

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

-----X
MARAT NOVIKOV,

Petitioner,

Index No. 506282/2013
(Demarest, J.)

-against-

OCEANA HOLDINGS CORP.,

Respondent.
-----X

**MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER'S ORDER TO SHOW
CAUSE TO COMPEL RESPONDENT TO PRODUCE CORPORATE RECORDS
PURSUANT TO BUSINESS CORPORATION LAW § 624**

**RAKOWER LUPKIN PLLC
488 MADISON AVENUE, 18TH FLOOR
NEW YORK, NEW YORK 10022
Tel: (212) 660-5550
Fax: (212) 660-5551**

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PRELIMINARY STATEMENT

Petitioner Marat Novikov's ("Novikov") current application contains a material factual inaccuracy – one which, when corrected, casts a dispositive pall over this entire special proceeding. In paragraph 20 of Novikov's Verified Petition, which seeks a wide range of corporate books and records based on unspecified allegations of corporate wrongdoing, he swears under oath that "[n]o previous application had been made for the relief sought herein." Obscured by this routine and generally innocuous allegation is that there has, in fact, been a "prior request" for the requested relief and it was denied by the Appellate Division, Second Department this past summer. In the case captioned *JAS Family Trust, et al. v. Oceana Holding Corp., et al.*, the Appellate Division affirmed an earlier ruling made by Justice Pfau in that case, denying Novikov access to the very same class of records that he seeks in the current special proceeding. The Second Department held that Novikov's allegations of wrongdoing were impermissibly "speculative, vague and conclusory." But Novikov's allegations of wrongdoing in the current proceeding, contained in a single paragraph of his Verified Pleading, are even more "speculative, vague, and conclusory" than those already found to be inadequate by the Second Department. Given this reality, it is hardly surprising that Novikov elected not to bring the Second Department's decision in *Oceana* to the court's attention; had he done so, this special proceeding would not have made it out of the proverbial starting gate.

Adding to the cloud that overshadows Novikov's present application is that he has begun to interfere in Oceana's relationship with its tenants -- whose rent is the lifeblood of the company. We have learned of at least one (and perhaps two) instances in which Novikov (or his representatives) have contacted tenants, insisting that they produce their leases and other business documents pertaining to Oceana and threatening court process for any refusal to

comply. Surely this type of conduct is inconsistent with the type of good faith and proper purpose that are prerequisites to the production of books and records.

Ultimately, Novikov brought this action because he wants management responsibility, but does not have it. Since the very beginning of Novikov's involvement with Oceana in 1995, he has never held a seat on Oceana's Board of Directors and has never served as part of Oceana's management team. In fact, he has never been more than a 20% shareholder. While Novikov's lack of status and management responsibility may well be frustrating to him, frustration, without more, does not entitle him to the extensive and intrusive documentation he now seeks.

For these reasons and others, as set forth more fully below, respondent respectfully requests that Novikov's application for books and records be denied in all respects.

STATEMENT OF FACTS

On March 15, 1994, Oceana was incorporated in the State of New York. Oceana is the owner of real property located at 1029 Brighton Beach Avenue in Brooklyn, New York, which is also its principal place of business. The building on that premises is intended for residential and mixed commercial use. At present, the building is at 95% occupancy. The tenants include a large Russian supermarket, known as "Net Coast," and a movie theater.

Oceana's certificate of incorporation provides that the corporation has authority to issue 200 shares without par value. On or about January 5, 1995, Novikov purchased 40 common shares of Oceana, which represented 20% of Oceana's shares. In addition to Novikov, Oceana's other original shareholders and their respective interest in Oceana were:

- Michael Bronstein ("M. Bronstein") – 35%
- Leonid Zeldovich ("L. Zeldovich") – 20%

- Issac Bronshtein (“I. Bronshtein”) – 15%
- Yury Beyn (“Y. Beyn”) – 10%.

Although the composition of ownership has changed over the years, Novikov has never held more than 20% of the outstanding shares. Similarly unchanged is that Novikov has never served on Oceana’s Board of Directors and has never held any other management position at Oceana. In sum, Novikov has been and remains a minority shareholder with neither managerial nor directorial duties.

