

EXHIBIT A

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

-----X :

MAZEL CAPITAL, LLC, on its own behalf, and :
derivatively on behalf of HEARTWATCH, LLC :

Plaintiff, :

-against- :

FRANKLYN LAIFER, :

Defendant. :

-----X :

AMENDED COMPLAINT

Index No. 600592/10

Plaintiff by its attorney, BARRY R. FERTEL, as and for his complaint herein, states as follows:

NATURE OF THE ACTION

1. This action arises out of the defendant's total disregard of his obligations to plaintiff as a member and investor of HeartWatch, LLC ("HeartWatch"), and his violations of statutory requirements and his duties to plaintiff. Plaintiff brings this action both on its own behalf and derivatively on behalf of HeartWatch.

THE PARTIES

2. At all times hereinafter mentioned, plaintiff Mazel Capital, LLC, (“Mazel”) was and still is a limited liability company organized and existing pursuant to the laws of the State of Delaware, with its principal place of business located in Nassau County, New York. Mazel is also a member and investor in HeartWatch.

3. At all times hereinafter mentioned, upon information and belief, Franklyn Laifer (“Laifer”) was and still is a resident of the County, City and State of New York. Laifer is the Managing Member of HeartWatch and has an investment interest in Heart Watch.

4. At all times hereinafter mentioned, upon information and belief, HeartWatch, was and still is a limited liability company organized and existing pursuant to the laws of the State of New York, with its principal place of business located at 311 East 72nd Street, New York, NY 10021. Upon information and belief, Laifer arranged for the formation of HeartWatch on or about April 26, 2006.

5. In or about April 2005, Mazel made an initial investment of \$300,000.00 in EK Guard, a corporation of which he was a shareholder. In May 2006, plaintiff exchanged its interest in EK Guard for a four per cent interest (4%) in HeartWatch. In addition, in May 2006, Mazel made an additional investment of \$250,000.00 for a five per cent (5%) interest in HeartWatch resulting in a total interest held by plaintiff of nine per cent (9%) in HeartWatch. In May, 2007, plaintiff made an additional investment of \$120,000.00 in HeartWatch and in October, 2007 Mazel made an additional investment of \$180,000.00 in HeartWatch.

6. Mazel and Laifer as members of HeartWatch entered into an operating agreement concerning the operation and management of HeartWatch on May 24, 2006. HeartWatch was to engage in the business of developing and marketing a cardiac monitoring and information service.

7. Laifer advised plaintiff that the investment made by Mazel would be used to provide working capital for HeartWatch and as managing member would assure that the monies would be expended in a prudent and responsible manner.

8. In or about 2008, HeartWatch ceased doing business and became insolvent.

9. Because Mazel never received any financial information concerning the operation and eventual insolvency of HeartWatch, by letter dated September 11, 2009, pursuant to Article III of the Operating Agreement (“the Agreement”) Mazel requested financial information concerning HeartWatch’s financial affairs.

10. In or about December, 2009, two months after making its request, Mazel was provided with unsigned copies of the purported 2006, 2007 and 2008 partnership tax returns for HeartWatch. No other financial information was provided to Mazel.

11. After reviewing the unsigned copies of the tax returns, it became clear to Mazel that serious questions were raised concerning the financial affairs of HeartWatch, which prompted Mazel to requested additional information, including explanations of certain guaranteed payments, consulting fees, legal and arbitration fees listed in the 2006 tax return, the basis for guaranteed payments of \$86,627.00 and startup costs of \$718,503, as listed in the 2007 return, and explanation of consulting fees, operating expenses and a payment to an entity identified as “Info Tech” for \$7,000.00 in the 2008 tax return. In addition, Mazel requested the full partnership returns for HeartWatch, including all K-1’s, journals and the general ledger, and bank statements and cancelled checks.

12. Repeated requests were made to defendant's counsel for this information, but despite numerous promises to provide the information, it was not until after this lawsuit was instituted that other financial records were provided to plaintiff.

13. The financial records and information provided by defendant showed that Laifer, as managing member engaged in conduct in violation of the Agreement and his fiduciary obligations as Managing Member of HeartWatch.

14. Pursuant to Paragraph 7(a) of the Agreement Laifer was not entitled to receive any compensation from HeartWatch.

15. Pursuant to Paragraph 7(g), Laifer was to perform his duties "in good faith and with that degree of care which a reasonable and prudent person in a like position would use under similar circumstances."

