

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

----- X
JOANNE CHANG, individually, and as Parent and
Custodian of N.C.S., her Minor Child

Plaintiffs,

-against-

SOLLEGA INC. and

ELIE ROTHSCHILD, individually, and as Majority
Shareholder, Director and Chief Executive Officer of
Sollega Inc.

Defendants.
----- X

Index No. 651274/2025

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS SOLLEGA, INC. AND ELIE ROTHSCHILD'S
MOTION TO DISMISS PLAINTIFFS' AMENDED VERIFIED COMPLAINT**

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Defendants Sollega Inc. (“Sollega”) and Elie Rothschild (“Rothschild,” and together with Sollega, “Defendants”) respectfully submit this memorandum of law in support of their motion to dismiss the Amended Verified Complaint (the “Amended Complaint”) filed by Plaintiffs Joanne Chang (“Chang”), individually and as parent and custodian of N.C.S., her minor child (together, “Plaintiffs”), pursuant to CPLR 3211(a)(1), (5), (7), and (8).¹

PRELIMINARY STATEMENT

This case is a business dispute disguised in emotional rhetoric and premised on outdated facts and documents that have been amended and corrected. The factual premise of the case – that Rothschild, the majority shareholder of Sollega, received disproportionate distributions from the company in 2020 and 2022 – no longer exists because the funds allegedly improperly distributed were returned to Sollega and corrective measures were taken, including additional distributions to Plaintiffs in January of this year. Plaintiffs know that. Reality, proven by indisputable documentary evidence, utterly refutes Plaintiffs’ claims.

As a preliminary matter, this Court lacks personal jurisdiction over Rothschild. Defendants raised this threshold issue in their motion to dismiss the original Verified Complaint. Nothing in the Amended Complaint provides otherwise. Rothschild is an officer, director and majority shareholder of Sollega. Rothschild also is a California resident who has not conducted Sollega-related business in New York for over a decade. The Complaint does not allege any specific acts by Rothschild within New York, any transaction of business in New York, any injury that occurred to Plaintiffs within New York, or any connection between the claims at issue and New York that

¹ The Affirmation of Elie Rothschild, executed on July 24, 2025 (the “Rothschild Aff.”) and annexed exhibits are submitted concurrently herewith.

could plausibly support personal jurisdiction under CPLR § 302(a)(1).² Plaintiffs' bare assertions that jurisdiction exists because Rothschild is a corporate agent of a New York corporation and that "New York County is where a substantial part of the events or omissions giving rise to the claims occurred and where the Corporation's principal office is located" are woefully insufficient.

Before this lawsuit was filed, Defendants engaged outside tax professionals, amended the company's tax filings, returned company assets which were transferred for the purposes of corporate investment, and issued amended K-1s to address the very discrepancies Plaintiffs now complain of. Plaintiffs knew that Defendants took all of those actions. Plaintiffs were kept informed, provided with access to Sollega's books and records, received amended K-1s, and received true-up distributions for years 2021, 2022 and 2023.³

Even assuming the facts as true (and they are not), the Complaint is legally unsupportable. Plaintiffs seek to impose fiduciary duties on a corporation that owes none, assert claims that are time-barred and derivative in nature without pleading derivative standing, and demand dividends that were never declared – despite black letter law which grants directors discretion over distributions in closely held corporations. Indeed, Plaintiffs add direct claims for damages relating to alleged usurpation and conversion of corporate opportunities and assets which not only are derivative, but also predicated on registrations of a trademark and patents which date back to 2017 through 2021 and are thus asserted beyond their applicable three-year statutes of limitations.

² Plaintiff's initial complaint asserted personal jurisdiction pursuant to CPLR §§ 302(a)(1) and 302(a)(2), and its Amended Complaint ceases to assert jurisdiction pursuant to Section 302(a)(2).

³ Defendants note that certain of the K-1s attached to the original Verified Complaint were explicitly labeled "old" in their file names. Plaintiffs appear to have removed the word "old" from the Amended Complaint's annexed exhibits' filenames. *Compare* Dkt Nos. 4, 6, 7 with 31, 33, 34. Yet Plaintiffs persist in attaching outdated K-1s, despite receiving and explicitly confirming receipt of amended versions.

This is a case that should never have been filed. Plaintiffs are looking for a windfall to which they are not entitled. The law does not recognize claims based on disproved facts, discretionary good-faith business decisions, or emotional dissatisfaction. Accordingly, the Complaint should be dismissed in its entirety.

