

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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FEW SPIRITS, LLC,
Plaintiff,

Index No. 653212/2019

v.

UB DISTRIBUTORS, LLC
Defendant.

----- X

AFFIRMATION OF JOSHUA M. D. SEGAL IN SUPPORT OF MOTION TO DISMISS

JOSHUA M. D. SEGAL, hereby affirms, pursuant to CPLR 2106, under penalty of perjury, based on his own knowledge, information, and belief,

1. I am an attorney licensed to practice law in the State of New York and am a partner of Lawson & Weitzen, LLP, attorneys for UB DISTRIBUTORS, LLC (“UB” or “Defendant”), the defendant in the above-captioned matter.

2. I make this affirmation in support of the Defendant’s motion to dismiss the verified complaint pursuant to CPLR 3211(a)(1) based upon documentary evidence and upon CPLR 3211(a)(7) for failure to state a cause of action.

3. The plaintiff, FEW SPIRITS, LLC, (“Few Spirits” or “Plaintiff”) is in the business of distilling and selling alcoholic beverages. Verified Complaint (“V.C.”) ¶ 1. UB is a licensed wholesaler of alcoholic beverages in the state of New York.

Background

4. In August 2012, UB and Few Spirits entered into a Distribution Agreement by which Few Spirits appointed UB its exclusive distributor for all Few Spirits branded liquor products throughout New York State. Distribution Agreement (Ex. 1) (“D.A.”) ¶ 1.1 & Schds. 1-2.

5. The Distribution Agreement provided for termination in one of two ways. Either the parties could terminate by mutual consent or if a party defaulted under the agreement. D.A. ¶¶ 2.2, 2.3.

6. The Distribution Agreement identified four types of defaults:
- a. A material breach of the Agreement for 120 days after a written notice;
 - b. An assignment for the benefit of creditors, bankruptcy, or other insolvency event;
 - c. Discontinuation of normal services for 60 consecutive days; and
 - d. Determination by a court that a party “made a material misrepresentation, or false statement, or materially misled the other, in order to procure a benefit or advantage.”
- D.A. ¶ 5.1.1-5.1.4.

7. There is no allegation in the Complaint (and no basis to argue) that UB defaulted under the Distribution Agreement.

8. On April 23, 2019, Juan Rovira, a representative of Few Spirits wrote to UB Distributors, LLC claiming that the contract was for an indefinite duration and that it therefore had a right to terminate the contract as a matter of law, citing *Conrad v. Golden*, 275 A.D. 946 (2d Dep’t 1949). (Ex. 2). Mr. Rovira did not cite any claim for default under the Distribution Agreement.

9. In the Complaint, Few Spirits alleges that “[t]his is an action seeking judgment declaring that the [Distribution] Agreement is terminable at will or on reasonable notice.” V.C. ¶ 4.

10. Few Spirits claims that the Distribution Agreement “lacked mutuality and consideration because [Few Spirits] has no right to damages or any remedy other than termination of [UB] fails to perform.” V.C. ¶ 9.

11. As a result, and because the Distribution Agreement has been in effect for nine years, Few Spirits claims that the Distribution Agreement is now terminable at will. V.C. ¶ 10.

12. In the alternative, citing a requirement of the Alcoholic Beverage Control Law that requires alcohol suppliers to provide a pricing scheduling to the New York State Liquor Authority on the 25th day of each month, ABCL § 101-b, Few Spirits claims that it can terminate the Distribution Agreement with 25-days' notice. V.C. ¶¶ 12-14.

Argument

I. The Distribution Agreement's term is not too indefinite to be enforced, and therefore Few Spirits should not be permitted to terminate either at will or on 25-days' notice.

13. Contrary to Few Spirits's claim, the Distribution Agreement is not simply a contract without a term. The duration, although not measured by time, is measured by the occurrence of events which could lead to termination.

14. A contract should be interpreted according to its terms – which manifest the parties' intent – and no new terms should be added. *Greenfield v. Philles Records, Inc.*, 98 N.Y.2d 562, 569 (2002). Here, the parties' contract is clear that it cannot be terminated unilaterally by either party unless the other party is in default. Because no default is alleged (and no default occurred) and because both parties are still operating in good standing, Few Spirits cannot terminate the Distribution Agreement unilaterally.

15. *United Chemical & Exterminating Co. v. Security Exterminating Corp.*, 246 A.D. 258 (1st Dep't 1936), is directly on point. *United Chemical* involved a contract between a rodent-extermination company and a company involved in soliciting customers who needed that service under which the former would service all of the latter's customers. *Id.* at 259. The contract's term was from its effective date "until and unless abrogated, cancelled and annulled by the consent of both of the parties thereto." *Id.* The party receiving the services attempted to terminate the contract unilaterally and stopped the exterminator from working under the agreement. The exterminator then sued for breach of contract.

16. The defendant argued that because the contract contained no provision as to duration and was therefore terminable at will. The First Department disagreed, holding that the contract was neither without term or for a definite term, but rather fell into a third category.

