SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
Index No.:_____

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JONY HEREDIA, PERSONALLY AND AS THE ADMINISTRATOR OF THE ESTATE OF ROSANNA MONTEAGUDO, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF LANCO BROKERAGE CORP.,

Plaintiffs,

v.

LANCO BROKERAGE CORP., JESUS ACOSTA, KENIA TAVAREZ, JOHN DOE #1-5, JANE DOE #1-5, XYZ CORP. #1-5,

Defendants.

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' ORDER TO SHOW CAUSE

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PRELIMINARY STATEMENT

Plaintiffs respectfully submit this memorandum of law in support of their Order to Show Cause seeking an order: (1) compelling Defendants to give Plaintiffs access to the books and records of Lanco Brokerage Corp. ("LANCO"); (2) enjoining Defendants from dissipating corporate assets, including the using of approximately $500,143.96 representing the proceeds of an insurance policy against the life of Rosanna Monteagudo, now deceased; (3) compelling Defendants to declare the payment of dividends; (4) enjoining Defendants from interfering with Plaintiffs' right to participate in the management of LANCO, including the right to participate in corporate meetings and making management decisions; (5) appointing a receiver; and (6) compelling Defendants to account to LANCO and Plaintiffs for their actions as officers, directors and shareholders in control of LANCO. The relief sought is necessary to prevent irreparable harm to Plaintiffs and LANCO, to preserve the status quo, and to protect Plaintiffs' rights as 50% shareholders in a closely held corporation.

STATEMENT OF FACTS

Summary

Plaintiff Jony Heredia is the surviving spouse, sole distributee, and administrator of the estate of Rosanna Monteagudo, who died in 2023 (Exhibit "A," Affidavit of Jony Heredia in Support of Order to Show Cause sworn to on July 28, 2025 ("Heredia Affd."), Page 1, 4). At the time of her death, MONTEAGUDO owned a 50% interest in LANCO, a closely held insurance brokerage firm (Exhibit "B," Verified Complaint dated July 28, 2025 with Exhibits (the "Complaint"), Page 5, Heredia Affd., Page 2). The remaining 50% is owned by Defendants Jesus Acosta (35%) and Kenia Tavarez (15%) (Complaint, Page 1, Heredia Affd., Page 2). Following

Ms. Monteagudo's death, LANCO received approximately $500,143.96 as the beneficiary of a life insurance policy insuring her life (Complaint, Page 6, Heredia Affd., Page 3). Since that time, Defendants have exercised exclusive control over LANCO, excluded Plaintiffs from management, denied Plaintiffs access to books and records, and engaged in self-dealing and waste, including the hiring of family members, paying themselves de facto dividends, and using corporate assets for their benefit (Complaint, Page 20, Heredia Affd., Page 4). Plaintiffs have made repeated demands for access to LANCO's books and records, an accounting, and payment of their share of corporate assets, all of which Defendants have failed to do (Complaint, Page 14, Heredia Affd., Page 4).

Without notice, knowledge, consent, authorization, and waiver from Plaintiffs, Defendants have also hired family members to work for LANCO, including Defendants' two sons, Allen Acosta and Kelvin Acosta, whom they have also unilaterally elected Vice Presidents of LANCO (Complaint, Page 8, Heredia Affd., Page 4).

Factual Allegations

In a transaction that appears to have started in 2006 and closed in 2019, MONTEAGUDO purchased a 50% interest in LANCO from Reina Maribel Perez. ACOSTA and TAVAREZ purchased a 35% and 15% interest, respectively, of LANCO, also from Reina Maribel Perez in the same transaction (Exhibit "B," Complaint, Page 4). At the time of her death, MONTEAGUDO remained the shareholder with the largest interest in the shares of LANCO, owning 50% of LANCO's shares (Complaint, Page 4).

Prior to her death, MONTEAGUDO was the insured in a policy of insurance issued by New York Life Insurance Company with death benefits of approximately $500,143.96, of which

LANCO was the beneficiary (Exhibit "C," Complaint, Page 6, Heredia Affd., Page 3). Following MONTEAGUDO's death, LANCO received the approximately $500,143.96 representing the proceeds of the Policy (Complaint, Page 6, Heredia Affd., Page 3). Defendants have caused LANCO to pay de facto dividends to themselves in various forms, which include, but are not limited to, loans from LANCO, personal use of vehicles that are leased or financed by LANCO, as well as other benefits (Complaint, Page 7, Heredia Affd., Page 4).

