

**SUPREME COURT OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION**

GREGORY BERRY,	)	
Plaintiff,	)	Index No. _____
	)	
-against-	)	
	)	<b><u>SUMMONS</u></b>
KASOWITZ, BENSON, TORRES	)	
& FRIEDMAN LLP; AARON	)	
MARKS; KIM CONROY,	)	Date Index No. Purchased:
Defendants.	)	
_____	)	

To the above-named Defendants:

Kasowitz, Benson, Torres & Friedman LLP  
1633 Broadway, New York, NY 10019  
Aaron Marks, 1633 Broadway, New York, NY 10019  
Kim Conroy, 1633 Broadway, New York, NY 10019

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is the residence of the Plaintiff,  
which is 106 Pinehurst Ave., Apt. C63, New York, NY 10033.

Dated: New York, New York  
August 15, 2011

by:           /s/ Gregory Berry          .  
Gregory Berry

Gregory Berry, pro se  
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**SUPREME COURT OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION**

GREGORY BERRY,	)	Index No. _____
Plaintiff,	)	
	)	
<i>-against-</i>	)	<b><u>COMPLAINT</u></b>
	)	<b><u>AND DEMAND</u></b>
KASOWITZ, BENSON, TORRES	)	<b><u>FOR JURY TRIAL</u></b>
& FRIEDMAN LLP; AARON	)	
MARKS; KIM CONROY,	)	
Defendants.	)	
_____	)	

Plaintiff Gregory Berry, pro se, as and for his complaint against defendants Kasowitz, Benson, Torres & Friedman LLP; Aaron Marks; and Kim Conroy alleges, upon knowledge as to himself and otherwise upon information and belief, as follows:

**PRELIMINARY STATEMENT**

1. Plaintiff brings this action to recover the losses suffered by Mr. Berry at the hands of defendant Kasowitz, Benson, Torres & Friedman (“KBTF” or the “firm”), Aaron Marks, and Kim Conroy, for compensatory damages of at least \$25 million, special damages of \$2.55 million, punitive damages of at least \$50 million, as well as injunctive relief and declaratory judgment.

2. In August 2007 Mr. Berry left his distinguished career as a software engineer and entrepreneur in San Francisco, California, to begin a new career as an attorney in New York City. To that end he began law school at the University of Pennsylvania Law School in Fall 2007.

3. After on-campus interviews in the Fall of 2008 and subsequent in-house interviews, Mr. Berry was offered a job at Kasowitz, Benson, Torres &

Friedman. Relying on KBTF's representations that it was an aggressive and creative firm that values intelligence, ambition, and drive, and eschews the artificial hierarchical structures of traditional law firms, Mr. Berry accepted the offer, forgoing other opportunities.

4. After a successful summer at KBTF in 2009, Mr. Berry was offered a full-time position at KBTF as associate starting September 2010.

5. Upon arrival at the firm, Mr. Berry immediately began doing superlative work. During his time at KBTF, he repeatedly found ways to improve the efficiency of the work, or even the outcome of cases.

6. Mr. Berry quickly discovered, however, that virtually every representation the firm had made about itself was false. It had told Mr. Berry it eschews artificial hierarchical structure, then refused Mr. Berry an assignment because it would be "unfair to the other associates." It told Mr. Berry it valued intelligence and creativity, then reprimanded and ultimately fired him for exhibiting those traits. It claimed that the amount of responsibility an associate shoulders is dependent only on his willingness and ability, then reprimanded and ultimately fired him for demonstrating that willingness and ability to shoulder more responsibility.

7. In December 2010, Mr. Berry ran afoul of Kim Conroy, an associate at the firm, when he informed her that he had too many assignments at the moment and would not be able fully to take on her project. It is well-known at the firm, and encouraged, that attorneys are responsible for managing their own time and refusing assignments when they are overbooked. Ms. Conroy, knowing this,

nonetheless conspired with Aaron Marks to damage his career and reputation and interfere with his employment at KBTF. Mr. Marks called Mr. Berry into his office to reprimand him, ultimately leading to his termination.

8. By the spring of 2011, Mr. Berry was confident that he could handle far more responsibility than he had been given to that point. When it happened that his current assignments wound down, he wrote to some partners he had come in contact with to request assignments that would give him more responsibility and the opportunity to fully demonstrate his abilities.

9. Mr. Marks again called Mr. Berry into his office, to again reprimand him, this time for that e-mail, and then some days later, on May 10, 2011, he was fired.

10. KBTF gave Mr. Berry an unconscionable Separation Agreement to sign under economic duress, and refused to negotiate or even discuss its terms.

11. Almost immediately after Mr. Berry signed the Agreement, KBTF breached virtually every one of its promises under the Agreement.

### **PARTIES**

12. Plaintiff Gregory Berry is a person residing in New York City, New York.

13. Upon information and belief, defendant Kasowitz, Benson, Torres & Friedman is a limited liability partnership organized under the laws of the State of New York, with its principal place of business in New York City, New York.

14. Upon information and belief, Aaron Marks is a citizen of New York and does business in New York.

15. Upon information and belief, Kim Conroy is a citizen of New York and does business in New York.

### **JURISDICTION AND VENUE**

16. This court has jurisdiction pursuant to CPLR §§ 301 and 302, and venue is proper pursuant to CPLR § 503.

### **STATEMENT OF FACTS**

#### **A. Mr. Berry's Remarkable Career before Law School, and His Choice of Law**

17. From 1997 to 2007 Plaintiff Gregory Berry had a distinguished career as a software engineer in the San Francisco Bay Area. Within five years he held the title of Director of Technology, managing a team of engineers. His career culminated when he founded and was the creative force behind an internet company whose impact on online entertainment services can still be felt today.

18. After conquering Silicon Valley, he decided to take his talents in a new direction, and in 2007 began law school at the University of Pennsylvania Law School in Philadelphia, PA.

#### **B. Interviewing with KBTF, Fraudulent Misrepresentations, and Hiring**

19. In the Fall of 2008 Mr. Berry interviewed with a representative of KBTF as part of Penn's On-Campus Interview program.

20. During that interview Mr. Berry was told that the exciting thing about KBTF was its non-traditional nature, that Marc Kasowitz made his mark by bucking the system, that what was so exciting about working for KBTF was that they valued creativity and intelligence and ambition, and allowed associates to grow as quickly as they could.

21. Based on the strength of Mr. Berry's performance at that interview Mr. Berry was invited to the offices of KBTF for additional interviews, and he accepted.

22. During those interviews Mr. Berry was again told that document review was a burden shared by all, that it was shared equally, and that junior associates were encouraged to seek out more interesting assignments and make their own way in the firm.

23. Based on the strength of Mr. Berry's performance at those interviews, KBTF offered him a job as summer associate for the summer of 2009.

24. To aid in evaluating the offer, Mr. Berry read the KBTF website. Upon information and belief, the website made several representations concerning employment at the Firm:

- (a) that "the structure and culture of the Firm distinguish it from other prominent law firms."
- (b) that at the Firm "associates assume substantial responsibility."
- (c) that "the amount of responsibility that an associate shoulders is determined only by the associate's willingness and ability, not by artificial or hierarchical structures."
- (d) that "associates work with partners in an informal environment."
- (e) that "creative and independent thinking is encouraged."

25. Every one of the above representations was false, as described in more detail below.

26. Upon information and belief, the statements made in the interviews and on the website were intended to induce Mr. Berry to choose KBTF.

