

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

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ADAM MAX, on behalf of himself and  
derivatively on behalf of ALP, INC., a New  
York corporation,

Index No.: 650618/2019

Petitioner-Plaintiff,

**AMENDED**  
**VERIFIED COMPLAINT**

- against -

LIBRA MAX and MICHAEL ANDERSON,

Respondents-Defendants,

-and-

ALP, INC., a New York Corporation.

Nominal Respondent-Defendant.

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Petitioner-Plaintiff Adam Max, on behalf of himself, individually and derivatively on behalf of ALP, Inc., by and through his attorneys, The Law Offices of Anthony A. Capetola and McKew Law Firm, PLLC, as and for his Amended Verified Complaint, respectfully shows and alleges as follows:

1. That at all times hereinafter mentioned, the petitioner-plaintiff Adam Max (“Adam” or “Plaintiff”) has been and remains a resident of the State of New York, County of New York, and a 40% shareholder in ALP, Inc.

2. That at all times hereinafter mentioned, respondent-defendant Libra Max (“Libra” or “Defendant”) has been and remains a resident of the State of California, County of Los Angeles, and a 40% shareholder in ALP, Inc., and is subject to jurisdiction pursuant to CPLR §302 (a) (1), (2), and (3) as she regularly transacts business within the State of New York, including but not limited to as a purported officer and putative director of ALP who has committed various tortious acts within the

State and other tortious without the State causing injury to the Corporation within the State including her attempts to operate the business of ALP by long distance from California.

3. That at all times hereinafter mentioned, respondent-defendant Michael Anderson (“Anderson” or “Defendant”) has been and remains a resident of the State of California, County of Los Angeles, and is subject to jurisdiction pursuant to CPLR §302 (a) (1), (2), and (3) as he regularly transacts business within the State of New York, including serving as a purported director of ALP, Inc., who has damaged that corporation by attending and voting at various Board meetings held within the State.

4. That at all times hereinafter mentioned, the nominal respondent-defendant ALP, Inc. (“ALP” or “the Corporation”) has been and remains a domestic corporation organized and existing under the laws of the State of New York with an office of business in the County of New York.

5. That the Corporation was formed in or about the year 2000 by Peter Max (“Peter”), a well known and established artist in part as an estate planning device pursuant to which 40% of the shares of the Corporation would be owned by Adam, his son, and 40% by Libra, his daughter, with Peter retaining the remaining 20%.

6. That in part, the Corporation was also formed so that it could be maintained as a separate asset and the artwork of Peter would not be subject to claims by his sometimes estranged spouse, Mary Max (“Mary”).

7. That as part and parcel of this overall plan, Peter assigned virtually all of the legal rights to his artwork to the Corporation.

8. That in the years following the formation of the Corporation, Peter fell onto hard times financially, his art was not selling well, and he defaulted on a number of significant debts including a \$4,000,000 line of credit from Bank of America and a \$1,400,000 loan from Harris Bank.

9. That there were many other creditors of both Peter and the Corporation seeking to be paid during those years and neither Peter nor the Corporation had the funds to satisfy those debts.

10. That as a result of diminishing sales of Peter's artwork by the Corporation and mismanagement by Peter due to failing health and age among other factors by 2012 the Corporation was in desperate financial straits and for the year ended December 31, 2012, recorded a net loss of \$4,093,750.

11. That in the year 2012, Peter requested Adam, a New York City resident with prior experience in the business and art worlds, and the holder of a law degree, to assume the management of the Corporation due to Peter's declining health and the unsuccessful results of the Corporation's business operations at that period in time.

12. That upon Adam's assuming the management and control of the day to day affairs of the Corporation, Peter and Adam together retained Lawrence Moskowitz ("Lawrence"), who had been friends with Peter since the 1990's, and Lawrence's company, Lawrence Moskowitz CLU, to assist, as a consultant, in the business operations of the Corporation, as well as Robert M. Frank, CPA ("Robert") and his accounting firm, Bender, Ciccotto & Co. ("Bender")

13. That at the time that Adam assumed the management of the Corporation, its annual sales had declined to half of their pre-recession levels; it was in default of several loans totaling several million dollars; could not pay its current debts as they came due; and was on the verge of bankruptcy.

14. That upon assuming the management, Adam with the assistance of Lawrence, Robert and Bender engineered a remarkable turnaround of the Corporation's business affairs to include transactions with Warner Brothers, HBO, The American Association of Retired Persons, The Rock

and Roll Hall of Fame, Taylor Swift, and numerous art galleries that did not previously carry Peter's art.

15. That during Adam's tenure as President of the Corporation, ALP also partnered with and did transactions with the Estates of Marilyn Monroe and Frank Sinatra, conducted business event at prominent centers such as Citi Center and Lincoln Center in New York City, and engaged in significant sales of artwork thereby enhancing and restoring Peter's artwork to a place of prominence and profitability.