Its duration, though not measured by months or years, is to be determined by the occurrence of an event which is none the less an event because it depends on concurrent action by the parties themselves. Such a contract is not too indefinite to be enforceable, even though it is impossible to predict exactly when the contingency will occur by which it will be terminated.

Id.

17. Moreover, the First Department held that “on account of its inherent nature, the contract can in no event continue beyond the corporate existence of the defendant, for the defendant did not agree to employ the plaintiff to perform any specific quantity of work.” *Id.* at 260. Because the defendant was free to cease business operations without liability, the contract was not of indefinite term and therefore not terminable at will by either party. *Id.*

18. The same logic applies here. The Distribution Agreement neither imposes any obligation on Few Spirits to stay in business nor any penalty if it dissolves and ceases operations.

19. Thus, under *United Chemical*, the Distribution Agreement cannot be interpreted as a contract with an indefinite term, but rather should be seen as a contract with a term measured by events and not “months or years.”

20. The Second Department reach a similar conclusion in *Bennett v. Atomic Products Corp.*, 132 A.D.3d 928 (2d Dep’t 2015). That case involved a contract that was essentially a distribution agreement for certain medical equipment. The product’s developer contracted to receive a percentage of gross sales of the product made by a distributor. *Id.* at 929. “The agreements did not expressly state when the percentage payments would stop.” *Id.*

21. The Second Department recognized the principle that “[c]ontracts containing no definite term of duration are terminable at will.” *Id.* (citations omitted). Nonetheless, “the duration

of the parties' agreements was dependent upon the continued sale of the products designated in the subject agreements and, thus, the agreements could be terminated only upon [the distributor's] discontinuation of the sale of the designated products." *Id.* at 930.

22. New York law does not require a contract's term to be fixed by a temporal measurement. Instead, a contract is not terminable at will simply because its continued enforceability is measured by ongoing sales of a product (as in *Bennett*) or the continued corporate existence of the contract's parties (as in *United Chemical*). See also *Zimmer-Masiello, Inc. v. Zimmer, Inc.*, 159 A.D.2d 363, 367-68 (1st Dep't 1990) (refusing to enforce an oral contract that was not terminable at will because it violated the statute of frauds since it could not be completed within a year); *McColleston v. Chisholm*, 104 A.D.2d 361, 362 (2d Dep't 1984) (condoning a written contract with a temporal limit as enforceable).

II. In the alcoholic beverage industry, contracts without a term defined by months or years is standard practice and condoned by statute.

23. UB is a wholesale distributor of malted beverages in addition to spirits. In the alcoholic beverage industry, distribution contracts regularly continue without a term defined by months or years, but rather until terminated by agreement or default. See, e.g., *N. Shore Bottling Co. v. C. Schmidt & Sons, Inc.*, 22 N.Y.2d 171, 174-175 (1968) (describing an agreement in place "for as long as [the defendant] sold beer in the New York metropolitan area"); *Clarence Bev., Inc. v. BRL Hardy (USA) Inc.*, No. 99-CV-0256E(M), 2000 U.S. Dist. LEXIS 1665, at *3, *6-7 (W.D.N.Y. Feb. 8, 2000) (discussing an alleged exclusive agreement to distribute wines until the defendant "ceased distributing its wines in eastern United States"). In fact, such an arrangement is required for distribution agreements involving malt beverages. ABCL § 55-c(4)(a).

24. Specifically, for malt beverage distribution agreements, the Legislature has required that

[n]o brewer may cancel, fail to renew, or terminate an agreement unless the party intending such action has good cause for such cancellation, failure to renew, or termination and in any case in which prior notification is required under this section, the party intending to act has furnished said prior notification as provided for in subdivision five of this section and the wholesaler has failed to cure such defaults or deficiencies after a period for cure

Id.

25. Additionally, the Legislature introduced a carve-out for small brewers, allowing them to terminate distribution agreements with the payment of fair-market value to the distributor for the brand distribution rights. ABCL § 55-c(4)(c).

26. Had the Legislature sought to do something similar for spirits, it could have. Instead, the Legislature was silent as to whether a spirits distribution agreement, like the one here, could be for a term defined by months or years or a term defined by some other measure. The parties' Distribution Agreement is a valid contract, supported by consideration (i.e., mutual promises), with a sufficiently definite term. Few Spirits is attempting to read a new term into the Distribution Agreement to allow for unilateral at-will termination. This claim fails as a matter of law.

27. Under CPLR 3211(a)(1), a motion to dismiss can be granted based on documentary evidence. Here, an analysis of the Distribution Agreement demonstrates that it has a satisfactory term. *See 971 Madison Ave. Corp. v. Complex Assoc.*, 90 A.D. 2d 758, 758-59 (1st Dep't 1982) (dismissing an action under CPLR 3211(a)(1) based on the interpretation of a contract between the parties). As a result, Few Spirits's complaint seeking a declaration that the contract should be terminable at will or with reasonable notice because it lacks a definite term should be dismissed.