27. Mr. Berry had other interesting and exciting opportunities, in particular with the IRS and with a bankruptcy firm in Wilmington, DE.

28. Specifically relying on the promises made to him by KBTF, Mr. Berry forwent the other opportunities he had available and accepted a position at the KBTF.

**C. Mr. Berry's Employment at the Firm**

29. During the summer of 2009, Mr. Berry did superlative work at KBTF, and received no complaints about it.

30. At the end of the summer of 2009, based on the strength of his performance, KBTF offered Mr. Berry a permanent position starting in September 2010.

31. Mr. Berry began permanent employment at KBTF in September 2010.

32. From the beginning he did superlative work, and never received a complaint or negative comment about it.

33. During this time, incidentally, representatives of KBTF advised Mr. Berry and the other first-year associates to pay off their school loans aggressively rather than saving money, which advice Mr. Berry followed.

**D. Suggestions, Comments, Observations, Inefficiencies, Fraud, Incompetence, Malpractice**

34. In virtually every assignment Mr. Berry was given, he went above and beyond the call of duty, pointing out better ways to proceed, inefficiencies, observations, and ways to get a better result for KBTF clients.

35. Specifically, one document review case Mr. Berry was assigned to involved software engineering, his field of expertise. He e-mailed the two partners on the case to inform them that he possessed this knowledge that would be helpful to them in understanding the technology and the expert witnesses. Neither one ever responded.

36. For this same project, the software the Firm had chosen for the review of electronic documents was extremely slow and inefficient. The software was web-based, and as a result it was extremely slow, taking up to several seconds to display each page. (The documents were served over the internet, with all the delays that typically involves, rather than internally over the firm's internal network.) Mr. Berry explained to the managing associate and the other associates on the team how to review the documents with a software package that was internal to the KBTF system. Using the internal software large documents could be reviewed up to *600% faster* (3 minutes versus 20) than using the web-based program.

37. None of the associates but Mr. Berry switched to the internal software, costing the client hundreds or thousands of dollars extra in unnecessary hourly billing.

38. Document review is a cash cow for KBTF. On this particular project, any procedure Mr. Berry suggested to improve efficiency was eschewed. For example, among the documents were pictures of various employees of the client, or images of the company logo. They could not possibly have any relevance to the contract performance and fraudulent inducement case. Mr. Berry suggested

they separate out these garbage files so they are not reviewed more than once. This suggestion was rejected by the managing attorney, who insisted that the team would be going through the documents *several times* during the course of the litigation, and it was better to re-view even those logo images every time. This small example again cost the client hundreds if not thousands of dollars in wasted effort.

39. Another document-review-related project Mr. Berry was assigned to involved creating a redaction log for redactions in a document production for the Firm's client. The senior associate managing the project had already gone through the documents and redacted the privileged passages. Mr. Berry's assignment, then, was to guess why each document had been redacted and write down in a log his guess as to the reason for the redaction. The senior associate then went through the documents a *third time* to make sure that Mr. Berry's guesses as to his reasons for redaction were correct, resulting in three times the billing that was necessary.

40. When Mr. Berry suggested that if the senior associate would just make note of the reason for each redaction as he made it, they could save two or three times the effort, and thus save the client money, the senior associate told Mr. Berry that it was not his job to take notes.

41. This same senior associate wanted Mr. Berry to go through the 50,000 documents one at a time, manually, looking for redactions. This task would have taken days. Instead Mr. Berry went to the litigation support team, had them run a script, and found the 62 redacted documents in about 30 minutes.

**E. Kim Conroy's Malicious Interference with Mr. Berry's Relationship with KBTF**

42. In or around December 2010, Mr. Berry was given three large assignments in close succession, a document review project demanding full time, a research and writing project requiring additional significant time, and another document review project demanding full time. The third project was managed by Kim Conroy.

43. Mr. Berry had already started on the other two projects when it became known how much time Ms. Conroy's project would require, and Mr. Berry realized he would not have the time to devote to Ms. Conroy's project that she needed.

44. Upon information and belief, KBTF policy is that an associate is responsible for managing his own time, and that if he has been assigned too many projects at the moment, he may inform the managing attorney that he cannot take on the new project.

45. Mr. Berry followed KBTF policy. Upon realizing Ms. Conroy's document review project would require more time than he had available, Mr. Berry wrote her the following e-mail:

Hi Kim—  
I wanted to talk to you about my job assignments. I've now been assigned to two big doc review projects, plus my other work with writing briefs and doing research. It seems from our meeting on Friday that you need someone who can be devoted full time just to [your case]. I am of course happy to help out as much as I can, but I am worried that I will not be able to devote the time necessary to "own" the doc review for this case. Could we bring in someone else to help and/or take over?

46. Ms. Conroy responded, “What other assignments are you on and how much time are they requiring?”

47. Mr. Berry replied again that he was happy to help, but that his other duties would prevent him from “owning” the project—Ms. Conroy’s term for being the go-to person who knew the documents of the case inside and out (“Second E-mail” to Ms. Conroy):

The thing I am concerned about is that you need someone to “own” the doc review. I am more than happy to help, it’s a necessary evil, but I need to temper the expectation that it can consume my time, preventing me from doing my real work. Maybe we can find a first year that would benefit more from this opportunity?

At the moment I’m drafting our appeals in [another case] with [another associate], and I have some other drafting duties coming up with the insurance group. In addition I have started helping out with another heavy document review project for [the other document review case]. They also need people full time, so I’ve been helping out as much as I can.

48. Upon information and belief, Ms. Conroy had been an associate at KBTF for several years at the time of this exchange, and was aware that at KBTF associates are responsible for their own time, and are allowed to refuse work for which they do not have time.

49. Ms. Conroy never responded directly to Mr. Berry, but instead, upon information and belief, complained to Aaron Marks and forwarded the Second E-mail, and only the second one, to him, in an intentional and willful act calculated to cause damage to Mr. Berry by depriving him of lawful employment.

50. Mr. Berry’s communications were, as Ms. Conroy knew, entirely proper under the duties of his employment. Upon information and belief, refusing

her project nonetheless angered Ms. Conroy and she lashed out by maliciously “reporting” Mr. Berry’s e-mail to Mr. Marks.

51. Such vindictiveness is outside the scope of Ms. Conroy’s employment.

52. Complaining to Mr. Marks had no purpose other than to harm Mr. Berry and interfere with his employment. After meeting with Mr. Marks, Mr. Berry wrote to Ms. Conroy again to reiterate that he was happy to help, and she replied that she had already found someone else.

53. Upon information and belief, although this was never made known to Mr. Berry at the time, Ms. Conroy was a “partner-track associate.” (And very soon after Mr. Berry was fired she was in fact made partner.)

**F. The First Meeting with Aaron Marks, plus John Doe**

54. The result of Ms. Conroy’s actions was that Mr. Marks called Mr. Berry into his office.

55. In the other guest chair was a man wearing a suit that Mr. Berry had never seen before (“John Doe”). He stayed for the entire meeting, listening as Mr. Marks reprimanded Mr. Berry. Mr. Marks never introduced him to Mr. Berry nor acknowledged his presence, and the man never introduced himself.

56. The man’s unexplained presence was intimidating and distressing to Mr. Berry. It is outside all bounds of civility to subject an employee to a dressing-down while a stranger watches.

57. Upon information and belief Mr. Marks does not have the authority on his own to make the decision to fire an employee, but he took up Ms. Conroy’s

cause by castigating Mr. Berry for writing an e-mail that was entirely proper and expected under the circumstances.