16. That during the year 2013, as a result of the continued burden of the debts and managerial issues that had arisen during Peter's stewardship, the Corporation's losses totaled \$5,387,071; however, in the year 2014 the finances and prospects of the Corporation were completely turned around and the Corporation earned a profit for that year of \$528,327.

17. That the success continued under the leadership of Adam and his team, such that profits for the years 2015, 2016 and 2017 increased exponentially year to year, from \$1,187,054, to \$4,481,473, and then to \$7,256,724 for each year respectively.

18. That these results were achieved despite the destructive impact of hurricane Sandy in October 2012 which destroyed and flooded significant portions of the warehouse in New Jersey owned by the Corporation and containing thousands of Peter Max artworks, many of which were destroyed or damaged in the storm.

19. That when Lawrence and his company, Lawrence Moskowitz CLU (collectively "Lawrence"), were retained as a consultant by Adam, Peter, and the Corporation in 2012, he discovered that numerous property insurance policies, including those covering the artwork in the New Jersey warehouse had expired or lapsed due to nonpayment.

20. That Lawrence, under Peter's stewardship, succeeded in having those property insurance policies reinstated, such that a retail insurance policy or policies were in place, providing full coverage for the losses sustained at the warehouse which otherwise would not have been the case.

21. That among his other duties, Lawrence also undertook work and effort in pursuit of recovering insurance proceeds from the insurance companies covering the New Jersey warehouse and its contents, consisting among other things of hundreds of hours of examinations under oath and travel time, and thereby secured an advance of \$10,000,000 for the benefit of the Corporation in December 2012 and an additional advance of \$5,000,000 for the benefit of the Corporation in March 2013.

22. That Lawrence continued in his efforts to obtain additional insurance proceeds and ultimately caused the Corporation, through his efforts, and those of Adam, Robert and Bender to receive an additional \$33,826,014 in October 2018, such that the total insurance recoveries through the end of that year aggregated \$48,826,014.

23. That those insurance payments represent only a partial recovery under the policies, such that Lawrence, Adam and the Corporation had a reasonable and well grounded expectation at the close of the year 2018 of receiving an additional \$200,000,000 in insurance payments as well as the creation and maintenance of a bad faith claim against the insurance companies leading to even greater monetary damages payable to the Corporation, on top of an additional proceeding seeking \$15,000,000 in the recovery of expenses which had been incurred in connection with the processing of the claims and for which the Corporation rightfully sought to have the insurance companies reimburse.

24. That during the years 2012 and following, Robert and Bender also performed significant accounting and other services to the Corporation including restructuring of its accounting systems, inventory systems, tax returns and most significantly of all the cataloguing and detailing of the damaged artwork leading to the insurance recovery cited above.

25. That among the most significant achievements in the restoration of the Corporation to renewed financial success, Adam and his team continued to engage the services of Gene Luntz (“Gene”), a longtime broker and agent for Peter Max artwork who had served both Peter and the Corporation faithfully and successfully in that capacity for thirty years, and also established a unique and enduring business relationship with Park West Gallery (“Park West”), perhaps the largest art gallery in the United States.

26. That Gene was instrumental in arranging numerous sales of Peter Max artwork to Part West, which in turn created and maintained an advertising, sales, marketing and merchandising campaign on behalf of Peter’s artwork that became viral and which resulted in the sales of tens of millions of dollars of Peter’s art on cruise ships where Peter’s artwork was exclusively sold and one or more of the ships was even decorated with Peter Max’s image, name and artwork along the side of cruise ships operated by the Norwegian line and others.

27. That as a result of all of the foregoing efforts by Adam and his team, for the year ended December 31, 2018, the Corporation had total sales and other income of \$82,913,461, the highest by far in the history of the existence of the Corporation.

28. That for the same year the Corporation reported a net profit of \$30,392,741, also by far the highest during the period of its existence.

29. That as 2018 drew to a close, Adam and his team had projected sales for the year to come, i.e. 2019, in excess of \$50,000,000 and additional insurance proceeds of \$40,000,000, which,

with properly forecasted expenses, would lead to an expected net income approaching \$50,000,000. That these forecasted results would then exceed the Corporation's financial performance for 2018 as the most successful in Peter Max's career.

30. That during the years of Adam's successful tenure as President of the Corporation, he always took steps to insure that both Peter and Libra would receive their rightful and proper share of the profits of the Corporation, such that during the year 2017 both Adam and Libra received \$800,000 in profits and Peter, through a court appointed guardian, one Lawrence Flynn ("Flynn") received \$400,000; that stated differently, both Flynn and Libra received their rightful and proper shares of corporate profits for that year; moreover, during the year 2018, Flynn received \$5,376,600 and Libra received \$10,753,201, representing every penny to which they were lawfully and properly entitled.

31. That during the years 2012-2018, during Adam's successful tenure as President, Flynn and/or the prior guardians, on Peter's behalf, received \$29,577,527 of salary and other payments and profits distributions of \$5,776,600 for a total of \$35,354,107 over a period of seven years.

