting standard”); *Ferreyra v. Arroyo*, 35 N.Y.3d 127, 128 (NY 2020) (explaining that clear and convincing means “proof that makes it highly probable that the alleged activity actually occurred.”) (internal citations and quotations omitted). A movant’s “bare and conclusory allegations [] are clearly insufficient to support the granting of a preliminary injunction.”

Network Financial Planning, Inc. v. Prudential-Bache Securities, Inc., 194 A.D.2d 651, 652 (2d Dep't 1993); *Kaufman v. International Business Machines Corp.*, 470 N.Y.S.2d 720, 722 (3d Dep't 1983).

In this instance, to meet this exacting clear and convincing standard, plaintiff relies solely on the unsupported four-page affidavit of one of plaintiff's owners, Mr. Steven L. Foster. However, much like the plaintiff in both *Network Financial Planning* and *Kaufman*, Mr. Foster's bare and conclusory allegations that defendants "stole" plaintiff's trade secrets and conspired "to misappropriate" plaintiff's trade secrets, are plainly insufficient. See 194 A.D.2d at 652; 470 N.Y.S.2d at 722. Mr. Foster's affidavit lacks any detail concerning these allegations, fails to cite or include *any* evidence to substantiate these allegations, and makes wholly unsupported conclusions. See NYSCEF [Doc. 3](#). Notably, plaintiff failed to even identify which trade secrets defendants are alleged to have stolen or misappropriated, how, or when defendants stole and misappropriated them. See *id.*; NYSCEF [Doc. 1](#). While both plaintiff's complaint and Mr. Foster's affidavit mention four purportedly "unique" dishes offered at Red Osier ("Signature Prime Rib," "Twin Cold Water Lobster Tails," "Mahi Mahi Mango Salsa," and "Bourbon Glazed Salmon,"), plaintiff does not allege these are the trade secrets defendants stole or misappropriated, and plaintiff provided no proof it actually created, made, or even offered any of these dishes. See NYSCEF [Doc. 3](#), ¶ 5 (citing Red Osier's website, which plainly does not include any of these dishes, aside from "Signature Prime Rib"). In fact, none of the publicly available menus for Red Osier include the "Mahi Mahi Mango Salsa" or "Bourbon Glazed Salmon." See Affirmation of Charles E.

Graney, Esq. (“Aff. of Counsel”), ¶ 7 (showing Red Osier’s menu from this year, last year, and four years ago).

Moreover, although plaintiff’s claim Mr. Newmark never returned to work after giving his notice and that Ms. Granata “abruptly” walked off in the middle of the shift—in front of Mr. Foster—plaintiff also claims that Mr. Newmark and Ms. Granata “stole the Trade Secretes from the kitchen, as they left.” *Compare* NYSCEF [Doc. 1](#), ¶¶ 14-15, with NYSCEF [Doc. 3](#), ¶¶ 7-8, 10. It is antithetical to plaintiff’s burden here to not include alleged evidence of theft. Plaintiff’s inability to maintain a consistent account of how defendants allegedly stole and misappropriated these trade secrets is fatal to its burden for a preliminary injunction, and likely its complaint.

While it appears plaintiff relies on the differences between Sunny’s previous menu from six years ago and Sunny’s newly released menu to prove defendants stole and misappropriated trade secrets (see NYSCEF Docs. [5](#), [6](#), [7](#)), this evidence is also plainly insufficient to meet its burden here. Sunny’s is now owned and operated by entirely new owners (Mr. David Syder and DJS II Corp), and they are not beholden to Sunny’s previous owner’s menu, style, or dishes in any way. Furthermore, simply offering the same type or style of dish does not, on its own, establish that the recipes or dishes were stolen or misappropriated—especially considering several other restaurants in or around Genesee County also offer their versions of “Signature Prime Rib,” “Twin Cold Water Lobster Tails,” and glazed or grilled salmon. See Aff. of Counsel, ¶ 8 (identifying at least three other restaurants in and around Genesee County that offer these same or similar dishes).

Because plaintiff wholly failed to provide any clear and convincing evidence in support of its request for a preliminary injunction, it must be denied.