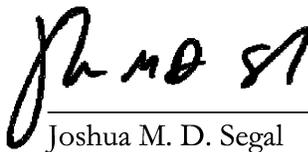
28. Similarly, under CPLR 3211(a)(7), Few Spirits has failed to plead facts demonstrating its entitlement to a declaration that the Distribution Agreement allows termination at will or upon 25-days' notice. *See generally Perl v. Smith Barney, Inc.*, 230 A.D.2d 664 (dismissing, *inter alia*, breach of contract and declaratory judgment claims based on a contract's interpretation under CPLR

3211(a)(7)). Such a right is not standard in the alcoholic-beverage industry, is not condoned by
Legislative intent, and is not found in the parties' Distribution Agreement.

Conclusion

29. For these reasons, the complaint should be dismissed under CPLR 3211(a)(1) and/or CPLR 3211(a)(7).

Dated: Boston, Massachusetts
August 28, 2019



Joshua M. D. Segal

Exhibit 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X

FEW SPIRITS, LLC

Plaintiff(s),

Index No. _____/

-against-

Date Index No.
purchased _____

UB DISTRIBUTORS, LLC

SUMMONS

Defendant(s)

----- X

To the Person(s) Named as Defendant(s) Above:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the complaint of the plaintiff(s) herein and to serve a copy of your answer on the plaintiff(s) at the address indicated below within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

Dated: May 31, 2019

FEW SPIRITS, LLC



Danow, McMullan & Panoff, P.C

275 Madison Avenue, Suite 1711

New York, NY 10016

Defendant's Address 1213-1217 Grand Street, Bldg B, Brooklyn, NY 11211

Venue: Plaintiff(s) designate(s) New York County as the place of trial. The basis of this designation is [CHECK ONE]:

- Plaintiff(s)' Residence in New York County.
- Defendant(s)' Residence in New York County.
- Other -- Describe: Contiguous Jurisdiction

NOTE: THIS FORM OF SUMMONS MUST BE SERVED WITH A COMPLAINT

SUPREME COURT OF THE STATE OF NEW YORK

NEW YORK COUNTY

FEW SPIRITS, LLC.,

Petitioner,

AGAINST

UB DISTRIBUTORS, LLC

Respondent.

Case No.: Number

VERIFIED COMPLAINT

Plaintiff, Few Spirits, LLC, by its attorneys, Danow, McMullan & Panoff, P.C., complaining of the defendant, UB Distributors, LLC, respectfully alleges.

1. Plaintiff, Few Spirits, LLC ("FEW"), is a limited liability company in the business of distilling and selling alcoholic beverages, with principal offices located at 918 Chicago Ave, Evanston, IL 60202.
2. Upon information and belief, UB Distributors, LLC ("UBD") is a New York limited liability Company, licensed to sell liquor and other alcoholic beverages at wholesale in the State of New York under license number 1261835.
3. On or about August 13, 2012, FEW and UBD entered into an agreement whereby FEW granted UBD the exclusive right to sell "All Few Spirits Branded Liquor Products" in "all counties, cities, and towns in the State of New York." A copy of that agreement is annexed hereto as Exhibit A and is hereinafter referred to as the "Agreement."
4. This is an action seeking judgment declaring that the Agreement is terminable at will or on reasonable notice.

5. Upon information and belief, UBD's principal business was the sale of beer and malt beverages.
6. Upon information and belief, UBD first obtained a license to sell liquor at wholesale in New York on March 19, 2012. At the time it entered into the Agreement, UBD had little or no experience selling spirits.
7. It was never FEW's understanding or intention, that UBD have the right to distribute its products in perpetuity.
8. The Agreement provides in relevant part:

2.1 Term. This Agreement will become effective upon signature by the last of the parties, and will remain in effect until terminated as provided herein. Termination other than as specifically set forth herein shall be deemed a breach of this Agreement and the parties shall have all applicable rights and remedies, including without limitation, any applicable equitable remedy.

2.3 Termination by Mutual Consent. This Agreement may be terminated at any time by mutual consent of the parties, in writing effective as provided herein.

2.3 Termination upon Default. This Agreement may be terminated by the non-defaulting party upon a default upon Section 5.1 hereof.

...

5.1 Default Defined. The following will be considered a default and good cause to terminate this Agreement:

5.1.1 A material breach of this Agreement continuing for a period of 120 days after receipt of written notice from the other party, unless the notice specifies a longer period;

5.1.2 An assignment for the benefit of creditors; the institution of involuntary or voluntary proceedings under the United States Bankruptcy Code or state insolvency laws that is not dismissed within 90 days; or the appointment of a receiver or trustee, unless vacated within 90 days;

5.1.3 Discontinuation of normal service to customers for a period of 60 consecutive days;

5.1.4 Determination by a court of competent jurisdiction that a party made a material misrepresentation, or false statement, or materially misled the other, in order to procure a benefit or advantage.

5.2 Remedies. If the Distributor defaults as described in Sections 5.1, the Company shall have as its only recourse to terminate this Agreement in accordance with the law of the State of New York, with no other claim for damages.

If the Company defaults, as described in Section 5.1, the Distributor may at its option:

5.2.3. terminate this Agreement in accordance with the law of the State of New York;

5.2.3 (sic) exercise any other available remedies.

