

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

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

INDEX NO. 651274/2025

(Motion No. 002)

Plaintiffs,

-against-

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

Defendants.

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**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' AMENDED VERIFIED COMPLAINT**

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Plaintiffs JOANNE CHANG (“Joanne”), individually, and as Parent and Custodian of Minor Child N.C.S. (“N.C.S.”) (each a “Plaintiff”, and collectively “Plaintiffs”) by their attorneys Eric N. Cohen & Associates PLLC, respectfully submit this Memorandum of Law (“Pl. Memo.”) in Opposition to defendants Elie Rothschild’s (“Rothschild”) and Sollega, Inc.’s (“Sollega” or the “Corporation”) (each a “Defendant”, and collectively “Defendants”) Motion to Dismiss (Motion No. 002 / NYSCEF Docs. No. 50-66) (the “Motion”).

PRELIMINARY STATEMENT

This case concerns the oppressive and unlawful treatment of Plaintiffs, minority shareholders of Sollega, by Defendant Rothschild, the majority shareholder, sole director and CEO, and the Corporation. Under the domination and control of Rothschild, the Corporation made disproportionate shareholder distributions in 2020 and 2022 in violation of New York law and in breach of Defendants’ fiduciary duties. Plaintiffs were deprived of over \$351,000.00 of their share of such distributions, while Rothschild received far in excess of his share during those same years. Defendant Rothschild further abused his position of trust to misappropriate critical intellectual property assets of the Corporation in his own name. In addition to the disproportionate distributions and self-dealing, Defendants also failed in key aspects of governance and record-keeping.

Notwithstanding that Rothschild has operated Sollega as a closely held New York corporation since it was incorporated in 2009, he now seeks to avoid the jurisdiction of the New York courts by moving to dismiss the Amended Verified Complaint (the “Complaint”)¹ pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction. Rothchild’s motion should be denied.

¹ Reference to the “Complaint” and “Compl.” in this Memorandum refers to the Amended Verified Complaint e-filed by Plaintiffs on June 13, 2025 (NYSCEF Doc. No. 28 and Exhibits Doc. Nos. 29-38); *and not* to the original Verified Complaint e-filed by Plaintiffs on March 6, 2025 (NYSCEF Doc. No. 1 and Exhibits Doc. Nos. 2-7).

Rothschild holds all controlling power over Sollega and owes fiduciary duties to Plaintiffs. However, Rothschild violated those duties and directed the corrupt corporate actions at issue. By availing himself of the privilege of conducting corporate affairs under New York law, and having abused that privilege, Rothschild has established sufficient contacts in New York for this Court to assert personal jurisdiction over him under New York's long-arm statute and equitable principles consistently applied by New York and Federal courts to non-resident defendants.

Defendants also seek dismissal of Plaintiffs' intellectual property claims under CPLR 3211(a)(5) arguing they are barred by a three-year statute of limitations. However, if a Plaintiff seeks equitable relief or the claims are fraud-based, *both applicable here*, then a six-year or longer limitations period applies under CPLR § 213(1) and CPLR 213(8). Accordingly, Plaintiffs' intellectual property claims were timely filed and should not be barred.

Defendants further seek to dismiss pursuant to CPLR 3211(a)(1) claiming documentary evidence refutes Plaintiffs' factual allegations. Defendants' evidence, principally to amended K-1s for 2020 through 2022 prepared solely by Defendants, does not meet the required "unambiguous" and "undeniable" standard and do not qualify as "documentary evidence". Defendants' arguments to dismiss under CPLR 3211(a)(1) fail and should be denied. Rather than countering Plaintiffs' claims, the amended K-1s instead *serve as an unambiguous admission by Defendants* that their misconduct relating to distributions and tax documents occurred at the dates and times alleged by Plaintiffs.

Defendants also move to dismiss each cause of action in the Complaint pursuant to CPLR 3211(a)(7). As addressed below, Defendants make a number of hyper-technical arguments in support of their contentions and ignore the facts as alleged in the Complaint, which must be taken as true for purposes of the Motion. Defendants' arguments lack merit and should be rejected.

Accordingly, Defendants' Motion should be denied in its entirety.

STATEMENT OF FACTS

The Complaint sets forth in detail the factual background of this action. As such, the Court is respectfully referred to the Complaint for the facts as alleged by Plaintiffs. Plaintiffs' Complaint asserts causes of action against Defendants for (1) breaches of fiduciary duties of care, loyalty and good faith, (2) breaches of the duty of equal treatment, (3) violations of BCL § 501(c), (4) oppression of minority shareholders, (5) failure to make shareholder distributions in 2024; (6) usurpation of corporate opportunity, (7) conversion, and (8) violations of BCL § 624. On July 24, 2025, Defendants e-filed their Motion, inclusive of Defendants' Memorandum of Law ("Def. Memo."), the Affirmation of Elie Rothschild ("Rothschild Aff.") and exhibits thereto.² Plaintiffs hereby oppose Defendants' Motion.

ARGUMENT

I.

STANDARD OF REVIEW

A. CPLR 3211(a)(8)

Defendants initially seek dismissal of the Complaint pursuant CPLR 3211(a)(8) asserting the Court lacks personal jurisdiction over Rothschild. While a complaint need not allege a basis for personal jurisdiction (*see Fischbarg v Doucet*, 9 NY3d 375, 381, FN 5 (2007)), when the issue is raised, plaintiff has the burden of proving a basis of jurisdiction. *See Castillo v. Star Leasing Co.*, 69 A.D.3d 551 (2010). "To successfully oppose such a motion, the plaintiff need only make a *prima facie* showing that the defendant was subject to the personal jurisdiction of the court."