While in control of LANCO's business operations, Defendants have also failed to give Plaintiffs access to all books and records related to LANCO's business despite Plaintiffs having made requests and the Estate having an ownership interest in LANCO (Exhibit "D," Complaint, Page 9, Heredia Affd., Page 3). Plaintiffs have also demanded an accounting from Defendants, and Defendants have failed and refused to do so (Exhibit "D," Complaint, Page 8, Heredia Affd., Page 3).

Via letter dated October 16, 2024, Plaintiffs have made a demand to inspect the books and records of LANCO from January 1, 2019, through the present (Complaint, Page 13). The demand requested:

> The books, records, and financial information to be provided and be made available for review and inspection include, but are not limited to: the Company's filing receipt, certificate of incorporation, articles of organization, by-laws, operating agreements, minutes of meetings, resolutions, names and addresses of all shareholders and members, copies of all agreements, including shareholders' agreements and operating agreements, tax returns, contracts, bank accounts and statements of all active and closed bank accounts, receipts, invoices, account payables, account receivables, accounting ledgers, licenses, permits, and any and all other documents of the Company. This request applies to all documents, books, and records of the Company during the Relevant Period.

See Exhibit "D." However, Defendants only provided Plaintiffs with one income tax return for 2023 and profit and loss reports for 2019 through 2024 (Complaint, Page 13, Heredia Affd., Page 3).

Plaintiffs desire to sell the Estate's shares of LANCO and have requested to review LANCO's books and records, including its business and financial records and information, in order to ascertain LANCO's value. Defendants have failed to give Plaintiffs access to LANCO's books and records as well as financial documents and information (Complaint, Page 9, Heredia Affd., Page 3).

Defendants have had complete control of the business operations since MONTEAGUDO's death. Defendants continue to cause LANCO to pay to Defendants the de facto dividends. These actions convey a benefit upon Defendants' benefit and losses, damages, and detriment of LANCO and Plaintiffs (Complaint, Page 7, Heredia Affd., Page 4). While benefiting themselves, Defendants have failed to pay Plaintiffs a portion of the proceeds of the insurance policy, commissions, de facto dividends, and any other income in connection with the operation of the brokerage's business (Complaint, Page 7, Heredia Affd., Page 4). The de facto dividends include, but are not limited to, loans from LANCO, personal use of vehicles that are leased or financed by LANCO, as well as other benefits. Defendants, while in control of LANCO, have also failed and refused to declare or pay dividends to Plaintiffs commensurate with their ownership interest (Exhibit "E," Complaint, Page 18, Heredia Affd., Page 4).

Following the death of Rosanna Monteagudo, Defendants have systematically excluded Plaintiffs from any meaningful participation in the management of LANCO by, among other things: a. Failing to notify Plaintiffs of board meetings; b. Making unilateral corporate decisions,

like hiring family members and electing them as officers, without consultation with or input from Plaintiffs; c. Denying Plaintiffs access to corporate facilities; and d. Refusing to provide Plaintiffs with financial information necessary to determine LANCO's value (Complaint, Page 21, Heredia Affd., Page 3).

Defendants have exercised exclusive control over LANCO's business and assets to the exclusion and detriment of Plaintiffs, have engaged in self-dealing, mismanagement, and waste of corporate assets, and have failed to provide Plaintiffs with access to books and records. Defendants' conduct has resulted in a deadlock in the management of LANCO, and the affairs of the corporation cannot be effectively managed by the shareholders or directors (Complaint, Page 1).

LEGAL ARGUMENTS

Preliminary Injunctions

A preliminary injunction may be granted upon notice to the defendant, N.Y. CPLR 6311(a), " . . . in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss, or damage will result unless the defendant is restrained before the hearing can be had." N.Y. CPLR 6301.

"If, on a motion for a preliminary injunction, the plaintiff shall show that immediate and irreparable injury, loss, or damages will result unless the defendant is restrained before a hearing can be had, a temporary restraining order may be granted without notice. Upon granting a temporary restraining order, the court shall set the hearing for the preliminary injunction at the earliest possible time." N.Y. CPLR 6313(a).

A preliminary injunction substantially limits a defendant's rights and is thus an extraordinary provisional remedy requiring a special showing (*Margolies v Encounter, Inc*., 42 N.Y.2d 475, 479)[1977]. "Accordingly, a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tipping in favor of the

moving party" (*1234 Broadway LLC v West Side SRO Law Project*, 86 AD3d 18, 23-24 [1st Dept 2011], *citing Doe v Axelrod,* 73 NY2d 748, 750 [1988]; *61 W. 62 Owners Corp. v CGM EMP LLC*, 77 AD3d 330, 334 [2010], *mod* 16 NY3d 822 [2011]; *Stockley v Gorelik*, 24 AD3d 535, 536[2005]).