16. Laifer breached the Agreement as follows:

(a) Laifer paid himself direct compensation from HeartWatch in an amount not less than \$125,000.00 in direct breach of the Operating Agreement;

(b) Upon information and belief, Laifer arranged for indirect compensation for himself by having HeartWatch pay for his expenses, which were not reasonable, nor for the benefit of HeartWatch, including, upon information and belief, meals, entertainment, travel, professional fees and expenses, and other personal expenses of not less than \$5,000.00;

(c) Upon information and belief, Laifer had HeartWatch pay unjustified, unsupported and excessive consulting and fees of over \$310,000.00 over a two year period, without any written consulting agreements with such consultants;

17. On or about May 24, 2006, HeartWatch and Laifer entered into a letter agreement ("the Letter Agreement") which, pursuant to paragraph 5 thereof, limited the expenditure of funds for "general start-up costs such as rent, salaries, utilities and other day-to-day expenses"

and further limited such expenditures to \$50,000.00 per month for each of the first two months thereafter and \$37,500.00 per month for each of the following four months unless defendant received the prior written consent of plaintiff prior to exceeding such amount of expenditures.

DERIVATIVE ALLEGATIONS

18. Plaintiff brings this action derivatively, on behalf of HeartWatch to enforce the claims of HeartWatch against defendant Laifer, which claims may be properly be asserted by HeartWatch and which HeartWatch has failed to enforce. Plaintiff has held a membership ownership interest in HeartWatch at all relevant times.

19. Plaintiff will fairly and adequately protect the interests of HeartWatch and its members in enforcing the rights of HeartWatch against defendant Laifer.

20. Demand on HeartWatch to bring this action has not been made and is not necessary because such demand would be a futile and useless gesture. HeartWatch is controlled by Laifer, as managing member. As alleged herein, Laifer unlawfully paid himself compensation in direct violation of the operating agreement, and therefore he would have no interest in making a demand upon himself for the return of the monies. Accordingly, demand on the managing member, Laifer, would be a futile act.

21. Laifer is not in a position to exercise independent business judgment with respect to the claim herein due to his participation in and responsibility for the conduct giving rise to this action. Moreover, to comply with any such demand would have a direct financial impact on defendant Laifer.

22. As a result of Laifer's position as sole managing member, he has a conflicting loyalty to HeartWatch's members and his personal interest, and he therefore has an irreconcilable

conflict of interest that renders him incapable of disinterestedly deciding whether to prosecute this action.

23. Defendant Laifer has breached the operating agreement, and committed waste. Such conduct is not and cannot be the product of valid, disinterested business judgment, cannot be ratified, and thus demand is excused.

24. Moreover, because, upon information and belief, Laifer made little or no financial investment in HeartWatch, he should not be entitled to receive any portion of the damages recovered in this action based upon his membership interest in HeartWatch, as to do so, would unjustly enrich him.

First Cause of Action –Derivative On Behalf of HeartWatch

(Derivative Breach of Contract)

25. Plaintiff repeats and realleges each and every allegation set forth in paragraphs “1” through “24” inclusive hereof as if fully set forth herein.

26. Laifer’s actions set forth above were intentional and/or a knowing violation of law and Laifer personally gained from his breach of contract and misappropriation of funds.

27. As a result of Laifer’s breach of his obligations, HeartWatch has been damaged in an amount to be proved at trial.

28. Defendant Laifer should be held personally liable for that amount, plus interest, costs, and attorneys’ fees.

29. In addition, the Court must direct, as part of any award or judgment herein, that Laifer be barred from sharing in any distribution from HeartWatch to its members of any monies recovered from Laifer as a result of this action.

Second Cause of Action on Behalf of Plaintiff

(Fraud)

30. Plaintiff repeats and realleges each and every allegation set forth in paragraphs “1 through “29” inclusive hereof, as if fully set forth herein.

31. Despite his obligation to do so, Laifer failed to disclose to plaintiff, and in fact, intentionally concealed the fact that he had paid himself tens of thousands of dollars in purported guaranteed payments in 2006 and 2007.

32. Because plaintiff was unaware of Laifer’s misapplication of such funds and misconduct, and based upon Laifer’s representations that the funds would be used for working capital and not for the personal benefit of Laifer, plaintiff invested the additional sums of \$120,000.00 in May, 2007 and \$180,000.00 in October, 2007.

33. Had plaintiff been aware of the true facts – that Laifer was paying himself out of HeartWatch’s funds, making excessive, unjustified, and unreasonable payments to consultants, plaintiff would not have made such investment in HeartWatch, and would have, demanded the return of its initial investment.

34. Laifer’s concealment of the true facts, upon which plaintiff relied was intentional.

35. As a result of the foregoing, plaintiff has been damaged in a sum to be determined at trial.

WHEREFORE, plaintiff demands judgment as follows:

(a) On the First Cause of Action, in favor of HeartWatch against defendant Laifer, and awarding damages, in an amount to be determined at trial, together with interest from May 24, 2006 and barring any distribution of the amount recovered from Laifer by HeartWatch to Laifer;

(b) On the Second Cause of Action in favor of plaintiff Mazel against defendant Laifer, in a sum to be determined at trial, but not less than \$550,000.00 with interest from May 24, 2006, plus punitive damages in the amount of \$2,000,000.00; and

(c) Awarding such other and further relief as the Court deems just and proper, including the costs and attorneys' fees associated with this action.