² To the extent this Memorandum references or recites any statements or documents provided by Defendants, Plaintiffs do not concede the truth, accuracy or authenticity of such statements or documents; rather, such statements or documents are referenced or recited herein solely for the purposes of Plaintiffs' arguments in opposition to the Motion.

America/Intl. 1994 Venture v Mau, 146 AD3d 40 (2d Dept 2016). However, courts do not require even a *prima facie* showing if jurisdictional discovery is sought, but only that plaintiffs demonstrate that facts “may exist” to overcome defendants’ motion (*see Castillo* at 552); or that a “sufficient start” is made in demonstrating personal jurisdiction to overcome the motion. *See Bangladesh Bank v. Rizal Commercial Banking Corporation*, 226 A.D.3d 60, 74 (2024).

B. CPLR 3211(a)(5)

A CPLR 3211(a)(5) motion to dismiss based on a three-year statute of limitations under CPLR 214 may be successfully opposed by demonstrating that the CPLR 213(8) “discovery rule” applies or the limitations period is tolled. The “discovery rule” allows fraud-based claims to be brought within six years of the wrongdoing or two years from the time plaintiff discovered the fraud. *See* CPLR 213(8); *see also Kaufman v. Cohen*, 307 A.D.2d 113 (2003) (holding that the discovery rule applies to fraud-based breach of fiduciary duty claims).

C. CPLR 3211(a)(1)

A motion to dismiss under CPLR 3211(a)(1) can be granted only if the documentary evidence “utterly refutes the plaintiff’s factual allegations,” (*Siegler v. Lippe*, 189 A.D.3d 903 (2020)) and “resolve[s] all factual issues . . .”. *Melnicke v. Brecher*, 65 AD3d 1020 (2d Dept 2009). To constitute documentary evidence, the evidence must be “unambiguous, authentic, and undeniable.” *Feldshteyn v Brighton Beach 2012, LLC*, 153 AD3d 670 (2d Dept 2017). “Judicial records . . . mortgages, deeds, contracts . . . and other papers whose contents are essentially undeniable qualify as documentary evidence.” *Matter of Elberg*, 164 AD3d 497, 498 (2d Dept 2018). “Conversely, letters, emails, affidavits, and deposition testimony fail to meet the requirements for documentary evidence.” *Id.*

D. CPLR 3211(a)(7)

When considering a CPLR 3211(a)(7) motion to dismiss for failure to state a cause of action, “[w]e accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” *Tax Equity Now N.Y. LLC v City of New York*, 42 NY3d 1, 6 (2024), citing *Leon v Martinez*, 84 NY2d 83 (1994), 87-88. “Thus, the question is not whether a party will eventually prove its claim once those allegations are put to the test but whether the claim is based on a viable legal theory”. *Id.* at 6.

II.**PLAINTIFFS HAVE ADEQUATELY PLED A BASIS FOR PERSONAL JURISDICTION IN NEW YORK OVER DEFENDANT ELIE ROTHSCHILD****A. The Complaint Makes Out a *Prima Facie* Case for Long-Arm Jurisdiction Over Defendant Rothschild.**

This Court may exercise jurisdiction over non-resident Defendant Elie Rothschild as Plaintiffs have made out a *prima facie* case that Rothschild has established sufficient contacts with New York to subject him to the jurisdiction of its courts under New York’s long-arm statute.

In *Kosoff v Samsung Co. Ltd.*, non-resident defendant directors were alleged to have wrongfully diverted corporation assets to an affiliated subsidiary. *See Kosoff v Samsung Co. Ltd.*, 123 Misc 2d 177, 179 (Sup Ct 1984). After noting that the “primary contact of the individual defendants with this jurisdiction is as directors of a New York corporation” (*Kosoff* at 178), the court found that “[h]aving availed themselves of the privilege of conducting the affairs of a corporation under the protection of New York Law, the individual defendants have established sufficient contacts with the State to subject them to the jurisdiction of its courts without offending ‘traditional notions of fair play and substantial justice’” *Id.* at 179, quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). After finding that constitutional due process

requirements were satisfied, the *Kossoff* court then held that defendants' actions constituted a "persistent course of conduct" within New York under CPLR 302(a)(3)(i) and that the court properly had jurisdiction over the defendants. *See Kossoff* at 184. The court in *Kossoff*, did not rely on physical contacts to establish jurisdiction, but rather based its findings on equitable grounds, stating that "the individual defendants can hardly profess surprise at being required to defend an action before the courts of a state, the laws of which they are charged with misusing." *Id.* at 184. Further, the *Kossoff* court emphasized New York's strong interest in regulating the affairs of corporations organized under its laws in finding that New York courts may exercise personal jurisdiction over directors charged with misuse of powers granted by New York law to divert corporate assets. *Id.*

Other New York cases similarly provide that long-arm jurisdiction is proper "even [where] the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted." *See Deutsche Bank Sec., Inc. v Montana Bd. of Invs.*, 7 NY3d 65, 71 (2006), *quoting Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 (1988) (finding CPLR 302(a)(1) provides long-arm jurisdiction over commercial actors using electronic and telephonic means to project themselves into New York). "Purposeful activities are those with which a defendant, through volitional acts, 'avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" *Fischbarg* at 380, *quoting McKee Elec. Co. v Rauland-Borg Corp.*, 20 NY2d 377, 382 (1967).

