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

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

Index No.: 600592/10

Plaintiffs,

Motion #6

-against -

FRANKLYN LAIFER,

Defendant.

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DEFENDANT'S REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

The crux of Laifer's argument on this motion is that plaintiff was fully informed of the actions about which it now complains long before it made its Additional Investments[1], and therefore plaintiff cannot now claim to have been defrauded into further investing. Moreover, plaintiff's full knowledge and acceptance of actions which it now characterizes as breaches of contract demonstrates that the contracts were not breached. In any event, such acquiescence establishes that plaintiff ratified the supposed breaches and/or waived the provisions it now claims were breached.

Astonishingly, plaintiff's response to this indisputable evidence that it was fully aware of the actions about which it now complains before it made its Additional Investments, is to attach to its opposing papers ***even more Heartwatch documents*** which completely negate its claims! The reams of documents and plaintiff's deposition testimony accompanying defendant's moving

[1] Capitalized terms are used herein as defined in defendant's moving memorandum of law ("Defendant's Memo".)

papers were more than enough (even without considering documents which were available to plaintiff but never requested) to prove that plaintiff's claims are barred by its failure to object to what it now mischaracterizes as breaches of contract (out of which it also tries to fashion a fraud claim), but the documents which plaintiff has submitted are the icing on the cake.

In addition, there is no dispute that it was within Laifer's authority to authorize compensation for consultants (actually employees) providing services to Heartwatch, and that Laifer did not profit personally from those payments. Thus, his decisions relating to third parties' compensation are protected by the business judgment rule.

Plaintiff's papers in opposition to the motion attempt to distract from the clear issues raised in defendant's moving papers with partial truths[2], mischaracterizations[3], red herrings[4],

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[2] E.g. that plaintiff's interest in EKG was worth $300,000, and therefore its total investment in Heartwatch was $850,000, as if, even if that were true, it would be in any way relevant to this motion. At some time in the distant past plaintiff's interest in EKG may have been worth as much as $300,000; at the time plaintiff converted its interest in EKG into 4% of Heartwatch, however, EKG was out of business and plaintiff's interest in it was worthless. See FL Aff., fn. 2, p.2.

[3] E.g. that Laifer breached the Letter Agreement, ***to which he was not a party***. See Letter Agreement, part of Exhibit B to the FL Aff.

[4] E.g. that any compensation Laifer received is not protected by the business judgment rule, countering an argument that Laifer has never made.

non-sequiturs[5], and just plain fabrications[6]. Plaintiff has virtually abandoned any effort to demonstrate the legal merits of its case; but rather has gone "all out" in an attempt to mislead the Court into believing that Laifer is the "bad guy" in this situation, and plaintiff the victim.

What all of plaintiff's distractions have in common - besides the fact that they are false (often contradicted by documentary evidence and/or plaintiff's own deposition testimony) - is that they are ***irrelevant***. For example, it makes no difference on this motion how much compensation Laifer received from Heartwatch ***because plaintiff contends that Laifer was not entitled to any compensation from Heartwatch, yet did not object even though both the fact and amount of Laifer's compensation was fully disclosed to it.*** For the same reason, it makes no difference for what services, as medical director or otherwise, Laifer was being compensated. Likewise, it makes no difference whether the compensation being paid Laifer and other Heartwatch employees was disclosed as budgeted or incurred expenses (the compensation was

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[5] E.g. Jedwab's accusation that Laifer "cannot account for the whereabouts of [certain heart monitoring] equipment" (Affidavit in Opposition to Defendant's Motion for Summary Judgment [the "Jedwab Affidavit"], par. 29), which comes completely out of the blue. It is not in the AC. At any rate, Laifer does not know what happened to the equipment; Heartwatch couldn't pay for it, and so those who had possession of it (the manufacturer, Aerotel, had some units and some units were being stored in a Poughkeepsie warehouse) have no doubt disposed of it. See accompanying Reply Affirmation of Franklyn Laifer (the "Laifer Reply".)