Likelihood of Success on the Merits

> With respect to the likelihood of success on the merits, the threshold inquiry is whether the proponent has tendered sufficient evidence demonstrating ultimate success in the underlying action (*Doe v. Axelrod, Id.* at 750-751). While the proponent of a preliminary injunction need not tender conclusive proof beyond any factual dispute establishing ultimate success in the underlying action (*Sau Thi Ma v Xuan T. Lien*, 198 AD2d 186, 187 [1993], *lv dismissed* 83 NY2d 847 [1994]; *Ying Fung Moy v Hohi Umeki*, 10 AD3d 604, 605 [2004]), "[a] party seeking the drastic remedy of a preliminary injunction must [nevertheless] establish a clear right to that relief under the law and the undisputed facts upon the moving papers" (*Gagnon Bus Co., Inc. v Vallo Transp., Ltd*., 13 AD3d 334, 335[2004]). Conclusory statements lacking factual evidentiary detail warrant denial of a motion seeking a preliminary injunction (Village of *Honeoye Falls v Elmer*, 69 AD2d 1010, 1010 [1979]). Furthermore, CPLR 6312 (c) requires that the court hold a hearing when "the elements required for the issuance of a preliminary injunction are demonstrated in the plaintiff's papers," and the defendant raises issues of fact with respect to such elements (*Jamie B. v Hernandez*, 274 AD2d 335, 336 [2000]).
>
> *Id.*

"In balancing the equities, the court must weigh the harm suffered by the plaintiff if the injunction were denied against the harm suffered by the defendant if the injunction were granted." (*Bank of AM., N.A. v. PSW NYC LLC*, 29 Misc 3d 1216(A) *13 [Sup. Ct. NY County, 2010], *citing Edgeworth Food Corp. v. Stephenson*, 53 AD2d 588 [1st Dept. 1976] (court balanced "convenience and relative hardship—the harm to plaintiff from denial of the injunction as against the harm to defendant from granting it").

Here, Plaintiffs' motion via Order to Show Cause for a preliminary injunction should be granted as Plaintiffs are likely to succeed on the merits of their claims, Plaintiffs will suffer irreparable injury in the absence of injunctive relief, and the equities favor the granting of the injunctive relief.

POINT I.

PLAINTIFFS ARE ENTITLED TO ACCESS THE BOOKS AND RECORDS OF LANCO

Plaintiffs request an order compelling Defendants, their agents, and attorneys to provide Plaintiffs with full access to all books and records of the corporations, including, but not limited to, corporate, financial, and management records of the corporation during the pendency of this action. Under common law and N.Y. Bus. Corp. Law § 624, any shareholder of record has the right to inspect the books and records of a New York corporation for any proper purpose. This right is absolute as to certain records (e.g., shareholder lists, annual balance sheets, profit and loss statements) and subject only to a showing of bad faith as to others.

"Under New York law, shareholders have both statutory and common-law rights to inspect a corporation's books and records so long as the shareholders seek the inspection in good faith and for a valid purpose." (*Ret. Plan for Gen. Emps. of City of N. Miami Beach v McGraw-Hill Cos., Inc. [McGraw]*,120 AD3d 1052, 1055 [1st Dept 2014] [citations omitted]; *see also Crane Co. v Anaconda Co*., 39 N.Y.2d 14, 19[1976].) "The statutory right supplemented, but did not replace, the common-law right." (*McGraw*, 120 A.D.3d at 1055 [citations omitted].) "Moreover, because the common-law right of inspection is broader than the statutory right, petitioners are entitled to inspect books and records beyond the specific materials delineated in BCL § 624(b) and (e)." *Id at* 1056 [citations omitted].

Proper purposes' are those reasonably related to the shareholder's interest in the corporation, and may include efforts to investigate management's conduct and to obtain information in aid of legitimate litigation. *See Tatko v Tatko Bros. Slate Co., Inc.,* 173 AD2d 917, 917-18 [3d Dept 1991].)

"Improper purposes are those which are inimical to the corporation, for example, to discover business secrets to aid a competitor of the corporation, to secure prospects for personal business, to find technical defects in corporate transactions to institute strike suits, and to locate information to pursue one's own social or political goals." (*Tatko*, 173 A.D.2d at 917-18 [internal quotation marks and citation omitted].) In *Beatrice Corwin Living Irrevocable Tr. v. Gen. Elec. Co.*, (2015 NY Slip Op 32656(U)) [Sup. Ct., NY County, 2015], the court noted that proper purposes "must be reasonably related to the shareholder's interest in the corporation, and may include efforts to investigate management's conduct and to obtain information in aid of legitimate litigation." (Citations omitted).