STATEMENT OF FACTS⁴

Sollega Inc. is a closely held S corporation engaged in the design and manufacture of solar racking systems. Am. Compl. ¶¶ 5, 13. Sollega was incorporated in New York in December 2009. *Id.* ¶ 11; Rothschild Aff. ¶ 3. At that time the three shareholders of the corporation were Elie Rothschild, John Humphrey and George Schnakenberg, III. Am. Compl. ¶ 12; Rothschild Aff. ¶ 6. In or about October 2013, Rothschild purchased all of Mr. Humphrey's shares in Sollega. Rothschild Aff. ¶ 7. Since 2013, Sollega has not had an office or other business presence in New York and has operated exclusively out of California. *Id.* ¶ 7.

Rothschild, a resident of California, is Sollega's CEO, majority shareholder, and sole director. Am. Compl. ¶¶ 6, 7; Rothschild Aff. ¶¶ 4, 5. Rothschild has not conducted Sollega-related business in New York in more than a decade. Rothschild Aff. ¶ 8. Rothschild has not been physically present in New York in connection with any of the conduct alleged in the Complaint. Rothschild Aff. ¶ 9.

Chang, a resident of Colorado, is the widow of George Schnakenberg, who formerly was a service provider to Sollega. Am. Compl. ¶¶ 2, 21, Rothschild Aff. ¶ 6. Chang and her daughter inherited Mr. Schnakenberg's minority interest in Sollega after his death in 2014. Am. Compl. ¶ 21. From 2014 to 2023, it was presumed that Chang individually held an eleven percent (11%)

⁴ Defendants do not concede the truth of the allegations in the Amended Complaint. The facts recited here are based on the Amended Complaint's allegations and from documents that may be considered under CPLR § 3211 solely for purposes of this motion.

interest in Sollega. *Id.* ¶¶ 21 n.1, 29, 33, 37. Defendants later learned that Chang and her daughter each held 50% of Mr. Schnakenberg's shares. *Id.*; Rothschild Aff. ¶ 12, Ex. A. As set forth in the Written Consent of the Majority Shareholder and Sole Director of the Board of Directors of Sollega Inc. (the "2024 Sollega Resolution"), referenced in footnote 1 in the Complaint, Chang had informed Sollega that the location of the certificate(s) representing Mr. Schnakenberg's shares was unknown and believed to be lost or destroyed. *See* Rothschild Aff. Ex. A. Chang had requested that Sollega issue new shares of equal amounts to her and her daughter as replacements for the certificates evidencing Mr. Schnakenberg's shares in accordance with a California court's order regarding settlement of Mr. Schnakenberg's estate. *See* Rothschild Aff. ¶ 12; Ex. A.

It was in connection with Chang's request for the replacement of the certificate(s) that Rothschild discovered – and affirmatively communicated to Chang – that Chang and her daughter together actually owned 15.3849% of the company's equity, not the 11% reflected in the original cap table and K-1s. Rothschild Aff. ¶ 13. Accordingly, Sollega issued amended K-1s to both Chang and her daughter in or about August 2024. *See id.* ¶ 14; Exs. B-E. The Amended Complaint attaches only the "original" K-1s issued to Chang for the years 2019, 2020 and 2022 and issued to Rothschild for 2020 and 2022 (*see* Am. Compl. Exs. 2-6),⁵ even though Chang received the amended K-1s for those years in or about August 2024 and had access to them through a shared Google drive since that time. *See* Rothschild Aff. ¶ 15; Exs. F-I.

The crux of Plaintiffs' Complaint is that Sollega made shareholder distributions in 2020 and 2022 but failed to pay Plaintiffs their proportionate shares. Am. Compl. ¶¶ 51-60. During those years, Rothschild was advised that Sollega's funds should be deposited in an investment account.

⁵ The file names of the Exhibits 3, 5 and 6 of the original Complaint explicitly labeled those documents as "old". *See* Dkt. Nos. 4, 6, 7.

Rothschild Aff. ¶ 17. Pursuant to that advice, Sollega transferred approximately \$1,200,000 to Rothschild, which Rothschild then deposited into an investment account for Sollega's benefit. Rothschild Aff. ¶ 18. Those transfers are reflected on certain K-1s which Sollega issued to Rothschild. *See* Am. Compl. Exs. 5, 6.

