SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: COMMERCIAL DIVISION

PRESENT: **HON. JENNIFER G. SCHECTER** **PART** 54

Justice

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JEANETTE LI, SATSUMA USA LLC,

INDEX NO. 454084/2021

Plaintiffs,

- v -

DECISION AFTER TRIAL

SATSUMA USA LLC, TATSUYA YAMAMOTO, JWD INC., MASAHIKO TOKOROKI, JFORWARD INC.,

Defendants.

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Introduction

Satsuma USA LLC (Satsuma or the Company) is a New York LLC governed by an operating agreement dated August 3, 2017 (Dkt. 688 [the Operating Agreement]). The Operating Agreement provides that "the purposes of the Company are: (i) to operate Japanese ramen restaurants (the "Restaurants"); (ii) to engage in any lawful act or activity for which limited liability companies may be formed pursuant to the Act; (iii) to do all things necessary or useful in connection with the foregoing; and (iv) to do every other act or acts incidental to, or arising from, or connected with, any of such purposes" (*id.* at 5). The Operating Agreement is unclear about the full scope of the Company's intended business. Moreover, while the Operating Agreement is clear that "the right and interest in and to all trademarks, domain names, logos, and intellectual property rights to other proprietary and valuable intellectual property (whether now existing or developed in the future) related to the operation of restaurants ... are solely owned by SATSUMA USA LLC, and may not be used by any Member individually without the Requisite Consent of the Members" (*id.* at 15), the actual trademarked names were not filled in (*id.* [referring to "the name 'XXX' and 'XXX'"]). This resulted in disputes concerning which trademarks were intended to be owned by the Company.

Plaintiff Jeanette Li, a non-managing member of the Company, asserts derivative claims on its behalf, principally based on objections to the accounting of one of the Company's managing members, defendant Tatsuya Yamamoto (*see* Dkt. 475), as further limited by the brief she filed after a six-day bench trial (Dkt. 865; *see* Dkts. 850-855 [trial transcripts]; *see also* Dkt. 857 [defendants' brief]).[1] Below, the court addresses the objections to the

[1] The parties' submissions are lengthy. They, nonetheless, do not address some of what the court believed to be the important issues in this case--apparently, ultimately, they were not significant to the parties. Defendants' brief also cites and relies, in significant part, on documents that were not actually introduced into evidence at trial. The court will only address issues fairly raised and

accounting set forth in plaintiff's brief. The court then addresses certain other issues raised by the briefs and the parties' competing claims for fees and costs. In the end, while the limited credible evidence submitted at trial failed to fully crystalize the parties' true vision for the scope of the Company or what really happened to all of the money, the outcome is largely dictated by the burden of proof in an accounting proceeding. When plaintiff actually identified an amount in the accounting that warranted explanation, defendants often could not explain it. And when, in the face of detailed financial records, plaintiff could not actually explain why an amount was suspect, there is no basis to impose a surcharge. So the result is discreet surcharges that must be imposed due to defendants' failure to carry their burden as fiduciaries to fully account. While the total amount is not insignificant, it is far less than what plaintiff requests in her post-trial brief (*see* Dkt. 865 at 56). While plaintiff's more grandiose claims and damages theories fail because they were not supported--and in many instances, not ultimately advanced--there are still ample grounds for meaningful surcharges due to serious deficiencies in defendants' accounting.[2]

Sufficiency of the Accounting

Plaintiff begins with a refrain that has been posited from the outset: what defendants submitted as their "equitable accounting" is not really an accounting. This argument is not without force (*see Hall v Louis*, 184 AD3d 437, 438 [1st Dept 2020] ["the inspection of books and records is not the equivalent of an accounting"]; *see also* Dkt. 135 at 1). Plaintiff urges--typical of claims in other accounting proceedings--that income was understated and not reflected on the Company's financial records. Under these circumstances, a plaintiff usually retains a forensic expert who, in reliance on an industry-accepted methodology, attempts to reasonably estimate the understated income and calculates an appropriate surcharge based on that amount. Plaintiff appears to be aware that this is the proper course as she cites a case where that is precisely what occurred (*see O'Mahony v Whiston*, 2023 WL 2020049, at *3 [Sup Ct, NY County Feb. 15, 2023], *affd* 224 AD3d 609 [1st Dept 2024]). That approach makes sense. If revenue is unaccounted for and presumably misappropriated, liability for that supported amount is warranted.

Plaintiff, however, suggests a different approach: that the court impose an 18% surcharge on "all income" reported (Dkt. 865 at 9-10). Plaintiff cites no authority for this arbitrary remedy (*see id.*). There is no basis for simply imposing a blanket surcharge on revenue that was actually disclosed without any credible evidentiary foundation for the amount of purportedly understated revenue.