[6] E.g., plaintiff's statement on p.21 of its opposing memorandum of law ("Plaintiff's Memo") that "[i]t is undisputed that Laifer paid himself the sum of $498,640, from 2006 through 2008", which is outrageous; that ridiculous contention is not only disputed, it is completely disproved by the very documents on which plaintiff relies. In actuality, during that period Laifer received $199,127 from Heartwatch, while loaning it $62,610 which has not been repaid, leaving a net to Laifer of approximately $136,000. See Laifer Reply and Exhibits A, B, and C thereto (which are nothing more than pages excerpted from the exhibits submitted by plaintiff on this motion.) Moreover, Laifer also personally guaranteed an obligation of Heartwatch to Wolf of approximately $263,000, and paid some $19,125 of Heartwatch debts (the subject of his counterclaim), for which he has never been reimbursed.

disclosed both when it was budgeted and after it had been paid), because either way, again, the fact is that both Laifer's compensation and the compensation paid other Heartwatch employees was disclosed fully to plaintiff, which never objected to it.

These are false issues, with which plaintiff hopes to distract the Court from the fact that plaintiff, as demonstrated by the reams of documentation which it no longer denies receiving, not to mention telephone conversations and meetings with Laifer and other Heartwatch personnel, was kept fully informed of every last detail of Heartwatch's business. It knew about every single one of the acts which it now characterizes as somehow wrongful, but raised no claim until years later. This is the fact which plaintiff cannot escape and which (along with the business judgment rule as applied to payments made by Heartwatch to third parties) compels the dismissal of its complaint.

POINT ONE

PLAINTIFF'S CLAIM THAT LAIFER BREACHED THE AGREEMENT BY APPROVING EXORBITANT CONSULTING FEES IS BARRED BY THE BUSINESS JUDGMENT RULE

Plaintiff does not dispute that it was within Laifer's authority as manager of Heartwatch to "elect or appoint managers, employees and agents of the limited liability company, define their duties and fix their compensation." N.Y. Limited Liab. Co. Law §202(h). Nor does it dispute that Laifer gained no personal benefit from the consulting fees paid to others, or that the compensation Heartwatch paid to its other employees (denominated as consultants on some financial forms) was commensurate with their responsibilities and experience. Accordingly, as set forth more fully in Point Two of Defendant's Memo, Laifer's decisions about the compensation to be paid others for their services to Heartwatch fall within the protection of the

business judgment rule.

Plaintiff's opposition to this point consists almost entirely of the "red herring" that the business judgment rule does not apply to Laifer's own compensation. Laifer never claimed otherwise.

The cases relied on by plaintiff are completely inapposite. The sole issue in *Morris v. New York State Dep't of Taxation & Fin.*, 82 N.Y.2d 135, 142 (1993) was whether the taxing authority could pierce the corporate veil of a taxpayer to impose personal liability on a non-shareholder. The case had nothing to do with the business judgment rule, which is nowhere mentioned in the decision. *Kantor v. Mesibov*, 8 Misc. 3d 722, 796 N.Y.S.2d 884 (Sup.Nass. 2005) merely stands for the unremarkable proposition that the business judgment rule doesn't apply where the person making the decision has a conflict of interest - it says nothing about applying the business judgment rule where, as here, the person making the decision derives no personal benefit from it. The conduct at issue in *Kantor* "c[ould] only be fairly viewed as an attempt by [a partner] to exploit [the partnership] for personal gain"[7] and "on its face is permeated with self-dealing ... ."[8] In contrast, plaintiff does not dispute that Laifer received no personal gain from the compensation paid to others. There was no self-dealing.

Plaintiff concludes, based solely on the fact that Heartwatch failed, that the compensation it paid consultants (about which plaintiff was fully informed, see Defendant's Memo, pp. 9-12) was excessive. This amounts to nothing more than a prototypical "statement[ ] of conclusions which express no more than a difference of opinion between a stockholder and directors as to the

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[7] 8 Misc. 3d at 725, 796 N.Y.S.2d at 888.

[8] *Id.*

value of an employee's services or the expediency of his employment whether it will advance the corporation's interests", and is insufficient, as a matter of law, to counter the presumption of the business rule that the transactions were proper. *Kalmanash v. Smith*, 291 N.Y. 142, 155 (1943).