Contrary to Defendants' argument, Plaintiffs' jurisdictional claims do not rest *solely* on Rothschild's status as an officer of Sollega (Def. Memo. p. 8). Plaintiffs allege much more -- focused on not only on Rothschild's director/officer status, but his actions in those capacities. As

alleged in the Complaint, Rothschild actively and continuously exercised his rights under New York law to form, manage and exercise domination and control over the New York corporation. Compl. ¶¶ 7, 11 – 13, 45, 47, 68, 92, 99. In so doing, Rothschild wrongfully disposed of corporate assets to the detriment of the minority shareholders and to his own benefit. Compl. ¶¶ 52-56). Rothschild directed and memorialized corporate actions under New York law (Compl. ¶¶ 47, 52, 54). Specifically, the 2024 Sollega Resolution identifies that Sollega's corporate actions were taken pursuant to New York law. *See* Rothschild Aff. Ex. A.; *see also* Compl., FN 1. Rothschild also regularly causes the Corporation to file documents in New York with the Secretary of State, and as recently as 2024 (*see* Chang Aff. ¶ 15 and Ex. 1).³ These acts are purposeful, legally-centered acts in New York, even if executed remotely. *See Fischbarg v Doucet*, 9 NY3d 375 (2007) (affirming CPLR 302(a)(1) jurisdiction based on nonresident defendant purposefully availing himself of the benefits of New York's legal system, despite not being physically present in the state).

Rothschild's actions as a director and officer of Sollega are similar in substance and effect to the non-resident directors in *Kosoff* and non-resident defendant in *Fischbarg*. Rothschild has projected himself into New York by conducting the corporate affairs of Sollega under the protection of New York law and Plaintiffs have alleged that he has abused that privilege, making out a *prima facie* case that Rothschild has a sufficient nexus with New York for jurisdictional purposes under CPLR 302(a)(1) and/or CPLR 302(a)(3)(1) of New York's long-arm statute.

³ Note that Plaintiffs can rely on facts outside the complaint, including in affidavits in opposition when opposing a motion to dismiss under CPLR 3211(a)(8). *See Leon v. Martinez*, 84 N.Y.2d 83, 87–88 (1994).

Accordingly, this Court should deny Defendants' CPLR 3211(a)(8) motion and assert personal jurisdiction over Rothschild.

B. Piercing the Corporate Veil Serves as a Further Basis to Assert Personal Jurisdiction Over Rothschild.

Jurisdiction over the individual Defendant Rothschild exists even without invoking New York's long-arm statute, as New York and Federal courts applying New York law have recognized that piercing the corporate veil and finding a corporation is being operated as an alter ego can support establishing personal jurisdiction over a party. "We have previously observed that . . . 'alter egos are treated as one entity' for jurisdictional purposes." *Transfield ER Cape Ltd. v Indus. Carriers, Inc.*, 571 F3d 221 (2d Cir 2009). *See also, Wm. Passalacqua Builders, Inc. v. Resnick Developers South, Inc.*, 933 F.2d 131, 142–143 (2d Cir.1991) (affirming a district court's conclusion under New York law that it possessed jurisdiction if plaintiffs "can prove [that] the defendants are in fact the alter ego" of parties to a construction contract with plaintiffs). Similarly, a New York court affirmed the finding of personal jurisdiction over a defendant "by piercing the corporate veil for jurisdictional purposes" based on testimony that defendants supervised business activities in New York that "were not run with sufficient separateness." *Corcoran v. Haddon S. Fraser Associates, Ltd.*, 171 A.D.2d 522, 522-523 (1991).

Primary factors for piercing the corporate veil under New York law are: (1) showing that the owners exercised complete domination over the corporation; and (2) that such domination was used to commit a wrong against the plaintiff, which resulted in the plaintiff's injury. *See Matter of Morris v New York State Dept. of Taxation and Fin.*, 81 NY2d 705 (1993). In addition, courts may consider other factors, such as failure to adhere to corporate formalities, commingling of assets, and use of corporate funds for personal use. *See East Hampton Union Free School Dist. v. Sandpebble Bldrs., Inc.*, 884 N.Y.S.2d 94 (2d Dept.2009).

Rothschild states that the distributions he received in 2020 and 2022 were not actually distributions but were the Corporation's funds that he was advised to invest -- apparently in his own name and/or own account -- on behalf of the Corporation. *See* Rothschild Aff. ¶¶ 17 - 19. This characterization is highly implausible and at odds with applicable tax and other contemporaneous financial records, and another reason to doubt Rothschild's credibility. But, if accepted as true, then Rothschild knowingly intermingled the Corporation's funds with his own. Thus, Rothschild's affirmation provides grounds for "piercing the corporate veil". *See M & A Oasis, Inc. v MTM Assoc., L.P.*, 307 AD2d 872 (1st Dept 2003) (sustaining court's piercing the corporate veil, plaintiff having alleged that defendants used their control to perpetrate a fraud upon plaintiff and did not observe proper corporate formalities). Moreover, Rothschild's misappropriation of intellectual property of the Corporation (Compl. ¶¶ 103-114) evidences additional intermingling of assets and abuses of the New York corporate form, providing a further basis for piercing the corporate veil for jurisdictional purposes.

Rothschild's domination and control over the corporation to extract corporate funds and assets for personal use establishes a clear basis for piercing the corporate veil. Based on the equitable principles in the cited cases, Rothschild's misuse of a New York corporation as an instrumentality for corrupt purposes renders it just to assert jurisdiction over his person.

C. Plaintiffs Have Met the "Sufficient Start" and "Facts May Exist" Standard to Warrant Denial of the CPLR 3211(a)(8) Motion and Require Discovery.