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properly addressed in the briefs and will not credit arguments made based on documents not in evidence (*see Matter of Kalik*, 117 AD3d 590, 592 [1st Dept 2014]).

[2] Since an accounting is equitable, the court would be remiss if it did not observe two countervailing unfortunate truths that were apparent from extensive consideration of the trial record--that defendants likely could have avoided some of the surcharges had they prepared a better accounting and provided more precise explanations; and that plaintiff may well have been able to prove certain corporate waste and corporate opportunity claims had she better developed the arguments on these issues in her post-trial brief and through expert evidence. Most of the findings after trial directly result from the parties' choices in presenting their cases.

Plaintiff did not offer the usual type of forensic expert testimony here. Instead, she retained a CPA, Jimmy Yee, to support her contention that "nearly $1 million of underreported sales or monies...did not go from JForward to Satsuma" (Dkt. 865 at 30). Yee's testimony, however, was not what one would expect in this type of case. Yee merely submitted a terse, five-page direct-testimony affirmation that did not set forth a credible methodology for his conclusions (*see* Dkt. 832). The court was unpersuaded by his gas-consumption analysis (*see id.* at 2). While this approach has some intuitive appeal--it suggests a correlation between gas usage and a restaurant's revenue--it is analytically unsound because it is based on the total gas bill without accounting for fluctuations in gas prices or actual gas use (*see* Dkt. 857 at 41). His analysis of cost of goods sold and other financial records was similarly unpersuasive (*see* Dkt. 832 at 2-4). But even if Yee had employed sound methodologies, his analysis was hopelessly flawed because it was permeated with factual, mathematical, and logical errors (Dkt. 857 at 39-50). An expert who makes such errors is not reliable. The court does not credit Yee's testimony.[3]

Defendants' expert, Marlon Balogh, was not much better (*see* Dkt. 839). Setting aside the myriad issues plaintiff noted and that the court did not find his testimony persuasive, much of Balogh's testimony is ultimately of no import since it addressed problems in plaintiff's case that are clear without the need for an expert to point them out (such as his critiques of Yee). The only potentially useful part of his testimony is the portion addressing plaintiff's objections to the accounting, but his opinions do not resolve the problems with the accounting that are discussed below. For instance, as will be discussed, Yamamoto admitted that he was not sure what some of the disputed amounts were for and does not have records substantiating many of the "loan" payments. Balogh's conclusory assertions about these issues were unhelpful (*see, e.g.*, *id.* at 11 ["Based on the documentation provided, there was no direct indication or evidence of personal use of funds"], 13 ["I observed documentation provided by management detailing expenses covered on behalf of Satsuma. This document accounts for the revenues of Satsuma as repayment for such expenses. Such expenses were further documented within the general ledger as money due to JForward"]). Conclusory expert testimony that Balogh looked at the records and saw nothing wrong is not persuasive (*see also Faber v New York City Hous. Auth.*, 258 AD2d 394 [1st Dept 1999], citing *Nevins v Great Atl. & Pac. Tea Co.*, 164 AD2d 807, 808 [1st Dept 1990]). Thus, even assuming the lack of backup in the accounting could be overcome by expert testimony, the court is unpersuaded that Balogh's testimony credibly fills the evidentiary gaps. Thus, no part of Balogh's testimony provides any basis to refrain from imposing surcharges.

That leaves the court with only the records defendants submitted and the lay-witness testimony to determine if defendants' filings qualify as an accounting. The court has discretion to determine whether they do (*see Seretis v Fashion Vault Corp.*, 110 AD3d 547, 548 [1st Dept 2013]; *see also Grgurev v Licul*, 233 AD3d 509, 509-10 [1st Dept 2024],

[3] On cross-examination, Yee's expert report (Dkt. 689) was admitted into evidence on consent (*see* Dkt. 851 at 5-6). Yee's report, which the court considered, does not alter the analysis. Moreover, because of the serious mistakes that were pointed out in defendants' brief, the court does not credit Yee's opinions.

citing *Soley v Wasserman*, 639 F Appx 670, 677 [2d Cir 2016]). This is a close call. Here, despite the less-than-ideal manner in which defendants accounted for the Company's dealings, the court nonetheless finds that defendants' submissions can be considered as an accounting.

But this conclusion only gets defendants so far. Both plaintiff and the court cautioned defendants that the way in which they purported to account ran serious risks. The manifestation of that risk in this case is not a ruling that defendants entirely failed to account; it was significant evidentiary gaps at trial that defendants were incapable of filling.