Last year, Rothschild was advised to transfer the funds back to Sollega, to maintain the corporation's status as an S corporation and because the transfers were not intended for nor should have been treated as shareholder distributions. Rothschild Aff. ¶ 19. On or about August 9, 2024, Rothschild transferred \$1,264,987.00 back to Sollega. *Id.* ¶ 20. Rothschild subsequently transferred an additional \$49,861.72 to Sollega reflecting interest earned on that amount. *Id.* ¶ 21. Rothschild informed Chang of the \$1,264,987 transfer back to Sollega via email on August 16, 2024. *Id.* ¶ 22; Ex. K. Rothschild also advised Chang that Sollega would issue amended K-1s and that Sollega would address the correction in the prior years' distributions in its 2024 tax returns. *See id.* Sollega received an IRS extension to file its 2024 tax return. *Id.* ¶ 27. As further confirmation, on September 16, 2024, Rothschild sent an email to Ms. Chang providing a link to a shared Google Drive folder containing relevant corporate materials, including the amended K-1s and additional financial documents. *Id.* ¶ 23; Ex. L. Ms. Chang acknowledged receipt of the same. *See id.* The Google Drive folder contains a copy of the printout from Chase for Business which confirms that a transfer by Rothschild to Sollega's business checking account was completed on August 9, 2024 in the amount of \$1,264,987.00, with a memo stating "Distribution Payback." *See* Rothschild Aff. Ex. J.

On or about January 22, 2025, Sollega issued and mailed checks in the amount of \$51,723.14 to each Plaintiff in satisfaction of their respective proportional amended distributions

for the years 2021 and 2022, as well as the corrected amounts for 2023. Rothschild Aff. ¶ 25; Ex. M. Ms. Chang deposited those checks. *Id.*

On March 6, 2025, dissatisfied that Plaintiffs only received approximately \$101,000 and not distributed as a “true up” distribution of over three times that amount, Plaintiffs filed this lawsuit. Plaintiffs disingenuously allege that Rothschild took disproportionate distributions, without alleging, let alone even acknowledging, the indisputable fact that the funds were returned to the Company and that Plaintiffs received over \$100,000 in distributions two months before filing. Plaintiffs also attached to the original Verified Complaint “old” K-1s for the years 2020 and 2022 – which they knew to be old – and asserted five causes of action: breach of fiduciary duty, breach of the duty of equal treatment, violation of BCL § 501, oppression of minority shareholders, and failure to make distributions in 2024. *See* NYSCEF Doc. No. 1, ¶¶ 63-88.

On May 2, 2025, Defendants filed a motion to dismiss the original complaint. *See* NYSCEF Doc. Nos. 13-26 (Motion #001). Though Plaintiffs filed a Memorandum of Law in Opposition (*see* NYSCEF Doc. No. 48), they also filed the Amended Complaint, and confirmed via stipulation that the filing of the Amended Complaint rendered Defendants’ motion to dismiss the original Complaint as moot. *See* NYSCEF Doc. No. 49.

As set forth herein, nothing in Plaintiffs’ amended pleading cures the legal defects in the original Verified Complaint. The Amended Complaint is jurisdictionally unsupported, asserts claims that are time-barred, and is predicated on facts that are contradicted by documentary evidence and amended corporate records. Accordingly, the Amended Complaint should be dismissed in its entirety.

LEGAL ARGUMENT

I. Legal Standard

On a motion to dismiss for failure to state a cause of action under CPLR § 3211 (a)(7), courts afford the pleadings a liberal construction, accept the facts as alleged in the complaint as true, and give the plaintiff the benefit of every possible favorable inference. *Leon v. Martinez*, 84 N.Y.2d 83, 87 (1994). Ordinarily, the court's inquiry is limited to assessing the legal sufficiency of the plaintiff's pleadings; accordingly, the court's only function is to determine whether the facts as alleged fit within a cognizable legal theory. *JF Capital Advisors, LLC v. Lightstone Group, LLC*, 25 N.Y.3d 759, 764 (2005). When they do not, dismissal is warranted pursuant to CPLR § 3211 (a)(7).

Additionally, dismissal is warranted under CPLR § 3211(a)(1) where the documentary evidence is of such nature and quality – unambiguous, authentic, and undeniable – that it utterly refutes plaintiff's factual allegations. *VXI Lux Holdco S.A.R.L. v. SIC Holdings, LLC*, 171 A.D.3d 189, 193 (1st Dept 2019). In such cases, the court need not accept allegations that are flatly contradicted by the documents.

On a motion to dismiss pursuant to CPLR § 3211 (a)(5), Defendants bear “the initial burden of establishing, prima facie, that the time in which to sue has expired.” *Benn v. Benn*, 82 A.D.3d 548, 548 (1st Dept 2011) (internal quotation marks and citation omitted). To meet this burden, “the defendant must establish, inter alia, when the plaintiff's cause of action accrued.” *Lebedev v. Blavatnik*, 144 A.D.3d 24, 28 (1st Dept 2016) (internal quotation marks and citation omitted). Once that burden is met, then the burden shifts to the plaintiff to aver evidentiary facts establishing that the cause of action was timely or to raise a question of fact as to whether the cause of action was timely. *See Lake v. New York Hosp. Med. Ctr. Of Queens*, 119 A.D.3d 843, 844 (2d Dept 2014) (internal quotation marks and citation omitted).