Moreover, plaintiff has not even addressed Laifer's argument based on Art. III, par. 7(g) of the Agreement, which provides that Laifer can have no liability to Heartwatch or its members "except if there is a final judgment or adjudication adverse to the Manager that establishes that his acts of omissions involved intentional misconduct or a knowing violation of law or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled." Plaintiff has come forward with nothing to suggest that, in agreeing to have Heartwatch pay third party employees (or consultants), Laifer engaged in intentional misconduct, a knowing violation of law, or that he personally gained any profit or other advantage.

Accordingly, plaintiff's claims based on the compensation paid other Heartwatch employees must be dismissed.

POINT TWO

HAVING BEEN FULLY INFORMED ABOUT HEARTWATCH'S PAYMENTS TO LAIFER AND OTHER HEARTWATCH EMPLOYEES, AS WELL AS HEARTWATCH'S "BURN RATE, AND HAVING FAILED TIMELY TO OBJECT TO THEM, PLAINTIFF CANNOT NOW ASSERT FRAUD OR BREACH OF CONTRACT CLAIMS BASED ON THOSE ACTIONS

As more fully set forth in Defendants' Memo (particularly pp. 9-12) and the FL Aff., throughout the period when Heartwatch was operating, both before and after plaintiff made its Additional Investments, plaintiff was kept fully informed about the money Heartwatch was spending, including the compensation paid both Laifer and other Heartwatch employees. Thus,

for example, plaintiff regularly received:

- Heartwatch financial analyses (Fl Aff., Ex. G), which (contrary to plaintiff's sworn affidavit) included both actual and budgeted compensation to be paid "management and sales execs" and "advisors", and also budgeted compensation for "Mgmt and Operations Salaries" and "Advisors" for 2007 through 2011[9]. At deposition, Jedwab acknowledged that Mazel knew that these terms included Laifer (RJ113:7-12). Jedwab also admitted that the July, 2006 "Introduction and Business Plan" "puts in writing what we discussed, Frank and myself or Hirsch and myself" and that the parties "discussed [a breakdown of exactly what management employee was receiving what compensation] during our meetings." RJ 128:4-17, 130:24 - 131:20, annexed to the Laifer Reply as part of Ex. F[10]. Indeed, when asked at deposition if "at the time the [additional] investments were made ... had you spoken to Dr. Laifer about what his activities were and whether he was being compensated for those activities?", Jedwab replied "I think we did." See RJ 80:11-17;

- schedules showing Heartwatch's deposits and withdrawals, as well as a summary of the amounts being paid to Laifer and other Heartwatch employees monthly. FL Aff., Exh. H.

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[9] Ex. G contains, from the July, 2006 business plan, a budget showing salaries for July, 2006 through June, 2007. For example, salaries for July, 2006 are budgeted to be $31,250, ***which matches exactly the actual July 2006 salaries for "Frank", "Jay", and "Don"*** shown in Exhibit H. Although these salaries were budgeted to increase, the recipients, including Laifer, actually received less than the budgeted amount because Heartwatch was in financial difficulties.

[10] Jedwab cannot backtrack on his deposition testimony now. It is well settled that "a party cannot avoid summary judgment by alleging issues of fact created by self-serving affidavits contradicting prior sworn deposition testimony." *Brock Enterprises, Ltd. v. Dunham's Bay Boat Co., Inc.*, 292 A.D.2d 681, 738 N.Y.S.2d 760 (3d Dept. 2002)(citations, internal quotations, omitted.) *Accord Titova v. D'Noval*, 117 A.D.3d 431 (1st Dept. 2014); *Feaster-Lewis v. Rotenberg*, 93 A.D.3d 431, 939 N.Y.S.2d 421 (1st Dept. 2012); *Colucci v. AFC Construction*, 54 A.D.3d 798, 863 N.Y.S.2d 767 (2d Dept. 2008).

These schedules ***expressly set forth*** the checks Heartwatch wrote to Laifer and other Heartwatch executives, belying plaintiff's claim that it did not realize that payments to management included Laifer. Thus for example, the "Heartwatch Financial Summary" from July, 2006 contains several entries for "Frank Fees" as well as for "Don Fees" and "Jay Fees", as does the "Financial Summary" from February, 2007. The July, 2006 summary also contains a "Monthly Expense Run Rate" listing monthly salary payments to "Frank", "Jay", and "Don";

- three draft versions of the "Offering Materials", dated March 2007, relating to a contemplated $2 million private placement (FL Aff., Ex. I), each of which disclosed that $260,000 of the contemplated $2 million raised would be used for "salaries of employees, officers, and directors" (par.2.) The Offering Materials also fully disclosed that Laifer would be managing a medical staffing company, and would receive compensation for such services. Offering Materials, par.7(i); and

- correspondence from Heartwatch employees discussing its "burn rate" and other Heartwatch financial matters Fl Aff. Ex. J.