B. Plaintiff will not suffer irreparable harm.

According to the Second Circuit, “the irreparable harm requirement is the single most important prerequisite for the issuance of a preliminary injunction” and “must therefore be satisfied before the other requirements for an injunction can be considered.” *St. Joseph’s Hosp.*, 131 F.4th at 106 (quoting *State Farm*, 120 F.4th at 80). *See also Buckingham Corp. v. Karp*, 762 F.2d 257, 262 (2d Cir. 1985) (“Inequitable conduct alone cannot justify the entry of a preliminary injunction. The linchpin of such interim relief is that threatened irreparable harm will be prevented by that injunction.”); *Citibank, N.A. v. Citytrust*, 756 F.2d 273, 275 (2d Cir.1985) (“Perhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered.”); *Trump v. Trump*, 69 Misc.3d 285, 300–01 (Sup Ct, Dutchess County 2020).

Additionally, the Second Circuit emphasized that it is not sufficient for a movant to demonstrate merely the possibility of irreparable harm; instead, the moving party must show an “injury that is neither remote nor speculative, but actual and imminent and that cannot be remedied by an award of monetary damages.” *New York v. U.S. Dep’t of Homeland Sec.*, 969 F.3d 42, 86 (2d Cir. 2020); *St. Joseph’s Hosp.*, 131 F.4th at 106; 22 *Convenience Shop*, 86 Misc.3d at 793 (“Economic loss, which is compensable by money damages, does not constitute irreparable harm.”). New York State Courts apply the same standards. *See, e.g., White v. F.F. Thompson Health System, Inc.*, 5 A.D.3d

105, 1077 (4th Dep’t 2010) (“The prospect of irreparable harm must be imminent, not remote or speculative.”); *Eastview Mall, LLC v. Grace Holmes, Inc.*, 122 N.Y.S.3d 848, 850 (4th Dep’t 2023) (“It is an anodyne proposition that irreparable injury, for purposes of equity means any injury for which money damages are insufficient.”) (internal citations and quotations omitted). Monetary “compensation need only be ‘adequate’ for preliminary relief to be unwarranted, not perfect.” *St. Joseph’s Hosp.*, 131 F.4th at 106 (quoting *Daileader v. Certain Underwriters at Lloyds London Syndicate 1861*, 96 F.4th 351, 358 (2d Cir. 2024)). Additionally, a preliminary injunction will not issue where to do so would grant the movant the ultimate relief sought in the complaint. *Larsertron*, 70 Misc.3d at 1092. Thus, the standard that movant must meet is extremely high. *Trump*, 69 Misc.3d at 301.

Here, plaintiff alleges only that it will be irreparably harmed because “any ultimate judgment [in this case] could well be rendered valueless if defendants lack assets to satisfy it.” NYSCEF [Doc. 8](#), pg. 4. While plaintiff correctly notes that a defendant’s “precarious financial position” could establish irreparable harm under specific circumstances (see, e.g., *Felix v. Brand Serv. Group LLC*, 101 A.D.3d 1724, 1726 (4th Dep’t 2012)), those circumstances are plainly not present here and plaintiff wholly fails to provide *any* evidence in support of this bare conclusion. As explained above, these bare conclusory allegations are insufficient to support a motion for preliminary injunction. *Kaufman*, 97 A.D.2d at 722; *22 Convenience Shop*, 86 Misc.3d at 793.

Because plaintiff cannot establish any irreparable harm, its motion for a preliminary injunction must be denied. *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 120 (2d Cir. 2009) (concluding that “there was no basis for the entry of a

preliminary injunction” when there was no showing of irreparable harm); *see also St. Joseph’s Hosp.*, 131 F.4th at 107 (“We have never held that the loss of an employee who receives . . . access to proprietary information necessarily constitutes irreparable harm.”). Even if plaintiff’s conclusory allegations of business loss or competitive disadvantage are taken seriously—and the Court should not—they do not clearly establish irreparable harm.