The right to verify proper management is specifically addressed in *Malone v. Dimco Corp.*, 68 Misc.2d 610 (N.Y. Sup. Ct. 1969), which stated: "The petitioners as stockholders have a right to examine the corporate books to determine whether the officers of the corporation are properly managing its affairs, even though upon an examination of the books it should appear that in fact there was no mismanagement." This principle was established in the seminal case of Matter of *Durr v. Paragon Trading Corp.*, 270 N.Y. 464 [1936], where the Court of Appeals affirmed a mandamus order compelling a corporation to allow shareholder inspection of its books and records.

"Furthermore, although the scope of the inspection right is broad, it is limited to those documents which in the trial court's exercise of reasonable discretion the situation requires be reviewed." (*Tatko*, 173 AD2d at 919)(citation omitted).

Here, Plaintiffs have a 50% interest in LANCO, and prior to her death, MONTEAGUDO participated in the management of LANCO, and subsequent to her death, Defendants have had full control of the management of LANCO. Defendants have also hired multiple family members and named them officers of the corporation with the knowledge, consent, or waiver from Plaintiffs.

Via letter dated October 16, 2024, Plaintiffs have made a demand to inspect the books and records of LANCO from January 1, 2019, through the present (Complaint, Page 13). The demand requested minutes of meetings, resolutions, names and addresses of all shareholders and members, copies of all agreements, including shareholders' agreements and operating agreements, tax returns, contracts, bank accounts and statements of all active and closed bank accounts, receipts, invoices, account payables, account receivables, accounting ledgers, licenses, permits, and any and all other documents of the Company. *See* Exhibit "D."

However, Defendants only provided Plaintiffs with one income tax return for 2023 and profit and loss reports for 2019 through 2024. These summary reports did not comply with the request for documents that are necessary for Plaintiffs to make an independent review of the financial affairs of LANCO. In addition to verifying the financial condition of LANCO, Plaintiffs wish to sell their interest in LANCO and have a good faith basis for making their request to have full access to all records of the company.

POINT II.

PLAINTIFFS ARE ENTITLED TO A PRELIMINARY INJUNCTION TO PREVENT THE USE AND DISSIPATION OF CORPORATE ASSETS

Plaintiffs seek an order enjoining Defendants from selling, transferring, assigning, converting, disposing, mortgaging, encumbering, or otherwise diminishing the value of the assets of the corporation as well as using LANCO's asset, and the approximately $500,143.96 paid by New York Life Insurance Company to LANCO upon the death of Rosanna Monteagudo, to pay for Defendants' legal costs and expenses related to this litigation without the written consent of the Plaintiffs.

In order "to prevail on a motion for a preliminary injunction," the movant has "the burden of demonstrating (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that a balancing of equities favors the movant's position." (*Walter Karl, Inc. v. Wood,* 137 AD2d 22, 26, [2d Dept. 1988]. Plaintiffs here are likely to succeed on their claims, including those for breach of fiduciary duty, unjust enrichment, and waste, declaration of dividends, accounting, based on Defendants' exclusion of Plaintiffs from management, self-dealing, and misappropriation of corporate assets.

A managing shareholder in a closely held corporation owes a fiduciary duty to other shareholders in the corporation, See *Littman v Magee*, 54 AD3d 14 [1st Dept 2008] (abrogated on other grounds by, *Centro Empresarial Cempresa S.A. v America Movil, S.A.B. de C.V.*, 17 NY3d 269, [2011]). Defendants breach their fiduciary duty to a minority shareholder when they divert profits to themselves, without disclosure to the shareholder, depriving the shareholder of his right to share therein. (*Cortes v. 3A N. Park Ave Rest Corp.*, 46 Misc 3d 670, 695 [Sup Ct, Kings County 2014]).

Defendants' conduct, as detailed in the record, demonstrates a pattern of self-dealing and disregard for their fiduciary obligations. Specifically, Defendants have:

- Failed to respond fully to Plaintiffs' demand for inspection of books and records, providing only a single tax return and summary profit and loss reports, and thereby denying Plaintiffs the ability to verify the financial condition of LANCO or to value their interest in the corporation.

- Hired family members and unilaterally named them as officers of LANCO, including electing Defendants' sons as Vice Presidents, all without notice, knowledge, or consent of Plaintiffs.