58. In front of John Doe Mr. Marks lectured Mr. Berry for writing the Second E-mail.

59. During the meeting Mr. Marks aggressively mischaracterized the e-mail, insisting Mr. Berry had refused to do Ms. Conroy's assignment, even when Mr. Berry pointed out that the e-mail states explicitly that he would be happy to do the work.

60. Upon information and belief, everything Mr. Marks chastised Mr. Berry for, Mr. Marks knew to be false. Mr. Marks knew that employees are expected to manage their time effectively and turn down assignments they cannot handle. Mr. Marks knew, or was reckless in not knowing, that KBTF values ambition. And as an attorney with 18 years experience Mr. Marks certainly knew that document review is a "necessary evil." (Indeed Mr. Marks acknowledged as much, by telling Mr. Berry that *even one of the partners* had come in that weekend to do some document review.)

61. During the meeting, however, he repeatedly denied such knowledge to Mr. Berry.

62. Mr. Marks told Mr. Berry that it would be "unfair to the other associates" to allow Mr. Berry not to do document review (even though the e-mail states clearly that he was already doing document review full time).

63. Mr. Berry stated that everything he does for KBTF is superlative, even document review. He told Mr. Marks about how, in the other document review

project he was working on, he had figured out how to do it 600% faster than it is currently being done.

64. John Doe then stated that Mr. Berry “should not be so arrogant.”

65. Subsequent to this meeting Mr. Berry was in fact fired.

**G. The Final Straw: Mr. Berry Asks for More Responsibility**

66. In April 2011 Mr. Berry found himself without assignments.

67. Every first-year associate is required to send a memo weekly to several senior partners, including Marc Kasowitz, and including Aaron Marks, who is responsible for finding new assignments for attorneys.

68. During this time (April 2011), Mr. Berry (through his secretary) sent the required memo to Marc Kasowitz and Aaron Marks every week informing them that he had no assignments and desired to be assigned to any case that needed help, in any capacity.

69. Mr. Marks never contacted Mr. Berry in response to his memos requesting work assignment.

70. KBTF also encouraged attorneys to seek out work by contacting partners on their own.

71. Having worked for KBTF for six months, Mr. Berry had assessed the situation. He saw that he would be of far more value to KBTF if he was given more responsibility.

72. Mr. Berry composed the following e-mail to that effect (the “Partner E-mail”):

I am writing to see if you have any small cases I could manage for you. It has become clear that the only limiting factor on how much

value I am to a case is how much responsibility I am given: the more responsibility I am given, the better the outcome. I am in kind of an uncomfortable position at the firm because although I am a “first year,” I have 15 years business and real world experience, as much as many senior associates. When I first got here I did not know what to expect, but after working here for several months now it has become clear that I have as much experience and ability as an associate many years my senior, as much skill writing, and a superior legal mind to most I have met.

There is a natural skepticism that someone without a lot of formal legal apprenticeship can do the job of a senior associate, but the truth is much of the learning and experience an associate acquires is parallel to any business experience—negotiating contracts, negotiating settlements, writing, analysis. If you will allow me to manage some cases for you I can guarantee without reservation that you will get a better result than you get now with many of the official resources you have available to you.

73. During April 2011, Mr. Berry e-mailed this letter to partners he had had some contact with, a few at a time.

74. Of the twelve e-mails he sent, Mr. Berry received a positive response from three partners, no response from the rest.

#### **H. The Second Meeting with Aaron Marks (No John Doe)**

75. On or about May 1, 2011, Mr. Marks again called Mr. Berry into his office, shortly after Mr. Berry had sent out the last of the Partner E-mails.

76. He told Mr. Berry that some of the partners were upset by the e-mail. Mr. Marks stated that he had never come across “this situation” before.

77. He said that Mr. Berry had “burned bridges” at the firm by asking for more responsibility, that because of the e-mail some partners now did not want to work with him, and that he was not allowed to ask for work that was above his position in the hierarchy.

78. Mr. Berry told Mr. Marks about the redaction log he was working on, describing how the senior associate was causing the client to be billed three times the hours necessary to complete this simple task.

79. Mr. Berry told Mr. Marks that he understood that there were reverse incentives in the business, and that KBTF made its money by billing clients for hourly work, but that the way he had been told to do the redaction log was grossly inefficient.

80. Mr. Marks insisted that Mr. Berry continue doing the redaction log the way the senior associate had instructed him to.

81. Within a few days of that meeting, Mr. Berry was fired.

#### **I. Mr. Marks Fires Mr. Berry**

82. A few days after the second meeting with Mr. Marks, Mr. Berry received an e-mail informing him his semiannual performance review.

83. Upon information and belief, Mr. Berry had received positive reviews from the two partners and two associates that wrote reviews of his performance.

84. The e-mail stated that the semiannual performance review was scheduled for May 10, 2011, at 10:15AM. The e-mail stated that the review would be given by Aaron Marks and another partner.

85. As soon as Mr. Berry sat down at the conference table Mr. Marks stated that the firm had decided to separate from him.

86. Mr. Marks stated that the reason for the termination was Mr. Berry's second meeting with him.

87. Mr. Marks told Mr. Berry that he could continue using his company e-mail for two months to assist him in a smooth transition.

88. Then he handed Mr. Berry a package that included the Separation Agreement.

89. Mr. Berry left the office immediately after stopping at his desk to pick up his things.

**J. KBTF Belligerently Refuses to Negotiate the Separation Agreement**

90. After firing him, Mr. Berry wrote to Mr. Marks to request a meeting to discuss the terms of the Separation Agreement. Mr. Marks ignored Mr. Berry's request entirely.

91. Per the Separation Agreement, Mr. Berry retained counsel to attempt to negotiate a better severance amount from KBTF, sufficient to allow him to survive until he could find a job.

92. Upon learning that Mr. Berry had retained counsel, KBTF immediately withdrew the severance offer entirely.

93. Within hours of learning Mr. Berry had retained counsel, KBTF cut off Mr. Berry's access to his e-mail, and his phone, and his secretarial service.

94. The firm then refused to negotiate the Separation Agreement, and said the agreement was "take it or leave it." Upon information and belief, the firm communicated to Mr. Berry that if he wanted to sue Kasowitz, Benson, Torres & Friedman, he should do so.

95. The firm also claimed that the reason for Mr. Berry's termination was the Second E-mail to Ms. Conroy.

96. Under duress and in a dire position economically, Mr. Berry signed and returned the Separation Agreement.

97. Upon information and belief KBTF never executed the Separation Agreement.

**K. The Unconscionable Separation Agreement**

98. The Separation Agreement stated that Mr. Berry would be paid four times during the regular payment cycles, June 1, June 15, July 1, July 15 of 2011.

99. Paragraph 1 of the Separation Agreement states that: “the Firm shall maintain your [Mr. Berry’s] e-mail, voice mail, and secretarial answering service and website bio for purposes of facilitating a smooth transition for you and the Firm through July 15, 2011.”

100. Paragraph 2 of the Separation Agreement states that: “KBT&F will pay you severance based on your final base salary rate, less any applicable withholdings and legally required deductions, for a period of two (2) months through July 15, 2011.”

101. Paragraph 2 continued, “The severance payment will be made to you in semi-monthly installments on the Firm’s regular payroll dates, commencing on the next payroll date following the Effective Date (as such term is defined in Paragraph 23) of this Agreement.”