C. Plaintiff does not have a likelihood of success on the merits for any of its claims.

Assuming for arguments’ sake that this Court finds plaintiff provided clear and convincing evidence in support of its request for a preliminary injunction and demonstrated it will suffer irreparable harm, plaintiff failed to establish a likelihood of success on the merits for any of its claims. To demonstrate a likelihood of success on the merits, it is sufficient for a moving party to make a prima facie showing of the right to relief. *Cangemi*, 185 A.D.3d 398. Here, plaintiff’s complaint includes eleven causes of actions, but plaintiff failed to allege facts demonstrating a prima facie showing of the right to relief for *any* of them. Remarkably, plaintiff’s entire argument in support of its request for a preliminary injunction is contained on less than one page. See NYSCEF [Doc. 8](#), pg. 4.

i. First Cause of Action: Misappropriation of Trade Secrets

A plaintiff claiming misappropriation of a trade secret must prove: “(1) it possessed a trade secret, and (2) defendant is using that trade secret in breach of an agreement, confidence, or duty, or as a result of discovery by improper means.” *E.J. Books Company v. Cambridge Security Seals*, 31 N.Y.3d 441, 452 (NY 2018). A trade secret is generally “any formula, pattern, device or compilation of information which is

used in one's business, and which gives one an opportunity to obtain an advantage over competitors who do not know or use it." *Id.* (quoting *Ashland Management*, 82 N.Y.2d 395, 407 (NY 1993)). Thus, information that is readily available from public sources is not entitled to trade secret protection. *Schroeder v. Pinterest Inc.*, 133 A.D.3d 12, 29 (1st Dep't 2015). New York courts consider several, non-exhaustive factors in determining whether information qualifies as a trade secret, including but not limited to: (1) the extent to which the information is known outside of the business; (2) the extent of measures taken to guard the secrecy of the information; (3) the value of the information to the business and its competitors; and (4) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Marsh USA, Inc. v. Alliant Ins. Servs., Inc.*, 49 Misc.3d 1210(A), at *4 (Sup Ct, NY County 2015).

Here, plaintiff failed to adequately allege—let alone demonstrate—it had any trade secrets. Simply labeling something as a “trade secret” is not enough. See *E.J. Books Company*, 31 N.Y.3d at 452; *Schroeder*, 133 A.D.3d at 29; *Marsh USA, Inc.*, 49 Misc.3d 1210(A), at *4. As explained above, although plaintiff baldly describes its dishes as “unique” or “distinctive,” plaintiff did not specifically identify which recipes were allegedly stolen or misappropriated by defendants, nor does plaintiff properly demonstrate that these recipes were not generally known or available outside of the business. For example, it appears these dishes are common, popular, and readily available from several other restaurants in the area, and these alleged “signature recipes” appear to be “owned” by the original owners of Red Osier—not Mr. Foster or his co-owner, Mr. Timothy Adams, or Red Osier generally. See Aff. of Counsel, ¶ 6.

Additionally, plaintiff has not shown that it employed sufficient measures to keep these recipes confidential—beyond “storing them securely” in the kitchen and maintaining another copy in an “undisclosed location,” or that these recipes were valuable to the business and its competitors. See *Marsh USA, Inc.*, 49 Misc.3d 1210(A), at *5; See NYSCEF [Doc. 3](#), ¶ 6. Although plaintiff describes itself as a “landmark institution” that “distinguish[es] [itself] by [] the kinds and quality of [its] culinary offerings,” plaintiff’s customer reviews and complaints paint a clearer picture of Red Osier’s current reputation and value in the market. See Aff. of Counsel, ¶ 11 (earning a rating of 3.1 out of five and highlighting consistent concerns with “new management,” the quality of food, and professionalism). Additionally, neither the “Mahi Mahi Mango Salsa,” or “Bourbon Glazed Salmon” are actually offered by Red Osier on a regular basis. See Aff. of Counsel, ¶ 7, 11, 12 (showing only one review mentioning bourbon, but for a chicken dish; only four reviews for salmon generally; zero results for “Mahi Mahi” or “mango salsa,” and new comments that recipes were developed by other staff). Furthermore, even if the alleged recipes are considered trade secrets, plaintiff has not made any showing, and simply cannot, that defendants stole or used the recipes at Sunny’s. See, e.g., *Kanan, Corbin, Schupak & Aronow, Inc. v. FD Int’l, Ltd.*, 8 Misc.3d 412, 413–14 (Sup Ct, NY County 2005) (holding that defendants’ recollection of details of client list and accounts does not amount to misappropriation of a trade secret).