So having found that defendants satisfied their initial burden to account, the burden shifted to plaintiff to show that the accounting is inaccurate or incomplete (*see Schulman v Levy, Sonet & Siegel*, 302 AD2d 321 [1st Dept 2003]). The court's focus at trial accordingly was on plaintiff's itemized objections (Dkt. 475). Defendants correctly explain that some of those objections about what was supposedly missing from the accounting are clearly incorrect (*see* Dkt. 857 at 23). However, as set forth below, plaintiff proffered multiple, significant objections to which defendants failed to submit a satisfactory response.[4] This will result in surcharges on a derivative basis, with recovery belonging to the Company (*see Glenn v Hoteltron Sys., Inc.*, 74 NY2d 386, 392 [1989], *accord Mohinani v Charney*, 208 AD3d 404, 405 [1st Dept 2022]). Plaintiff's objection seeking a surcharge on total income is overruled. So too is plaintiff's request for a direct recovery (*see O'Mahony*, 2023 WL 2020049, at *4).[5]

Nor is there any merit in plaintiff's contention that "with a lease that ran through November 2027, it is not unreasonable for the Court to also include prospective additional damages of $500,000 for another five years of operations at a modest $100,000 annually" (Dkt. 865

[4] Defendants assert that they are exculpated from liability based on § 5.9 of the Operating Agreement (*see* Dkt. 857 at 70). They do not meaningfully expound on this argument aside from quoting the section and stating in conclusory fashion that "plaintiff has failed to plead fraud, gross negligence, or willful misconduct" (*see id.*). It is unclear why, after trial, defendants are making an argument about the pleading rather than the proof. While the argument raises potentially novel issues of how to assess burden shifting on an accounting in light of an exculpatory provision, those questions are better left for a case in which the argument is more meaningfully developed. Here, it is clear that a fiduciary who is required to account for funds and fails to do so is either presumed to have taken the funds and thus committed willful misconduct or it is the failure to account itself that is willful misconduct. Any other conclusion would be inconsistent with settled First Department law establishing that fiduciaries have an "absolute" obligation to account (*see Grgurev v Licul*, 203 AD3d 624 [1st Dept 2022]); it would impossibly shift the burden of proof to a plaintiff that, due to the failure to account, lacks the ability to explain the use of the funds. Furthermore, the extent to which such obligation may be modified and whether that rule should depend on the type of business entity or fiduciary context is not fairly presented here.

[5] While, at trial, plaintiff tried to frame some of her claims as direct, the court does not find that there is credible admissible evidence supporting any direct recovery that was within the scope of the pleaded claims, such as tax liability claims based on documents disclosed for the first time either during or shortly before trial.

at 12). No legal authority is submitted supporting the suggestion that surcharges may be imposed based on future breaches that have not yet occurred. But even if there was a basis to conclude that some subset of this amount is to account for the present value of lost corporate opportunities, plaintiff does not provide a sufficient explanation of why they should be valued at $100,000 per year. Calling the amount "modest" does not justify awarding an arbitrary amount of damages.

Plaintiff's Objections to the Accounting & the Surcharges

Turning to the specific objections, the second and fifth seek surcharges totaling $1,156,941 composed of: (1) $569,000 of defendant JForward Inc.'s (JForward) operating expenses; (2) $267,941 diverted and commingled with Stripe, Bill.com and Goldbelly funds; and (3) $320,000 in diverted and commingled funds from other sources (Dkt. 865 at 13). These objections do not warrant a surcharge.

Plaintiff avers that the $569,000 represents "half of the operating expenses listed on the P&L from 2020 (divided by four to reflect half from June onward, or $209,000); 2021 ($306,000) and 2022 ($54,000)" and that a surcharge is warranted because Satsuma "paid all expenses for the JForward entities" (*id.* at 14, citing Dkt. 703). Plaintiff acknowledges defendants' assertion "that there is documentation of payments made to Satsuma from JForward," but she objects that "they reference only five total ledger payments" totaling "$44,801.57 – a sum Mr. Yamamoto does not explain, the bulk of which is a debit of $31,093.86, for revenues that Satsuma collected at Mr. Yamamoto's event 'Japan Fes' – which the ledger states was transferred to JForward" and that "there is no explanation of why Satsuma, which staffed the event and paid for the food and labor costs would not retain the revenue--which is categorized as a 'Loan'" (Dkt. 865 at 15; *see* Dkt. 694 at 197). Defendants aver that "documentation provided includes detailed records of expenses covered by JForward on behalf of Satsuma ... [,] these expenses are transparently recorded in the general ledger as amounts due to JForward" and that "revenues from Satsuma were appropriately used to repay these expenses" (Dkt. 857 at 27). Plaintiff objects that defendants' brief provides no further explanation beyond merely citing an entry on the general ledger purporting to show repayment of a loan of less than $4,000 (*see* Dkt. 694 at 197).