102. Paragraph 3 of the Separation Agreement states that, “you [Mr. Berry] shall receive from the Firm (a) payment for any accrued and unused vacation days through April 30, 2011, if any. . . .”

103. Paragraph 8 of the Separation Agreement states that, “you [Mr. Berry] hereby forever release and discharge the Firm and each of the Firm’s predecessors, [etc.] . . . from any and all complaints, [etc.] . . . including . . . any Claims arising under any contracts . . . or any tort, including without limitation intentional infliction of emotional distress, defamation, fraud and breach of duty, or any legal restrictions on the Firm’s right to terminate employees, . . . including without limitation: the Age Discrimination in Employment Act of 1967, [etc.]”

104. The Separation Agreement contains no such reciprocal release of Mr. Berry by the Firm.

105. Paragraph 9 of the Separation Agreement states that, “You [Mr. Berry], [etc.] hereby covenant and represent that you have not instituted, and will not institute, any complaints, Claims, charges, or lawsuits . . . against the Firm . . . arising from or related in any way to your employment with the Firm or the termination of such employment . . . .”

106. The Separation Agreement contains no such reciprocal covenant or representation by the Firm.

107. Paragraph 13 of the Separation Agreement states that, “You [Mr. Berry] agree not to disparage, or make any disparaging remarks, or send any disparaging communications concerning the Firm, its reputation, its practice, and/or its partners and employees.”

108. The Separation Agreement contains no such reciprocal agreement by the Firm regarding Mr. Berry, his reputation, and/or his practice.

109. As explained below, a “neutral response” to an employment inquiry is just such a disparaging communication.

110. Paragraph 14 of the Separation Agreement states that, “The Firm agrees to respond to employment inquiries or other inquiries concerning your employment with the Firm by informing those persons or entities requesting such information that the Firm’s policy only allows it to confirm the following information for all former employees: the dates of employment and position with the Firm.”

111. Upon information and belief, this is not in fact KBTF’s policy.

112. Paragraph 15 of the Separation Agreement states that, “It is agreed and understood that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement.”

113. This term is unconscionable when KBTF refused to allow Mr. Berry to participate in the drafting of the Separation Agreement.

114. Paragraph 20 of the Separation Agreement states that, “You [Mr. Berry] agree and acknowledge that the Firm will be irreparably harmed by any breach, or threatened breach, by you of Paragraph 9, 10, 11, 12, or 13 of this Agreement and that monetary damages would be grossly inadequate.”

115. This term is unconscionable and facially not true.

116. Paragraph 21 of the Separation Agreement states that, “You [Mr. Berry] agree not to disclose to anyone, other than your immediate family, accountant, and attorney, the existence of this Agreement, the circumstances surrounding it, its terms, conditions, or negotiation, including the dollar amounts

set forth herein, and then only upon their express agreement not to disclose such subject matter to another person, except as required by law.”

117. The Separation Agreement contains no such reciprocal promise on the part of KBTF.

**L. KBTF Immediately Breaches the Agreement**

118. The Effective Date of the Agreement was May 28, 2011. The next payroll date, therefore, was June 1, 2011.

119. Mr. Berry was not paid on June 1.

120. Not receiving the promised payment led to his bank account being overdrawn to cover his June rent.

121. This overdraft was stressful, and led to embarrassment and harm to his reputation, and harmed the flawless record he had maintained with his bank until that point.

122. Upon information and belief, Mr. Berry’s access to e-mail and voice mail and secretarial answering service were never restored or available at any time after May 13 when KBTF canceled them.

123. When KBTF did finally pay him, on June 15, 2011, it withheld \$600 more than his regular semi-monthly salary payment had been during employment, or was legally required.

124. Mr. Berry was never paid for accrued and unused vacation days, accumulated from January 1 to April 30, 2011 (approximately 6 days).

125. These breaches caused him anguish and stress and embarrassment.

126. A few weeks after his termination, Mr. Berry wrote to Mr. Kasowitz and Mr. Marks to ask them for a truthful letter of recommendation. They never responded.

**M. Damages**

127. By terminating his employment after only eight months, KBTF has made Mr. Berry unhirable. Upon information and belief, he has too much experience to get a first-year position, yet not enough to get a lateral-hire position. Upon information and belief, recruiters will not even work with first-year graduates. As a consequence, it will take Mr. Berry years to build the experience to put him back in the position he had been in, if indeed it will ever be possible. As a bright young attorney with a promising future, the loss of his job has cost Mr. Berry special damages in the form of this lost income worth \$2.55 million, the difference between what he would have made continuing on the trajectory he started on, with approximately 10% salary increase each year, and the struggling staff attorney trajectory he has been left on, which currently pays approximately \$30 per hour when such work is available.

128. The harm to Mr. Berry's career and reputation, and the harm caused by the emotional distress to Mr. Berry from the actions of the Defendants, has caused damage to Mr. Berry of at least \$25 million.

129. In order to deter KBTF and Mr. Marks from continuing their wanton behavior, Mr. Berry prays for an additional \$50 million in punitive damages.

**FIRST CAUSE OF ACTION**  
**(Fraudulent Misrepresentation Inducing**  
**Mr. Berry to Accept Employment at KBTF)**  
**[against KBTF]**

130. Mr. Berry repeats and reasserts the allegations of paragraphs 1 through 129 as though fully set forth herein.

131. While recruiting Mr. Berry for a job, KBTF and its representatives made several representations that were materially false, in particular:

(a) that KBTF was an exciting firm that valued creativity and intelligence and ambition and allowed associates to grow as quickly as they could.

(b) that document review was a burden shared by all, and that junior associates were encouraged to seek out more interesting assignments and make their own way in the firm.

(c) upon information and belief, the KBTF website at the time further represented:

(1) that “the structure and culture of the Firm distinguish it from other prominent law firms.”

(2) that “associates assume substantial responsibility.”

(3) that “the amount of responsibility that an associate shoulders is determined only by the associate’s willingness and ability, not by artificial or hierarchical structures.”

(4) that “associates work with partners in an informal environment.”

(5) that “creative and independent thinking is encouraged.”

132. Every one of the above statements made by the Firm to Mr. Berry was false. In particular:

(a) KBTF does not value ambition or allow associates to grow as quickly as they can. To the contrary, Mr. Berry was reprimanded and ultimately fired for having ambition and communicating to partners at the Firm that he could handle far more responsibility than they had given him so far.

(b) Mr. Berry was reprimanded and ultimately fired for repeating back to Mr. Marks what he had been told at his interview, that document review is a thankless task in which all attorneys must participate but few if any enjoy.

(c) The structure and culture of KBTF is similar to other prominent law firms, requiring first-year associates to do the menial tasks. Mr. Marks told Mr. Berry specifically that it would be “unfair to the other associates” if Mr. Berry was given more responsibilities than they.

(d) Mr. Berry was reprimanded and ultimately fired for asking for precisely the thing promised on the website: more responsibility.

(e) Mr. Berry was reprimanded and ultimately fired for explicitly demonstrating a willingness to assume more responsibility. Mr. Berry was further denied the opportunity to demonstrate his ability. Further, Mr. Marks stated that the specific reason he could not give Mr. Berry more responsibility was artificial and hierarchical

structures: it would have been “unfair to the other first years,” according to Mr. Marks, for him to give Mr. Berry more responsibility.

(f) Mr. Berry was reprimanded and ultimately fired for writing several partners an informal e-mail asking to be considered for more responsibility if the opportunity arose.