9. The agreement lacked mutuality and consideration because FEW has no right to damages or any remedy other than termination if UBD fails to perform.
10. Because the contract appears to provide that it will continue for a more or less indefinite period of time, pursuant to New York law it should be held to be terminable after a reasonable time.
11. The contract has been in effect for almost seven years and as such has been in effect for a reasonable time and is now terminable by either party on reasonable notice.
12. Alternatively, because no specific termination date is contemplated by the Agreement, pursuant to New York law, the contract should be considered terminable at will.
13. Section 101-b of the Alcoholic Beverage Control Law of the State of New York provides in part:
 3. (a) No brand of liquor or wine shall be sold to or purchased by a wholesaler, irrespective of the place of sale or delivery, unless a schedule, as provided by this

section, is transmitted to and received by the liquor authority, and is then in effect...

4. Each such schedule required by paragraph (a) of subdivision three of this section shall be filed on or before the twenty-fifth day of each month and the prices and discounts set forth therein shall become effective on the first day of the second succeeding calendar month and shall be in effect for such second succeeding calendar month...

4-a (a) A schedule of prices to wholesalers filed by the brand owner or its agent with the authority, pursuant to this section, may limit the distribution or resale of a brand to wholesalers by the filing by the brand owner or its agent with the authority of the names, addresses and license numbers of such wholesalers. Such list shall be filed each month together with the schedule of prices, and no name shall be added thereto or removed therefrom after filing except with permission of the authority.

(b) Only those wholesalers listed, pursuant to paragraph (a) of this subdivision, may schedule the price to retailers for such brand, except that when not inconsistent with the purpose of this section, the authority may authorize any other wholesaler to schedule a price after furnishing the quantity, source of purchase and any other information the authority may require.

14. Because the statutory scheme requires the supplier to give notice to the New York State Liquor Authority and to the trade on the twenty-fifth day of a month, effective on the first day of the second succeeding month, in New York the custom and practice is that reasonable notice of termination of a liquor distribution agreement is approximately thirty five days.

Wherefore, FEW respectfully requests that the Court declare that the contract is terminable at will or upon thirty five-days' notice together with such other, further and different relief as to the Court may seem just and proper.

Dated: New York, NY

May 31, 2019

Yours, Etc.

Danow, McMullan & Panoff, P.C.
275 Madison Ave. Suite 1711
New York, NY 10016
212 370 3744

DISTRIBUTION AGREEMENT

This Distribution Agreement (Agreement) dated as of August 13, 2012, is made by and between Few Spirits, LLC, a company with offices at 918 Chicago Avenue, Evanston, IL 60202 (Company), and UB Distributors, LLC, a limited liability company with offices at 1213 Grand Street, Brooklyn, NY 11211 (Distributor).

The Company is engaged in the business of producing, advertising, marketing, and selling the brands and products listed in the attached Schedule 1, as it may be amended from time to time (Products). The Company and Distributor desire that the Distributor act as the exclusive seller and distributor of the Products in the Territory described in the attached Schedule 2 (Territory).

The parties agree as follows:

I. APPOINTMENT.

1.1 Territory. The Company warrants and represents that it is the manufacturer or sole United States importer of the Products identified in Schedule 1 in the Territory identified in Schedule 2. The Company hereby appoints the Distributor as its exclusive distributor for the Products in the Territory, having the exclusive right to sell and distribute the Products in the Territory.

1.2 Trademarks. The Company hereby grants to the Distributor the nonexclusive, nonassignable, nontransferable right to use the Company's trademarks, trade names and trade dress described in the attached Schedule 3 (Trademarks) solely in connection with the distribution, marketing, and sale of the Products in the Territory. The Trademarks will remain the Company's sole and exclusive property.

II. EFFECTIVE AND TERMINATION DATES.

2.1 Term. This Agreement will become effective upon signature by the last of the parties, and will remain in effect until terminated as provided herein. Termination other than as specifically set forth herein shall be deemed a breach of this Agreement and the parties shall have all applicable rights and remedies, including without limitation, any applicable equitable remedies.

2.2 Termination by Mutual Consent. This Agreement may be terminated at any time by mutual consent of the parties in writing effective as provided therein.

2.3 Termination upon Default. This Agreement may be terminated by the non-defaulting party upon a default under Section 5.1 hereof.

III. DISTRIBUTOR'S OBLIGATIONS.



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3.1 The Distributor will use commercially reasonable efforts to develop and maintain a market for the Products in the Territory including, without limitation, the following:

3.1.1 Territory Development. To supply the Products to customers in the Territory.

3.1.2 Marketing. To develop and execute marketing programs.

3.1.3 Handling Business. To maintain a business organization and equipment reasonably sufficient to market and distribute the Products in the Territory.

3.1.4 Inventory Quantities. To maintain inventory quantities reasonably sufficient to fill the orders of its retail customers, but in no event will the Distributor be required to maintain an inventory quantity on any SKU of more than 30 days.

3.1.5 Storage and Handling. To maintain warehouse space in good condition and of sufficient capacity for packages and sizes of the Products to meet the demand of customers and to meet all Federal, state and local laws and regulations. The Distributor will rotate inventory in its warehouse so that the Products are sold to customers on a first-in, first-out basis.