32. That during those same years of 2012-2018, under Adam's management and leadership, Libra received \$4,680,750 of salary and other payments, and \$11,553,201 in distribution of profits for a total of \$16,233,951 over a period of seven years. That during the same period, Adam received salary and other payments of \$4,598,357 and \$11,533,201 in profits distributions for a total of \$16,151,558. However, although Adam worked six to seven days a week consistently, including time spent in caring for Peter, and without even taking any vacations, Libra contributed not one moment of her time or effort to ALP, did not contribute in any constructive manner to the Corporation whatsoever, and yet actually received more money than Adam. Thus, her contention that she has somehow a victim or an aggrieved party is disingenuous to say the least.

33. That through the years 2000 to 2010, Libra was estranged from Peter and played no meaningful part in his life, nor did she participate in any of the aspects or affairs of the Corporation of its business in which she apparently had no interest whatsoever.

34. That because Libra was an officer and director of the Corporation, once Adam assumed control of its affairs, he sought to it that she received a salary equal to his of approximately \$700,000 per year even though she performed no services, played no role in corporate management or the conduct of its business and lived in California where she was totally engrossed in her own personal life and other matters totally unrelated to the Corporation.

35. That only upon learning of the receipt of the insurance advances in 2012 and 2013 did Libra evince any interest in ALP or its business activities but during those years she continued to play no role in corporate affairs and provided no services to the Corporation.

36. That when Libra finally decided to express an interest in the Corporation it was in the form of a request for documents under §624 of the Business Corporation Law dated May 19, 2017 wherein Libra sought a plethora of documents well beyond the scope of that statute covering the period January 12, 2012 going forward.

37. That Libra served that notice through a law firm which had learned privileged information from Adam that later caused the firm to be disqualified from future litigation by court order.

38. That Libra caused that notice to be served in bad faith despite the fact that she had been fully apprised of all corporate activities and affairs in the period leading up to that notice as an officer and a director even though she played no part in the affairs of the Corporation and had not contributed in any way to its success.

39. That in a vain effort to satisfy Libra's feigned ignorance of corporate affairs, Adam and the Corporation provided her with hundreds of thousands of pages of documents in paper form, electronic disks and other formats, all to no avail, as each production of documents and information was met with an ever expanding and more unreasonable request.

40. That on July 24, 2017 despite being provided with the foregoing documents and information, Libra commenced an Article 78 Petition in the Supreme Court State of New York, County of New York seeking allegedly more information, which Petition was converted and expanded into a request for a special meeting of shareholders and/or directors to replace Adam as President of the Corporation "for cause" even though there was no such cause and this request was made in bad faith and for the improper purpose of taking over the Corporation and derailing all of the successful actions taken by Adam and his team, not for financial reasons or any valid legal or business reasons but apparently out of personal spite due to long simmering family disputes between Libra, Adam, Peter, Mary and the mother of Adam and Libra.

41. That as an integral part of this misguided effort, Libra somehow arranged the cooperation of Flynn, who as a property guardian for Peter, assumed control over Peter's 20% interest as a shareholder of ALP, which when combined with Libra's 40%, would give her a controlling 60% in the Corporation.

42. That as the litigation between Libra and Adam continued, Libra, with the assistance of various attorneys who regaled themselves as "business divorce" lawyers, entered into some sort of arrangement with Flynn, the nature of which is yet unknown, although it is believed that Flynn entered into this agreement at the behest of Mary with the common goal of dissolving the Corporation, reassigning the artwork and intellectual properties owned by the Corporation to Peter

and then splitting the proceeds from future art sales between Libra and Mary thus cutting Adam out of the family business completely despite his enormous successes and endeavors.

43. That at first, Libra's efforts to replace Adam were unsuccessful, even though Libra expended an inordinate amount of funds on legal fees (all of which had been received by her from Adam and the Corporation as she has no other source of income or employment and has never had any other source of income or employment) and concomitantly causing the Corporation to expend an inordinate amount of funds on unnecessary legal fees to defend Libra's baseless claims and allegations while at the same time forcing Adam and his team to devote time and effort to such defense, which was wholly unnecessary, rather than devoting the same to the furtherance of the Corporation's continued successes.

44. That despite the hostile takeover attempted by Libra during the years 2017 and 2018, Adam and his team continued with the Corporation's success and business relationships as described above.

45. That ultimately, because of the 60% share control possessed by Libra and Flynn (who to this day has provided absolutely no valid business, legal or other reason why he would have sided with Libra against Adam), Libra was successful in December 2018 in conducting a meeting of directors at which she and Flynn removed Adam as President of the Corporation; reinstated Libra as a director as well as Adam (for window dressing and to prevent him from having a basis for dissolution of the Corporation); and appointing Anderson as a director, an individual who had absolutely no prior relationship or contact with the Corporation or any of its activities but was instead an acquaintance and bookkeeper for Libra who resides in California and is totally unable both geographically business-wise and otherwise from performing any meaningful function as the other director, the result being that the Board of Directors consisted of Libra with no prior business

experience, Anderson with no prior business experience, and Adam as a powerless figurehead, with a controlling Board of Directors possessing absolutely no skill, talent, ability or training in the business of art, sales of art or otherwise.