Since the beginning, Novikov is (and has always been) dissatisfied with his lack of authority. Starting in 1999, he has either commenced or intervened in at least three litigations, including this one, all of which have sought the wide-ranging disclosure of corporate documents -- the very type of documents that company managers and board members would (and should) have at their disposal. In each of these litigations, the ostensible basis for disclosure is always the same: vague and unspecified allegations of corporate misconduct. Regrettably for Novikov, his forays into the judicial process have, thus far, all been singularly unsuccessful.

The 1999 Action

On January 4, 1999, Novikov filed an action entitled *Marat Novikov v. Michael Bronstein, et al.*, Index No. 126/99, in the Supreme Court of New York, County of Kings (the “1999 Action”). (See Summons and Verified Complaint in 1999 Action annexed to the Affirmation of Jonathan D. Lupkin (“Aff. of JDL”) at Ex. 1.) In the Verified Complaint, Novikov alleged that M. Bronstein, L. Zeldovich, I. Bronshtein, and Y. Beyn (all of the then owners of Oceana except him¹) engaged in fraud, overreaching, and self-dealing that resulted in the misuse and waste of Oceana’s corporate assets. (*Id.* at ¶ 13.) Without providing any specific

¹ As set forth on the chart attached to this memorandum, Oceana’s ownership has changed over time, but Novikov’s ownership interest has remained constant at 20%.

instances of wrongdoing, Novikov's complaint requested "an independent audit of the books and records of Oceana Holding Corp. for the purpose of determining, among other things, why the corporation is running at a loss and is unable to pay essential costs and expenses in connection with the operation of 1029 Brighton Beach Avenue, Brooklyn, New York" and for Oceana's officers and directors to "account to" Oceana for their acts and omissions in managing the assets and property of Oceana. (Verified Complaint in 1999 Action annexed to Aff. of JDL at Ex. 1 at Wherefore Clause and accompanying Exhibit A.)

Although he filed the 1999 Action a year before the turn of the millennium, Novikov did not seek judicial intervention by purchasing an RJI until *six years later*, in December of 2005. (Clerk's Minutes of 1999 Action annexed to Aff. of JDL at Ex. 4.) The RJI appears to have been purchased in connection with Novikov's one and only motion in the case – a motion for a preliminary injunction. (*Id.*) Novikov's application, purportedly made because of "[M. Bronstein's] absolute refusal to make any of the books, records, or other documents of the corporation available to me for inspection" and because "Mr. Bronstein has increased his ownership stake from 35% to 70%, under circumstances which are not known to me," sought to enjoin an amendment to Oceana's by-laws to require a majority shareholder vote in order to sell or transfer company stock. (*See* Order to Show Cause and Affidavit of Marat Novikov in 1999 Action annexed to Aff. of JDL at Ex. 2 at ¶ 8.) By decision and order dated May 11, 2006, the Court rejected Novikov's arguments, holding that the proposed amendment, which stipulated that approval of sales or transfers "shall not unreasonably be withheld," did not constitute an unlawful restriction on the alienation of stock. (Decision and Order in 1999 Action annexed to Aff. of JDL at Ex. 3.)

It appears that Novikov neither appealed the Court's decision nor took any additional action in the case. Court records show the 1999 Action as "disposed," suggesting that Novikov simply abandoned the action. (Clerk's Minutes and E-Courts snapshot of 1999 Action annexed to Aff. of JDL at Ex. 4.)

The 2009 Action

In or around 2009, Novikov again participated in litigation against Oceana. This time, he intervened as a plaintiff in a case captioned *JAS Family Trust, et al. v. Oceana Holdings Corp., et al.*, Index No. 15675/09 (the "2009 Action"). (Amended Verified Complaint in 2009 Action annexed to Aff. of JDL at Ex. 5.) In the 2009 Action, Novikov made the same conclusory allegations that he raised (and subsequently abandoned) in the 1999 Action, except this time, he directed his ire against M. Bronstein and his two adult children, Aron Bronstein ("A. Bronstein") and Diana Bronstein ("D. Bronstein"). (*Id.*)

In the 2009 Action, Novikov asserts that the Bronstein family engaged in, among other things, fraud, overreaching, conflict of interest, and self-dealing that resulted in the misuse and waste of Oceana's corporate assets. (*Id.*) Novikov claimed that "upon information and belief" the Bronstein family "[paid] alleged exorbitant salaries to themselves" and "propagated space within the premises for their own use and/or at a rental rate not commensurate with the going rate for similar space." (*Id.* at ¶¶ 67, 70, 72-73.) Novikov also claimed that the Bronstein family had failed and refused to provide him with (1) rental incomes and information concerning the tenancies, (2) profit and loss statements, (3) corporate tax returns, (4) contracts, agreements, leases, and other documents evidencing Oceana's profits and losses, and (5) a statement of all corporate revenue. (*Id.* at ¶¶ 110-114, 118.) He sought a Court order, seeking those records.