3.2 Trademark Infringement. The Distributor will notify the Company promptly after becoming aware of any infringement of any of the Trademarks, and assist the Company (at the Company's expense) in any action or proceedings that the Company may institute as the result of such infringement.

3.3 Use of Trade Name or Trademarks. The Distributor will refrain from removing the Trademarks from Products, from using the Trademarks on any other product except the Products, and from using the Trademarks in the Distributor's corporate or business names without the Company's prior approval.

3.4 Inspection. Upon reasonable notice, the Distributor will allow the Company to inspect the portions of the Distributor's facilities used for storage and distribution of the Products.

3.5 Depletion Reports. The Distributor will provide the Company with monthly depletion reports for the Products. This report will identify each product sold to each account, including the name and address of each account, and how many cases of which Product sold to each account.

3.6 Upon the Company's Notice of Default. Within 15 days of receipt of the Company's written notice of a legitimate default under this Agreement by the Distributor, the Distributor will commence to cure the default and inform the Company of the actions contemplated. Unless additional time is reasonably required, a default shall be cured within 90 days.

3.7 Notice. The Distributor will provide the Company with written notice by certified mail of any event or events that the Distributor alleges constitute(s) a default under this Agreement within 30 days, including, without limitation:

3.7.1 a description of each act or omission constituting the default;

3.7.2 the date(s) of each act or omission constituting the default; and

3.7.3 (if the default is susceptible to cure) the steps the Distributor believes are necessary to cure the default.

3.8 Quality Control.

3.8.1 The Distributor will, at its own cost and expense, destroy any damaged or out of code Products in its warehouse. The Company will reimburse Distributor for 50% of the laid-in cost of damaged or out of code product destroyed in its warehouse. The Distributor will not sell any damaged or out of code inventory to any customer.

3.8.2 The Distributor will, at its own cost and expense, retrieve and destroy any out of code Products located at its accounts in the Territory if such Products were sold by the Distributor. The Company will reimburse Distributor for 50% of the laid-in cost of damaged or out of code products retrieved from accounts in the Territory.

3.9 Sales Out of Territory. The Distributor will not sell the Products to customers located outside the Territory, nor to any customer within the Territory that the Distributor reasonably believes will sell the Products for resale outside the Territory.

IV. THE COMPANY'S OBLIGATIONS.

4.1 Sale of Products. The Company will sell the Products to the Distributor in sufficient quantity to meet customer demand to Company's best ability, and Distributor agrees that the Products are allocated to Distributors based on historical sales performance and Distributor agrees that there is more demand for the Products that Company can supply. The Company will take all commercially reasonable steps, including discontinuing sales to infringing resellers, to protect the Distributor's exclusivity in the Territory and to prevent any person or entity other than the Distributor from directly or indirectly distributing, selling or marketing the Products in the Territory.

4.2 Shipping. The Company will make prompt shipments of the Products to the Distributor in accordance with the Distributor's purchase orders.

4.3 Inspection. The Company will use commercially reasonable efforts to avoid inconvenience to the Distributor or disruption of the Distributor's business when inspecting the Distributor's facilities.

Bank

4.4 Notice. The Company will provide the Distributor with written notice by certified mail of any event or events the Company alleges constitute(s) a default under this Agreement within 30 days, including without limitation:

- 4.4.1 a description of each act or omission constituting the default;
- 4.4.2 the date(s) of each act or omission constituting the default; and
- 4.4.3 (if the default is susceptible to cure) the steps the Company believes are necessary to cure the default.

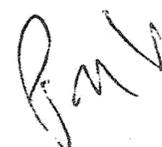
4.5 Allocation of the Products. In times of short supply of the Products, the Company will allocate the Products fairly and equitably among its distributors, such that the Distributor will be allocated at least a percentage of the supply for the Products commensurate with its sales history as compared to all other distributors of the Products.

4.6 Company Responses. The Company will respond promptly in writing to the Distributor upon notification of a claim or action against the Company, the Distributor, or any customer for Products.

4.7 Sales and Marketing Support. The Company may develop marketing strategies, programs, and activities for the Products and furnish such information to the Distributor, including without limitation:

- 4.7.1 Providing the Distributor with pricing information, sales literature, technical assistance and sales training as needed;
- 4.7.2 Developing sales, merchandising, and promotional material to support the development of the Products;
- 4.7.3 Assisting the Distributor in promoting sales of the Products, and helping build consumer acceptance for the Products;
- 4.7.4 Providing point-of-sale materials at no cost to the Distributor as deemed commercially reasonable by Company;
- 4.7.5 In its reasonable discretion and upon request of the Distributor, providing special support to the Distributor in endorsing special events, promotions, or public relation activities.

Notwithstanding anything in this Agreement to the contrary, should the Company wish the Distributor to contribute to the cost of any marketing program, the Company and the Distributor will make reasonable efforts to agree upon the amount to be spent in advance, but in no event will the Distributor be required to contribute to the cost of any marketing program.



4.8 Upon Distributor's Notice of Default. Within 15 days of receipt of the Distributor's written notice of a legitimate default by the Company under this Agreement, the Company will commence to cure the default and inform the Distributor of the actions contemplated. Unless additional time is reasonably required, a default shall be cured within 90 days.