- Paid themselves and their family members de facto dividends and other benefits, such as loans from LANCO and personal use of corporate vehicles, while refusing to declare or pay dividends to Plaintiffs, despite LANCO's clear solvency and the receipt of substantial insurance proceeds.

- Excluded Plaintiffs from management, denied access to corporate facilities, and made unilateral corporate decisions to the detriment of Plaintiffs and the corporation.

These actions constitute a clear breach of fiduciary duty. As officers, directors, and controlling shareholders in a closely held corporation, Defendants owe Plaintiffs the utmost good faith, loyalty, and fair dealing. Their refusal to provide access to books and records, diversion of corporate assets for personal benefit, and exclusion of Plaintiffs from management are classic indicia of self-dealing and oppression. Such conduct also amounts to unjust enrichment, as Defendants have used their control to confer financial benefits upon themselves and their relatives at the expense of Plaintiffs and the corporation.

Moreover, the hiring of family members and payment of de facto dividends without proper corporate authorization or disclosure constitutes corporate waste and mismanagement. These actions dissipate corporate assets, undermine the integrity of corporate governance, and threaten to render any judgment in Plaintiffs' favor ineffectual.

Irreparable harm is present here since Defendants are in exclusive control of corporate assets, have already diverted the funds of the Corporation by hiring family members, paying de facto dividends, and controlling and refusing to share the approximately $500,143.96 insurance proceeds. Defendants are likely to continue dissipating assets absent court intervention. The balance of equities favors Plaintiffs, who seek only to preserve the status quo and prevent further harm pending resolution of this action.

The harm will be even greater if Defendants are permitted to not only hold on to the over $500,000 that they control and which the company received following Rosanna Monteagudo's death. Defendants would be rewarded for their misconduct if they were permitted to use the funds to then fight against Plaintiffs' plea to this court to enforce their rights. Consequently, Plaintiffs' request to enjoin Defendants from using the corporate assets, including the approximately $500,000 from the insurance policy, should be granted.

POINT III.

PLAINTIFFS ARE ENTITLED TO AN ORDER COMPELLING THE DECLARATION AND PAYMENT OF DIVIDENDS

Plaintiffs request an order compelling Defendants to declare and pay all dividends to which Plaintiffs are entitled as shareholders of Lanco Brokerage Corp., including any accrued and unpaid dividends, during the pendency of this action. In closely held corporations, courts

may intervene when majority shareholders abuse their power to withhold dividends from minority shareholders. In *Matter of Kemp & Beatley, Inc.*, 64 NY.2d 63, 74-75 [1984], the Court of Appeals held that, when the majority shareholders of a close corporation award de facto dividends to all shareholders except a class of minority shareholders, such a policy may constitute oppressive actions and serve as a basis for a dissolving the corporation. *Id.* at 75.

In *Matter of Kemp,* the Court stated that its equitable power "can be invoked when it appears that the directors and majority shareholders have so palpably breached the fiduciary duty they owe to the minority shareholders that they are disqualified from exercising the exclusive discretion and the dissolution power given to them by statute." *Id* at 69-70 (citation omitted). The court emphasized that this intervention is based on the "majority shareholders' fiduciary obligation to treat all shareholders fairly and equally, to preserve corporate assets, and to fulfill their responsibilities of corporate management with 'scrupulous good faith'…". *Id* (citation omitted).

In *Gordon v. Elliman*, 306 NY 456, 459 [1954], the court explained: "The test of whether an action to compel declaration of dividends is maintained in the interest of the corporation, is whether the object of the lawsuit is to recover upon a chose in action belonging directly to the stockholders, or whether it is to compel the performance of corporate acts which good faith requires the directors to take in order to perform a duty which they owe to the corporation, and through it, to its stockholders." In *Orloff v. Weinstein Enterprises, Inc.*, 247 AD 2d 63 [1st Dept 1998], where the court "directed dividends be distributed of an amount equal to at least 55% of annual corporate profits," shows that courts may not only compel the declaration of dividends but may also specify minimum dividend amounts in cases of oppressive conduct.

"[W]here, without doubt, the surplus of a corporation properly applicable to a dividend is ample for the purpose, and the directors, or a majority of them, acting in bad faith and without reasonable cause, refuse to declare a dividend, the courts will interpose in favor of those stockholders who otherwise would be without remedy." *Hiscock v. Lacy*, 9 Misc 578, 598 [Sup Ct, NY County 1894].