(g) Mr. Berry was reprimanded and ultimately fired for demonstrating “creative and independent thinking.” Mr. Marks told Mr. Berry that he had never before come across a situation where an associate wrote an e-mail such as Mr. Berry’s requesting more responsibility. The creativity and independent thinking that Mr. Marks himself acknowledged was a reason Mr. Berry was reprimanded and ultimately fired.

133. Upon information and belief, KBTF knew, or was reckless in failing to know, each of these statements to be false when it made them.

134. Upon information and belief, KBTF knew and intended that Mr. Berry would rely on the statements in forgoing other opportunities to work for KBTF.

135. Upon information and belief, KBTF knew that Mr. Berry had other opportunities that he would be forgoing if he took a job at KBTF.

136. Mr. Berry did have specific other opportunities for employment.

137. Mr. Berry reasonably relied on the false statements made in deciding to forgo his other opportunities and take the position at KBTF.

138. Mr. Berry's reliance on the misrepresentations directly caused Mr. Berry to lose his job.

139. Mr. Berry's reliance on those statements caused him significant, specific damage. By losing his job after only eight months, KBTF has made Mr. Berry unhirable. Upon information and belief, he has too much experience to get a first-year position, yet not enough to get a lateral-hire position. Recruiters will not even work with first-year graduates. As a consequence, it will take Mr. Berry years to build the experience to put him back in the position he would have been in if he had not relied on KBTF's fraudulent statements. This has caused Mr. Berry significant, specific damage, as described above.

140. Mr. Berry further seeks punitive damages to deter KBTF from continuing its fraudulent practices in hiring associates.

**SECOND CAUSE OF ACTION**  
**(Negligent Misrepresentation Inducing**  
**Mr. Berry to Accept Employment at KBTF)**  
**[against KBTF]**

141. Mr. Berry repeats and reasserts the allegations of paragraphs 1 through 140 as though fully set forth herein.

142. KBTF had a duty, as the result of its role as interviewer and potential employer, to give correct information.

143. While recruiting Mr. Berry, KBTF and its representatives made several statements that were false, as described in paragraphs 131 and 132 above.

144. Upon information and belief, KBTF and its representatives should have known that each of the statements above were incorrect.

145. Upon information and belief, KBTF and its representatives knew that the information supplied was desired by Mr. Berry for a serious purpose, namely to ascertain the atmosphere and values of the KBTF Firm, and to make an employment decision that would heavily impact the next many years of his life.

146. Mr. Berry asked the questions he asked, and listened intently to KBTF's representations, because he intended to rely and act upon the information.

147. Mr. Berry did reasonably rely on the false statements, to his detriment, by choosing KBTF over his other employment opportunities, and then by conducting himself in accordance with those representations during his employment at the Firm, leading directly to his dismissal eight months after starting work.

148. As described above, Mr. Berry's reliance on those statements caused him significant, specific damage.

**THIRD CAUSE OF ACTION**  
**(Tortious Interference with Prospective Contractual Relations)**  
**[against Kim Conroy]**

149. Mr. Berry repeats and reasserts the allegations of paragraphs 1 through 148 as though fully set forth within.

150. Ms. Conroy knew that Mr. Berry was an employee at KBTF.

151. Upon information and belief, Ms. Conroy, angered or insulted by Mr. Berry's Second E-mail stating it would not be possible for him to "own" Ms. Conroy's project, intentionally interfered with that prospective contractual

relationship (Mr. Berry's at-will employment with KBTF) by complaining to Mr. Marks and misrepresenting that Mr. Berry had refused the work.

152. Upon information and belief, Mr. Berry's Second E-mail is the reason that his relationship with KBTF was terminated.

153. Ms. Conroy's interference with Mr. Berry's relationship with KBTF was malicious and wrongful, and was done with the unjustifiable purpose of damaging Mr. Berry's relationship with the Firm.

(a) Upon information and belief, Ms. Conroy had been an employee of KBTF for many years when the incident happened, so she was aware that associates are expected to manage their time effectively and turn down assignments that they cannot handle.

(b) This rule is in the best interests of the firm, as indeed Mr. Berry pointed out in his e-mail.

(c) Further, Ms. Conroy was aware, or was reckless in being unaware, that KBTF values ambition, and that "associates assume substantial responsibility."

(d) And Ms. Conroy was certainly aware that document review is a "necessary evil" (she gave the assignment to Mr. Berry, the most junior associate on the team).

154. Upon information and belief, Ms. Conroy represented to Mr. Marks that Mr. Berry was insubordinate and refused to do the work, which the text of the e-mail itself plainly shows to be false. Such malicious misrepresentation of a

fellow associate is outside the scope of her employment, motivated by a desire to hurt the plaintiff as an end in itself.

155. The direct result of Ms. Conroy's actions was that Mr. Marks called Mr. Berry into his office, where in front of John Doe, he reprimanded Mr. Berry for writing the Second E-mail.

156. Mr. Berry was subsequently fired.

157. Ms. Conroy's actions were taken for the sole purpose of injuring Mr. Berry. After his meeting with Mr. Marks, Mr. Berry wrote Ms. Conroy again to reiterate that he was happy to help. She replied that she had already found someone else to do the work.

158. Upon information and belief, Mr. Berry's Second E-mail was the reason he was fired. Upon information and belief, KBTF indicated Mr. Berry's Second E-mail as the reason he had been terminated. KBTF indicated that Ms. Conroy was a partner-track associate at the time. (Ms. Conroy was made partner shortly after the Firm fired Mr. Berry.)

159. The termination has caused Mr. Berry grave damage to his reputation and his well-being, and ruined his legal career in a way that will take years for him to repair, as described above.

**FOURTH CAUSE OF ACTION**  
**(Conspiracy to Interfere with Prospective Contractual Relations)**  
**[against Aaron Marks and Kim Conroy]**

160. Mr. Berry repeats and reasserts the allegations of paragraphs 1 through 159 as though fully set forth herein.

161. Mr. Marks knew Mr. Berry was an associate at KBTF.

162. Upon information and belief, although Mr. Marks has significant influence over employment decisions made by the firm, he does not have the authority to terminate the employment of an associate at KBTF on his own.

163. When Ms. Conroy forwarded Mr. Berry's Second E-mail to Mr. Marks, Mr. Marks took up the cause, conspiring with Ms. Conroy to maliciously induce Mr. Berry's termination, by calling Mr. Berry into his office to reprimand him for writing the e-mail.

164. Mr. Marks repeatedly and willfully mischaracterized the e-mail, insisting Mr. Berry had refused to do Ms. Conroy's project, even when Mr. Berry pointed out that the e-mail said explicitly that he would be happy to do the work.

165. Upon information and belief, Mr. Marks, too, was aware that associates are expected to manage their time effectively and turn down assignments that they cannot handle. Mr. Marks too knew, or was reckless in not knowing, that KBTF values ambition, and that "associates assume substantial responsibility." And Mr. Marks was certainly aware that document review is a "necessary evil."

166. Mr. Berry was subsequently terminated. Upon information and belief, KBTF has stated that the reason for Mr. Berry's termination was his Second E-mail to Ms. Conroy.

167. The termination has caused Mr. Berry grave damage to his reputation and his well-being, and ruined his legal career in a way that will take years for him to repair, as described above.

168. As Mr. Marks is in a position to wield this malicious influence over dozens of inexperienced young associates, punitive damages are necessary to deter such unprincipled actions.