Dismissal also is appropriate under CPLR § 3211(a)(8) where the court lacks personal jurisdiction over a defendant. The plaintiff bears the burden of demonstrating jurisdiction. Where jurisdiction is predicated on New York's long-arm statute, Plaintiff must allege specific facts sufficient to show that a non-domiciliary defendant engaged in conduct that would subject him to jurisdiction under New York's long-arm statute. *See Coast to Coast Energy, Inc. v. Gasarch*, 149 A.D.3d 485, 486 (1st Dept 2017); *Thorsen v. Sons of Norway*, 996 F. Supp. 2d 143, 152-60 (E.D.N.Y. 2014) (applying New York law). Bare, conclusory assertions are insufficient.

Applying these standards, the Court should dismiss the Amended Complaint as against Rothschild for lack of personal jurisdiction, and against both Defendants for failure to state a cognizable cause of action and because the allegations are refuted by documentary evidence, if not time-barred altogether.

II. The Court Lacks Personal Jurisdiction Over Defendant Elie Rothschild

This Court lacks personal jurisdiction over Rothschild. Rothschild is a resident of California without any contacts in New York or connection to New York. The Complaint fails to allege any New York-based conduct that would satisfy New York's long-arm statute or justify the Court's exercise of jurisdiction over Rothschild. Chang's jurisdictional claims rest solely on Rothschild's status as an officer of Sollega – a corporation that has not maintained a New York presence in over a decade. That is not enough.

New York courts recognize two bases for personal jurisdiction over non-domiciliaries: general jurisdiction under CPLR § 301 and specific, long-arm jurisdiction under CPLR § 302. Chang does not assert general jurisdiction over Rothschild under § 301 (and there is none). Instead, Chang relies on CPLR §§ 302(a)(1), but that provision does not apply.

Under CPLR § 302(a)(1), a New York court may exercise jurisdiction over a non-domiciliary who “transacts any business within the state” and where the cause of action “arises

from” that transaction. *Noris Med., Inc. v. Siev*, 214 A.D.3d 540, 540 (1st Dept 2023). The second prong requires a showing of “an ‘articulable nexus’ or ‘substantial relationship’ between the business transaction and the claim asserted.” *Id.* (quoting *Licci v Lebanese Can. Bank, SAL*, 20 N.Y.3d 327, 339 (2012)). “Purposeful activities are volitional acts by which the non-domiciliary avails itself of the privilege of conducting activities within the forum State,” and, therefore, “[m]ore than limited contacts are required.” *Coast to Coast Energy*, 149 A.D.3d at 486. Even in cases involving corporate officers, an officer is only subject to jurisdiction if he personally engaged in conduct in New York that gives rise to the claims. *See Grp. One Ltd. v. GTE GmbH*, 523 F. Supp. 3d 323, 336 (E.D.N.Y. 2021) (declining to exercise personal jurisdiction over corporation’s CEO under CPLR § 302(a)(1) and holding that allegations against corporation did not equally apply to the CEO absent allegations of personal conduct).

The Amended Complaint does not allege any transaction of business within New York. It merely alleges that Rothschild is the CEO and majority shareholder of Sollega, and that Sollega is a New York corporation with a registered agent in the state. Am. Compl. ¶¶ 5-7. Plaintiffs do not (because they cannot) identify any business that Rothschild personally transacted in New York, nor any connection between the claims in the Complaint and New York. Plaintiffs instead conclusorily allege that Rothschild “acted as a corporate agent of a New York corporation” and that New York is “where a substantial part of the events or omissions giving rise to the claims occurred.” *Id.* ¶ 10. These boilerplate allegations are insufficient. *See Poms v. Dominion Diamond Corp.*, Index No. 655733/2017, 2019 WL 2106090, at *3 (Sup. Ct., N.Y. Cnty. 2019) (rejecting jurisdiction where plaintiffs failed to allege purposeful New York activity tied to claims).

The Amended Complaint fails to allege a transaction of business in New York because there is none. Sollega has not maintained an office in New York since approximately 2013 when

Rothschild purchased John Humphrey's shares. Rothschild Aff. ¶ 7. The next year, George Schnakenber – who was a California resident – passed away, and his shares passed intestate to his wife, Chang, and their minor child, N.C.S. Am. Compl. ¶¶ 17–21. Since then, Sollega's sole place of business has been San Francisco, California. The exhibits attached to the Amended Complaint reflect Sollega's and Rothschild's California addresses. *See* Am. Compl. Exs. 2-6. Rothschild has not traveled to or conducted any business in New York on behalf of Sollega since at least 2020. Rothschild Aff. ¶ 9. The communications, distributions, and corporate decisions at issue were carried out entirely from California and involved correspondence with Chang in California and Colorado – not New York. Rothschild Aff. ¶ 11. Simply put, the Complaint fails to allege specific jurisdiction pursuant to CPLR § 302(a)(1).