Even if the Court does not find that Plaintiffs have made out a *prima facie* case that Rothschild is subject to personal jurisdiction in New York, as discussed above, the Complaint alleges numerous indicators of Rothschild's contacts in New York that would satisfy the "sufficient start" and "facts may exist" standard to require denial of the Motion. *See supra*, "Legal Standards, para. A." Accordingly, at a minimum, this Court should deny the Motion and allow

discovery to proceed to confirm that Rothschild has, or after discovery will have been shown to have, sufficient contacts in New York under New York's long-arm statute. Although Rothschild asserts that he has not had contacts with New York since 2020 (*see* Rothschild Aff. ¶¶ 8 – 11) that need not be taken as true. Rothschild may travel to New York for solar industry trade shows, he may solicit sales of products in New York or otherwise enter into transactions with employees, consultants, vendors, customers, or investors in New York. Because, as alleged, Rothschild has betrayed his fiduciary position of trust and Defendants have refused to timely and fully comply with Plaintiffs' inspection demands under BCL § 624, Defendants should not be entitled to dismissal under CPLR 3211(a)(8) and Plaintiffs should be entitled to jurisdictional discovery in respect thereof.

III.

PLAINTIFFS' USURPATION OF CORPORATE OPPORTUNITY AND CONVERSION CLAIMS ARE NOT TIME-BARRED; AND WITH RESPECT TO PLAINTIFF N.C.S. ARE TOLLED

Rothschild usurped corporate opportunity and converted assets by titling IP Assets of the Corporation in his name rather than Sollega's. Compl. ¶¶ 68-71, 102-114, and Exs. 7-10.⁴ As used herein, "IP Assets" refers to the SOLLEGA trademark (the "Mark") issued December 7, 2021, and three solar racking patents dated December 1, 2020, January 22, 2019, and November 28, 2017 (the "Patents"). Instead of answering for such misconduct, Rothschild seeks to avoid accountability by moving to dismiss pursuant to CPLR 3211(a)(5), asserting the claims are barred by a three-year statute of limitations under CPLR 214.

⁴ The usurpation of corporate opportunity claims are included within the First Cause of Action (Breach of Fiduciary Duties) and Fourth Cause of Action (Shareholder Oppression), and raised separately as the Sixth Cause of Action (Usurpation of Corporate Opportunity). The conversion claim is raised as the Seventh Cause of Action (Conversion).

A. “Discovery Rule” Limitations Period Applies as the IP Assets Claims Are Fraud-Based and Are Not Time-Barred

Where a claim is fraud-based, as is the case with both the usurpation of corporate opportunity and conversion claims,⁵ the CPLR 213(8) “discovery rule” allows such claims to be brought within six years of the wrongdoing or two years from the time plaintiff discovered the fraud or could have with reasonable diligence. *See Gam v. Dvir*, 223 A.D.3d 706 (2024) (applying rule to fraud-based breach of fiduciary duty and conversion claims where fraud was integral to the cause of action); *see also Epiphany Community Nursery School v. Levey*, 171 A.D.3d 1 (2019).

In the instant case, elements of fraud are essential to the IP Assets claims. Rothschild is alleged to have acted in bad faith and committed self-dealing by titling the IP Assets in his own name. *See* Compl. ¶¶ 1, 68-69, 111. The Complaint further alleges that Rothschild failed to disclose the opportunity, thereby intentionally diverting opportunities and benefits squarely within the Corporation’s line of business. *Id.* ¶¶ 103-105, 111. These deceitful actions were part of a pattern of withholding corporate information from Plaintiffs and providing misleading or incorrect information related to corporate assets and shareholder interests. *Id.* ¶¶ 46, 105.

Fraud claims can be predicated on acts of concealment when a fiduciary relationship exists and the fiduciary fails to disclose material facts with the intent to deceive. *See Kaufman v. Cohen*, 307 A.D.2d 113, 120 (2003) (holding that “the mere failure to disclose facts which one is required to disclose may constitute actual fraud, provided the fiduciary possesses the requisite intent to deceive”). These principles establish that fiduciaries are held to a higher standard of disclosure, and their intentional omissions can form the basis of a fraud claim.

⁵ Usurpation of corporate opportunity is a subset of the fiduciary duty of loyalty. *See Alexander & Alexander of New York, Inc. v. Fritzen*, 147 A.D.2d 241 (1989) (providing “corporate fiduciaries . . . cannot, without consent, divert and exploit for their own benefit any opportunity that should be deemed an asset of the corporation”).

In the instant case, where Plaintiffs only recently in June 2025 discovered the fraud-based conduct with respect to the IP Assets (*see* Chang Aff. ¶¶ 11-14), application of the “discovery rule” allows for Plaintiffs’ claims to be brought up to “two years from the time the plaintiff . . . discovered the fraud . . .” CPLR 213(8). Accordingly, Defendants’ Motion with respect to all of the IP Assets claims should be denied.

B. Six-Year Limitations Period Applies to Corporate Opportunity Claims as Equitable Relief Is Sought

If a plaintiff seeks equitable relief for a breach of fiduciary duty claim, the six-year limitations period under CPLR § 213(1) applies. *See IDT Corp. v. Morgan Stanley Dean Witter & Co.*, 12 N.Y.3d 132 (2009); *see also Cusimano v. Schnurr*, 137 A.D.3d 527 (2016). In the case at bar, Plaintiffs request equitable remedies as a primary part of their prayer for relief for their usurpation of corporate opportunity claim. Specifically, Plaintiffs request “return of the Intellectual Property to the Corporation [and] the imposition of a constructive trust over any proceeds or benefits derived from such IP Assets” (Compl., p. 9, ¶¶ F and G); and, applicable to all claims, “[f]or such other and further relief as the Court deems just and equitable” (Compl., p. 10 ¶ J). Accordingly, the six-year limitations period under CPLR § 213(1) applies to First, Fourth and Sixth Causes of Action. Assuming the causes of action accrued on the registration date of each IP Asset, the breach of fiduciary duty claims are timely raised within the six-year limitations period with respect to the Mark and the Patent dated December 1, 2020; and Defendants’ Motion should be denied with respect thereto.