46. That with the takeover complete, the recipe for disaster that Libra had set in motion came to fruition with results that have been both spectacular in their failures and calamitous in their results.

47. That amongst other things, Libra has flagrantly wasted and expended an untold amount of legal fees in her pursuit in the takeover and ultimate destruction of the Corporation which are being billed to and paid for by the Corporation in the total breach of her fiduciary duties.

48. That although the amount of fees can only be guessed at, it is necessary to point out that Flynn, acting in concert with Libra and Mary, currently seeks over \$108,000 in legal fees for services allegedly provided by his counsel over a six month period in 2019, with such services being entirely duplicative of the efforts of others, wholly unnecessary, and a complete waste and misuse of funds to the detriment of Peter as a 20% shareholder.

49. That upon removing Adam as President, Libra and Anderson took steps to diminish his authority to prevent him from paying expenditures and from continuing with his worthy and successful efforts at the continued rejuvenation of the Corporation and its financial affairs.

50. That to add insult to injury, Libra and Anderson terminated Lawrence as a consultant and advisor to the Corporation, took the improper and insupportable position that he should not even have been paid for his efforts, and set the scene for a total disruption and unsuccessful conclusion of the efforts to obtain the remaining \$200,000,000 in insurance claims, \$15,000,000 in expense receipts and bad faith claims totaling even more, all of which have been seriously jeopardized, if not

eliminated by the actions of Libra and Anderson which were made without any thought, reflection or consideration.

51. That on top of that, Libra and Anderson caused the Corporation to become embroiled in what should have been unnecessary litigation with Lawrence, thus resulting in yet another wasteful dissipation of corporate assets through the payment and expenditure of legal fees, including fees owed to Lawrence pursuant to ALP's indemnification obligations, and the disruption and destruction of an invaluable business relationship.

52. That in addition, Libra and Anderson terminated Robert and Bender, thereby disrupting all of their efforts on behalf of the Corporation, replacing them with ineffective and expensive substitute accounting service providers, and embroiling the Corporation in another round of costly litigation, including unnecessary litigation involving fees owed to Bender pursuant to ALP's indemnification obligations and otherwise, while at the same time destroying an equally valuable business relationship that had been continued for years with great success.

53. That to make matters worse, Libra and Anderson terminated Gene, a prominent and highly regarded art dealer and broker, terminating yet another valuable and irreplaceable business relationship, thus cutting off the source of virtually all of the Corporation's sales of Peter Max artwork resulting in what is believed to be a catastrophic reduction in sales and business volume, and engaged Gene in yet another set of expensive and totally unnecessary litigation, to the detriment and prejudice of the Corporation.

54. That perhaps the most damaging of all, Libra and Anderson became entangled in a bitter financial dispute with Park West, took the improper and legally unsupportable position that a \$15,000,000 sale of Peter Max artwork should be canceled, breached the Corporation's obligations with Park West, and involved the Corporation with at least two other expensive lawsuits, both

wholly unnecessary, while causing the destruction of the main source of revenue of the Corporation during its renaissance, based upon the false and demonstrably untrue supposition that Adam had sold off all of ALP's saleable inventory to Park West in December 2018, when in truth and in fact, the quantity of inventory of the Corporation by crate was 1,860,321 items prior to that sale; the Park West order consisted of only 21,144 quantity by crate, leaving a quantity by crate of 1,839,177 after the sale, including tens of thousands of "Peter's Keepers" available for sale but which can no longer be sold, as the Corporation no longer has any viable customers.

55. That on or about May 28, 2019, Libra, conspiring with Mary and others, allowed a reporter from the New York Times to have access to Peter, provided the Times and its reporter with false information, betraying the Corporation, and portraying Adam and his team in a false light and making it appear that customers of Peter Max art on the cruise ships operated by Park West or otherwise, were essentially purchasing counterfeit goods, thus decimating the value, good name and reputation of the artwork created by Peter to the irretrievable detriment of the Corporation, thereby destroying the six year recovery brought by Adam and his team in one fell swoop.

56. That shortly after the publication of this article, Mary in an apparent bout of depression and regret over her actions taken in conspiracy with others, including Libra, committed suicide on or about June 11, 2019, shortly after the New York Times article was published and at the same time that reported allegations of her conspiracy and her abuse of Peter were about to be brought to light - - abuse of which Flynn was well aware and yet about which Flynn did nothing despite his status as guardian.