While Plaintiffs own a 50% interest in LANCO and, therefore, are equal shareholders, Defendants are in control of LANCO and have excluded Plaintiffs from management and control. Here, Defendants have paid themselves and their family members de facto dividends and other benefits, while refusing to pay Plaintiffs their proportionate share as 50% shareholders. Such conduct constitutes oppression and a breach of fiduciary duty, justifying judicial intervention to compel the declaration and payment of dividends. Defendants are causing LANCO to retain the proceeds of the Policy and, upon information and belief, LANCO is not insolvent, and the declaration of dividend will not render LANCO insolvent.

POINT IV

PLAINTIFFS ARE ENTITLED TO PARTICIPATE IN THE MANAGEMENT OF LANCO

Plaintiffs further request an order from the Court enjoining Defendants from interfering with Plaintiffs' rights as shareholders of LANCO, including the rights to enter the place of business of the corporate defendants and to manage, operate, and direct the business of the corporation. Plaintiffs also request that the Court compel Defendants to allow Plaintiff to participate fully in the management and operation of Lanco Brokerage Corp., including but not limited to attending and voting at meetings of the board of directors and shareholders, and participating in all management decisions.

Not uncommonly a participant in a closely held enterprise invests all his assets in the business with an expectation, often reasonable under the circumstances even in the absence of an express contract, that he will be a key employee in the company and will have a voice in business decisions." *Topper, Application of*, 433 N.Y.S.2d 359, 365 [N.Y. Sup. Ct. 1980]. Courts recognize "that in a close corporation the bargain of the participants is often not reflected in the corporation's charter, by-laws nor even in separate signed agreements. The parties' full understanding may not even be in writing but may have to be construed from their actions. Unlike their counterparts in large corporations, minority shareholders in small corporations often expect to participate in management and operations. 'Furthermore, generally, there is an expectation on the part of some participants that their interest is to be recognized in the form of a salary derived from employment with the corporation,' (Exadaktilos v. Cinnaminson Realty Co., 167 N.J.Super. 141, 400 A.2d 554 (1979) citing: 1974 Ariz.St.L.J. 409, 411-13; see also, O'Neal, 33 Business Lawyer, supra ; 55 Va.Law Rev., supra). These reasonable expectations constitute the bargain of the parties in light of which subsequent conduct must be appraised." *Application*

of Topper, 107 Misc. 2d 25, 34 [Sup Ct, NY County 1980] Shareholders in closely held corporations have a reasonable expectation of participation in management, particularly when they show that decisions made in their absence were either significant or adverse to the interests of the minority shareholders. (S*ee Orloff v. Weinstein Enterprises, Inc.*, 247 AD 2d 63, 67 [1st Dept 1998].) Whether the controlling shareholders act in their good business judgment is irrelevant when the defendants' actions have severely damaged plaintiffs' reasonable expectations and freeze plaintiffs out of their interest, in which case they can be deemed to have engaged in oppressive conduct. (*See Application of Topper*, 107 Misc. 2d at 28.)

Rosanna Monteagudo worked for and was involved in the management of LANCO prior to her death. However, after her death, Defendants visited Monteagudo's home, picked up the equipment and documents related to LANCO, and since then have systematically excluded Plaintiffs from all aspects of management, including failing to notify them of meetings, making unilateral decisions, and hiring family members whom they promoted to officers of the corporation. This exclusion is a breach of fiduciary duty and justifies injunctive relief requiring Defendants to permit Plaintiffs to participate meaningfully in management. As such, Plaintiffs' motion should be granted.

POINT V.

THE APPOINTMENT OF A RECEIVER IS WARRANTED

Plaintiffs additionally request an order appointing a temporary receiver pursuant to CPLR Article 64 to take charge of the property, assets, and business operations of Lanco Brokerage Corp. during the pendency of this action, with such powers and duties as the Court deems just and proper. The appointment of a receiver is an extraordinary remedy, but it is appropriate

where, as here, there is a deadlock, risk of further irreparable harm, and evidence of self-dealing and mismanagement.

Under Common Law

"Upon motion of a person having an apparent interest in property which is the subject of an action in the supreme or a county court, a temporary receiver of the property may be appointed, before or after service of summons and at any time prior to judgment, or during the pendency of an appeal, where there is danger that the property will be removed from the state, or lost, materially injured or destroyed." N.Y. CPLR 6401.