Review of the portions of Satsuma's general ledger referencing JForward reveals only a few entries that require explanation based on plaintiff's objections to the accounting. Aside from the management fees that were addressed on summary judgment and the $44,801.57 addressed in defendants' brief, plaintiff has not cited any credible evidence or specific portions of the general ledger reflecting payment of JForward's expenses totaling more than $500,000. Instead, plaintiff merely relies on the total expenses set forth on Satsuma's Profit and Loss Statements and posits, without explanation, that half of them should be surcharged because they were really payment of JForward's expenses.

Plaintiff's claim that half of the expenses on Satsuma's Profit and Loss Statements were not really reflective of its own expenses was not fairly raised in the objections to the accounting (*see* Dkt. 475 at 15). It was raised for the first time in her post-trial brief.

Nonetheless, if plaintiff had cited evidence showing that Satsuma paid more than $500,000 of JForward's expenses there might have been a basis to impose a surcharge of this magnitude. But plaintiff cites no such evidence and does not explain the methodological basis for imposing this type of arbitrary surcharge. Plaintiff does not purport to know what portion of Satsuma's expenses were used to pay for other restaurants and businesses, yet simply posits that half of them should be estimated to have been for JForward's expenses. She does not explain the basis for this estimate. Perhaps it has something to do with the profit share on the Goldbelly revenue, but even that would not support the inference that half of all of Satsuma's expenses were incurred on behalf of JForward. While the court appreciates that there is credible evidence that Satsuma paid for certain JForward expenses and that the benefit derived by Satsuma may have been unfair, it does not follow that the result should be an arbitrary surcharge.

Had plaintiff taken a more comprehensive approach to this issue there may have been a basis for a substantial surcharge. There are several ways in which plaintiff could have calculated and justified a surcharge for a portion of the expenses that amounted to corporate waste, but what plaintiff suggests is not tenable. At trial, she failed to elicit fact testimony or submit expert testimony permitting the court to reach a reliable conclusion about the amount of this surcharge. The court cannot accept an estimate untethered to the evidentiary record and will not impose an arbitrary 50% surcharge.

Next, in the portion of their brief directly responding to the fifth objection, defendants do not explain how they have accounted for the $267,941 that was allegedly diverted or commingled (*see* Dkt. 857 at 27). Plaintiff suggests that this was the portion of the Goldbelly revenues that were sent directly to the JForward bank account and that they "do not appear as a line item on any of the Profit and Loss Statements, nor in the Satsuma bank account" (Dkt. 865 at 14). Plaintiff seeks a surcharge because "none of the revenue was ever paid to Satsuma" and was "not accounted for and cannot be tracked" (*id.*). Defendants, however, explain that this is not true and address the commingling claims in response to the fourth objection (*see* Dkt. 857 at 25-26). Plaintiff does not proffer a persuasive response to these points and, as discussed, her reliance on Yee's testimony is unavailing. This amount also will not be surcharged.

As for the $320,000, this is not a real number based on actual diversions or commingled funds but rather is based on plaintiff's assertion that since she does not know how much money may have been diverted "it is reasonable to surcharge...the average of $40,000 a month" (Dkt. 865 at 17). There is no evidentiary basis to do so. As noted, unlike other cases cited by plaintiff, she did not submit credible expert testimony sufficient to properly model unreported income (*see also* Dkt. 857 at 25). Once again, the court cannot surcharge an-essentially-made-up-for-litigation amount, particularly when plaintiff does not meaningfully respond to defendants' explanations for the "missing" $40,000 per month (*see DPB Family LLC v Eutychia Group LLC*, 2024 WL 2274929, at *4 [Sup Ct, NY County May 20, 2024]; *see also Sexter v Kimmelman, Sexter, Warmflash & Leitner*, 19 AD3d 298, 299 [1st Dept 2005]).

By contrast, there is some merit in the third objection, which seeks a surcharge for unreported cash (Dkt. 865 at 17). Plaintiff avers that "defendants failed to provide a witness with knowledge to explain any transactions" and cited trial testimony confirming that Yamamoto cannot account for the cash (*see id.* at 17-18). Defendants' brief confirms this (*see* Dkt. 857 at 33). Speculation about what might have been done with the cash is insufficient; defendants had the burden to account for it and made no serious effort to do so. They must be surcharged accordingly (*see O'Mahony*, 224 AD3d at 611).