4.9 Discounts. The Company will reimburse the Distributor for fifty percent of all price discounts invoiced to the Distributor's retail customers to the extent permissible under applicable law.

4.10 Product Quality. The Company will maintain the premium quality of the Products and comply with all applicable Federal, state and local laws. The Company warrants and represents that all Products delivered to the Distributor shall, upon delivery, be merchantable premium liquor products of good quality produced in accordance with the Company's specifications and free of defects. The Company guarantees a 6 month shelf life on its bottled products and a 3 month shelf life on its unpasteurized draft products from delivery to the Distributor's warehouse.

4.11 Distributor Reimbursement. The Company will reimburse the Distributor for promotional program expenditures, samples, the Company's share of price discounts, depletion allowances, and all other types of reimbursable items, within 15 calendar days of receipt from the Distributor of the relevant supporting documentation, provided the Company has committed to such reimbursement in advance. The Distributor shall have the right to set off any reimbursement due against sums owed the Company for the Products or otherwise.

V. **DEFAULT.**

5.1 Default Defined. The following will be considered a default and good cause to terminate this Agreement:

5.1.1 A material breach of this Agreement continuing for a period of 120 days after receipt of written notice from the other party, unless the notice specifies a longer period;

5.1.2 An assignment for the benefit of creditors; the institution of involuntary or voluntary proceedings under the United States Bankruptcy Code or state insolvency laws that is not dismissed within 90 days; or the appointment of a receiver or trustee, unless vacated within 90 days;

5.1.3 Discontinuation of normal service to customers for a period of 60 consecutive days;

5.1.4 Determination by a court of competent jurisdiction that a party made a material misrepresentation, or false statement, or materially misled the other, in order to procure a benefit or advantage.

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5.2 Remedies. If the Distributor defaults, as described in Section 5.1, the Company shall have as its only recourse to terminate this Agreement in accordance with the law of the State of New York, with no other claim for damages.

If the Company defaults, as described in Section 5.1, the Distributor may at its option:

5.2.3 terminate this Agreement in accordance with the law of the State of New York;

5.2.3 exercise any other available remedies.

5.3 Effect of Termination. Termination of this Agreement will not affect the obligation of the Company to make delivery on orders accepted by it prior to the effective date of termination, subject to the provisions of this Agreement. If this Agreement terminates, the Distributor may require the Company to repurchase all unsold Products in the Distributor's inventory, at Distributor's laid-in cost plus a 10% handling charge, with shipping to the Company's plant to be paid by the Company. The Company will pay the Distributor for repurchased inventory within 7 days of receipt.

5.4 The Distributor's Obligations Upon Termination. Upon termination of this Agreement, the Distributor will immediately:

5.4.1 Return to the Company at the Company's expense all advertising, promotional and sales materials in the Distributor's possession that were furnished by the Company without charge, including, without limitation, brochures, catalogs, price books, photographs, designs, drawings, and engineering and other data;

5.4.2 Immediately cease use of the Trademarks;

5.4.3 At its earliest opportunity, remove the Trademarks from the Distributor's vehicles and any of the Distributor's products, letterhead, business cards, and other promotional materials.

VI. TERMS OF SALE OF THE PRODUCTS.

6.1 Price. The Company will sell the Products to the Distributor at its announced prices, which shall not be higher than its lowest price to any wholesale distributor in New York, Massachusetts, Maine, New Hampshire, Vermont, Rhode Island, Connecticut, Pennsylvania, Ohio, or New Jersey. The Company may change its prices for the Products by giving the Distributor 60 days written notice.

6.2 Delivery/FOB. The Products shall be sold FOB the Company's warehouse.

6.3 Purchase Orders. The Distributor's orders for the Products, and the Company's acceptances thereof, whether oral, written, or otherwise, will be subject to this Agreement. Any

term or condition in purchase orders or acceptances that conflict with this Agreement shall be unenforceable.

6.4 Payment. The Distributor will pay for each shipment of the Products by check 45 calendar days after the delivery of the products to Distributor's delivery company, subject to a right of setoff of any sums due from the Company to the Distributor.

6.5 Claims. Any claims for shortages, damaged Products, or discrepancies in any shipment must be sent to the Company no later than 30 days after receipt of the shipment at the Distributor's facility. The Company will issue the Distributor a credit for claims that are approved, or notify the Distributor of disapproval, within 15 days of receipt of the claim.

VII. INDEMNIFICATION AND INSURANCE.

7.1 Indemnification by the Company. The Company will indemnify, defend, and hold harmless the Distributor from and against any and all losses, expenses, damages, claims, suits, demands, and causes of action, including, without limitation, reasonable fees and expenses of attorneys, court costs, and other litigation and dispute resolution costs, arising from or relating to any breach of this Agreement by the Company, or any injuries to or death of persons, or any damage to property, occurring as a result of, or in any way arising out of, the bottling, packaging, defects, or storage of the Products by the Company. The Distributor will give the Company cooperation and any and all available information and assistance in the defense of such claim or suit, to the extent it is able without incurring additional cost.