C. Limitations Periods for IP Assets Claims Are Tolled For Plaintiff Minor Child N.C.S.

Applicable to Plaintiff Minor Child N.C.S, CPLR 208 explicitly tolls the statute of limitations for individuals under a “disability because of infancy” at the time the cause of action accrues. For actions with a limitation period of three years or more, the plaintiff has three years

after the disability ceases (i.e., after turning 18) to commence the action. Moreover, the Court of Appeals has emphasized that infancy is the disability that determines the toll, and the toll is not terminated by the actions of a guardian or legal representative. *Henry ex rel. Henry v City of New York*, 94 NY2d 275 (1999). Accordingly, *all claims* of Plaintiff N.C.S, including all IP Assets claims are not time-barred and Defendants' Motion should be denied with respect thereto.

IV.

DEFENDANTS' MOTION TO DISMISS UNDER CPLR 3211(a)(1) LACKS MERIT

Defendants further seek to dismiss the Complaint pursuant to CPLR 3211(a)(1), claiming documentary evidence refutes Plaintiffs' factual allegations. The documentary evidence to which Defendants refers, principally consists of Schedule K-1s, amended for 2020 through 2022 issued to Chang in August 2024 (Rothschild Aff. Exs. F - H) and Rothschild (Rothschild Aff. Exs. B - D), prepared and signed by Defendants in connection with the Corporation's amendment and filing of those years' tax returns, without Plaintiff's involvement, approval or signature.

A. Defendants' Evidence Does Not Qualify as "Documentary Evidence"

As an initial matter, Defendants' tax documents evidence does not qualify as "documentary evidence" for purposes of CPLR 3211(a)(1). As discussed above (*see supra*, "Legal Standards, para. C."), to qualify as "documentary evidence" in support of a CPLR 3211(a)(1) motion, evidence submitted must be "unambiguous, authentic, and undeniable." *Attias v Costiera*, 120 AD3d 1281 (2d Dept 2014). Directly applicable here, the K-1s prepared by the Defendant do not meet the criteria for documentary evidence. *See Lessin v Piliaskas*, 188 AD3d 859 (2d Dept 2020) (finding tax return signed only by one party and prepared without participation of the other party, did not utterly refute the plaintiff's allegations and therefore was not considered documentary evidence). On that basis alone, Defendants' CPLR 3211(a)(1) argument fails and should be denied.

To the extent that Defendants offer the 2024 Sollega Resolution (Rothschild Aff. Ex. A), email correspondence (Rothschild Aff. Exs. K, L) and checks issued to Plaintiffs in 2025 (Rothschild Aff. Ex. M), neither do they qualify as documentary evidence. The 2024 Sollega Consent, drafted and signed solely by Rothschild, does not meet the criteria for documentary evidence under CPLR 3211(a)(1). *See Rabos v R & R Bagels & Bakery, Inc.*, 100 AD3d 849 (2d Dept 2012) (holding corporate minutes did not constitute documentary evidence). Email correspondence has been consistently described as not qualifying as “documentary evidence.” *See Matter of Elberg*, 164 AD3d 497 (2d Dept 2018). Additionally, checks and bank statements have been held not to meet the standard of documentary evidence under CPLR 3211(a)(1) because the evidence was not “unassailable proof” and did not resolve all factual issues as a matter of law. *See Doggart v. Praeger*, 229 N.Y.S.3d 311 (2025).

B. Defendants’ Evidence Fails to Refute Plaintiffs’ Claims as Required Under CPLR 3211(a)(1)

Even were the documents provided by Defendants deemed “documentary evidence”, they do not conclusively resolve all factual issues and are therefore insufficient to warrant dismissal under CPLR 3211(a)(1). *See Leon v Martinez*, 84 NY2d 83, 87-88 (1994); *see also Feldshteyn v. Brighton Beach 2012, LLC*, 153 A.D.3d 670 (2017).

Defendants’ repeated assertions that their evidence is “indisputable” and “utterly refutes” Plaintiffs’ allegations (Def. Memo. *passim*) are nonsense. The documents, at most, create issues of fact requiring further legal process, rather than “conclusively resolving” matters. The amended K-1’s provided by Defendant generated solely by Defendants’ in connection with their amendment of the Corporation’s 2020-2022 tax returns (undertaken in 2024 only after Plaintiffs raised concerns and hired a law firm to confront Defendants regarding financial discrepancies), instead *serve as an admission by Defendants* that their misconduct and misstatements relating to

distributions occurred as alleged by Plaintiffs. Furthermore, as orchestrated by Mr. Rothschild, the amendments appear to represent a deliberate effort to recharacterize prior years' tax returns for the purposes of denying Plaintiffs' the remedy they are entitled to – payment in full of the owed and unpaid distribution amounts.

Rothschild also exhibits Sollega checks dated 1/22/25 made to each Plaintiff for \$51,723.14, asserting they are “in satisfaction of their respective proportional amended distributions for the years 2021 and 2022, as well as the corrected amounts for 2023” (*see* Rothschild Aff. ¶ 25; Ex. M). Rothschild's statement and the checks are ambiguous as to their meaning and simply raise further questions – including, are the amended returns, which Defendants' claim the checks are based on, themselves flawed? and, are the checks new 2025 distributions unrelated to any prior deficient distributions? The evidence provided does not refute Plaintiffs allegations and cannot resolve all issues of fact.