This Court roundly rejected Novikov’s application. (*See* Decisions and Orders of Justice Pfau, dated September 22, 2011 and May 10, 2012, annexed to Aff. of JDL at Exs. 6 and 7.) On September 22, 2011, Justice Ann T. Pfau dismissed Novikov’s claim for relief, holding that they were “so vague and lack such specificity as to provide inadequate notice of the claimed transactions and the material elements of [the] alleged claim.” (Decision and Order of Justice Pfau, dated September 22, 2011, annexed to Aff. of JDL at Ex. 6.) The Second Department agreed. On August 28, 2013, the Appellate Division affirmed Justice Pfau’s dismissal, holding that to be entitled to corporate books and records under Business Corporation Law (“BCL”) § 624 and the common law, Novikov needed (but failed) to plead a “proper purpose” for the inspection. (Decision and Order of Appellate Division, dated August 28, 2013, annexed to Aff. of JDL at Ex. 8.) Echoing Justice Pfau’s conclusion, the Appellate Division, held that Novikov’s stated purposes for inspection were insufficient because they were “speculative, vague, and conclusory.” (*Id.*)

The 2013 Action

Fewer than two months after the Second Department rejected Novikov’s claim for books and records, he saw fit to commence yet another action – the current special proceeding. Yet even the most cursory review of the Verified Petition confirms that it is, in the immortal words of Yogi Berra, “déjà vu all over again.” Novikov levels the very same allegations as alleged in the 2009 Action, but with even less detail than that found to be insufficient in the 2009 Action:

Upon information and belief, the officers and directors of the corporation may be paying themselves unreasonable compensation, failing to lease the property at fair and reasonable rates and may have also engaged in a conflict of interest, as to leases in entities in which they may have a pecuniary interest and have failed to maximize the assets of Oceana and have failed to demonstrate why Oceana should be converted from an “S” corporation to an LLC.

(Verified Petition at ¶ 10.) Novikov even seeks the same classes of documents: (1) shareholders' minutes and proceedings; (2) Board of Directors' minutes and meetings; (3) financial statements; (4) federal and state income tax returns; (5) Oceana's leases with tenants; (6) profit and loss statements; and (7) employment agreements. [(Order to Show Cause and Verified Petition in 2013 Action at "Wherefore" Clause.)]

ARGUMENT

In his Verified Petition, Novikov alleges "upon information and belief" that certain officers and directors of Oceana "may be" engaged in corporate misconduct. (Verified Petition in 2013 Action at ¶¶ 9-10.) He invokes his statutory right as a minority shareholder of Oceana to seek inspection of Oceana's books and records. Specifically, Novikov seeks the following books and records for the period of 2010 to the present: (1) shareholders' minutes and proceedings; (2) Board of Directors' minutes and meetings; (3) financial statements; (4) federal and state income tax returns; (5) Oceana's leases with tenants; (6) profit and loss statements; and (7) employment agreements. [(Order to Show Cause and Verified Petition in 2013 Action at "Wherefore" Clause.)] (*Id.*) Notably, in neither the Order to Show Cause that commenced this nor his Verified Petition does Novikov invoke his common law right seek to inspect corporate records. (Order to Show Cause and Verified Petition in 2013 Action.)

In New York, corporate shareholders have both a statutory and common law right to inspect corporate books and records. The statutory right conferred by the Business Corporation Law is exceedingly narrow. It entitles a shareholder to inspect:

- (1) the corporation's "annual balance sheet and profit and loss statement for the preceding fiscal year, and, if any interim balance sheet or profit and loss statement has been distributed to shareholders or otherwise made available to the public, . . . the most recent such interim balance sheet or profit and loss statement"; and
- (2) "minutes of the proceedings of its shareholders and record of shareholders."

BCL § 624 [b], [e].