Because the Amended Complaint fails to allege any plausible basis for personal jurisdiction over Rothschild, the Complaint should be dismissed as against him under CPLR § 3211(a)(8).

III. The Amended Complaint Asserts Claims that are Time-Barred

The Amended Complaint's Sixth Cause of Action, for Usurpation of Corporate Opportunity, asserts a breach of fiduciary duty claim against Rothschild based on his alleged registration of the "IP Assets" in his name rather than Sollega's. *See* Am. Compl. ¶¶ 103-105. Plaintiffs also add to their First Cause of Action, for breach of fiduciary duty, the allegation that Defendants breached their duties by "usurping corporate opportunity and assets by misappropriating intellectual property assets of the Corporation." *See id.* ¶ 75(6). The referenced intellectual property and "IP Assets" are the SOLLEGA trademark, issued on December 7, 2021, and three patents dated December 1, 2020, January 22, 2019, and November 28, 2017. *See id.* ¶ 103, Exs. 7-10. And Plaintiffs tack on in their Seventh Cause of Action a claim for "conversion – wrongful taking" of the IP Assets. Each of those claims are subject to the three-year statute of limitations as set forth in CPLR § 214, and are time-barred.

Although New York law does not provide for a single statute of limitations for breach of fiduciary duty claims, the applicable limitations period is three years under CPLR § 214(4) on claims seeking monetary damages. *See IDT Corp. v. Morgan Stanley Dean Witter & Co.*, 12 N.Y.3d 132, 139 (2009) (applying three-year statute of limitations period to breach of fiduciary duty claim where plaintiff primarily sought damages).

Before Plaintiffs filed this lawsuit, and before they filed the Amended Complaint, the three-year limitations period set forth in CPLR §§ 214(3) and (4) had already run. A claim for breach of fiduciary duty accrues as soon as “the claim becomes enforceable – when all elements of the tort can be truthfully alleged in a complaint.” *IDT Corp.*, 12 N.Y.3d at 140. And a claim for conversion accrues when the alleged conversion occurred. Setting aside that Plaintiffs do not have standing to pursue those claims on behalf of the corporation (*see infra*, Section IV.F), the claims should be dismissed at the outset as time-barred.

The statute of limitations on Plaintiffs’ breach of fiduciary duty and conversion claims predicated on the registration of the trademark (Am. Compl. ¶ 69) and patents (*id* ¶ 70) expired as in November 2021 on the 2017 patent and no later than December 2024, three years after the SOLLEGA trademark was registered. Plaintiffs filed these claims too late and they should be dismissed, with prejudice.

IV. The Amended Complaint Fails to State a Claim and is Contradicted by Documentary Evidence

Even affording Plaintiffs every favorable inference, the Amended Complaint fails both as a matter of law and fact. The Amended Complaint is predicated on a false narrative and is based on outdated facts documents. The documentary evidence – which Plaintiffs disingenuously fail to reference or attach to the Amended Complaint – conclusively refute Plaintiffs’ claims and warrant dismissal under CPLR § 3211(a)(1). It is appalling that Ms. Chang verified both the original and

complaints which attach outdated documents and allege facts which Ms. Chang indisputably knows to be false. Beyond that, each of Plaintiffs' legal theories fails to state a cognizable claim under New York law warranting dismissal under CPLR § 3211(a)(7).

A. Documentary Evidence Refutes Plaintiffs' Allegations and Claims

Plaintiffs' claims rest on documents Plaintiffs knew were outdated at the time they filed this action. That alone warrants dismissal. Under CPLR 3211(a)(1), dismissal is appropriate where "documentary evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law." *Leon v. Martinez*, 84 N.Y.2d at 88. Here, Plaintiffs' allegations are flatly contradicted by the documentary record – including corrected K-1s, written correspondence to and from Chang, and documents reflecting the return of funds allegedly disproportionately distributed – which are omitted from the Complaint entirely.