At best, Defendants' “after the fact” 2024 and 2025 documents establish only that Rothschild *claims* he made restitution to the Corporation for a wrong that he committed, but do not prove the damages caused by that wrong, or that all the money improperly taken by Rothschild was returned, or properly distributed to Plaintiffs to make-up for the funds they were entitled to but never received. Documents created in 2024 and 2025 cannot undo wrongful takings or disproportionate distributions of money in 2020 and 2022 or make them outdated.

Accordingly, Defendant's CPLR 3211(a)(1) motion should be denied.

V.

**PLAINTIFF'S BREACH OF FIDUCIARY DUTY CLAIMS
ARE LEGALLY SUFFICIENT**

Defendants allege that Plaintiffs' first, second and fourth causes of action must be dismissed because a corporation does not owe fiduciary duties to its shareholders. However, where, as here, the minority shareholders plead breaches of fiduciary duty that not only resulted in a direct harm to them, but from which the defendant corporation actually stood to benefit, New York law recognizes a direct cause of action against the corporation for said breach.

A. Plaintiffs' Direct Actions for Breach of Fiduciary Duty Against Defendant Sollega are Legally Sufficient

Contrary to Defendants' assertions, Plaintiffs' direct actions for breach of fiduciary duty against Sollega are legally sufficient. It is the general rule in New York, that where a corporation suffers losses due to the acts of its officers and directors which reduce the value of a shareholder's investment, the shareholder does not have a direct cause of action for such damages, but rather a derivative cause of action to recover the loss for the benefit of the corporation. *Abrams v. Donati*, 66 N.Y.2d 951 (1985). However, an established carve-out to this rule allows a direct claim to be asserted against a corporation where the shareholder alleges a breach of duty owed independent of any duty to the corporation. *Higgins v. New York Stock Exchange*, 10 Misc.3d 257 (NY County 2005); discussing *Abrams* at 953.

In *Higgins*, plaintiffs were seat-holders on the stock exchange and brought a direct claim for breach of fiduciary duty against defendant NYSE alleging a merger agreement caused direct injury to their equity interests while benefiting the NYSE and the merged corporation. The injury alleged was not a harm to the corporation, but rather a distinct harm to the shareholders, thus enabling a direct claim against the corporation. *Higgins, Id.* In refusing to dismiss the plaintiffs' cause of action for breach of fiduciary duty against the corporation, the court held:

. . . the alleged disparate allocation of equity, resulting in more seatholders' equity being contributed to the merged corporation. . . while 'short-changing' NYSE seatholders from realizing the full value of their equity positions . . . constitutes a separate and distinct harm to NYSE seatholders that is redressable by the assertion of direct claims against the corporation and its fiduciaries. . . [I]nsofar as the . . . complaints allege injuries that result in harm to NYSE seatholders' *equity* interests, as opposed to the NYSE's *assets*, plaintiffs have standing to assert direct causes of actions for breach of fiduciary duty. *Higgins* at 274, 275.

See also Gjuraj v. Uplift Elevator Corp. 110 A.D.3d 540 (1st Dept 2013) (minority shareholder had standing to bring direct claim for breach of fiduciary duty against defendant corporation where defendants' freezing plaintiff out of the corporation and failing to pay him his share of the profits harmed him individually).

The pleadings in the instant case are similar to the *Higgins* and *Gjuraj* cases in that Plaintiffs allege breaches of fiduciary duty which had the effect of harming them directly while actually benefiting the underlying corporation. Plaintiffs have alleged that Sollega breached its fiduciary duties by, among other things, failing to ensure proportionate shareholder distributions to Plaintiffs in 2020 and 2022. Indeed, Rothschild does not deny that he failed to cause the Corporation to make proportionate shareholder distributions, but rather alleges he deposited the funds he received "into an investment account for Sollega's benefit" then eventually "transfer[red] the funds back to Sollega as the transfers were not intended for, nor should have been treated as shareholder distributions" Rothschild Aff. ¶¶ 17 - 19. The disproportionate distributions benefited Sollega while directly harming the Plaintiffs by withholding the distributions to which they were entitled. Plaintiffs' Complaint is not focused on the assets of the corporation, which have seemingly increased, but rather their own equity interests. As such, Plaintiffs' First, Second, and Fourth direct Causes of Action against the Corporation for breaches of fiduciary duty must survive a motion to dismiss.

B. Defendants “Bad Faith” Acts Rebut the Applicability of the Business Judgment Rule

Defendants’ assertions that the business judgment rule forecloses all challenges to the legitimacy of Defendant Rothschild’s corporate decisions are misplaced. It is true that “[j]udicial inquiry into the actions of corporate directors which are taken in good faith in the exercise of honest judgment and the legitimate furtherance of corporate purposes is forbidden.” *Amfesco Industries Inc. v. Greenblatt* 172 A.D.2d 261 (1st Dept 1991); quoting *Auerbach v. Bennett*, 47 N.Y.2d 619 (1979). However “the presumptive applicability of the business judgment rule is rebutted, and judicial inquiry thereby triggered by showing that a breach of fiduciary duty occurred, which includes evidence of bad faith [and] self-dealing, or by decisions made by directors’ demonstrably affected by inherent conflicts of interest,” *Higgins* at 278, quoting *Jones v. Surrey Coop. Apts. Inc.* 263 A.D.2d 33 (1999).

In the case at bar, Plaintiffs have alleged that both Defendants have acted in bad faith in breaching their fiduciary duties to Plaintiffs. As stated above, plaintiffs can maintain a direct action for breach of fiduciary duty against a corporation where the shareholder alleges a breach of duty owed independent of any duty to the corporation. As such, Defendants’ bad faith actions will not be shielded by the business judgment rule, and the burden to prove the fairness of the challenged acts shifts to Defendants.