Apart from the specifically delineated categories of documents contemplated by BCL § 624, other types of corporate books and records may only be obtained pursuant to a shareholder's rights under the common law. *See* BCL §624 [b], [e], and [f] (setting forth procedure by which shareholders may obtain “minutes of the proceedings of its shareholders and record of shareholders,” “annual balance sheets” and “profit and loss statements” and stating that statute does not “impair the power of courts to compel the production for examination of the books and records of a corporation.”) The common law right to inspect corporate books and records is relatively broad, but does not entitle shareholder access to records for the mere asking. It permits shareholders, upon an affirmative showing of good faith and proper purpose, the right to inspect “as many books and records” in furtherance of that purpose as the Court deems appropriate. *See JAS Family Trust, et al. v Oceana Holding Corp., et al.* 109 AD3d 639, 642 [2d Dept 2013] (“[A] shareholder has both statutory and common-law rights to inspect the books and records of a corporation if inspection is sought in good faith and for a valid purpose.”) (internal quotation marks and citation omitted); *see also Hughey v Du Bois Press*, 36 NYS2d 220, 221-22 [Sup Ct 1942] (“The purpose of an inspection is to enable a stockholder to ascertain facts to protect his interests, and the court can in a proper case throw open as many books and records or permit as many inspections as the court, in the exercise of a reasonable discretion, believes the situation requires.”)

As a threshold matter, because Novikov has only invoked his statutory right of inspection, his application for documents other than those contemplated by BCL should be rejected outright, and for this reason alone. Put differently, Novikov's current application should be deemed nothing more than a request for minutes of shareholder proceedings, a list of

Oceana's shareholders, and Oceana's financial statement for its last fiscal year, the documents specified by BCL § 624.

But even assuming that Novikov had invoked both his common law and statutory rights, his application must still be denied. *First*, Novikov's entire application should be denied because his allegations of corporate misconduct are speculative, vague, and conclusory. *Accord Oceana Holding Corp*, 109 AD3d at 643. *Second*, Novikov's history of litigation against Oceana, which includes an application for the same classes of corporate books and records to which the Second Department denied him access in August of 2013, suggests that Novikov is seeking corporate books and records merely to harass the board of directors and interfere with their authority to manage Oceana's business and financial affairs. (Decision and Order of Appellate Division in 2009 Action, dated August 28, 2013, annexed to Aff. of JDL at Ex. 8; *see also* Verified Petition in 2013 Action at ¶ 10.) As provided in further detail below, Novikov is not entitled to the books and records he has requested, and his application should be denied in its entirety.

A. Novikov's Request For Oceana's Books And Records Is Impermissibly Vague And Conclusory

In support of his current application, Novikov claims that he needs an extensive and intrusive production of corporate records to expose alleged corporate malfeasance. In cases where shareholders seek corporate books and records based on corporate mismanagement and wrongdoing, courts have required factual assertions of specific wrongdoing. *See Oceana Holding Corp*, 109 A.D.3d at 642-43 (holding plaintiff was not entitled to corporate books and records under either the common law or BCL §624 because "plaintiff's asserted purposes for the inspection were speculative, vague, and conclusory"); *Lapsley v Sorfin Intern., Ltd.*, 43 AD3d 1113, 1114 [2d Dept 2007] (stating that requests for books and records "may not be based upon unsupported claims [of corporate waste]" and holding shareholder's conclusory claims of

corporate waste were insufficient to justify a limited review of corporation's books and records); *Eklund v Pinkey*, 27 AD3d 878, 879 [3d Dept 2006] ("Plaintiffs were required to set forth more than vague and conclusory allegations of conversion and such charges had to be supported by factual assertions of specific wrongdoing.")

The totality of Novikov's assertions is contained in paragraph 10 of the Verified Petition.

It reads in full as follows:

Upon information and belief, the officers and directors of the corporation *may be* paying themselves unreasonable compensation, failing to lease the property at fair and reasonable rates and may have also engaged in a conflict of interest, as to leases in entities in which they may have a pecuniary interest and have failed to maximize the assets of Oceana and have failed to demonstrate why Oceana should be converted from an "S" corporation to an LLC.