**FIFTH CAUSE OF ACTION**  
**(Breach of Employment Contract in Violation of KBTF's  
Implied-in-Law Obligation to Act Ethically,  
Notwithstanding the Employment-at-Will Doctrine)  
[against KBTF]**

169. Mr. Berry repeats and reasserts the allegations of paragraphs 1 through 168 as though fully set forth herein.

170. The law firm of Kasowitz, Benson, Torres & Friedman has an implied-in-law obligation to act ethically, notwithstanding the at-will employment doctrine.

171. During Mr. Berry's first meeting with Mr. Marks, Mr. Berry explained that he had shown the team-leaders of the document review project he was assigned to and the rest of the team how to increase their efficiency 600%, and that everyone on the team, the members and the leaders alike, refused to make the changes, leading to the client being significantly over-billed. John Doe at that meeting replied that Mr. Berry should not be so arrogant.

172. At Mr. Berry's second meeting with Mr. Marks, Mr. Berry explained how the senior associate on a redaction log project he was working on was insisting on doing three times the work necessary. Mr. Berry told Mr. Marks that he understood that there were reverse incentives in the business, and that KBTF made its money by billing clients for hourly work, but that the way he had been told to do the redaction log was grossly inefficient. Mr. Marks replied by

insisting that Mr. Berry continue doing the redaction log the way the senior associate had instructed him to.

173. Soon thereafter Mr. Marks terminated Mr. Berry's employment, stating that the reason was that second meeting.

174. In hiring Mr. Berry as an associate to practice law with KBTF, there was implied an understanding that both the associate and the firm in conducting the practice will do so in accordance with the ethical standards of the profession.

175. By terminating Mr. Berry for calling attention to KBTF's possibly fraudulent billing practices, KBTF has acted in violation of that primary professional rule in frustration of the only legitimate purpose of the employment relationship.

176. This breach of its implied-in-law obligations has caused severe damage to Mr. Berry's career and reputation that will require years to repair, costing him many years of lost income.

**SIXTH CAUSE OF ACTION**  
**(Wrongful Termination in Retaliation,**  
**in Violation of N.Y. Labor Law § 740)**  
**[against KBTF]**

177. Mr. Berry repeats and reasserts the allegations in paragraphs 1 through 176 as though fully set forth herein.

178. As stated above, Mr. Berry twice communicated his concern to Mr. Marks of possibly fraudulent billing practices at the Firm, in response to which he was first told, "don't be arrogant," then was told explicitly to continue the practice, and was then fired for continuing to point it out.

179. These practices of KBTF were in violation of the Firm's duty to practice law ethically, a violation of which presents a substantial danger to the public, which depends on the honesty and integrity of attorneys.

180. Upon information and belief, KBTF took Mr. Berry's reports of these practices as a threat to disclose the conduct.

181. Mr. Berry, by telling Mr. Marks of the practices, afforded KBTF a reasonable opportunity to correct the practice.

182. For the wrongful termination, Mr. Berry demands compensation for lost wages, benefits, and other remuneration in an amount to be determined at trial, and the payment of reasonable costs, disbursements, and attorney's fees.

**SEVENTH CAUSE OF ACTION**  
**(Intentional Infliction of Emotional Distress)**  
**[against KBTF, Kim Conroy, Aaron Marks]**

183. Mr. Berry repeats and reasserts the allegations in paragraphs 1 through 182 as though fully set forth herein.

184. KBTF's conduct toward Mr. Berry was extreme and outrageous:

(a) Upon information and belief, Ms. Conroy complained to Mr. Marks about Mr. Berry's Second E-mail. The e-mail was not only acceptable but required conduct for a KBTF attorney managing his time. Rather than talk to Mr. Berry herself she went to Mr. Marks. For Ms. Conroy to cause Mr. Berry, an employee at the firm for three months, to be called into Mr. Marks's office for doing something he had been told repeatedly he is supposed to do, was extreme, outrageous, and malicious. Further, upon information

and belief Ms. Conroy showed Mr. Marks only the Second E-mail in order to increase its impact.

(b) At the first meeting with Mr. Marks, a man in a suit sat in Mr. Marks's second guest chair the entire time. Neither Mr. Marks nor the man introduced him to Mr. Berry. His presence was intimidating and never explained. Having a man sit silently witnessing an employee's dressing-down without explanation is itself extreme and outrageous, far outside the bounds of courteous behavior that KBTF claims to expect of its employees, but also outlandish conduct for an employer reprimanding an employee.

(c) At that meeting Mr. Marks used extreme and outrageous language to create an atmosphere of intimidation. Mr. Marks stated that KBTF could not accept such attitude, that Mr. Berry could not refuse work, that all work is equally important, that the partners expect an associate to "own" every project he is on, each a flagrant misconstrual of Mr. Berry's e-mail. The parts of the letter where Mr. Berry had tried constructively to help the Firm staff the project in the most effective way possible Mr. Marks used as further evidence of Mr. Berry's wrongdoing. John Doe told Mr. Berry not to be so arrogant. All of this was extreme and outrageous behavior with no possible purpose (and none stated) but to inflict emotional distress on Mr. Berry (especially

considering that Ms. Conroy found a replacement for Mr. Berry the same day).

(d) At the second meeting Mr. Marks adopted the same line, aggressively threatening Mr. Berry's future at the firm, stating that he had "burned bridges" by asking for additional responsibility, that there were now partners who did not want to work with him, that he was back-stabbing other employees, that he could not ask for work that was above his position in the hierarchy. All of this again purposefully misconstrued the actual content of Mr. Berry's letter and directly contradicted KBTF's stated policies and values, in order to inflict the maximum emotional distress on him.

(e) Soon after the second meeting Mr. Berry received an e-mail informing him of his "performance review." Instead of reviewing his performance, Mr. Marks informed him that he was fired. This procedure was extreme and outrageous and designed to cause the maximum impact of surprise and shock.

(f) KBTF in the Separation Agreement suggested that Mr. Berry retain an attorney. In retaliation for complying with its suggestion, KBTF terminated Mr. Berry's access to his e-mail, phone, and secretarial service that Mr. Marks had promised to maintain, and withdrew the Separation Agreement entirely in order to intimidate Mr. Berry and cause him emotional distress.

(g) Even after Mr. Berry signed the Agreement, KBTF did not pay the first severance installment as provided by the Agreement. This intentionally extreme and outrageous behavior left Mr. Berry without enough money to pay his June rent.

(h) When KBTF finally did pay two installments on June 15, they withheld \$600 more than was required or expected, again causing Mr. Berry distress.

185. Each of these episodes, individually and cumulatively, directly and immediately caused Mr. Berry damage in the form of severe emotional distress, leaving him with feelings of tightness in his chest, shaking, afraid for his future, sleepless.

186. Punitive damages are necessary to deter KBTF from engaging in this outrageous behavior toward current employees, former employees, and future prospects.

**EIGHTH CAUSE OF ACTION**  
**(Tortious Interference with Prospective  
Employment Advantage)**  
**[against KBTF]**

187. Mr. Berry repeats and reasserts the allegations of paragraphs 1 through 186 as though fully set forth herein.

188. Upon information and belief, KBTF knew that Mr. Berry would be looking for a new job after termination.

189. KBTF stated, in the Separation Agreement it provided to Mr. Berry, that the Firm will:

respond to employment inquiries and other inquiries concerning your employment with the Firm by informing those persons or entities requesting such information *that the Firm's policy only allows it* to confirm the following information for all former employees: the dates of employment and position with the Firm; such information will then be provided to the person or entity requesting the information.

(Emphasis added.)