But the problem, yet again, is that the amount of the proposed surcharge--$395,000--has no evidentiary basis. Plaintiff does not explain her calculation of this amount (*see* Dkt. 865 at 17-20). This number does not appear in the objections to the accounting. And the calculation in the brief does not add up to this total (*see id.* at 19). But even if the numbers added up, the amount is yet again based on a seemingly arbitrary "reasonable" 10% surcharge on "total income" suggested by counsel without any explanation of its methodological basis (*see id.*). While there is evidentiary support for the claim that cash was unreported and possibly misappropriated, as explained earlier, unlike in other cases in which virtually identical allegations were made, plaintiff did not submit fact or expert testimony supporting a credible estimate of the percentage of sales likely made in cash that would permit the court to reach a reliable conclusion about how much should be surcharged (*cf. O'Mahony*, 2023 WL 2020049, at *3). Thus, this surcharge is limited to $28,000—the amount for which defendants admitted they could not account (*see* Dkt. 865 at 18).[6]

Surcharges also are warranted based on the fourth objection. Plaintiff seeks a $236,000 surcharge for "Unexplained Miscellaneous Payments and a $100,000 surcharge for payments to Ibuskido" (Dkt. 865 at 20). As discussed below, while the amounts total far less than $336,000, there is no question that defendants have not accounted for these payments (*see id.* at 20-22). No loan documents were produced and defendants' brief provides no meaningful explanation of the loans or their terms aside from citing the general ledger (*see Polish Am. Resource Corp. v Byrczek*, 270 AD2d 96 [1st Dept 2000] ["While defendant claims that he did not personally make the cash withdrawals and therefore cannot account for them, all obscurities and doubt created by the failure to keep clear and accurate records are to be resolved against him"]). Defendants assert that "these loans were later repaid, as evidenced by entries in the general ledger and supported by bank statements" (Dkt. 857 at 28), but no citation to the record is provided for this assertion (*see DPB Family*, 2024 WL 2274929, at *2 ["Merely listing such a balance on an accounting without any clear backup or compelling testimony to support it is insufficient to carry defendants' burden to account for the Companies' money"]). While defendants correctly assert that "in closely-held businesses, it is common for loans and expense reimbursements to be conducted based on mutual trust and understanding among the parties involved, with transparent recording in the financial statements serving as adequate documentation" (*id.* at 28), the relative informality with which this type of business was run on a day-to-day basis does not obviate the need to formally account in litigation (*see O'Mahony*, 2023 WL 2020049, at *8 ["The whole point of an accounting is that plaintiffs and the court should

[6] This specific amount, based on a payment made on July 13, 2020 (*see* Dkt. 694 at 197), is raised again in other objections. It will only be surcharged once.

not have to guess; the fiduciary is obligated to explain and justify the use of money"]). Managers of restaurants who cannot account in detail about expenses and provide clear backup will be surcharged (*O'Mahony*, 224 AD3d at 611; *see DPB Family*, 2024 WL 2274929, at *2-3; *cf. Grgurev*, 233 AD3d at 509).

Likewise, defendants only attempted to explain some of the payments to Ibuskido, ignored others, and relied on documents that were marked at trial but not actually introduced into evidence (such as Dkt. 860, which is not properly translated). This approach to providing receipts is not a sufficient way of accounting (*see O'Mahony*, 2023 WL 2020049, at *8). While plaintiff acknowledges that she cannot clearly determine what happened to this money (*see* Dkt. 865 at 22),[7] that is not her burden (*see DPB Family*, 2024 WL 2274929, at *3).[8]

The court understands the basis for plaintiff's $100,000 proposed surcharge for insufficiently-explained payments to Ibuskido from revenues collected that JForward charged to Satsuma; thus, there is a reasonable basis for a surcharge in that amount. The other specific transactions cited in this portion of plaintiff's brief do not add up to $236,000 (*see* Dkt. 865 at 20-21). Setting aside duplicative amounts (such as the $28,000 payment that was already surcharged and the amounts in footnote 71 that are subsumed within the Ibuskido surcharge), plaintiff's brief only cites specific unexplained amounts totaling $97,350.72 ($2,398.78 + $1,298.42 + $130.71 + $3,047.95 + $10,381 + $1,500 + $31,500 + $31,093.86 + $16,000) (*see id.*; *see also* Dkt. 694 at 9, 10, 24, 65, 185, 370, 373, 408). Thus, with the Ibuskido surcharge, the total surcharge on this objection based on defendants' failure to account is $197,350.72.

In the sixth objection, plaintiff seeks "a post-judgment accounting for Satsuma and JForward to determine additional damages as both entities have defaulted" (Dkt. 865 at 22). This request is baseless. Plaintiff was provided with an accounting and surcharges are being imposed for unexplained amounts addressed in the objections. As noted, to the

[7] To be clear, plaintiff being unaware of what happened to certain funds is not enough to impose a surcharge. But here, unlike the objections discussed earlier, plaintiff actually identified specific amounts in the financial records that defendants could not explain.