(Verified Petition in 2013 Action at ¶ 10 (emphasis added))²

As a threshold matter, Novikov's Verified Petition is materially inaccurate. In it, Novikov swears that that "[n]o previous application has been made for the relief sought herein." (*Id.* at ¶ 20 (emphasis added)). This is simply not true. In the 2009 Action, Novikov sought the *same* types of books and records and made *similar* allegations of corporate misconduct in support thereof, and both the trial court and appellate division rejected his claim. (*See* Amended Verified Complaint and Decisions and Orders of Justice Pfau and Appellate Division in 2009

² Novikov also attempts to bolster his application by pointing to information about A. Bronstein and D. Bronstein that is unrelated to any actions taken by them in connection with Oceana. He annexes as Exhibits B and C to his Verified Petition documents that purport to show that the Securities and Exchange Commission sanctioned A. Bronstein in 2003, that A. Bronstein pled guilty to securities fraud and that the Second Department suspended D. Bronstein from practicing law in 2012. Under New York's well-established *Molineaux* rule, none of these unrelated facts is admissible to establish propensity towards wrongdoing with respect to Oceana's business affairs. *See Matter of Brandon's Estate*, 55 NY2d 206, 210-11 [1982] ("[I]t is improper to prove that a person did an act on a particular occasion by showing that he did a similar act on a different, unrelated occasion"; *held*, appellant's two prior judgments are inadmissible as direct evidence of whether appellant exerted undue influence on decedent to obtain decedent's property); *Coopersmith v Gold*, 223 AD2d 572, 573 [2d Dept 1996] *affd*, 89 NY2d 957 [1997] (holding plaintiff could not introduce testimony of other women who engaged in sexual relations with defendant while they were his client to establish that defendant engaged in malpractice by engaging in a sexual relationship with plaintiff); *Kourtalis v City of New York*, 191 AD2d 480, 481 [2d Dept 1993] (holding plaintiff should not have been permitted to introduce evidence of five civilian complaints alleged against police officer to establish that police officer has engaged in acts amounting to malicious prosecution and false arrest in the past).

Action annexed to Aff. of JDL at Exs. 5-8.) Here is a comparison of the allegations made in the two actions:

Allegations in the Current 2013 Action	Allegations in the 2009 Action found to be <i>insufficient as a matter of law</i>
<p>“[T]he officers and directors of the corporation may be paying themselves unreasonable compensation” (Verified Petition at ¶ 10.)</p>	<p>“Defendants MICHAEL BRONSTEIN, ARON O. BRONSTEIN, DIANA BRONSTEIN, SCORPIO FAMILY, SCORPIO REALTY, and OCEANA FAMILY individually and/or collectively and/or acting on concert, caused to be withdrawn from the funds of the Defendant OCEANA weekly sums through fictitious means and in fictitious names, or for alleged exorbitant salaries to themselves, when in truth and in fact, the services rendered by the Defendants to the Defendant OCEANA, were not commensurate with the services provided.” (Amended Verified Complaint annexed to Aff. of JDL at Exhibit 5 at ¶ 67 (emphasis added)).</p>
<p>“[T]he officers and directors of the corporation may be . . . failing to lease the property at fair and reasonable rates” (Verified Petition at ¶ 10.)</p>	<p>“Upon information and belief the Defendants MICHAEL BRONSTEIN, ARON O. BRONSTEIN, DIANA BRONSTEIN, SCORPIO FAMILY, SCORPIO REALTY, and OCEANA FAMILY, individually, collectively and/or acting in concert have propagated space within the premises for their own uses and/or at a rental rate not commensurate with the going rate for similar space and said Defendants are accordingly converting the assets of the Defendant OCEANA for their own personal benefits and at the expense of the Plaintiffs JAS and Novikov.” (Amended Verified Complaint annexed to Aff. of JDL at Ex. 5 at ¶ 70.)</p>
<p>“[T]he officers and directors of the corporation. . . may have also engaged in a conflict of interest, as to leases in entities in which they may have a pecuniary interest and have failed to maximize the assets of Oceana” (Verified Petition at ¶ 10.)</p>	<p>“Upon information and belief the Defendants MICHAEL BRONSTEIN, ARON O. BRONSTEIN, DIANA BRONSTEIN, SCORPIO FAMILY, SCORPIO REALTY, and OCEANA FAMILY, individually and/or acting in concert are partners and/or owners of one or more corporations, including but not limited METPO MAGAZINE, LLC and ADOLUTIONS POWER MEDIA, LLC which are renting space within the PREMISES at a reduced rental rate not commensurate with the interests of the Defendant OCEANA and/or the</p>