190. Upon information and belief, KBTF does not have such a policy regarding employment inquiries, and the claim that such a policy exists is wrongful and a misrepresentation. In fact, KBTF is free to respond to such inquiries truthfully and completely.

191. Upon information and belief, it is common knowledge, and KBTF is aware, that a former employer states it has a “policy” against recommendations in order to imply the recommendation would be negative. In Mr. Berry’s case, however, the *truth* of why he was fired would cast the firm in negative light, not Mr. Berry. The firm’s conduct toward Mr. Berry has been so outlandish prospective employers have trouble believing it. When KBTF misrepresents its policy toward recommendations, it only serves to reinforce the wrong impression that Mr. Berry is “telling stories.”

192. Upon information and belief, KBTF made and makes this false representation of its policy intentionally to falsely imply there is something to hide, and prevent other, similar firms from hiring Mr. Berry.

193. KBTF’s misrepresentation of its employment inquiry policy has caused and is causing Mr. Berry further damage after his termination by injuring

specific job opportunities for which he applied, and will continue to injure future opportunities.

194. The loss of future employment opportunities has caused Mr. Berry current and future permanent damage to his career and reputation.

195. Injunctive relief is also necessary to demand KBTF be truthful in response to employment inquiries, and/or provide Mr. Berry with truthful letters of recommendation regarding his work at the Firm.

196. Punitive damages are necessary to deter KBTF from continuing its wanton conduct.

**NINTH CAUSE OF ACTION**  
**(Injurious Falsehood)**  
**[against KBTF]**

197. Mr. Berry repeats and reasserts the allegations of paragraphs 1 through 196 as though fully set forth herein.

198. As stated above, KBTF provided in the Separation Agreement that it has a “policy” of only providing dates and position to employment inquiries.

199. Upon information and belief, KBTF does not have such a policy, and in fact is free to respond to employment inquiries by describing the employee’s work truthfully and completely.

200. As described above, it is well known that a “neutral recommendation” implies the former employee did not do well at the last job.

201. Upon information and belief, the falsehood regarding KBTF’s policy is calculated to prevent other, similar firms from hiring Mr. Berry.

202. Upon information and belief, the opinion of former employers, especially the immediate former employer, plays a material and substantial part in the hiring decisions of potential employers, and KBTF's false claim regarding its policy of not explaining the circumstances of termination, when in fact no such policy exists, have induced and will continue to induce others not to hire Mr. Berry.

203. These recent and continuing and future lost dealings have resulted and will continue to result in special damages in the form of lost employment. Because of KBTF's misrepresentations Mr. Berry cannot find a position similar to his position at KBTF, and is left, if he can find employment at all, with very limited positions as a staff attorney for far less compensation and little or no benefits.

204. Injunctive relief is also necessary to demand KBTF be truthful in response to employment inquiries, and/or provide Mr. Berry with truthful letters of recommendation regarding his work at the Firm.

**TENTH CAUSE OF ACTION**  
**(Prima Facie Tort)**  
**[against KBTF]**

205. Mr. Berry repeats and reasserts the allegations of paragraphs 1 through 204 as though fully set forth herein.

206. As described above, KBTF stated in the Separation Agreement that if a prospective employer calls, it will tell the employer that the KBTF policy is only to give dates and position.

207. Upon information and belief, KBTF does not have such a policy.

208. Mr. Berry has no choice but to rely on this representation when speaking to prospective employers. If he told the prospective employer that KBTF would be truthful and verify why he was fired, and the prospective employer did call and KBTF said it is their policy only to give dates and position, it would make Mr. Berry look worse than if he told the prospective employer that the Firm will say it has a policy of only giving dates and position.

209. Repeating KBTF's false claim concerning its policy, however, is also derogatory to Mr. Berry, and Mr. Berry has no choice but to rely on the falsehood.

210. Upon information and belief, KBTF expects and intends Mr. Berry to believe that the firm would in fact respond to employment inquiries as it indicated in the Separation Agreement.

211. Upon information and belief, KBTF is aware that for an attorney with eight months of experience it will be virtually impossible to find another job with a firm similar to KBTF. Such firms, KBTF knows, want either attorneys with two or more years of experience, or new graduates. The only jobs Mr. Berry will be able to acquire are as a staff attorney, which in the years to come will be of no more value to a future employer than an attorney with eight months of experience is now.

212. Upon information and belief, KBTF's wrongful promise to misrepresent its policy regarding employment inquiries is made with disinterested malice, as indicated Aaron Marks's refusal to discuss the Separation Agreement,

and Aaron Marks's and Marc Kasowitz's refusal to write truthful letters of recommendation for Mr. Berry.

213. This necessary reliance on KBTF's misrepresentation of its policy regarding employment inquiries has caused and will continue to cause Mr. Berry specific damage in lost employment opportunities, as described above. Without a truthful representation of the circumstances of Mr. Berry's termination, and without a truthful representation of KBTF's policy regarding employment inquiries, KBTF has made it impossible for Mr. Berry to find a job equivalent to the one he lost.

214. Injunctive relief is also necessary to demand KBTF be truthful in response to employment inquiries, and/or provide Mr. Berry with truthful letters of recommendation regarding his work at the Firm.

**ELEVENTH CAUSE OF ACTION**  
**(Declaratory Judgment That No Contract Exists, as**  
**KBTF Never Accepted Mr. Berry's Counter-Offer)**  
**[against KBTF]**

215. Mr. Berry repeats and reasserts the allegations in paragraphs 1 through 214 as though fully set forth herein.

216. No Separation Agreement contract exists between Mr. Berry and KBTF.

217. KBTF made an offer to Mr. Berry in the form of the Separation Agreement on May 10, 2011.

218. Mr. Berry rejected that offer, first when he attempted to discuss the Agreement with Mr. Marks (which Mr. Marks ignored), on or about May 12,

then, upon information and belief, by counter-offering to accept KBTF's terms in return for more months of severance pay.

219. In any event, KBTF withdrew its offer upon learning Mr. Berry had retained counsel. At that point the KBTF offer was dead.

220. Mr. Berry subsequently made a counter-offer by signing and returning the original Separation Agreement.

221. Mr. Berry has never received acceptance from KBTF of his counter-offer, and upon information and belief KBTF never executed the contract.

222. Mr. Berry seeks declaratory judgment that no Separation Agreement between KBTF and Mr. Berry exists, that is, that the original Separation Agreement offer was rejected and withdrawn, and Mr. Berry's counter-offer was never accepted.

**TWELFTH CAUSE OF ACTION**  
**(Declaratory Judgment That the Separation Agreement**  
**Is Void for Economic Duress and Undue Influence)**  
**[against KBTF]**

223. Mr. Berry repeats and reasserts the allegations in paragraphs 1 through 222 as though fully set forth herein.

224. KBTF terminated Mr. Berry on May 10, 2011.

225. In the months preceding Mr. Berry's termination, representatives of KBTF had advised the first year associates at a meeting to pay off their school loans aggressively rather than saving money.

226. Mr. Berry relied on this advice and paid down his school loans as fast as possible, keeping nothing in savings.

227. Upon information and belief, KBTF was aware of where Mr. Berry went to law school, was aware of the cost of that education, and was aware of Mr. Berry's loans.

228. As a consequence, when Mr. Berry was terminated it put him under immediate and dire economic duress.

229. KBTF acted in bad faith in demanding Mr. Berry accept the Separation Agreement, refusing to discuss the terms with him, and stating that if Mr. Berry wanted to sue Kasowitz, Benson, Torres & Friedman he should do so, and in immediately withdrawing its Separation Agreement offer upon learning Mr. Berry had retained an attorney.