In addition, Laifer and other Heartwatch personnel had numerous meetings with the Jedwabs at which, Jedwab admitted at deposition, they discussed, *inter alia*, Heartwatch expenses, including compensation paid Laifer and other Heartwatch employees. Jedwab also admitted at deposition that Laifer routinely communicated with Wolf about all aspects of Heartwatch's business, and Wolf reported back to Jedwab about those conversations.[11] See

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[11] Laifer's communications with Wolf are, as set forth more fully above and in Defendants' Memo, pp. 6-9, but one of many ways in which Laifer's and other employees' compensation, and Heartwatch's burn rate, were communicated to plaintiff. Remove those communications and Laifer has still come forward with more than enough evidence to demonstrate plaintiff's knowledge of these matters before it made its Additional Investments.

Defendants' Memo, pp. 6-9 and Fl. Aff., Ex. C.

These documents include lists of transactions by vendors, and general ledgers, which specifically reference payments to Laifer and other Heartwatch employees, and show the amount of money Heartwatch was spending overall. See Ex. C and D to Jedwab Affidavit. As set forth more fully in Defendant's Memo (pp. 3-4, 5-6, 13-14), plaintiff always had access to these documents, but never requested them. Indeed, Jedwab confirmed that plaintiff had had "the opportunity to ask and receive whatever [information it] needed." RJ 108:10-18; BJ 95:24 - 96:6.[12]

A. Plaintiff's Prior Knowledge of the Acts About Which it Now Complains Precludes any Claim of Reasonable Reliance, and Bars Plaintiff's Fraud Claim

As set forth more fully in Point One of Defendant's Memo, "[r]easonable reliance is a condition which cannot be met where, as here, a party has the means to discover the true nature of the transaction by the exercise of ordinary intelligence, and fails to make use of those means." *Arfa v. Zamir*, 78 A.D.3d 56, 59, 905 N.Y.S.2d 77, 79 (1st Dept. 2010), *aff'd* 17 N.Y.3d 737, 929 N.Y.S.2d 11 (2011)(citations, internal quotations, omited.) Plaintiff never explains how it could

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However, it should be noted that Hirsch Wolf was alive and a member of the plaintiff at the time this litigation was started. Laifer has always maintained, even before plaintiff commenced this action, that he communicated everything concerning Heartwatch's operations to Wolf, who never denied it. This constitutes an adoptive admission by plaintiff. *Stecher Lithographic Co. v. Inman*, 175 N.Y. 124 (1903)(failure of company executive to deny statement by third party regarding quality of manufactured product constituted an adoptive admission by the company that the product was satisfactory.) Moreover, as a member of the plaintiff, Wolf was under plaintiff's control, and it had every opportunity to preserve his testimony if it wished. It cannot complain now that it failed to do so.

[12] Moreover, plaintiff knew how to obtain any information it wanted, which it demonstrated when it made a books and records demand on EKG in 2007. See Laifer Reply, Ex. E.

have reasonably relied on Laifer not receiving any compensation from Heartwatch, on other Heartwatch employees receiving less compensation, or on Heartwatch spending less money ***when it received numerous documents showing that these were not the facts***, not to mention numerous telephone conversations, meetings, and correspondence with Laifer and other Heartwatch employees conveying the same true state of affairs.

At best from plaintiff's perspective, Jedwab's deposition testimony establishes that he continually questioned Laifer about Heartwatch expenditures, including the compensation paid to Laifer himself and other Heartwatch employees, and was only partially satisfied with Laifer's responses. As Jedwab himself put it, in one of the many exchanges in which he testified that he and other representatives of plaintiff were always concerned about, and always questioned, Heartwatch's expense level in general and the compensation paid Laifer and other Heartwatch personnel in particular (see Defendant's Memo, pp. 6-9), "it was always a unanimous question why there's so much salaries being paid, so much expense being eaten up." RJ 98:18-20.