	<p>going rate for similar space and said Defendants are accordingly converting the assets of Defendant OCEANA for their own personal benefits and at the expense of the Plaintiff JAS and other shareholders similarly situated.” (Amended Verified Complaint annexed to Aff. of JDL at Ex. 5 at ¶ 72 (emphasis added)).</p> <p>“Upon information and belief the Defendants MICHAEL BRONSTEIN, ARON O. BRONSTEIN, DIANA BRONSTEIN, SCORPIO FAMILY, SCORPIO REALTY, and OCEANA FAMILY, individually, collectively and/or acting in concert are partners and/or owners of one or more of the tenants within the PREMISES renting space at a reduced rental rate not commensurate with the interests of the Defendant OCEANA and/or the going rate for similar space and said Defendants are accordingly converting the assets of the Defendant OCEANA for their own personal benefits and at the expense of the Plaintiffs JAS and NOVIKOV.” (Amended Verified Complaint annexed to Aff. of JDL at Exhibit 5 at ¶ 73.)</p>
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Given that this Court and the Appellate Division dismissed Novikov’s 2009 Action for books and records as “speculative, vague, and conclusory,” it follows, *a fortiori*, that the current application is defective as well. (Decision and Order of Appellate Division, dated August 28, 2013, annexed to Aff. of JDL at Ex. 8.) As the chart makes clear, Novikov’s current allegations are even *more* speculative, vague, and conclusory than those passed upon and rejected in the 2009 Action. (*Compare* Verified Petition in 2013 Action *with* Amended Verified Complaint in 2009 Action, annexed to Aff. of JDL at Ex. 5) To summarize: given that Novikov’s claims of corporate misconduct did not pass muster in the 2009 Action because they were “speculative, vague, and conclusory,” then surely Novikov’s current claims of corporate misconduct are similarly insufficient. *See Oceana Holding Corp.*, 109 AD3d at 643; *Lapsley*, 43 AD3d at 1114; *Eklund*, 27 AD3d at 879. As such, Novikov’s application should be denied in its entirety.

B. Novikov Is Not Entitled to Oceana's Books and Records Because He Lacks Good Faith And A Proper Purpose

Not only is Novikov's current application defective because his allegations of corporate misconduct are impermissibly vague and conclusory, it is also deficient because Novikov has not (and cannot) establish that he is acting in good faith and with a proper purpose.

Novikov's history of litigation, coupled with his statements and actions, cast grave doubt upon the *bona fides* of his current application. Proper purposes are defined as those that are "reasonably related to the shareholder's interest in the corporation." *Tatko v Tatko Bros. Slate Co., Inc.*, 173 AD2d 917, 918 [3d Dept 1991]. Examples of proper purposes include "efforts to ascertain the financial condition of the corporation, to learn the propriety of dividend distribution, to calculate the value of stock, to investigate management's conduct, and to obtain information in aid of legitimate litigation." *Id.*³

On the other end of the spectrum, *improper* purposes are "those which are inimical to the corporation." *Id.* at 917. Examples of improper purposes include the shareholder seeking "to find technical defects in corporate transactions to institute 'strike suits'[] and to locate information to pursue one's own social or political goals." *Id.* at 917-18; *see also de Paula v Memory Gardens, Inc.*, 90 AD2d 886, 887 [3d Dept 1982] (recognizing harassment as an improper purpose that may defeat a shareholder's claim for books and records; *held*, serious question raised as to shareholder's proper purpose in requesting records to uncover corporate misconduct where governmental bodies already considered the allegations and found that they lacked merit).

While Novikov claims that his request for books and records is for the proper purpose of investigating corporate misconduct, Novikov's actions tell a different story. More specifically:

³ Nowhere in Novikov's papers does he ever claim entitlement to the information at issue for the purposes of valuing his stock or assessing the financial condition of the corporation.

(a) Novikov has been involved in three separate litigations against Oceana since 1999, all of which allege corporate misconduct and all of which, thus far, have been either abandoned or unsuccessful; (b) Novikov's allegations in the Verified Pleading and elsewhere make clear that his purpose was (and is) to inject himself improperly into the Oceana's corporate decision-making process; and (c) Novikov, and others acting on his behalf, have intimidated and threatened Oceana's tenants, the rent from which is the single biggest source of Oceana's revenue.