Thus, plaintiff failed to show it is likely to succeed on the merits of its misappropriation of trade secrets claim.

ii. Second Cause of Action: Unfair Competition

Under New York State common law, to establish a claim of unfair competition, a plaintiff must prove either: (1) that the defendants activities have caused confusion with, or have been mistaken for, the plaintiffs activities in the mind of the public, or are likely to cause such confusion or mistake; or (2) that the defendants have acted unfairly in some manner. *Kg2, LLC v. Weller*, 105 A.D.3d 1414, 1415 (4th Dep’t 2013); *Jeffrey Milstein, Inc. v. Greger, Lawlor, Roth, Inc.*, 58 F.3d 27, 35 (2d Cir. 1995). A plaintiff’s failure to demonstrate a likelihood of success on the merits of a claim of misappropriation of trade secrets is fatal to a plaintiff’s attempt to demonstrate unfair competition. *Marsh USA, Inc.*, 49 Misc.3d 1210(A), at *6.

In *Kg2*, the Fourth Department specifically concluded that the plaintiff-owner’s conclusory affidavit that defendant’s use of a trade name caused confusion in the marketplace was plainly insufficient to establish a prima facie case of unfair competition. 105 A.D.3d at 1415. Similarly, here, Mr. Foster concludes that “defendants’ unlawful misappropriation of our trade secrets will . . . cause confusion in the marketplace,” but fails to include any support or evidence for such a conclusion. See NYSCEF [Doc. 3](#), ¶ 14. Plaintiff’s complaint also fails to provide any additional support or evidence for this claim; simply concluding that “defendants’ activities are causing confusion with, and/or are being mistaken for, the plaintiff’s activities. . . and/or are likely to cause such confusion or mistake.” See NYSCEF [Doc. 1](#), ¶ 29. Put another way, adding common menu items such as prime rib and cold water lobster tails to Sunny’s menu does not make out a prima facie claim for misappropriation. Because of this, and because plaintiff cannot demonstrate a likelihood of success on the merits of its misappropriation

claim, plaintiff also cannot demonstrate a likelihood of success on the merits for its unfair competition claim.

iii. Third Cause of Action: Conversion

A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession. *Marsh USA, Inc.*, 49 Misc.3d 1210(A), at *4 (relying on *State of New York v. Seventh Regiment Fund*, 98 N.Y.2d 249, 259 (NY 2002)). The two key elements of conversion are: (1) plaintiff's possessory right or interest in the property, and (2) defendants' dominion over the property or interference with it, in derogation of plaintiffs' rights. *Id.* While plaintiff arguably has a possessory right in unique recipes it uses at its restaurant, plaintiff failed to show that defendants ever took or interfered with the recipes in derogation of its rights. See *id.* In fact, aside from unsupported and inconsistent conclusions in Mr. Foster's affidavit and plaintiff's complaint that defendants "stole" plaintiff's trade secrets, plaintiff has not presented *any* evidence that defendants ever actually stole, or exerted dominion over or interfered with those recipes in derogation of plaintiffs' rights. See *Marsh USA, Inc.*, 49 Misc.3d 1210(A), at *4 (holding that plaintiff's claim of conversion failed because defendants copied the lists, rather than taking or destroying them). As such, plaintiff is not likely to succeed on the merits of its claim for conversion.

iv. Fourth and Fifth Causes of Action: Breach of Contract and Tortious Interference with a Contract

Under New York law, it is well settled that the elements for a breach of contract claim are: (1) "the existence of a contract," (2) "the plaintiff's performance under the contract," (3) the defendant's breach of that contract," and (4) "resulting damages."

Tapp Partner, LLC v. Wall Sections Inc., 247 N.Y.S.3D 851, 853 (4th Dep't 2025) (quoting *Niagara Foods, Inc. v. Ferguson Elec. Serv. Co., Inc.*, 111 A.D.3d 1374, 1376 (4th Dep't. 2013)). Additionally, to establish a cause of action for tortious interference with contractual relations, a plaintiff must show: "(1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of the contract; (3) defendant's intentional procurement of the third-party's breach of the contract without justification; (4) an actual breach; and (5) damages resulting therein." *Marsh USA, Inc.*, 49 Misc.3d 1210(A), at *6 (relying on *Lama Holding Co. v. Smith Barney, Inc.*, 88 N.Y.2d 413, 425 (NY 1996)).