7.2 Notice; Defense by the Company. The Distributor will give the Company prompt written notice of any matter for which it claims indemnification, and if the matter involves a third-party claim, the Company may, if it elects, defend or settle the claim or suit at its own expense using counsel of its choosing, provided however that any settlement that does not provide for an unconditional release to the Distributor, or that includes granting equitable relief, will be subject to the approval of the Distributor in its sole discretion.

7.3 Company's Insurance. The Company will maintain primary and excess products liability coverage totaling at least \$3,000,000 per occurrence, on an occurrence, and not a claims-made basis, and containing a Vendor's Liability Endorsement applicable to the Distributor, its affiliated companies, and all customers requesting such coverage through the Distributor. Within ten days of the effective date of this Agreement, the Company will provide to the Distributor an original certificate of insurance containing the terms, and thereafter will provide the Distributor with each certificate of renewal, within ten days of the effective date of renewal. Each certificate of insurance will contain an endorsement stating that the insurance company will give the Distributor at least ten days advance written notice of cancellation, nonrenewal, or material change in the terms of the liability policy.

7.4 Distributor's Insurance. The Distributor will maintain Comprehensive General Liability insurance with bodily injury limits of not less than \$500,000 per occurrence, property damage limits of not less than \$100,000 Dollars per occurrence, and an endorsement providing contractual liability coverage. Within ten days of the effective date of this Agreement, the Distributor will provide to the Company an original certificate of insurance containing the terms,

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and thereafter will provide the Company with each certificate of renewal, within ten days of the effective date of renewal. Each certificate of insurance will contain an endorsement stating that the insurance company will give the Company at least ten days advance written notice of cancellation, nonrenewal, or material change in the terms of the liability policy.

VIII. INTELLECTUAL PROPERTY INFRINGEMENT.

8.1 The Company will indemnify, defend, and hold harmless the Distributor from and against any and all losses, expenses, damages, claims, suits, demands, and causes of action, including, without limitation, reasonable fees and expenses of attorneys, court costs, and other litigation and dispute resolution costs, arising from or relating to any actual or claimed infringement of any patent, trademark, copyright, or other intellectual property or proprietary rights by reason of the Products or any advertising or promotional materials created or supplied by the Company.

8.2 Company Options. In the event of any infringement or claimed infringement of any patent, trademark, copyright, or other intellectual property or proprietary rights by reason of the Products or any advertising or promotional materials created or supplied by the Company, the Company, at its option and expense may:

8.2.1 Secure for the Distributor the right to continue selling or distributing the Products, either by obtaining a license for such continued sale or distribution or by other appropriate means;

8.2.2 Replace the Products with noninfringing products or parts thereof;

8.2.3 Modify the Products so as to render them noninfringing; or

8.2.4 Remove the Products from the Distributor's premises and refund the laid-in cost of the Products, plus a 10% handling charge within 15 days of removal.

IX. MISCELLANEOUS.

9.1 Force Majeure. Fires, floods, wars, acts of war, strikes, lockouts, labor disputes, accidents to machinery, delays or defaults of common carriers, orders, decrees or judgments of any court, or any other contingency beyond the control of the Company or the Distributor, whether related or unrelated, or similar or dissimilar to any of the foregoing, will be sufficient excuse for any resulting delay or failure in the performance by either party of its respective obligations under the Agreement, but such performance will be excused only as long as the *force majeure* continues.

9.2 Assignment. The Distributor may assign any or all of its rights hereunder to any distributor or subdistributor upon written notice to the Company; provided that the assignee agrees in writing to be bound by the terms of this Agreement. The Company may assign its rights and obligations hereunder to any person or entity upon written notice to the Distributor, provided the assignee agrees in writing to be bound by the terms of this Agreement. If the assignment of rights by the Distributor involves a sale or transfer of the Distributor's distribution rights of the Products then, prior to any such sale or transfer, Distributor shall deliver to Company, with such

notice, a copy of the fully executed purchase agreement or binding letter of intent for the Products negotiated on an arm's length basis signed by Distributor and the proposed transferee, setting forth the amount or value of the compensation to be paid for the Products. Distributor shall have the right to redact any portion of a purchase agreement or letter of intent relating to simultaneous purchases of brand name items other than the Product. Company shall then have for a period of thirty (30) days thereafter the right of first refusal to purchase from Distributor all of the Distributor's rights to distribute Products in the Territory at the price or value of the compensation to be paid by the proposed transferee. If Company has not exercised its right of first refusal within the thirty days, Distributor shall have the right to sell the distribution rights for the Products in the Territory to the proposed transferee.

9.3 Relationship of the Parties. The relationship between the parties is that of independent contracting parties, as buyer and seller of goods, and not that of partners, joint venturers, or principal and agent. Neither party has or will hold itself out as having the authority to bind or act in the name of, or on behalf of, the other.

9.4 Notices. Any notice required by this Agreement will be sent by certified mail to the addresses set forth in the first paragraph hereof, unless a party gives written notice of a change of address, and will be effective upon receipt.