57. That all of the foregoing has made it necessary the commencement of the within shareholder derivative action on behalf of the Corporation, which is brought seeking equitable relief and damages to remedy among other things, the breaches of fiduciary duties by Libra and Anderson,

including their gross mismanagement of the Corporation, its assets and business operations; the misleading and false statements that they have made both under oath and otherwise in pursuit of their specious and misguided goals, the unauthorized and improper payment of unnecessary expenses as set forth above, the abandonment and destruction of virtually all of ALP's business lines and sales facilities as well as all of its professional managerial and business relationships which have resulted in the near destruction of the Corporation.

58. This Court has jurisdiction over Libra and Anderson as they have appeared in the action and interposed an Answer and have never objected to jurisdiction. The Court also has jurisdiction over Flynn, as he has voluntarily filed a Notice of Appearance as an "interested person". The Court also has jurisdiction over the Corporation as a nominal defendant.

59. That Adam brings this action derivatively in the right and for the benefit of ALP to redress the wrongful and illegal conduct outlined therein by Libra and Anderson.

60. That Adam will adequately represent the interests of the Corporation and its shareholders in prosecuting its rights.

61. That the Corporation is named as a nominal defendant in this action solely in a derivative capacity and the prosecution of this action, independent of Libra and Anderson as board members is in the best interests of the Corporation and its shareholders.

62. That any demand by Adam to Libra, Anderson or the Board of Directors as a whole would be futile due to a majority of directors being interested in the alleged violations of law contained herein.

63. That moreover, the absolute voting power of Libra due to her alignment with Flynn and representing 60% of the voting rights of the Corporation's shares would make any such demand to the Board futile; that therefore, the Plaintiff did not make any demand upon the Corporation, the

Board, or Libra or Anderson that the said Corporation commence an action against Libra and Anderson for the reason that they control the Board of Directors and are the controlling officers of the Corporation so that it would be futile and useless to demand that they bring an action against themselves; and indeed, the filing of the original Petition/Complaint in this action and their failure to take any remedial steps in connection therewith, make it incontestible that any pre-action demand would have been utterly futile.

AS AND FOR A FIRST CAUSE OF ACTION

(Breach of Fiduciary Duties)

64. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 63 of this Amended Complaint with the same force and effect as is fully set forth at length herein.

65. That Libra and Anderson, as controlling members of the Board of Directors, and due to their positions and control over the Corporation, owed and continue to owe the Corporation and its shareholders certain fiduciary obligations.

66. That because of their positions as director of the Corporation and Libra's position of President and CEO thereof, which she assumed in January 2019, the defendants owe the Corporation the fiduciary obligations of good faith, trust, loyalty and due care and were required to use their utmost ability to control and manage the corporation in a fair, just, honest and equitable manner, and to act in the best interests of the Corporation and not in furtherance of their personal interests or benefit.

67. That the defendants have breached their fiduciary duties by failing to take the necessary steps to appoint certain directorial and managerial positions of the Corporation by terminating Adam and his team, by leaving important positions vacant or otherwise staffing them with inexperienced and incapable personnel, by allowing Libra to assume unchecked executive

functions as the Chairman of the Board, President and CEO of the Corporation, all to the Corporation's detriment.

68. That the defendants have breached their fiduciary duties by directing and/or allowing the Corporation to abandon its essential business lines, destroying irreplaceable business relationships, connections and avenues of sales, by gross mismanagement and the wasting of corporate assets and the inexplicable abandonment of a cruise ship related business that was touted as a highly successful model for the entire art world and community.

69. That the defendants have further breached their fiduciary duties by failing to be transparent with financial details of the Corporation, failing to properly manage the Corporation in many material ways, failing to secure or ascertain the current true financial condition of the Corporation, failing to ensure that the Corporation's assets are preserved, failing to take the necessary steps to insure that the defendants are removed from their positions with the Corporation, and failing to appoint a new management team to run its day to day operations in line with proper corporate governance and experience and failure to restore value to the Corporation and its shareholders as well as failing to prevent the further dissipation of the Corporation and its assets.

70. That the defendants have failed to disseminate accurate and truthful information to the Corporation, its shareholders and public officials.

71. That Libra and Anderson have failed to fulfill their fiduciary obligations by their destruction of their business relationship with Park West, an irreplaceable customer that purchased \$94,516,700 of artwork from the Corporation between January 1, 2012 and January 24, 2019, during the period of Adam's tenure, but had only purchased \$2,378,803.98 of artwork from January 1, 2006 to December 31, 2011 when Peter ran the Corporation and Libra was residing in California, essentially unemployed and oblivious to the Corporation, its activities or its destiny.

72. That the defendants have further failed to fulfill their fiduciary obligations by their inability to obtain essential personnel, including not just the Corporation's leading salesperson but also artists, office personnel and others without whom the Corporation can no longer function.