Plaintiff's claims for breach of contract and tortious interference with a contract fail on this first element because there is no enforceable agreement or contract between plaintiff and any of the defendants, particularly Mr. Newmark or Ms. Granata. While employee handbooks can, under specific circumstances, be an enforceable contract (see, e.g., *Currier, McCabe & Associates, Inc. v. Maher*, 75 A.D.3d 889 (3d Dep't 2010)), no such circumstances exist here. Not only is it unclear whether the select pages plaintiff's submitted are actually part of an employee handbook—given the inconsistent page numbers, style, and font—the documents contain three separate sections that specifically state: "This Employee Handbook does not constitute a contract . . . the contents of any Employee Handbook, including this one . . . shall not be construed to be a contract or in any way binding. . . This handbook is a general guide and provisions of this handbook do not constitute an employment agreement (contract)." NYSCEF [Doc. 4](#). Another page and/or version of the handbook further states, "neither this handbook nor any other communication by a management representative or other, whether oral or

written, is intended in any way to create a contract of employment.” *Id.* Plaintiff simply cannot have it both ways. Plaintiff clearly did not want or intend for these handbooks to be valid and enforceable contracts, yet it now seeks to enforce them because they wish to retaliate against their former employees’ decision to go to work for a different local restaurant.

Because there is no contract, plaintiff cannot establish a likelihood of success on the merits for its claims of breach of contract or tortious interference with a contract.

v. *Sixth Cause of Action: Tortious Interference with Economic Relations*

For a cause of action for tortious interference with economic relations, plaintiffs must show that defendants “directly interfered with a third party and that the defendant[s] either employed wrongful means or acted for the *sole* purpose of inflicting intentional harm on plaintiff[s].” *Ray v. Stockton*, 162 A.D.3d 1677, 1679 (4th Dep’t 2018) (emphasis added). The New York Court of Appeals defines the term “wrongful means” as conduct amounting “to a crime or an independent tort.” *Id.* (quoting *Carvel Corp. v. Noonan*, 3 N.Y.3d 182, 190 (NY 2004)). More specifically, plaintiff must demonstrate: “(1) [it] had a reasonable expectation of entering into a valid business relationship; (2) the defendant’s knowledge of the expectation; (3) purposeful interference by the defendant that prevents the plaintiff’s legitimate expectancy from ripening into a valid business relationship; and (4) damage to the plaintiff resulting from the defendant’s interference.” *Marsh USA, Inc.*, 49 Misc.3d 1210(A), at *6. “The essential element of this claim is that the complaining party would have obtained the economic advantage but for the defendant’s interference.” *Id.*

Plaintiff's unsupported and meritless allegations of unfair trade and "orchestrating" a walkout by other unnamed employees do not make out a potentially viable tortious interference claim. Because plaintiff wholly failed to make any allegations supporting this claim and further failed to present any evidence in support of its request for preliminary injunction, plaintiff cannot establish a likelihood of success on the merits.

vi. Seventh Cause of Action: Unjust Enrichment

The elements of an unjust enrichment cause of action are: "(1) the defendant was enriched; (2) the enrichment was at the expense of the plaintiff; and (3) it would be inequitable to allow the defendant to retain that which is claimed by the plaintiff." *Barker v. Gervera*, 236 A.D.3d 1318, 1324 (4th Dep't 2025) (quoting *OneWest Bank, FSB v. Spencer*, 145 A.D.3d 1488, 1489–1490 (4th Dep't 2016)). Conclusory allegations that one party was unjustly enriched at another's expense are plainly insufficient. See *Baron v. Pfizer, Inc.*, 42 A.D.3d 627, 630 (3d Dep't 2007); *Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 182 (NY 2011) ("Without sufficient facts, conclusory allegations that fail to establish that a defendant was unjustly enriched at the expense of a plaintiff warrant dismissal."). Beyond the conclusory statement that "defendants are being unjustly, inequitably, and unfairly enriched at plaintiff's expense," plaintiff makes no other allegations or references to unjust enrichment and wholly failed to present any evidence or proof of such claim. See NYSCEF [Doc. 1](#), ¶ 51. As with the unfair competition claim, the suggestion that Sunny's is being unjustly enriched at Red Osier's expense for offering prime rib and lobster tails is meritless. As such, plaintiff failed to and cannot demonstrate a likelihood of success on the merits of this claim.