It is disingenuous for Defendants to assert that Plaintiffs’ allegations fail to satisfy the elements of a claim for breach of fiduciary duty. The Complaint is clear in stating that Plaintiffs, as minority shareholders in a closely-held corporation, were owed fiduciary duties by Defendants, such duties were violated and Plaintiffs were directly damaged thereby.

Moreover, contrary to Defendants’ contentions, Plaintiffs’ allegations of specific misrepresentations of fact are numerous, detailed and sufficient to satisfy CPLR § 3016(b)’s

particularity pleading requirement relating to fraud. The Complaint alleges that over several years, Defendants misrepresented and understated to Plaintiffs, via K-1s and other communications, the actual number of shares and ownership held by the Plaintiffs (reporting 11 shares and 11% instead of the correct 1,200,030 shares and 15.3849%), while simultaneously overstating Rothschild's ownership percentage (89% rather than the accurate 84.6151%) (see Compl. ¶¶ 15, 48, 50; and Exs. 4-7).

In sum, because New York law recognizes a direct cause of action against a corporation for breach of fiduciary duty and the business judgment rule does not foreclose the bad faith actions taken by Defendants, Plaintiffs' First, Second and Fourth Causes of Action sounding in breach of fiduciary duty must survive a motion to dismiss.

VI.

PLAINTIFF'S THIRD CAUSE OF ACTION FOR VIOLATION OF BCL § 501(c) STATES A LEGALLY SUFFICIENT CLAIM

Defendants seek dismissal pursuant to CPLR 3211(a)(7) of Plaintiffs' Third Cause of Action against the Corporation for violation of NY BCL § 501(c) asserting the Complaint alleges "unequal treatment of shareholders" rather than "unequal treatment of shares". Defendants' basis for dismissal is not only an artificial distinction — it is a distinction without a difference.

The statute's mandate is clear -- "[e]ach share shall be equal to every other share of the same class." BCL § 501. That language focuses squarely on the rights and privileges associated with shares of the same class — including, the right to receive distributions *pro rata* according to ownership interest. Any deviation, such as providing higher distributions to certain shareholders while others receive less, would be contrary to the statute. *See Beaumont v Am. Can Co.*, 142 Misc 2d 767 (Sup Ct 1988), *aff'd as mod.*, 160 AD2d 174 (1st Dept 1990).

Plaintiffs have clearly pled a cause of action alleging the Corporation's violation of NY BCL § 501(c). Plaintiffs' Complaint alleges (1) that Plaintiffs and Defendants held shares of the same class -- "common shares of the Corporation" (Compl. ¶¶ 4, 8, 14, 53); (2) the number of common shares held and ownership percentages represented (Compl. ¶¶ 4, 8, 14); (3) the Corporation made distributions to disproportionate to the parties' respective ownership percentages of such shares. (Compl. ¶¶ 45, 53-56, Table at 57, 58 and 87); and (4) the inconsistent specific per share amounts distributed with respect to each share owned by Plaintiffs versus Rothschild (Compl. ¶¶ 53, 55).

Moreover, as relevant to whether the Corporation violated BCL § 501(c), the Complaint does not allege discretionary decision-making -- rather it alleges a specific, concrete violation of BCL § 501(c) -- the Corporation made disproportionate distributions in 2020 and 2022 to holders of the same class of common stock, without regard to their respective ownership percentages. While corporate directors have discretion in managing business affairs, they do not have discretion to violate statutory mandates. The right to equal treatment under BCL § 501(c) is not subject to override by "business judgment." The moment a distribution is made -- and it is not aligned *pro rata* with share ownership within a class -- the statute has been violated.

Defendants' hyper-formal argument draws a false wall between shares and shareholders. By alleging that shareholders of the same class received unequal economic benefits from the same shares, Plaintiffs necessarily allege that certain shares were treated as more valuable or privileged than others of the same class, in direct contravention of BCL § 501(c). This is consistent with judicial interpretations of BCL § 501(c), which prohibit creating *de facto* preferential shares without formal reclassification. *See Matter of Kemp & Beatley, Inc.*, 64 N.Y.2d 63 (1984) (courts may intervene when majority shareholders use control to disproportionately benefit their own

shares). Plaintiffs' detailed allegations regarding ownership of equal shares and unequal distributions squarely invoke BCL § 501(c). Accordingly, Defendant's motion to dismiss Plaintiffs' BCL § 501(c) should be denied.

VII.

PLAINTIFFS' FOURTH CAUSE OF ACTION FOR SHAREHOLDER OPPRESSION STATES A LEGALLY SUFFICIENT CLAIM

Defendants premise their argument to dismiss Plaintiffs shareholder oppression claim on *Orloff v. Weinstein Enterprises, Inc.*, 247 A.D.2d 63 (1st Dept 1998). In *Orloff*, the court held that excluding a minority shareholder from some board meetings and denying access to corporate records did not rise to the level of oppression and dismissed the minority shareholders' complaint. *Orloff*, however, provides a narrow interpretation of oppressive conduct, and numerous cases support that where, as here, the majority's conduct substantially defeats the reasonable expectations of minority shareholders, a claim for oppression can be maintained. *See Matter of Wiedy's Furniture Clearance Center Co., Inc.*, 64 N.Y.2d 63 (1984) (Court of Appeals emphasizing that reasonable expectations must be objectively viewed and central to the shareholder's investment).