[8] The court need not opine on whether Li was a credible witness since her personal knowledge has no material bearing on the relevant issues on which defendants are being held liable. Those issues turn on defendants' failure to carry their own burden to account. Even in the absence of any credible testimony by Li, the outcome would be the same. By contrast, defendants contend that "Yamamoto's testimony was not only coherent but also corroborated by independent records and other witnesses, solidifying its reliability" and that "his straightforward demeanor and commitment to transparency starkly contrast with the Plaintiff's speculative and unsubstantiated claims" (Dkt. 857 at 19). Li's credibility is not the benchmark for assessing Yamamoto's credibility. The court accepts some of his testimony as credible but, as noted, the credibility of other portions of his testimony was beside the point. A fiduciary who testifies to lacking particular factual recollections and lacks sufficient documentary backup for certain issues will be surcharged even if his testimony is credible on other issues.

extent that plaintiff wanted to prove that more money is missing she should have submitted proper expert testimony from a forensic accountant.

In the seventh objection, plaintiff seeks an $88,619.68 surcharge "for unexplained transfers and loans" (Dkt. 865 at 23). "Yamamoto did not know why the loans are booked as 'expenses' in the ledger" and did not know "if the $30,000 from JForward to Satsuma in 2019 and other loans totaling $73,782.89 made from October 2021 to March 2022 were repaid or with interest; nor could he explain what the twelve 'uncategorized assets' were for in 2019" that appear to be "mostly debits that were adjusted year end with a $20,494.89 payment" despite "the total in and out that year alone was $88,619.68, which is not accounted for" (*id.*). Defendants' brief does not dispute that Yamamoto did not answer these questions in his testimony and they confirmed that there are no loan agreements in evidence (*see* Dkt. 857 at 28). Thus, Yamamoto's failure to carry his burden to properly account must result in a surcharge.[9] But here too, the total amount in plaintiff's brief does not correspond to the specific amounts cited. This surcharge is limited to $83,288 ($30,000 + $73,782.89 - $20,494.89) (*see* Dkt. 865 at 24).[10]

Eighth, plaintiff seeks a $121,684.95 surcharge for management and professional fees (Dkt. 865 at 25). Defendants were granted summary judgment on most of the issues addressed by this objection (Dkt. 672 at 2). The balance of the objection is unpersuasive and is overruled.

Finally, the ninth objection addresses admittedly duplicative issues (*see* Dkt. 865 at 26). It also addresses plaintiff's claim for a return of her $55,000 capital contribution and a requested surcharge based on $54,750 that Yamamoto never contributed (*see id.* at 27), along with other unaccounted funds (*see id.* at 28). Plaintiff does not provide any explanation for why she is entitled to return of her capital contribution or a surcharge based on inaccuracies in the way in which the capital accounts of other members are recorded. At most, if and when the Company is dissolved the final distributions may need to be adjusted accordingly. However, plaintiff has not cited authority requiring a surcharge under these circumstances. The other issues raised in this objection are indeed duplicative.

Other Issues

There were certain significant issues that were addressed during discovery and summary judgment that were not meaningfully addressed in plaintiff's post-trial brief. For instance, as indicated at the outset, there were major questions about the intended scope of the Company and its intellectual property. The court declines to opine on the evidence about these issues that are addressed in defendants' brief but not addressed in plaintiff's brief. While the testimony cited by defendants is of varying degrees of credibility (and, to

[9] As plaintiff explains, and as previously noted, on this issue and many others defendants make arguments based on documents that are not in evidence. The court did not consider documents cited in defendants' brief that were not admitted into evidence at trial or testimony about those documents.

[10] The rest of this objection addresses duplicative Ibuskido payments (*see* Dkt. 865 at 24-25).

be sure, some of the testimony about the trademark and the intended scope of the Company was highly questionable), there is no need to opine on issues that plaintiff essentially abandoned.

The court also largely declines to address various incorrect assertions in defendants' brief regarding the factual record and the procedural history where they are irrelevant to the disposition or those based on documents that were not actually admitted into evidence. Two, however, merit mention in light of the defendants' serious, demonstrably false accusations. First, defendants claim "plaintiff misled the court in obtaining the Order nullifying the shares transfer between Mr. Yamamoto and the other members of Satsuma" because "her husband knew and approved of the sale, and there is no doubt that this was communicated to her" (Dkt. 857 at 7). The court was not misled. Rather, the court held that the lack of the contractually-required written approval rendered the transfers void and cited ample authority providing that "transfers of membership interests in violation of these provisions are void and cannot be ratified" (Dkt. 135 at 2). Yamamoto did "not dispute that the transfers ... did not comply with Article VIII of the operating agreement" (*id.*). Second, defendants suggest the court was duped into ordering an accounting because plaintiff had access to the Company's books and records all along (*see* Dkt. 857 at 38-39). The court was not misled. Rather, the court explained that an accounting was required regardless of the book-and-records access provided to plaintiff (*see* Dkt. 135 at 1; *see also id.* at 2 ["access to books and records is no substitute for an accounting"]).