73. That the defendants have also violated their fiduciary obligations by removing Adam and his team, who successfully engineered ALP's turnaround and converted it into a highly successful enterprise; electing a woefully unqualified President and CEO who has no requisite educational background, training or experience that would enable her to successfully run the Corporation and who has a history of misappropriating corporate assets and has announced her intentions to do so again; by causing ALP to breach its contractual obligations with its professionals, consultants, salespersons, clients and customers in a wholly unnecessary and unjustified manner; by wasting corporate assets through the payment of unreasonable compensation, stipends, unnecessary legal fees and other expenses, by threatening the continued occupancy of ALP in its existing corporate offices which face substantial reduction, if not eviction to the diminishment of corporate activities and the threatened failure to pay rent or to continue such occupancy; by embroiling the Corporation with unnecessary litigation with its consultants, employees, customers and salespersons; by causing the Corporation and its artwork to be the subject of untrue and scandalous allegations thereby diminishing its value permanently and without recourse; by interfering with or impeding with the continued collection of insurance proceeds claims, expense claims and bad faith claims, all of which have been placed in jeopardy, if not, termination; by conspiring with Mary, Flynn and others for their own personal vendetta and agenda, all to the prejudice of the Corporation and for their own personal benefit, by terminating valuable business personnel such as Robert, Lawrence and Bender and engaging the same in unnecessary litigation and resulting in expensive fees and costs and by causing the overall destruction of the business of the Corporation.

74. That by reason of the foregoing, Plaintiff demands judgment against the Defendants for the sum of \$400,000,000, together with interest.

AS AND FOR A SECOND CAUSE OF ACTION

(Appointment of Receiver)

75. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 74 of this Amended Complaint with the same force and effect as if fully set forth at length herein.

76. That due to the wrongful conduct herein, there is a danger to ALP that its property will be lost, materially injured or destroyed, such that a receiver of the Corporation and its business should be appointed pursuant to Article 64 of the Civil Practice Law and Rules, and/or Article 12 of the Business Corporation Law.

77. That due to the wrongful conduct herein, including the abandonment of business lines and operations, failure to be transparent with financial details of the Corporation, failure to properly manage the Corporation and its business in many material ways, and other acts of negligence and intentional wrongdoing, an independent receiver is necessary and prudent to ensure that corporate assets are preserved to prevent the further dissipation of the Corporation and its assets, to take all necessary steps to ensure that Libra and Anderson are removed from the management and operation of the Corporation and to secure the true financial condition of the Corporation and restore it to success and its prior financial path.

78. That accordingly, Plaintiff demands appointment of a receiver to take immediate possession, management and control of the Corporation and its operations throughout the duration of this action.

AS AND FOR A THIRD CAUSE OF ACTION

(Declaratory Judgment Voiding the December 10, 2018 Special Meeting)

79. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 78 of this Amended Complaint with the same force and effect as if fully set forth at length herein.

80. That on September 25, 2018, Libra and Flynn, acting in concert to the detriment of the Corporation and Adam, requested that a special meeting of shareholders for the Corporation be scheduled for December 10, 2018.

81. That Adam was provided with notice of the special meeting on September 28, 2018, 73 days before the scheduled meeting was supposed to take place.

82. That §605 of the Business Corporation Law provides that any notice of any such meeting must be given not more than 60 days before the date of the meeting, such that the notice of meeting provided by Libra and Flynn was untimely and ineffective as not in compliance with the statutory dictates.

83. That as a result, Adam timely and properly objected to the meeting.

84. That nevertheless, on December 10, 2018, over Adam's objections, Libra and Flynn elected Adam, Libra and Anderson as the directors with the avowed purpose of having Libra and Anderson form a controlling majority of the Board of Directors so that they could fulfill their plans against the Corporation and Adam and his team, all of which was done in bad faith by Libra and Flynn and in full defiance of the law with full knowledge of its import.

85. That on December 17, 2018, Libra and Anderson conducted a rump meeting of the Board of Directors, and purportedly elected Libra as Chairperson of the Board.

86. That on January 11, 2019, Libra and Anderson met and purported to remove Adam as President of the Corporation and to elect Libra as President and CEO of the same.

87. That the purported election of directors in any and all acts, proceedings, and matters arising therefrom, including the putative election of Libra as President and CEO, were and are illegal and invalid because notice was not properly given within the statutory dictates of BCL §605 and because the number of directors elected was in excess of the maximum permissible number of directors as provided in BCL §702.

88. That by reason of such illegal, invalid, and improper actions, Adam's rights as a shareholder have been infringed upon and impaired, the value of his shares has been adversely affected, and the Corporation has suffered irreparable financial harm by reason of the actions and derelictions of duty as specified above.

89. That by reason of the foregoing, a judicial determination is necessary to resolve the legal issues, and rights and duties of the parties concerning the December 10, 2018 special meeting, as well as the meetings conducted on December 17, 2018 and January 11, 2019, and to set aside the results of those meetings and all actions taken by the defendants subsequent thereto.

90. That the Plaintiff has no adequate remedy at law.

AS AND FOR A FOURTH CAUSE OF ACTION

(Attorneys Fees)

91. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 90 of this Amended Complaint with the same force and effect as is fully set forth at length herein.