9.5 Binding on Successors; Third Party Benefits. This Agreement shall be binding upon and shall inure to the benefit of the parties' successors in interest. As used herein, "successors in interest" means and includes any person or entity which succeeds to the business or assets of the Company, as well as any person or entity which acquires an interest in the trademarks, trade names or labels of the Products or in the Products themselves. The parties hereby agree that Company's Products are unique and that it would be difficult, if not impossible, to ascertain the damages that would occur in the event of a breach of this Section 9.5 and to that end the parties agree that this Agreement may be specifically enforced in the event of a breach or threatened breach thereof. The parties further agree that the provisions of this Section 9.5 are an integral part of the consideration given for this Agreement and are not a mere recital.

9.6 Enforcement. Failure of either party to enforce at any time any right or remedy it may have under this Agreement will not be a waiver of the provision or right, and will not preclude or prejudice the party from thereafter exercising the same or any other right or remedy it may have under this Agreement.

9.7 Governing Law. This Agreement will be governed by, and interpreted and construed in accordance with, the internal laws of the State of New York without reference to principles of conflicts or choice of law.

9.8 Severability. If any provision of this Agreement is held invalid, for any reason by a court, government agency, body or tribunal, the remaining provisions will be unaffected and will remain in effect unless the invalidity goes to the essence of the Agreement.

9.9 Amendment. No change, modification, or alteration to this Agreement, or to the distribution relationship evidenced hereby will be effective unless set forth in writing and signed by both parties.

9.10 Entire Agreement. This Agreement supersedes all previous and contemporaneous agreements and understandings between the parties and is intended as the complete and exclusive statement of the terms of their understanding and agreement with respect to the subject matter hereof. There are no representations, oral or written, upon which the Company or the Distributor has relied as an inducement to enter into this Agreement, other than those set forth herein.

9.11 Product Recall. If any Products are recalled by Company, or if the Company discontinues selling any Products and requests the Distributor to retrieve the discontinued Products from the retail trade, the Distributor will return any unsold Products to the Company FOB within 45 days of receipt of the Company's recall or discontinuance notice. The Company will repurchase the Products from the Distributor for the Distributor's laid in cost plus a 15% handling charge.

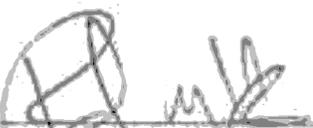
9.12 Construction. The language used in this Agreement is the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against either party. The section headings are for convenience and are not intended as aids in construction.



[Handwritten signature]

Executed under seal and delivered as of the date first above written.

FEW SPIRITS, LLC:

By 
Name: Paul Mletko
Title: Founder

UB DISTRIBUTORS, LLC:

By _____
Name: Christopher T. Sheehan
Title: GM/Managing Partner

SCHEDULE 1 - PRODUCTS

The following products, individually, have been authorized to Distributor by this Agreement:

NAME(S) OF PRODUCT(S)

All Few Spirits Branded Liquor Products

The Distributor will be given thirty (30) days to accept or reject all future products and line extensions.

SCHEDULE 2 - TERRITORY

The Distributor has the exclusive right to sell and distribute the Products in all counties, cities and towns in the State of New York.

SCHEDULE 3 - TRADEMARKS

The Distributor may use the following in accordance with Section 1.2:

All trademarks, trade names, and trade dress of the Company both existing or future, applicable to the Products.

[A large, faint, handwritten mark or signature, possibly a stylized 'F' or 'S', is present on the page.]

[Handwritten initials or signature, possibly 'JMK', is present in the bottom right corner.]

Exhibit 2

SAMSON & SURREY
THE BEVERAGE ARTISANS

Jay Frary
UB Distributors, LLC
1213 Grand Street,
Brooklyn, NY 11211

April 23th 2019

Dear Jay,

Following our recent conversations around our concerns for the last two years of sales results for the FEW portfolio, I am writing to confirm our views on this matter and to propose a way forward.

We have reviewed the Distribution Agreement dated August 13, 2012 between UB Distributors, LLC and Few Spirits, LLC and have concluded that it does not in fact have any definite term of duration. We refer inter alia to the following judgement:

"Moreover, the provision in the contract that it should terminate upon the mutual consent of the parties is mere surplusage, and the contract, without a term of its duration, was terminable at will."
Conrad v Golden 275 A.D. 946; 89 N.Y.S 2d. 689.

Under New York Law such an agreement is thus terminable at will. In terms of an appropriate timing for termination to be effective we refer to Section 101-b 4 of New York's Alcoholic Beverage Control Law which requires a price posting by a supplier to a wholesaler be filed on or before the 25th day of the month to be effective on the first day of the second succeeding calendar month.

As a result, we have the right to terminate the Distribution agreement by providing you notice before the 25th day of any month, such termination to be effective the second succeeding month along with the filing of a price posting listing with another wholesaler and delisting of yourselves.

Having said all of this, although we believe we have the right to terminate the agreement unilaterally, we would very much like to part ways on an amicable basis along the lines recently discussed, and trust that you would prefer to do the same. Should this prove not to be the case you will understand that we would then have no alternative but to protect our rights in an appropriate manner.

I look forward to hearing from you in the very near future

Sincerely,


Juan Rovira