History of Litigation

In the 1999 Action, the 2009 Action, and the 2013 Action, Novikov has made similar allegations of corporate misconduct and demanded an inspection of Oceana's books and records. (Summons and Verified Complaint in 1999 Action annexed to Aff. of JDL at Ex. 1; Amended Verified Complaint in 2009 Action annexed to Aff. of JDL at Ex. 5; Verified Petition.) As noted above, Novikov abandoned the 1999 Action and lost in the 2009 Action, before the trial and appellate courts, thereby denying him access to the same class of far-reaching corporate books and records sought here. (*See* Clerk's Minutes and E-Courts snapshot and Decisions and Orders of Justice Pfau and Appellate Division in 2009 Action annexed to Aff. of JDL at Exs. 4, 6-8.) Nevertheless, *fewer than two months* after the Appellate Division affirmed the dismissal of Novikov's claim for Oceana's books and records in the 2009 Action, Novikov initiated the 2013 Action to obtain the *exact same relief*. (Order to Show Cause and Verified Petition in 2013 Action.) Novikov's history of litigations against Oceana, including the most recent pronouncement by the Second Department, should cause the Court to look askance at Novikov's motives.

Novikov Seeks to Interfere with Corporate Decision-Making

Novikov's own statements make abundantly clear the real reason for seeking Oceana's books and records. According to his Verified Petition:

It was anticipated that when Oceana was formed, [Novikov], an experienced business person, who organized and formed the corporation with the original shareholders, was to be involved in the operation of the corporation and its financial affairs and growth.

(Verified Petition in 2013 Action at ¶ 4.) This is hardly the first time Novikov has expressed this sense of frustration. For example, in a letter to Oceana's Board of Directors, dated August 5, 2005, Novikov excoriated M. Bronstein for failing to provide him with information regarding various disputes with Oceana's tenants, stating that "[t]his method of operation cannot continue" because he is entitled to this information "as a 20% shareholder of Oceana." (Letter annexed to Affidavit of Aron Bronstein ("Aff. of A. Bronstein") at Ex. B.) Additionally, after the commencement of this very proceeding, Novikov's attorney sent an email to Oceana's attorney, Jonathan Lupkin, requesting that Novikov "be made fully advised as to any leases or other business transactions involving 'Net Coast,'" one of Oceana's largest tenants. (Email annexed to Aff. of JDL at Ex. 9.)

Regardless of Novikov's desires and expressions of original intent of the founders, the fact remains that he has never been a member of the Board of Directors or Oceana's management team. Thus, while Novikov may well be frustrated, his frustration does not, without more, entitle him to interfere in corporate decision-making. *See* BCL §701 ("[T]he business of a corporation shall be managed under the direction of its board of directors.").

Novikov Has Threatened and Intimidated Oceana's Current Tenants

As further evidence of Novikov's bad faith and improper purpose, we have evidence that Novikov has begun to interfere with Oceana's relationship with its tenants. Novikov arranged as recently as three weeks ago to contact Oceana's current tenants to obtain copies of the very documents that he seeks in this application. As set forth in the accompanying affidavits of A. Bronstein and Alon Maman, a woman named "Olga" had been calling tenants and requesting that they forward copies of their leases and other paperwork of their dealings with Oceana. (*See* Aff. of A. Bronstein at ¶¶ 6-8; Affidavit of Alon Maman ("Aff. of Maman") at ¶¶ 2-4.) Alon Maman, the owner of one of Oceana's tenants, stated that Olga called him from telephone number (718) 743-5449 and threatened to subpoena these documents if he did not provide them. (Aff. of Maman at ¶¶ 2-3.) Novikov does not speak English well and, on occasion, has referred matters relating to Oceana to his daughter named Olga so that she may speak for him. (Aff. of A. Bronstein at ¶ 11.) And lest there be any doubt as to Olga's identity and affiliation, a simple internet search confirms that telephone number (718) 743-5449, the number from which Mr. Maman received the call from Olga, is associated with "Olga Novikova" and "Marat Novikov." (Result of internet search for telephone number annexed to Aff. of JDL at Ex. 10.)