"The drastic remedy of the appointment of a receiver is to be invoked only where necessary for the protection of the parties. . . . 'There must be danger of irreparable loss, and courts of equity will exercise extreme caution in the appointment of receivers, which should never be made until a proper case has been clearly established.'" (*DiBona v. General Rayfin Ltd.*, 45 AD2d 696, 696 quoting *Laber v. Laber*, 181 App. Div. 733, 735) *In re Application of Armienti v Brooks*, 309 AD2d 659, 661 [1st Dept 2003].)

Under Statute

Under the Business Corporation Law, "[a]t any stage of an action or special proceeding under this article, the court may, in its discretion, make all such orders as it may deem proper in connection with preserving the property and carrying on the business of the corporation, including the appointment and removal of a receiver under article 12 (Receivership), who may be a director, officer or shareholder of the corporation." Bus. Corp. Law § 1113.

"It is well recognized that courts of equity exercise extreme caution in appointing receivers *pendente lite* because such appointment results in the taking and withholding of possession of property from a party without an adjudication on the merits" *Hahn v Garay*, 54 AD2d 629, 629-630 [1st Dept 1976] [*citing S.Z.B. Corp. v Ruth*, 14 A.D.2d 678; *Glassner v Kaufman*, 19 A.D.2d 885].

Plaintiffs, owners of a 50% interest in LANCO, have demonstrated that Defendants' conduct has resulted in a deadlock in management, exclusion of Plaintiffs, and a risk that corporate assets will be further wasted or diverted. Plaintiffs lack an adequate remedy at law, and the appointment of a receiver is necessary to preserve the assets and business of LANCO pending resolution of this action.

POINT VI.

PLAINTIFFS ARE ENTITLED TO AN ORDER COMPELLING DEFENDANTS TO RENDER A FULL AND COMPLETE ACCOUNTING

Plaintiffs seek an order compelling Defendants to provide a full and complete accounting of all finances of LANCO, including all assets, liabilities, income, and expenses during the pendency of this action. This relief is necessary to protect Plaintiffs' rights as 50% shareholders and as the administrator and sole distributee of the Estate of Rosanna Monteagudo (Summons and Complaint, Page 5, Heredia Affd., Page 1).

Defendants are required to account for their actions pursuant to both statute and common law. Under NY Bus. Corp. Law § 720, corporate officers may be compelled to account for their official conduct in cases that include the neglect of, or failure to perform, or other violation of their duties in the management and disposition of corporate assets committed to their charge; the

acquisition by themselves, transfer to others, loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of his duties. This provision is broad and covers forms of waste of assets and violation of duty, whether as a result of intention, negligence, or predatory acquisition. *Rapoport v. Schneider*, 29 N.Y.2d 396, 400 [1972]. Its purpose "is to furnish a means of redressing the wrongful disposition of corporate assets by the corporation's officers and directors." *Planned Consumer Marketing, Inc. v. Coats and Clark, Inc.*, 71 N.Y.2d 442, 451 [1988]. The right to recover under Section 720 belongs to the corporation. *Conant v. Schnall*, 33 A.D.2d 326, 328 [3d Dept. 1970]; *see Rapoport*, 29 N.Y.2d at 401 (noting, in an action brought pursuant to NY BCL § 720, "any benefit derived from this action would accrue to the corporation").

The common law right to an accounting is premised upon the existence of a confidential or fiduciary relationship and a breach of the duty imposed by that relationship respecting property in which the party seeking the accounting has an interest (*Palazzo v. Palazzo*, 121 AD2d 261, 265 [1st Dept 1986])). *Luong v. Ha The Luong*, 67 Misc 3d 1210(A) [Sup Ct, NY County 2020].

Directors and officers of a corporation owe corporations and its shareholders a fiduciary duty.

> "In a broad sense, the directors and officers of a corporation are its agents, and they occupy a fiduciary, or more exactly a quasi-fiduciary, relation to the corporation and its stockholders. [Equity Corp. v. Groves, 294 N.Y. 8, 60 N.E.2d 19; Pink v. Title Guarantee & Trust Co., 274 N.Y. 167, 8 N.E.2d 321; Manson v. Curtis, 223 N.Y. 313, 119 N.E. 559; Godley v. Crandall & G. Co., 212 N.Y. 121, 105 N.E. 818; Bosworth v. Allen, 168 N.Y. 157, 61 N.E. 163; Seymour v. Spring Forest Cemetery Asso., 144 N.Y. 333, 39 N.E. 365.] They are bound by all those rules of conscientious fairness, morality, and honesty in purpose, which the

> law imposes as guides for those who are under the fiduciary obligations and responsibilities, and they are held, in official action, to the extreme measure of candor, unselfishness, and good faith. They are bound to exercise the utmost good faith and loyalty in the performance of their duties, to be scrupulous in such performance, and to act at all times in the interests of the corporation and the stockholders, and not for personal benefit or advantage. Directors must always be free from fraud in their relations with their shareholders; fair dealing is imperative. Indeed, it is the view frequently and broadly taken that the officers and directors of a corporation are, in substance and in effect, trustees for the corporation and for its stockholders, it has been said that at least they occupy a position of partial trust."