92. That §626 (e) of the Business Corporation Law provides that if a derivative action on behalf of a corporation is successful, in whole or in part, or if anything is received by the Plaintiff or plaintiffs as a result of a judgment, compromise or settlement of such an action, the court may award the plaintiff reasonable expenses of the litigation including reasonable attorneys fees.

93. That by reason of the foregoing, the Plaintiff demands judgment awarding him the reasonable expenses of this action including reasonable attorneys fees.

AS AND FOR A FIFTH CAUSE OF ACTION

(Removal of Directors and Officers)

94. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 93 of this Amended Complaint with the same force and effect as is fully set forth at length herein.

95. That §706 (d) of the Business Corporation Law authorizes the holder of 10% or more of the shares of stock of a corporation to seek the removal of the directors of that corporation, and §716 (c) confers the same authorization upon such a holder to remove the officers of that corporation.

96. That at all relevant times, Defendants Libra and Anderson, were and still are Directors of the Corporation, and Libra is currently its President and CEO based upon the putative election referred to above.

97. That pursuant to the Common Law right of motion, and the inherent right of shareholders to remove directors and officers for cause, and because Adam has at all times been and remains a holder of more than 10% of the shares of stock of ALP, and since specific charges have been brought against directors and officers as set forth above with adequate notice to the same, said directors and officers should be removed and replaced by court order as per the statutes recited above.

98. That Libra and Anderson are both guilty of misconduct as Directors of the Corporation and Libra is also guilty of misconduct as an officer thereof, and Plaintiff, as the holder of more than 10% of the shares of the Corporation, is authorized and empowered by the provisions of BCL §§706 and 716 to bring this action to procure a judgment removing Libra and Anderson from office as Directors and to further remove Libra from office as President and CEO of ALP, and to direct the filling of the vacancies in such manner as the Court directs.

AS AND FOR A SIXTH CAUSE OF ACTION

(Accounting)

99. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 98 of this Amended Complaint with the same force and effect as is fully set forth at length herein.

100. That at various times, Libra and Anderson have unlawfully and improperly appropriated to their own use sums of money from the Corporation as expenses that were not actually incurred and which were mere devices to increase their salaries, benefits, and receipts of income and property from the Corporation; that at various times Libra has misappropriated paintings and artwork that were the property of the Corporation for her own use without compensating the Corporation for same; that Libra and Anderson have caused the Corporation's business and income to be substantially, if not wholly diminished and eliminated; have ousted the Plaintiff from work and gainful activities on behalf of the Corporation and prevented him from discharging his duties therein; have caused the Corporation to discontinue its lines of business to its detriment; has engaged it in unnecessary and costly litigation; has discharged or permitted the withdrawal of employees who were valuable assets to the Corporation without just cause; have prevented salespersons from taking any orders for the Corporation; have willfully wasted and dissipated the assets of the Corporation; thereby depriving the Corporation of large sums of money and assets that belong to the same, the particular amounts of which Plaintiff does not know; and that Libra and Anderson have taken such action in bad faith and intentionally with full knowledge that their action constituted misconduct in knowing violation of the law and for the improper purpose of personally gaining financial profits and advantages to which they are not entitled, such that the business judgment rule does not apply and that moreover they are not entitled to any indemnification from the Corporation by statute, a Common Law nor by any corporate action.

101. That the Plaintiff therefore seeks and accounting on behalf of the Corporation to recover the sums wrongfully received by Libra and Anderson as Directors, Officers or otherwise and further accounting for the loss of income and property as detailed above, in violation of their representation and statements and in further violation of their fiduciary duty to the Corporation.

AS AND FOR A SEVENTH CAUSE OF ACTION

(Breach of Duties of Diligence, Care and Skill - Negligence)

102. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 101 of this Amended Complaint with the same force and effect as is fully set forth at length herein.

103. That Libra and Anderson at all times relevant herein acted in a grossly negligent manner in preventing Adam and his team from continuing their management of the Corporation and its financial affairs; by failing to discharge their duty to the Corporation of exercising that degree of diligence, care or skill that an ordinarily prudent business person would exercise in similar circumstances; and by failing to prudently invest and manage the Corporation's business and assets.

104. That as a direct result and proximate cause of the negligence and breach of duty by Libra and Anderson to properly manage, monitor and invest the Corporation's assets, the assets of the Corporation were wasted, and the Corporation has lost income and incurred other losses in an amount to be determined by the Court but estimated to be not less than \$400,000,000.