C. Oceana Has Agreed to Provide Its 2012 Financial Statements

Pursuant to BCL §624, shareholders may receive, upon written request, a copy of the corporation's annual balance sheet and the profit and loss statement for (a) the preceding fiscal year, (b) any interim balance sheet or profit and loss statement that has been distributed to its shareholders or made publicly available, and (c) the current balance sheet and profit or loss statement. BCL §624[e]. Shareholders may also receive a list of shareholders and minutes of shareholder proceedings. BCL §624[b]. Yet the case law limits a shareholder's right to obtain even this circumscribed class of documents if the shareholder intends to use the information to

the detriment of the corporation. *Matter of Botwin v Cent. Structural Steel Co.*, 28 AD2d 522, 522 [1st Dept 1967] (holding that shareholder would not be permitted to inspect corporate financial statements and balance sheet as a way to harass her husband in a matrimonial action); *Apple v Careerco, Inc.*, 82 Misc 2d 468, 469 [Sup Ct 1974] (“It is when the stockholder attempts to misuse the financial information to the detriment of the corporation that his actions will be limited.”)

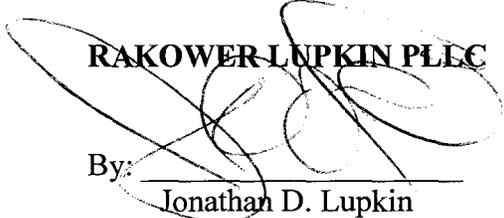
Although Novikov, as a shareholder of Oceana, would normally be permitted to obtain copies of these statements, there is, as set forth above, sufficient reason to believe that Novikov will use these statements to Oceana’s detriment. Nevertheless, (and while Oceana could stand firm in its refusal to provide any of its records under these circumstances), it is prepared to provide the following records to Novikov: a copy of Schedule L and Form 8825 from Oceana’s 2012 Federal Income Tax Return. Oceana also agrees to make available for inspection to Novikov at Oceana’s offices a list of current Oceana shareholders and the minutes Oceana has of shareholder meetings held in 2013.

CONCLUSION

For the foregoing reasons, Oceana respectfully requests that Novikov's application to inspect Oceana's books and records be denied in its entirety.

Dated: New York, New York
December 3, 2013

RAKOWER LUPKIN PLLC

By: 

Jonathan D. Lupkin

Melissa Yang

488 Madison Avenue, 18th Floor

New York, New York 10022

(212) 660-5550 (main)

(212) 660-5551 (fax)

jlupkin@rakowerlupkin.com

myang@rakowerlupkin.com

Attorneys for Respondent

TIME TABLE OF SHAREHOLDERS AND THEIR RESPECTIVE SHARES OF OCEANA HOLDING COMPANY STOCK

1995				
Michael Bronstein – 35%	Leonid Zeldovich – 20%	Issac Bronshtein – 15%	Marat Novikov – 20%	Yury Beyn – 10%
2002				
Michael Bronstein – 35%	Leonid Zeldovich – 10%; (Transferred 10% to Gennadi Zeldovich) Gennadi Zeldovich – 10%	Issac Bronshtein – 15%	Marat Novikov – 20%	Yury Beyn – 10%
2003				
Michael Bronstein – 55% (Bought out Leonid Zeldovich and Gennadi Zeldovich in 2003)	Issac Bronshtein – 15%	Marat Novikov – 20%	Yury Beyn – 10%	
2005				
Scorpio Realty Trust – 35% (Michael Bronstein transfers 20% and Issac Bronshtein sells 15%); Michael Bronstein – 35%		Marat Novikov – 20%	Yury Beyn – 10%	
2006				
Scorpio Family Trust – 43.75% (Scorpio Realty Trust transfers 35% to Scorpio Family Trust and Michael Bronstein transfers 8.75% to Scorpio Family Trust); Oceana Family Trust 8.75% (Michael Bronstein transfers 8.75% to Oceana Family Trust); Michael Bronstein – 17.5%		Marat Novikov – 20%	JAS Family Trust – 10%	
2007				
Scorpio Family Trust – 52.5% (Michael Bronstein transfers 8.75% to Scorpio Family Trust); Oceana Family Trust – 17.5% (Michael Bronstein transfers 8.75% to Oceana Family Trust)		Marat Novikov – 20%	JAS Family Trust B – 10%	
2009 - Present				
Scorpio Family Trust – 52.5%; Oceana Family Trust – 17.5%		Marat Novikov – 20%	JAS Family Trust B/JAS Family Trust V – 10%	