vii. *Eighth Cause of Action: Fraud*

To establish a prima facie case of fraud, plaintiff must properly allege and demonstrate: (1) a material misrepresentation of a fact, (2) knowledge of its falsity, (3) an intent to induce reliance, (4) justifiable reliance by the plaintiffs; and (5) damages. *Browne v. Lyft, Inc.*, 219 A.D.3d 445, 448 (2d Dep't 2023) (relying on *Eurycleia Partners, LP v. Seward & Kissel, LP*, 12 N.Y.3d 553, 559 (NY 2009)). According to NY CPLR § 3016(b), “[w]here a cause of action or defense is based upon misrepresentation, fraud, mistake, willful default, breach of trust or undue influence, **the circumstances constituting the wrong shall be stated in detail.**” (emphasis added). New York Courts routinely hold that general, bare, and conclusory statements that a defendant committed fraud or any of these elements are plainly insufficient. *Essential Home Remodeling, Inc. v. Rossin*, 236 A.D.3d 464, 465 (1st Dep't 2025). A cursory review of plaintiff's cause of action for fraud quickly dispenses with any argument that plaintiff is likely to succeed on the merits for this claim. See NYSCEF [Doc. 1](#), ¶¶ 53-57. Not only does plaintiff wholly fail to allege a claim for fraud with the required particularity standard (see NY CPLR § 3016(b)), but it also failed to plead any specific facts from which it may be reasonably inferred that defendants misrepresented any facts at all to plaintiff—especially not with the intent to induce plaintiff's reliance on anything. As such, plaintiff is not likely to succeed on the merits for this claim.

viii. *Ninth Cause of Action: Constructive Trust*

A constructive trust may be imposed where there is “(1) a confidential or fiduciary relation, (2) a promise, express or implied, (3) a transfer made in reliance on that promise, and (4) unjust enrichment.” *Barker*, 236 A.D.3d at 1324 (quoting *Bankers Sec.*

Life Ins. Socy. v. Shakerdge, 49 N.Y.2d 939, 940 (NY 1980)). In New York, a “conventional business relationship, without more, is insufficient to create a fiduciary relationship.” *Pauwels v. Deloitte LLP*, 83 F.4th 171, 183 (2d Cir. 2023) (quoting *Oddo Asset Mgmt. v. Barclays Bank PLC*, 19 N.Y.3d 584, 592–93 (NY 2012)). Additionally, “employment relationships,” without more, “do not create fiduciary [or confidential] relationships.” *Id.* at 184. See also *Rather v. CBS Corp.*, 886 N.Y.S.2d 121, 125 (1st Dep’t 2009) (concluding that employer did not owe an employee fiduciary duties notwithstanding the employee’s “four-decade history” with the employer); *Freedman v. Pearlman*, 706 N.Y.S.2d 405, 409 (1st Dep’t 2000) (holding that allegations that an employee trusted the defendant “as his employer to treat him fairly ... does not give rise to a fiduciary duty”). Rather, a plaintiff must show “special circumstances that transformed the parties’ business relationship into a fiduciary one.” *Pauwels*, 83 F.4th 171 at 184. The “mere communication of confidential information [or trade secrets] is not sufficient in and of itself to create a fiduciary relationship” between two parties. *Id.*

Because plaintiff merely alleges the existence of a confidential or fiduciary relationship “[b]y virtue of the Trade Secrets among other things,” plaintiff failed to and cannot demonstrate a likelihood of success on the merits for a constructive trust. See NYSCEF [Doc 1](#), ¶ 60.

ix. *Tenth Cause of Action: Prima Facie Tort*

To state a cause of action for prima facie tort, the plaintiff must allege “(1) the intentional infliction of harm, (2) which results in special damages, (3) without any excuse or justification, (4) by an act or series of acts which would otherwise be lawful.”