There is a lot more in defendants' brief that plaintiff's brief does not meaningfully address. But despite defendants' extensive discussion of the factual record, much of it has no bearing on the sufficiency of their accounting of the disputed issues and much of the unrebutted factual recitation is irrelevant to and does not fill the evidentiary gaps discussed earlier. The court does not fault defendants for addressing these issues; they likely did not foresee that plaintiff might not press them in her brief. It is unclear if plaintiff was persuaded by many of their points or if she chose not to address certain issues for other reasons. Regardless, there is no need to opine on the messier portions of the record that pertain to issues that were either not meaningfully addressed in plaintiff's brief or related to issues resolved in defendants' favor on other grounds. Aside from noting a few issues that overlap with the surcharges, plaintiff's brief does not sufficiently explain the amount of harm suffered by the Company due to the loss of corporate opportunities or provide any foundation for the court to grant further relief.[11] Plaintiff, in fact, acknowledges that some of the amounts sought in her first objection included these damages (*see* Dkt. 865 at 46).

The court also finds that there is no basis for awarding any damages based on the severed declaratory judgment regarding the void membership interest transfers (*see* Dkt. 155). The additional damages requested by plaintiff are both speculative and duplicative (*see* Dkt. 865 at 49). Regardless of whether the challenged transactions would not have occurred

[11] For instance, while plaintiff had a claim that the Company's kitchen was used for other business without compensation (*see* Dkt. 865 at 16), plaintiff does not explain how much money the Company should have been paid for use of its resources.

without these transfers, to the extent the transactions were improper and proven, damages have already been awarded.[12]

The court declines to award punitive damages. Defendants are being surcharged due to their failure to account and not based on direct proof of conduct that rises "to the level of moral culpability necessary to support punitive damages" (*Young Adult Inst., Inc. v Corp. Source, Inc.*, 236 AD3d 483, 485 [1st Dept 2025]).

Judgment on the surcharges will be entered against the Company's managing members--Yamamoto, who submitted the accounting, and defendants JWD Inc. (JWD) and Masahiko Tokoroki.[13] By order dated February 28, 2022, the court granted plaintiff's motion for a default judgment against JWD and Tokoroki and provided that "monetary damages [will] be determined at the time of trial" (Dkt. 135 at 3). The declaratory judgment, which was entered after the court granted plaintiff's motion for summary judgment on her claim that the membership interest transfers of JWD and Tokoroki were void (*see id.* at 2), provides that the Company's members are the same as those set forth in the Operating Agreement (*see* Dkt. 155). The Operating Agreement provides that all of the original members aside from Li were Managing Members with the authority to manage the Company and thus had the requisite fiduciary duty obligating them to account (*see* Dkt. 688 at 3, 11-12, 30; *see also* Dkt. 151 [discussing that Li was not a managing member and did not have the right to act on behalf of the Company]). While JWD and Tokoroki defaulted on their obligation to account, plaintiff does not provide any reasons why the amount of their surcharges should be any greater than Yamamoto's.

Aiding and Abetting

As discussed, the surcharges are only based on the failure to account rather than proof of actual wrongdoing. While such proof was not necessary to impose a surcharge, its absence is fatal to the claim for aiding and abetting breach of fiduciary duty. JForward lacked a fiduciary duty to the Company and was not ordered to account. Thus, without credible proof of how JForward substantially assisted Yamamoto's breaches it cannot be held liable (*see Kaufman v Cohen*, 307 AD2d 113, 126 [1st Dept 2003]). That JForward may have benefited from some of the breaches is not enough.

[12] The same is true for certain other minor issues. Noting that defendants may have inadequately addressed them does not alleviate the need for plaintiff to actually explain how much should be awarded (*see, e.g.*, Dkt. 865 at 41-43). While plaintiff again acknowledges that some of these amounts are subsumed in the damages sought in the objections to the accounting (*see id.* at 49), for the avoidance of doubt the court did not overlook them—rather, damages are only being awarded based on what was properly addressed in the briefs.

[13] Tokoroki's name appears to be misspelled in the Operating Agreement (*see, e.g.*, Dkt. 688 at 2) and in other places in the record such as plaintiff's brief (*see, e.g.*, Dkt. 865 at 6). The court assumes the correct spelling appears in Tokoroki's direct-testimony affidavit, in which he confirms that he indeed is the same person that has a 5% membership interest in the Company (Dkt. 835 at 1-2; *see* Dkt. 688 at 30).