In other words, plaintiff could not have reasonably relied on any alleged misrepresentations about these matters. To the contrary, Jedwab's sworn testimony that he and other representatives of plaintiff were constantly worried about these matters, and never fully satisfied with Laifer's responses to its questions (see, e.g. RJ 12:11-25, 15:3-18:12, annexed to Laifer's Reply Affidavit as part of Ex. F) ***is diametrically opposed to any claim of reasonable reliance.***

Laifer has cited many cases in Point One of Defendant's Memo for the proposition that:

> As a matter of law, a sophisticated plaintiff cannot establish that it entered into an arm's length transaction in justifiable reliance on alleged misrepresentations if that plaintiff failed to make use of the means of verification that were available to it, such as reviewing the files of the other parties.

Dragon Investment Co. 11 LLC v. Shanahan, 49 A.D.3d 403, 404, 854 N.Y.S. 2d 115, 117 (1st Dept. 2008). In response, plaintiff does not even try to provide any explanation of how its alleged reliance on a state of affairs which was directly contrary to that shown on numerous documents with which it was provided, without even seeking the additional documents and information which was readily available to it, could be considered reasonable.

Instead, plaintiff attempts to distinguish these cases on the basis that they "do not apply here because MC reasonably relied on ***Laifer's representations in the existing Operating Agreement***." Plaintiff's Memo, p.13 (emphasis added.) In other words, plaintiff is trying to convert an alleged breach of contract into a fraud claim, which is improper as a matter of law. It is well settled that:

> A fraud claim that only restates a breach of contract claim may not be maintained. *** Thus, a viable claim of fraud concerning a contract must allege misrepresentations of present facts (rather than merely of future intent) that were collateral to the contract and which induced the allegedly defrauded party to enter into the contract. *Allegations that a party entered into a contract without intent to perform do not state a cause of action for fraud.*

Orix Credit Alliance, Inc. v. The R.E. Hable Co., 256 A.D.2d 114, 115, 682 N.Y.S.2d 160, 161 (1st Dept. 1998)(citations omitted, parentheses in original, emphasis added.) Plaintiff's allegations that Laifer entered into the Agreement (or some subsequent oral contract where he agreed to perform the Agreement as plaintiff interprets it) without intending to honor it do not state a cause of action for fraud. "Promising to abide by a contract's terms, and then allegedly

breaching the contract, does not of itself constitute fraud; it constitutes breach of contract." *Ergowerx Int'l, LLC v. Maxell Corp. of Am.*, 2014 WL 1642970, at *9 (S.D.N.Y. Apr. 23, 2014)(applying New Jersey law.)

B. Plaintiff's Acceptance, Over a Long Period of Time, of the Practices Which it Now Characterizes As Breaches Establishes that Such Practices did Not breach the Agreement. In any Event. Plaintiff Ratified the Practices and/or Waived any Breach

Plaintiff continues to insist that "[Laifer] was ... in breach of the Letter Agreement" (Plaintiff's Memo, p.25), which is an impossibility. Laifer is not a party to the Letter Agreement. To the extent that plaintiff claims that Heartwatch breached the Letter Agreement, and that Laifer is somehow personally liable for Heartwatch's alleged breach, those contentions are fully addressed in Point Three of Defendants' Memo. Heartwatch did not breach the Letter Agreement, and plaintiff could not possibly have suffered any damage if it had.

Plaintiff also claims that Laifer breached the provision of the Agreement that provides that "[Laifer] shall not be entitled to any compensation ***for serving as manager to [Heartwatch]*** ... ." See Agreement, par.7(a)(emphasis added.) Laifer contends that this provision did not bar him from receiving compensation from Heartwatch for services he provided that were not managerial, while plaintiff contends (contrary to the express and explicit words of the Agreement) that "[t]he Operating Agreement stated that the Manager shall not be entitled to ***any*** compensation." Plaintiff's Memo, p.25.

Plaintiff argues that the Agreement is clear and unambiguous and should be interpreted from its four corners, without regard to any extrinsic evidence. Laifer agrees. The Agreement is explicit - it simply does not say what plaintiff claims it does. The Agreement does not provide

that Laifer is not entitled to "any compensation"; it provides that Laifer is not entitled to "any compensation for serving as manager to Heartwatch."