As set forth in the Rothschild Affirmation, in or about August 16, 2024, Chang sent an email to Rothschild with questions about her amended 2020 and 2022 K-1s – not the "old" K-1s attached to the Complaint. *See Rothschild Aff.*, Ex. K. Chang confirmed receipt of the amended K-1, and asked: "In 2020 Sollega made a \$700K distribution to shareholders. Where is this reflected in the updated K1s? I see the \$10k (\$5k each me and [N.C.S.]) but this is only 1.4% of the total distribution vs. 15.4%." *Id.* Rothschild responded on August 19, 2024, and explained that in connection with correcting the cap table and amending Sollega's tax returns and distributions, he paid \$1,264,987 on August 9, 2024 back to Sollega as instructed by Sollega's tax attorney/CPA to correct the distributions in connection with IRS revenue procedure in order to preserve Sollega's S election. Rothschild further confirmed in writing to Chang that "[t]he funds were put back" into Sollega. *Id.* Rothschild also shared a Google folder with Chang which included the amended K-1s, along with other relevant corporate records. *Id.*; *see Rothschild Aff.* ¶ 23, Ex. L.

The amended K-1s indicate that Plaintiffs have a combined 15.38% minority interest in Sollega, rather than the 11% that Chang previously presumed Plaintiffs held, and that Rothschild accordingly has an 84.6% interest, rather than the 89% indicated on the “old” tax returns.⁶ *Compare* Compl. Exs. 2-6 with Rothschild Aff., Exs. B-I. The amended materials supersede the outdated documents that Chang attaches to the Complaint, and Rothschild’s written confirmation to Chang – which she indisputably received – utterly refute Plaintiffs’ claims that Sollega made disproportionate distributions.

The law does not permit a plaintiff to proceed on claims that are contradicted by documentary evidence. The Complaint is factually stale, legally untenable, and cannot support a cause of action as a matter of law.

B. The Amended Complaint Fails to State Claims Which Sound in Breach of Fiduciary Duty

The First, Second, and Fourth Causes of Action each sound in breach of fiduciary duty and fail as a matter of law as against Sollega because under well-settled New York law, a corporation does not owe fiduciary duties to its shareholders.

“It is black letter law that a corporation does not owe fiduciary duties to its members or shareholders.” *Stalker v. Stewart Tenants Corp.*, 93 A.D.3d 550, 552 (1st Dept 2012) (affirming dismissal of breach of fiduciary duty claim against the corporate entity itself) (internal quotation and citation omitted). Rather, fiduciary duties are imposed on directors and officers, not on the corporation as an artificial legal person. *See Hyman v. N.Y. Stock Exch., Inc.*, 46 A.D.3d 335, 337 (1st Dept 2007) (holding that imposing fiduciary duties on a corporate entity “would lead to the

⁶ Indeed, the file names on the exhibits attached to the original Complaint, which are the same exhibits attached to the Amended Complaint, confirm that they are outdated: Exhibit 3 is labeled “Ex 3 2020_old_JOANNE CHANG_K1-REDACTED.pdf”; Exhibit 5 is “Ex 5 2020_old_ELIE ROTHSCILD_K-1-REDACTED.pdf”; and Exhibit 6 is “Ex 6 2022_old_ELIE RITHSCHILD K-1-REDACTED.” *See* Dkt. Nos. 4, 6, 7, 31, 33, 34.

confounding possibility that a shareholder of a corporation could bring a derivative action on behalf of the corporation against the corporation itself”). Accordingly, the claims predicated on allegations of fiduciary duties owed to Plaintiffs by Sollega fail as a matter of law.

The claims asserted against Rothschild individually fail because the allegations in Amended Complaint do not satisfy the elements of a breach of fiduciary duty claim nor the heightened pleading standard required by CPLR § 3016(b). The elements of a breach of fiduciary duty claim are: “(1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant’s misconduct.” *Palmetto Partners, L.P. v. AJW Qualified Partners, LLC*, 83 A.D.3d 804, 807 (2d Dept 2011) (dismissing fiduciary duty claims based on documentary evidence which conclusively established that plaintiffs did not suffer damages from any breach of fiduciary duty). Furthermore, the allegations “must be pleaded with the particularity required by CPLR § 3016(b).” *Id.* at 808.

To the extent Plaintiffs challenge the legitimacy of Rothschild’s corporate decisions, Plaintiffs’ claims are barred by the business judgment rule which “bars judicial inquiry into actions of corporate directors taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes.” *Auerbach v. Bennett*, 47 N.Y.2d 619, 629 (1979). The Amended Complaint attempts to sidestep the business judgment rule by peppering its allegations with the phrase “bad faith,” but the law demands substance, not semantics. Plaintiffs allege, for example, that Rothschild’s “refusal to authorize shareholder distributions in 2024, despite the corporation’s continued profitability, suggests a lack of good faith” and that “there is reason to believe” Rothschild is acting in bad faith due to “the dispute between the parties.” Am. Compl. ¶¶ 65-66. Plaintiffs go further, accusing Defendants of “knowingly, intentionally and in bad faith” issuing disproportionate distributions in prior years (*id.* ¶ 82), and of acting “in bad

faith” in withholding corporate records (*id.* ¶ 121). These are not well-pleaded facts – they are legal conclusions in disguise, and belied by indisputable facts. *See* Rothschild Aff. ¶ 23; Ex. L. Indeed, last year, Mr. Rothschild provided Ms. Chang with access to a shared Google Drive which contains Sollega’s corporate documents, including confirmation that Rothschild returned the purported disproportionate distribution to Sollega.