Dated: January 16, 2012

Law Office of Barry R. Fertel

By: 
Barry R. Fertel

Attorney for Plaintiff
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(914) 740-4346

(b)(2)

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

-----X		
MAZEL CAPITAL, LLC, on its own behalf, and	:	
Derivatively on behalf of HEARTWATCH, LLC,	:	Index No.: 600592/10
	:	
Plaintiff,	:	<u>ANSWER</u>
	:	
-against-	:	
	:	
FRANKLYN LAIFER	:	
	:	
Defendants.	:	
-----X		

Defendant Franklyn Laifer (“Laifer”), by his attorneys FEDER KASZOVITZ LLP, as and for his Answer to the Complaint, allege as follows:

1. Denies the allegations contained in paragraph 1, except admits that Plaintiff so alleges.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.
3. Admits the allegations in Paragraph 3.
4. Admits the allegations contained in the first sentence of paragraph 4, denies the remainder thereof.
5. Denies the allegations contained in paragraph 5, and admits that on May 6, 2006, May 2007 and October 2007, investments were made by Mazel Capital LLC (“Mazel”) in HeartWatch LLC (“HeartWatch”).
6. Admits the allegations contained in paragraph 6 and refers to the Agreement for its provisions.
7. Denies the allegations contained in paragraph 7.

8. Denies the allegations contained in paragraph 8, which call for a legal conclusion, and avers that in 2008, HeartWatch ceased doing business.

9. Denies the allegations contained in paragraph 9, except admits that a letter was sent regarding HeartWatch and refers to it for its contents.

10. Denies the allegations contained in paragraph 10 except admits that copies of tax returns for the years 2006, 2007 and 2008 were provided, and requests for additional documents were responded to.

11. Denies knowledge or information sufficient to form a belief as to what Mazel thought and what became clear, and denies the remaining allegations in paragraph 11 and avers that over 1,000 documents were provided to Mazel, in addition to those provided during the period.

12. Denies the allegations contained in paragraph 12.

13. Denies the allegations contained in paragraph 13.

14. Denies the allegations contained in paragraph 14.

15. Denies the allegations contained in paragraph 15 of the Complaint and refers to the Agreement for its contents.

16. Denies the allegations contained in paragraph 16 and each of the subdivision thereof.

17. Admits that a letter agreement was signed and refers to the letter for its contents.

DERIVATIVE ALLEGATIONS

18. Denies the allegations contained in paragraph 18 except admits that Mazel purchased a membership interest in HeartWatch.

19. Denies the allegations contained in paragraph 19.

20. Denies the allegations contained in paragraph 20.
21. Denies the allegations contained in paragraph 21.
22. Denies the allegations contained in paragraph 22.
23. Denies the allegation contained in paragraph 23.
24. Denies the allegations contained in paragraph 24.

First Cause of Action-Derivative On Behalf of HeartWatch

25. Incorporates the responses to the paragraphs of the Complaint incorporated in this paragraph as if more fully set forth.

26. Denies the allegations contained in paragraph 26.
27. Denies the allegations contained in paragraph 27.
28. Denies the allegations contained in paragraph 28.
29. Denies the allegations contained in paragraph 29.

Second Cause of Action on Behalf of Plaintiff

30. Incorporates the responses to the paragraphs of the Complaint incorporated in this paragraph as if more fully set forth.

31. Denies the allegations contained in paragraph 31.
32. Denies the allegations contained in paragraph 32.
33. Denies the allegations contained in paragraph 33.
34. Denies the allegations contained in paragraph 34.
35. Denies the allegations contained in paragraph 35.

AS AND FOR A FIRST COUNTERCLAIM

1. Laifer has expended his personal funds to meet obligations of HeartWatch, including but not limited to the following:

a) Laifer paid \$12,700 to HeartWatch's landlord in payment of HeartWatch's rent obligations under its lease; and

b) Laifer paid an executive search firm a total of \$6,425 in payment of HeartWatch's contractual obligations to it.

2. Laifer is entitled to be reimbursed by HeartWatch, or to have set off against any recovery by HeartWatch in this action, the monies he personally advanced to pay its obligations, with interest.

WHEREFORE Defendant request that the Complaint be dismissed and judgment be entered on his counterclaim/set off, and for such other relief as this Court deems just and necessary.

Dated: New York, New York
January 31, 2012

FEDER KASZOVITZ LLP

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