Plaintiff does not, and cannot, explain why, if the Agreement means that Laifer cannot receive any compensation from Heartwatch, it never asserted a claim of breach despite receiving document after document showing that Laifer was, indeed, being compensated by Heartwatch. Nor does plaintiff even respond to Laifer's argument (see Point Three of Defendant's Memo), that the parties' long course of conduct - where Laifer received compensation from Heartwatch with no objection by plaintiff - establishes (if the plain words of the Agreement are not enough) that Laifer's interpretation is the correct one. "When the parties to a contract of doubtful meaning, guided by self-interest, enforce it for a long time by a consistent and uniform course of conduct, so as to give it a practical meaning, the courts will treat it as having that meaning, even if as an original proposition they might have given it a different one." *Brooklyn Pub. Library v. City of New York*, 250 N.Y. 495, 501 (1929)(citation, internal quotations, omitted.)

Plaintiff's reliance on the Agreement's "no oral waiver" provision is misplaced. First, Laifer is not arguing, except in the alternative, that plaintiff waived any breach. The Agreement allowed Laifer to receive compensation for services other than managerial. There was no breach.

Should this Court determine that there is a question as to the meaning of the Agreement which is not satisfied by the interpretation the parties placed on it with their conduct, there would still be no question that plaintiff ratified Laifer's receipt of compensation, or waived the right to object to it, by accepting that practice for so long without objection. See Point Three of Defendant's Memo and the cases discussed therein. *Accord Lamberti v. Angiolillo*, 73 A.D.3d 463, 464, 905 N.Y.S.2d 560, 561 (1st Dept. 2010)("Although the option contract required

modifications to be in a writing signed by all parties, the evidence of record shows that by their conduct, the parties ratified numerous modifications to their contract ... ."); *Jennings v. Huntington Crescent Club*, 120 A.D.3d 1394, 993 N.Y.S.2d 139, 140 (2d Dept. 2014)(dismissing plaintiff's claim that his employer had not paid him compensation to which he was entitled because "the plaintiff's allegations reflect that he ratified the actions of which he now complains by choosing to remain in the defendants' employ ... .")(citations omitted.)

The "no oral waiver" provision cannot save plaintiff. First, the provision only purports to prohibit waivers, not ratification or modification (and certainly has no application to a fraud claim.) Moreover, "no oral waiver" provisions can be waived, as this one was, by the parties' course of conduct. "[T]he law is abundantly clear in New York that, even where a contract specifically contains a nonwaiver clause and a provision stating that it cannot be modified except by a writing, it can, nevertheless, be effectively modified by actual performance and the parties' course of conduct." *Aiello v. Burns Int'l Sec. Servs. Corp.*, 110 A.D.3d 234, 245, 973 N.Y.S.2d 88, 96 (1st Dept. 2013)(citations omitted.) *Accord Rose v. Spa Realty Associates*, 42 N.Y.2d 338, 343 (1977)("[A] contract once made can be unmade, and a contractual prohibition against oral modification may itself be waived."); *B. Reitman Blacktop, Inc. v. Missirian*, 52 A.D.3d 752, 753-54, 860 N.Y.S.2d 211, 212-13 (2d Dept. 2008)(Where "the parties demonstrated a mutual departure from the written agreement *** [t]he Supreme Court ... properly concluded that the defendant waived the requirement of written modification contained in the parties' written contract.")(citations omitted.)

Here, the parties' course of conduct for years was that Laifer would receive compensation from Heartwatch, without objection by plaintiff. Assuming *arguendo* that the Agreement

prohibited such compensation, that prohibition was waived and/or ratified by the parties' course of conduct.

Finally, there is no basis for this Court to grant summary judgment to plaintiff, even if it had made a timely motion. Nor is there any basis to uphold plaintiff's claims for punitive damages and attorneys' fees. Plaintiffs' arguments on these subjects are fully addressed in Defendants' Memo.

CONCLUSION

For all the foregoing reasons, as well as those submitted in Defendants' Memo, the FL Aff., the Laifer Reply, and the exhibits thereto, Laifer's motion seeking summary judgment dismissing plaintiff's claims should be granted in its entirety.

Dated: New York, New York
November 6, 2014

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