Regardless, plaintiff has not proven this claim. Plaintiff spends only three pages of her brief on this cause of action and most of that was merely recitation of the legal standard (*see* Dkt. 865 at 50-52). Plaintiff yet again ignored this court's admonitions to stop relying on an alter-ego claim that is not actually part of this case (*see* Dkt. 449 at 2). Instead, plaintiff begins this section of the brief writing that "JForward Inc. is Tatsuya Yamamoto," that "it is his alter ego and he controls the entity" and that "it was a cut out for the sole purpose of defrauding Satsuma" (Dkt. 865 at 50). This argument is unavailing given the court's previous orders (*see* Dkt. 449 at 2-3 ["Use of inflammatory remarks such as 'legitimate business' and 'sham' provides no clarity and gives the impression that plaintiff is seeking discovery based on legal theories that, like veil piercing, are beyond the scope of the case and which are not supported, at least on this record, by anything other than rhetoric"]). The rest of this section merely proffers other conclusory assertions regarding JForward being held liable because "JForward is Yamamoto, and therefore knew of the bad acts that Yamamoto was committing against Satsuma to benefit JForward" (Dkt. 865 at 51). They are inconsistent with law of the case and are insufficient to prove aiding-and-abetting liability.

The Counterclaims

The court rejects defendants' counterclaim seeking recovery from Li (*see* Dkt. 857 at 66-68). Setting aside the lack of citation to legal authority, the court does not find there to be any credible evidence supporting a non-speculative basis to conclude that Li's actions actually harmed the Company. The court is unpersuaded by their assertions about what would have occurred with the lease (the rent was payable anyway and any possible concessions are speculative and not supported by credible evidence) and with Goldbelly (for which the harm mostly amounted from the predicable but unfortunate collateral effects of this litigation) but for her conduct. Nor does the court find there to be a credible evidentiary basis to support the amount of damages sought. Defendants certainly are not prevailing parties; thus, they cannot recover fees from Li under § 13.10 of the Operating Agreement.

Conclusion

The court imposes surcharges totaling $308,638.72 ($28,000 + $197,350.72 + $83,288). Plaintiff suggests that pre-judgment interest should run from June 1, 2020. While the court does not accept the proffered rationale for that date (*see* Dkt. 865 at 54), in light of when the numerous challenged transactions occurred this is a reasonable intermediate date from which pre-judgment interest will run (*see Delulio v 320-57 Corp.*, 99 AD2d 253, 255 [1st Dept 1984]).

Plaintiff is entitled to recover the reasonable attorneys' fees incurred for procuring this derivative recovery on behalf of the Company (BCL § 626[e]; *see Glenn*, 74 NY2d at 393). Plaintiff has only incurred a modest $125,000 in fees (*see* Dkt. 865 at 52). Defendants cannot possibly dispute that this amount is eminently reasonable relative to the benefit achieved and in light of the many years it took to litigate this case to trial (*see Matter of Freeman*, 34 NY2d 1, 9 [1974]). It is far below what most firms that appear in

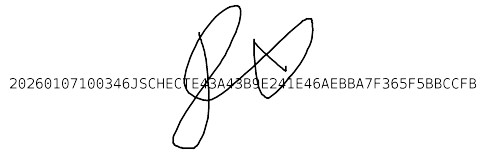
this court would likely have billed. Thus, the court will direct judgment in favor of the Company on the surcharges against Yamamoto, JWD, and Tokoroki, while the fees will be payable by the Company to plaintiff.

While the court seriously considered imposing sanctions for the troubling incident that occurred at trial (*see* Dkt. 865 at 44-45), this case has unfortunately been rife with troubling conduct (*see* Dkt. 568 at 2-3). While the prior incidents do not at all justify what happened, the court declines to impose sanctions. Significantly, defense counsel, who should never again be quick to lodge serious accusations, swiftly took responsibility for his mistake, which was expeditiously brought to light (Dkt. 852 at 113). Hopefully, the parties and their counsel have come to realize that their approach to this case was far from ideal and that they would all have benefited tremendously from more professional, collegial conduct.

In closing, this case should serve as another cautionary tale in a dispute among owners of a closely-held restaurant and serve as a reminder that rhetoric cannot overcome a lack of proof by the fiduciary or substitute for a validly supported case by the derivative plaintiff. The net result, as here, is often messy and unsatisfying. All the court can do when parties chart this type of course is rule on the evidence actually presented based on the applicable legal standards.

Accordingly, it is ORDERED that the Clerk is directed to enter judgment: (1) in favor of nominal defendant Satsuma USA LLC and against defendants Tatsuya Yamamoto, JWD Inc., and Masahiko Tokoroki, jointly and severally, in the amount of $308,638.72, with 9% pre-judgment interest from June 1, 2020 until judgment is entered; and (2) in favor of plaintiff Jeanette Li and against nominal defendant Satsuma USA LLC in the amount of $125,000.

Plaintiff shall e-file a proposed judgment to the Clerk consistent with this order.



DATE: 1/7/2026 **JENNIFER G. SCHECTER, JSC**

Check One: [X] **Case Disposed** [ ] **Non-Final Disposition**