As the First Department recently held in *Barlow v. Skroupa*, a complaint that merely alleges “false representations” without identifying “any specific and material misrepresentation of fact” fails to satisfy CPLR § 3016(b)’s particularity requirement. 221 A.D.3d 482, 483 (1st Dept 2023). So too here. Plaintiffs offer no particularized facts suggesting that Rothschild’s decisions were made for an improper purpose. To the contrary, the documentary evidence shows that Rothschild returned the disputed funds to Sollega, retained tax professionals, and issued amended K-1s – all before this lawsuit was filed. These are not the hallmarks of bad faith.

Because Sollega does not owe fiduciary duties to Plaintiffs, and because the Amended Complaint fails to allege particularized facts to support a claim for breach of fiduciary duty against Rothschild, the First, Second, and Fourth Causes of Action, which sound in breach of fiduciary duty, should be dismissed.

C. The Amended Complaint Fails to State a BCL § 501(c) Claim

The Third Cause of Action for violation of Business Corporation Law § 501(c) should be dismissed because it does not allege unequal treatment of shares, but rather alleges unequal treatment of shareholders and discretionary decisions, which are outside the statute’s scope. Courts consistently hold that individual disputes over discretionary decisions are not actionable under BCL § 501(c). *See Moltisanti v. East River Housing Corp.*, 149 A.D.3d 530, 532 (1st Dept 2017) (affirming dismissal of BCL claims); *Tahari v. 860 Fifth Avenue Corp.*, 214 A.D.3d 491, 492 (1st Dept. 2023) (same).

Here, Plaintiffs' claim fails because it does not allege that the rights associated with Plaintiffs' shares differ from other shareholders. Even assuming Plaintiffs were treated differently (which Defendants do not concede), the claim still fails because BCL § 501(c) is not designed to address such individualized grievances. And even affording Plaintiffs' allegations every favorable inference, there is no disparity to complain of: the funds allegedly disproportionately distributed to Rothschild were transferred back to Sollega and Plaintiffs received true-up distributions well before this lawsuit was filed. Plaintiffs were informed of the corrective action. Thus, the Complaint fails to state a cause of action under BCL § 501(c).

D. The Amended Complaint Fails to State a Claim for Oppression of Minority Shareholders

Plaintiffs' Fourth Cause of Action for "Oppression of Minority Shareholders" fails as a matter of law. The Appellate Division, First Department's decision in *Orloff v. Weinstein Enterprises, Inc.*, 247 A.D.2d 63 (1st Dept 1998), is instructive and directly applicable here. In *Orloff*, the First Department reversed the trial court's finding of minority oppression and dismissed the complaint in its entirety, holding that alleged exclusion from some board meetings and denial of access to corporate records did not rise to the level of "oppressive conduct" necessary to support a claim under either common law or Business Corporation Law § 1104-a.

The *Orloff* plaintiffs, like Plaintiffs here, were minority shareholders in a closely held corporation. They alleged a long list of grievances including oppressive conduct by the majority, requests for corporate records, and a declaration of reasonable dividends. *Id.* at 65. Nonetheless, the First Department held that the plaintiffs failed to allege a reasonable expectation of participation in management and failed to demonstrate that the alleged acts were "significant" or "adverse to the interests of the minority shareholders." *Id.* at 67. The court also held that no oppressive conduct existed where "no resolution or bylaw of the corporation was violated." *Id.*

Here, Plaintiffs' claim is weaker than the one rejected in *Orloff*. Plaintiffs make conclusory assertions that Rothschild's management was "oppressive," citing acts such as issuing disproportionate distributions in 2020 and 2022, failing to declare a distribution in 2024, and allegedly withholding corporate information. Am. Compl. ¶¶ 90-93. But as discussed in the sections *supra*, those factual allegations are belied by documentary evidence – corrected K-1s, the return of distributions to Sollega, and direct correspondence showing Plaintiffs had access to the very documents they now claim were withheld. Plaintiffs' claim that they were deprived of shareholder distributions likewise fails, as directors are under no obligation to declare dividends, and the decision to do so lies within their business judgment. *See Gordon v. Elliman*, 306 N.Y. 456, 459 (1954). Critically, Plaintiffs do not allege any specific facts showing that Rothschild acted outside the bounds of his discretion as majority shareholder and director. Nor do they allege that Sollega violated any corporate resolution or bylaw.