Kickertz v. New York University, 110 A.D.3d 268, 280 (1st Dep't 2013) (quoting *Freihofer v. Hearst Corp.*, 65 N.Y.2d 135, 142–143 (NY 1985)). Because plaintiff failed to make any such allegations—in its complaint, motion for preliminary injunction, or Mr. Foster's supporting affidavit—beyond the mere conclusory recitation of the elements for this cause of action, it cannot establish any likelihood of success on the merits for this claim.

x. *Eleventh Cause of Action: Permanent Injunction*

Although it is permissible to plead a cause of action for a permanent injunction, “permanent injunctive relief is, at its core, a remedy that is dependent on the merits of the substantive claims asserted.” *Rock Star Enterprises, LLC v. Villag of Sylvan Beach*, 237 A.D.3d 1601, 1604 (4th Dep't 2025); *Stuyvesant Town-Peter Cooper Village Tenants' Assoc. v. BPP ST Owner LLC*, 184 N.Y.S.3d 538, 546 (Sup Ct, NY County 2023) (“Under New York law, a claim for permanent injunction is a remedy for an underlying wrong, not a cause of action.”); *Talking Capital LLC v. Omanoff*, 169 A.D.3d 423, 424 (1st Dep't 2019). As more thoroughly explained above, because plaintiff failed to properly allege or demonstrate a likelihood of success on the merits for any of its causes of action, not only must its claim for permanent injunction also fail (see *Rock Star Enterprises, LLC*, 237 A.D.3d at 1604 (“It is well settled that permanent injunctive relief is simply not available when the plaintiff does not have any remaining substantive cause of action.”))), but so shall its request for a preliminary injunction.

D. *The balance of equities is not in plaintiff's favor.*

Plaintiff cannot meet the third prong of the preliminary injunction analysis because the balance of equities is not in its favor. See *Marsh USA, Inc.*, 49 Misc.3d 1210(A), at *6. Balancing equities means “it must be shown that the irreparable injury to

be sustained is more burdensome to the plaintiff than the harm caused to the defendant through imposition of the injunction.” *Destiny USA Holdings, LLC v. Citigroup Global Markets Realty Corp.*, 889 N.Y.S.2d 793, 802 (4th Dep’t 2009) (internal citations and quotations omitted); *Eastview Mall, LLC*, 122 N.Y.S.3d at 851. Here, the harm defendants will suffer if forced to unnecessarily and unreasonably rework their menus and recipes, remove dishes they independently created, retract any advertising and social media posts they made related to these menu items, and issue corrections to any website and anyone they spoke with about these recipes and dishes, is far greater than any injury plaintiff will suffer from Sunny’s Restaurant offering its own specifically curated versions of dishes that are commonly offered by restaurants in and around Genesee County. *See, e.g.*, Aff. of Counsel,

¶ 8. As such, plaintiff’s request for a preliminary injunction must be denied.

CONCLUSION

For these reasons and for those set forth in the accompanying Affirmations of Charles E. Graney, Esq., David Snyder, Nicole Granata and Justin Newmark, defendants respectfully request that this Court deny plaintiff’s request for a preliminary injunction in its entirety because plaintiff failed to satisfy any of the elements required for a preliminary injunction.

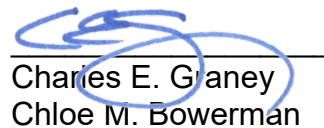
Additionally, defendants note that they are preparing a request for sanctions. As demonstrated above, plaintiff failed to state any viable causes of action within its complaint and is wholly unable to satisfy its burden for any of the eleven meritless causes of actions it advanced. The false and baseless accusations of fraud, misappropriation, theft of proprietary business information, and other accompanying allegations by plaintiff are, at a minimum, reckless—but more likely malicious and

intended to harass a new restaurateur and former employees in an effort to improperly impede a competing restaurant from entering the marketplace. This litigation is a significant waste of this Court's limited time and resources, as well as defendants'.

Respectfully submitted,

DATED: March 16, 2026
Buffalo, New York

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22 N.Y.C.R.R. § 202.8-b CERTIFICATION

I hereby certify pursuant to 22 N.Y.C.R.R. § 202.8-b, that the foregoing Memorandum of Law was prepared on a computer using Microsoft Word.

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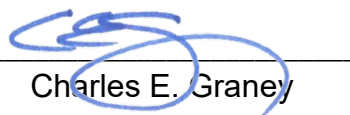
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DATED: March 16, 2026



Charles E. Graney