230. In addition, the duress is evident in the inadequacy of consideration passing between the parties.

231. As a result of the economic duress Mr. Berry was under, and the coercive tactics used by KBTF in procuring Mr. Berry's signature, the contract is voidable, and Mr. Berry repudiates it.

232. Mr. Berry seeks declaratory judgment that the Separation Agreement between the parties is void.

**THIRTEENTH CAUSE OF ACTION**  
**(Declaratory Judgment that Mr. Berry Is Excused**  
**from Performance of the Separation Agreement**  
**for Unconscionability and Adhesion)**  
**[against KBTF]**

233. Mr. Berry repeats and reasserts the allegations in paragraphs 1 through 232 as though fully set forth herein.

234. On or around May 28, 2011, Mr. Berry entered into an agreement, the Separation Agreement, with KBTF that was both procedurally and substantively unconscionable.

235. Mr. Berry was and continues to be in a very weak bargaining position:

- (a) KBTF had just discharged Mr. Berry a few days before.
- (b) Mr. Berry was therefore without any source of income.
- (c) Mr. Berry had spent all discretionary income on paying down his school loans so he had no savings, as advised by representatives of KBTF.
- (d) Mr. Berry's rent was due in a matter of days.
- (e) KBTF had fired Mr. Berry without warning and without cause, leaving Mr. Berry no opportunity to prepare.
- (f) Upon information and belief, the legal job market right now is very difficult.

236. Upon information and belief, KBTF, on the other hand, is a putatively successful law firm that made gross revenues of around \$226 million last year.

237. Mr. Berry attempted to discuss the terms of the Agreement with Mr. Marks by requesting a meeting via e-mail. Mr. Marks ignored Mr. Berry's request.

238. Upon information and belief, KBTF would not discuss the Agreement and stated that it was “take it or leave it,” and said that if Mr. Berry wanted to sue Kasowitz, Benson, Torres & Friedman, he should do so.

239. The Separation Agreement was drafted solely by KBTF.

240. Upon information and belief, the Separation Agreement is a standardized form commonly used for KBTF terminated employees.

241. The terms of the Agreement inflict substantive unfairness on Mr. Berry:

(a) Paragraph 8 of the Agreement provides that Mr. Berry releases KBTF from any and all complaints, but no provision of the Agreement reciprocally provides that KBTF releases Mr. Berry from complaints.

(b) Paragraph 9 of the Agreement provides that Mr. Berry represents that he will not institute any complaints against the Firm, but the Agreement contains no reciprocal provision.

(c) Importantly, Paragraph 13 of the Agreement provides that Mr. Berry agrees not to make any disparaging remarks concerning the firm, but nowhere does the Firm agree not to make disparaging remarks concerning Mr. Berry, and indeed KBTF’s promise to provide only “neutral reference” is just such a disparaging remark.

(d) KBTF attempted to remove even common contract law rules from application to this Agreement, by stating that the general rule

that ambiguities are construed against the drafter does not apply to this Agreement.

(e) Paragraph 20 of the Agreement provides that Mr. Berry agrees that the Firm will be irreparably harmed by any breach of the Agreement, but no such reciprocal provision is included.

(f) Paragraph 21 of the Agreement provides that Mr. Berry agrees not to disclose to anyone the existence or terms of the Agreement, but KBTF does not promise likewise.

242. Mr. Berry seeks declaratory judgment that he is excused from performance of this Agreement that is procedurally and substantively unconscionable, and the terms of which are adhesive.

**FOURTEENTH CAUSE OF ACTION**  
**(Breach of the Separation Agreement)**  
**[against KBTF]**

243. Mr. Berry repeats and reasserts the allegations in paragraphs 1 through 242 as though fully set forth herein.

244. On or around May 28, 2011, Mr. Berry entered into a contract with KBTF, the “Separation Agreement.”

245. The Agreement contained promises and consideration by each party to the other.

246. KBTF promised:

(a) “. . . [T]he Firm shall maintain your e-mail, voice mail, and secretarial answering service . . . through July 15, 2011”;

- (b) “. . . KBT&F will pay you severance based on your final base salary rate, less applicable withholdings and legally required deductions, for a period of two (2) months through July 15, 2011”;
- (c) “The severance payment will be made to you in semi-monthly installments on the Firm’s regular payroll dates, commencing on the next payroll date following the Effective Date . . . of this Agreement”;
- (d) “You shall receive from the Firm (a) payment of any accrued and unused vacation days through April 30, 2011, if any, at your 2011 base rate . . . .”

247. KBTF breached every one of these promises:

- (a) KBTF terminated Mr. Berry’s e-mail, phone, and secretarial service on or about May 13, 2011, a mere three days after he was discharged, and never restored them thereafter;
- (b) KBTF withheld significantly more deductions (approximately \$600) than are legally required from the first severance payment it made to Mr. Berry;
- (c) KBTF failed entirely to pay Mr. Berry on the next payroll date following the Effective Date of the Agreement (which is May 28, making the next payroll date June 1), not making its first severance payment to Mr. Berry until June 15, 2011;
- (d) KBTF did not pay Mr. Berry for accrued and unused vacation days.

248. Mr. Berry has performed, or tendered offer to perform, all of his obligations under the Agreement.

249. Mr. Berry has been damaged by KBTF's breaches of its promises in an amount to be determined at trial.

250. Mr. Berry seeks declaratory judgment that he is excused from further performance due to KBTF's multiple breaches.

**PRAYER FOR RELIEF**

**WHEREFORE**, Mr. Berry respectfully prays for relief against KBTF, Mr. Marks, and Ms. Conroy as follows:

- (a) nominal damages for breach of the Separation Agreement from KBTF;
- (b) compensatory damages for breach of the Separation Agreement in an amount to be determined at trial from KBTF;
- (c) compensatory damages for breach of their implied-in-law obligation to act ethically from KBTF;
- (d) for the violation of N.Y. Labor Law § 740, compensation for lost wages, benefits, and other remuneration in an amount to be determined at trial, and the payment of reasonable costs, disbursements, and attorney's fees, from KBTF;
- (e) compensatory damage in the amount of no less than \$25 million, for injury resulting from loss of current and prospective income, emotional distress, loss of reputation from all defendants;
- (f) special damages in the amount of no less than \$2.55 million, for lost income, from all defendants;

(g) punitive damages in an amount of no less than \$50 million, for the wanton, malicious, and intentional nature of KBTF's and Mr. Marks's conduct, to deter them from further such conduct;

(h) interest, costs, and reasonable attorneys' fees incurred by Mr. Berry in prosecution of this action from all defendants;

(i) an order from this court that KBTF stop answering employment inquiries with the false claim that KBTF has a "policy" regarding such inquiries, and rather answer the inquiries truthfully, or alternatively that KBTF provide Mr. Berry with truthful letters of recommendation regarding the quality of his work while at the Firm;

(j) a declaration that:

(1) no Separation Agreement contract was ever formed;

(2) the Separation Agreement is void;

(3) Mr. Berry is excused from performance under the Separation Agreement for unconscionability; or

(4) Mr. Berry is excused from performance because of KBTF's many breaches; and

(k) any other such further relief as the court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff respectfully demands a trial by jury for all issues so triable in this action.

Dated: August 15, 2011  
New York City, New York

By: /s/ Gregory Berry.  
Gregory Berry

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