Brecher v. Gregg, 89 Misc 2d 457 [Sup Ct, NY County 1975].

The first element of an accounting claim is the existence of a fiduciary relationship, the absence of which requires dismissal. *See Front, Inc. v. Khalil*, 103 AD3d 481, 483 [1st Dept 2013], affd24 NY3d 713 [2015]. A shareholder in a closely held corporation owes a fiduciary duty to other shareholders in the corporation (*Littman v Magee*, 54 AD3d 14, 17[1st Dept 2008]. A fiduciary relationship arises "between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation" (id. [internal quotation marks and citation omitted]). Put differently, "[a] fiduciary relation exists when confidence is reposed on one side and there is resulting superiority and influence on the other" (*AG Capital Funding Partners, L.P v. State St. Bank & Trust Co*., 11 N.Y.3d 146, 158, 866 N.Y.S.2d 578, 896 N.E.2d 61 [2008] [internal quotation marks and citation omitted]). *Roni LLC v. Arfa*, 18 N.Y.3d 846, 848 [N.Y. 2011].

This matter involves a closely held corporation of which Plaintiff owns a 50% interest. The Verified Complaint specifically pleads a cause of action for an accounting, alleging that Plaintiffs have made a formal demand for an accounting and access to LANCO's books and records, and that Defendants have failed and refused to comply. The Complaint further alleges

that Defendants' self-interest and exclusive control render them incapable of acting impartially for the benefit of Plaintiffs, and that a full and complete accounting is required to determine the true financial condition of the corporation and the value of Plaintiffs' interest (id., Page 13, Heredia Affd., Page 4) .

Under New York law, a shareholder in a closely held corporation is entitled to an accounting where there is a fiduciary relationship and, here, a demand for an accounting has been made and Defendants have failed to account to Plaintiffs (Complaint, Page 10). The Complaint and Affidavit of Jony Heredia establish that Defendants, as officers, directors, and co-shareholders, owe fiduciary duties to Plaintiffs and the corporation (Complaint, Page 9, Heredia Affd., Page 3). The Complaint and Affidavit further demonstrate that Defendants have engaged in self-dealing, mismanagement, and waste, and have failed to provide any accounting or access to records despite repeated demands (Complaint, Page 13, Heredia Affd., Page 3).

A full and complete accounting is particularly warranted here because Plaintiffs are being excluded from management, denied access to information, and prevented from valuing or selling the Estate's interest in LANCO (Complaint, Page 9-10, Heredia Affd., Page 4). Without an accounting, Plaintiffs cannot ascertain the value of their interest, determine whether assets have been misappropriated, or protect their rights as shareholders and as the Estate's representative.

Accordingly, Plaintiffs respectfully request that the Court grant the relief sought in the Order to Show Cause and compel Defendants to render a full and complete accounting of all finances of LANCO, including all assets, liabilities, income, and expenses during the pendency of this action.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant the relief sought in the Order to Show Cause, including an order: (1) compelling Defendants to give Plaintiffs access to the books and records of Lanco Brokerage Corp. ("LANCO"); (2) enjoining Defendants from dissipating corporate assets, including the using of approximately $500,143.96 representing the proceeds of an insurance policy against the life of Rosanna Monteagudo, now deceased; (3) compelling Defendants to declare the payment of dividends; (4) enjoining Defendants from interfering with Plaintiffs' right to participate in the management of LANCO, including the right to participate in corporate meetings and making management decisions; (5) appointing a receiver; and (6) compelling Defendants to account to LANCO and to Plaintiffs for their actions as officers, directors and shareholders in control of LANCO, and granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 1, 2025

Respectfully submitted,

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AFFIRMATION RELATED TO WORD COUNT
N.Y. Comp. Codes R. & Regs. tit. 22 § 202.8-b
N.Y. Comp. Codes R. & Regs. tit. 22 § 202.70.17

William A. Garcia, an attorney duly admitted to practice law in the State of New York, affirms the following under penalty of perjury that the word count for the within document is 6215 of 7000, exclusive of the cover/caption, table of contents, table of authorities, signature line, and this affirmation.

Dated: New York, New York
August 1, 2025

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