Here, the Plaintiff's shares were originally owned by Plaintiff Chang's late husband, George Schnakenberg, III ("George"). As a co-founder and chief designer of Sollega through his passing in 2014, George had every expectation of receiving distributions to the extent available. While Plaintiffs, as heirs to George's shares, do not expect an active role in management, they do have an objective reasonable expectation to receive at least a minimum tax distribution and proportionate profit distributions during profitable years.

Moreover, *Orloff* can be distinguished from the case at bar on key facts. In *Orloff*, the plaintiffs had been paid regular dividends on their shares for over thirty years before they brought

their claim. *See Orloff* at 64. In the instant case, the Corporation's first ever cash distribution to Plaintiff Chang was in 2020 for \$10,000.00 (see Compl. ¶ 31), which turned out to be a grossly disproportionate distribution given that Rothchild distributed \$700,000.00 to himself that same year (even though Plaintiffs' ownership was 15.3849% and Rothschild's was 84.6151%). Notably, after being confronted by Chang with her concerns about an expected increased tax liability due to Sollega's profit allocations, Rothschild sought to buy out Plaintiffs' shares, knowing Chang was in a compromised position (*see* Chang Aff ¶¶ 5-7). The instant case then is more like *Matter of Kemp & Beatley*, in which the court found oppression where the majority shareholders terminated dividend payments to force a buyout of the minority's shares at a reduced price. *Matter of Kemp & Beatley, Inc.*, 64 NY2d 63 (1984). For the reasons stated above, Defendant's motion to dismiss the shareholder oppression cause of action should be denied.

VIII.

PLAINTIFFS' EIGHTH CAUSE OF ACTION ADEQUATELY ALLEGES VIOLATION OF BCL § 624

Defendants' conduct, as alleged, fell far short of the shareholder inspection compliance requirements of BCL § 624. Despite multiple written demands beginning in April 2023, Defendants refused for over a year to provide Plaintiffs with full, and complete access to Sollega's stock ledger, shareholder lists, minutes, financial statements, and other corporate records. *See* Compl. ¶¶ 41-46. Moreover, even when certain documents were provided, others were not and remain outstanding (*see* Chang Aff. ¶ 24 listing documents not provided).

Significantly, records that were provided also failed to satisfy BCL § 624(a) because they revealed that Sollega's stock ledger and tax filings were grossly inaccurate and inadequately maintained. For years, K-1s and other documents understated Plaintiffs' actual ownership while overstating Rothschild's, and omitted proper documentation of shareholder meetings or board

actions. Such inaccuracies and omissions meant that the “books and records” provided were neither “correct” nor “complete” as the statute requires. Courts have recognized that such deficiencies may justify further judicial intervention to ensure compliance with the statute (see *Novikov v. Oceana Holdings Corp.*, 46 Misc.3d 561 (2014) (court noted that BCL § 624(f) does not restrict the court’s power to compel the production of additional records beyond those specified in the statute, particularly where inaccuracies or omissions are alleged).

Defendant’s Motion to Dismiss Plaintiffs’ violation of BCL § 624 should be denied.

IX.

PLAINTIFFS’ FIFTH CAUSE OF ACTION FOR FAILURE TO MAKE 2024 SHAREHOLDER DISTRIBUTIONS STATES A LEGALLY SUFFICIENT CLAIM

Plaintiffs agree that “[i]t 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.” Def. Memo. at 12, *referencing Gordon v. Elliman*, 306 N.Y. 456, 459 (1954). However, the carve-out to the rule is also well settled -- that minority shareholders can overcome the business judgment rule by demonstrating that directors breached their fiduciary duties, which includes showing bad faith or self-dealing. *See Higgins v New York Stock Exch., Inc.*, 10 Misc 3d 257 (NY Sup 2005); *see also Lippman v Shaffer*, 15 Misc 3d 705 (Sup Ct 2006). Rothschild’s refusal to authorize shareholder distributions in 2024 despite the corporation’s profitability as alleged, strongly suggests a lack of good faith -- especially against the backdrop of Rothschild’s pattern misconduct with respect to prior distributions.

Defendants’ claim that the Fifth Cause of Action fails because it is premised solely on Plaintiffs’ claims that Sollega was profitable in 2024 and that Plaintiffs “do not and cannot allege” bad faith or misconduct (Def. Memo at 19) simply ignores the Complaint. Plaintiffs allege Defendants’ bad faith and self-dealing comprehensively throughout the Complaint, and explicitly

in relation to the 2024 distributions (Compl. ¶¶ 97-98). Moreover, Plaintiffs' allegations of specific misrepresentations and acts of bad faith are expressly incorporated by reference under the Fifth Cause of Action heading. *See* Compl. ¶ 94; *see also People by James v Natl. Rifle Assn. of Am., Inc.*, 74 Misc 3d 998 (Sup Ct 2022) (finding that allegations throughout the complaint regarding defendant's misconduct were sufficient to meet the heightened pleading standard under CPLR 3016).

Accordingly, Plaintiffs' claim as to Defendants' failure to make 2024 Shareholder Distributions is legally sufficient to overcome the presumptions typically afforded by the business judgment rule and survive the instant Motion.

CONCLUSION

Based on the foregoing, Defendants' Motion should be denied in its entirety. Alternatively, if the Court finds that there are pleading deficiencies, Plaintiffs respectfully request leave to re-plead to correct such deficiencies.

Dated: August 25, 2025
New York, New York

Respectfully submitted,

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CERTIFICATION

I hereby certify pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court that this Memorandum of Law was prepared on a computer using Microsoft Word.

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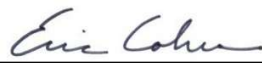
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Dated: New York, New York
August 25, 2025

By: 
Eric N. Cohen