In sum, Plaintiffs' Fourth Cause of Action is a repackaging of their disproved and legally insufficient claims for breach of fiduciary duty and failure to distribute dividends. The Amended Complaint alleges no facts that rise to the level of oppression recognized by New York law. Accordingly, the claim for oppression of minority shareholders must be dismissed.

E. The BCL 624 Claim Should be Dismissed

Defendants do not dispute that Plaintiffs, as shareholders, have the right to examine certain Sollega corporate records. Indeed Plaintiffs affirmatively allege that certain of their requests for corporate records were granted. *See, e.g.*, Am. Compl. ¶¶ 120, 122. As set forth in Mr. Rothschild's Affirmation, Plaintiffs were provided with access to a shared Google Drive folder containing the very corporate records they now claim were withheld. On September 16, 2024, Rothschild sent an email to Ms. Chang providing a link to that folder, which included amended K-1s and additional financial documents. Ms. Chang acknowledged receipt of that email and the shared materials. *See*

Rothschild Aff. ¶ 24, Ex. L. Though Plaintiffs allege that certain demands were “refused” and they were “denied access” to corporate records, they do not articulate, as they must, how the records they were provided were insufficient.

Moreover, Plaintiffs’ addition of a corporate records claim under BCL § 624 is procedurally improper. BCL § 624(d) requires that a demand for inspection be made by order to show cause. BCL § 624(d) requires:

Upon refusal by the corporation or by an officer or agent of the corporation to permit an inspection of the minutes of the proceedings of its shareholders or of the record of shareholders as herein provided, the person making the demand for inspection may apply to the supreme court ... for an order directing the corporation, its officer or agent to show cause why an order should not be granted permitting such inspection by the applicant. Upon the return day of the order to show cause, the court shall hear the parties summarily, by affidavit or otherwise, and if it appears that the applicant is qualified and entitled to such inspection, the court shall grant an order compelling such inspection and awarding such further relief as to the court may seem just and proper.

N.Y. Bus. Corp. Law § 624 (McKinney). Accordingly, the Eighth Cause of Action for violation of BCL § 624 should be dismissed. *See Greenberg v. Falco Const. Corp.*, 958 N.Y.S.2d 307 (Sup. Ct., Kings Cty 2010) (“Because BCL § 624(d) requires that a demand for inspection be made by order to show cause, plaintiff’s fifteenth cause of action is hereby dismissed[.]”).

F. The Amended Complaint Fails to State a Claim for Failure to Make Distributions in 2024

It is well settled that the decision to declare a dividend is committed to the discretion of a corporation’s board of directors, and, in the absence of fraud, bad faith, or dishonesty, that decision is conclusive. *See Gordon v. Elliman*, 306 N.Y. at 459 (“Unless a dividend has been declared, upon the other hand, no portion of the assets of the corporation has been set aside for stockholders, and no right of action inheres in them to be paid any part of the corporation’s funds.”).

Because the declaration of a dividend lies within the board’s discretion, Plaintiffs cannot compel Sollega to make a distribution absent a showing of bad faith or other misconduct, which

they do not and cannot allege. Instead, Plaintiffs' claim is based solely on the allegation that Sollega was profitable in 2024, which is insufficient to compel a shareholder distribution.

In addition, a claim to compel the payment of a dividend is a derivative claim, belonging to the corporation, not to an individual shareholder. *See Matter of Goerler*, 227 A.D.2d 479, 479-80 (2d Dept 1996) (citing *Gordon*, 306 N.Y. at 459). Plaintiffs' claims are brought individually, not derivatively, and thus Plaintiffs lack standing.

For these reasons, the Fifth Cause of Action should be dismissed pursuant to CPLR 3211(a)(7).

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court enter an order granting their motion to dismiss the Amended Complaint in its entirety, with prejudice, and for such other and further relief the Court deems just and proper.

Dated: New York, New York
July 24, 2025

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WORD COUNT CERTIFICATION

I hereby certify, pursuant to Rule 17 of the Commercial Division Part 202.70 and the Uniform Rules of the Supreme Court of New York Part 202.8-b, that the total number of words in the foregoing Memorandum, excluding any caption, tables of contents or authorities, and signature block, is 5940 words.

Dated: July 24, 2025
New York, New York

/s/ Michelle G. Bernstein

Michelle G. Bernstein