WHEREFORE, Plaintiff demands judgment as follows:

- I. For \$400,000,000 on the First Cause of Action;
- II. For the appointment of a receiver on the Second Cause of Action;
- III. For a declaratory judgment setting aside and vacating the December 10, 2018 special meeting, all subsequent meetings, and all actions taken by the putative directors and officers, on the Third Cause of Action;


- IV. Awarding the Plaintiff the expenses of this action including reasonable attorneys fees on the Fourth Cause of Action;
- V. For an Order removing Libra and Anderson as directors and officers of ALP, Inc., and appointing substitute directors and officers in their place and stead on the Fifth Cause of Action;
- VI. That the Defendants Libra Max and Michael Anderson and each of them be compelled to account to the Corporation and the Plaintiff for all money and property of the Corporation which has come into their hands or which has found to have been wrongfully or fraudulently paid out, disbursed or delivered, or which has in any manner been lost or wasted for the reasons set forth above and awarding judgment in favor of the Corporation for that amount on the Sixth Cause of Action;
- VII. Awarding the Corporation an amount equal to the loss of income, business, assets and profits suffered by the Corporation in an amount to be determined by the Court but not less than \$400,000,000;
- VIII. Together with the costs and disbursements of this action, and interest on any judgment or award at the statutory rate from January 1, 2019, together with such other and further relief as to this Court may seem just and proper.

Dated: Williston Park, New York  
July 16, 2019

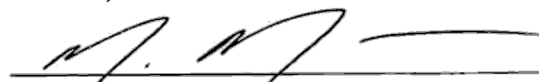
Yours, etc.,

THE LAW OFFICES OF ANTHONY A. CAPETOLA

By: \_\_\_\_\_

  
Anthony A. Capetola, Esq.  
Attorneys for Plaintiff  
2 Hillside Avenue, Building C  
Williston Park, New York 11596  
(516) 746-2300

MCKEW LAW FIRM, PLLC

By:   
Mark L. McKew, Esq.  
Attorneys for Plaintiff  
1725 York Avenue, Suite 29A  
New York, New York 10128  
(212) 876-6783

TO: PARKER POHL, LLP  
Attorneys for Respondent ALP, Inc.  
420 Lexington Avenue, Suite 2440  
New York, New York 10170  
(212) 202-8886

FARRELL FRITZ, P.C.  
Attorneys for Defendants  
Libra Max and Michael Anderson  
622 Third Avenue, Suite 37200  
New York, New York  
(212) 687-1230

WARSHAW BURSTEIN, LLP  
Attorneys for Non Party  
Lawrence L. Flynn  
555 Fifth Avenue  
New York, New York 10017  
(212) 984-7810

BENOWICH LAW, LLP  
1025 Westchester Avenue  
White Plains, New York 10604  
(914) 946-2400

VERIFICATION

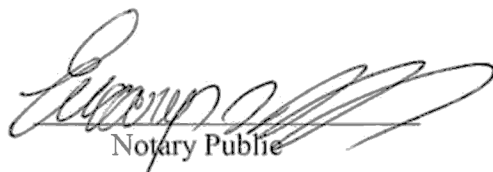
STATE OF NEW YORK    )  
  )SS.:  
COUNTY OF NASSAU    )

Adam Max being duly sworn deposes and says:

I am the Plaintiff in the within action. I have read the foregoing Amended Verified Complaint and know the contents thereof. The contents are true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

  
Adam Max

Subscribed and sworn to before  
me this 23<sup>rd</sup> day of July, 2019

  
Notary Public

EUCARYS S MARTINEZ  
Notary Public - State of New York  
NO. 01MA6348755  
Qualified in Bronx County  
My Commission Expires Oct 3, 2020

7/23/2019

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

ADAM MAX, on behalf of himself and derivatively on behalf of ALP, INC.,  
a New York Corporation,

Petitioner-Plaintiff,

-against-

LIBRA MAX and MICHAEL ANDERSON,

Respondents-Defendants.

-and-

ALP, INC., A New York Corporation,

Nominal Respondent-Defendant.

AMENDED VERIFIED COMPLAINT

THE LAW OFFICES OF ANTHONY A. CAPETOLA

Attorneys for Adam Max  
BUILDING C  
TWO HILLSIDE AVENUE  
WILLISTON PARK, NEW YORK 11596-2335  
Phone (516) 746-2300  
Fax (516) 746-2318\*  
\*(This office does not accept service by fax)

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR.1200.41-a.

Dated: August 1, 2019

Signature

Print Signer's Name - Michael C. Barrows, Esq.

Service of a copy of the within  
Dated:

is hereby admitted.

Attorney(s) for

PLEASE TAKE NOTICE

NOTICE OF ENTRY

that the within is a (certified) true copy of a  
entered in the office of the clerk of the within named Court on

NOTICE OF SETTLEMENT

that an order of which the within is a true copy will be presented for settlement to the  
Hon. one of the judges of the within named Court,  
at , at M.

Dated:

THE LAW OFFICES OF ANTHONY A. CAPETOLA

Attorney's for Adam Max  
Building C  
TWO HILLSIDE AVENUE  
WILLISTON PARK, NEW YORK 11596-2335  
Phone (516) 746-2300  
Fax (516) 746-2318

To:

Attorney(s) for