

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

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RICHARD GILBERT, individually and on behalf of  
ROAD RUNNERS LLC and ROAD RUNNERS  
TOLA, LLC,

Plaintiffs,

**AMENDED  
COMPLAINT**

-against-

**Index No. 602290/2015**

NOEL WEINTRAUB,

Defendants.

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Plaintiffs, Richard Gilbert, individually and on behalf of Road Runners LLC and Road Runners TOLA, LLC, by his attorneys, Rosenberg Fortuna & Laitman, LLP, as and for their Amended Complaint, respectfully allege as follows:

1. Plaintiff Richard Gilbert (“**Gilbert**”) is an individual residing in the County of Nassau, State of New York.
2. Plaintiff Road Runners, LLC, (“**Road Runners**”) is a New York limited liability company.
3. Plaintiff Road Runners TOLA, L.L.C. (“**TOLA**”) is a New York limited liability company. (Road Runners and TOLA are hereinafter collectively referred to as the “**LLCs**”).
4. Upon information and belief, Defendant Noel Weintraub (“**Weintraub**”) is an adult resident of the State of New York residing in the County of Westchester.
5. Gilbert and Weintraub are the sole members of Road Runners with equal ownership interests.
6. There is no operating agreement for Road Runners.
7. Gilbert and Weintraub are the sole members of TOLA with equal ownership

interests.

8. There is no operating agreement for TOLA.

9. The LLCs are agencies which represent a wide variety of manufacturers selling giftware, stationery, children's gifts and toys, greeting cards, gift books, jewelry, fashion accessories, home fragrance and personal care products, among other things.

10. Neither the LLCs nor their members ever entered into an operating agreement.

11. Prior to September 24, 2015, Gilbert and Weintraub were managers of the LLCs.

12. Effective September 24, 2015, Weintraub resigned in his role of manager and employee of the LLCs.

13. Upon information and belief, on or about September 30, 2015, Weintraub established a new corporation, NWA.

14. Upon information and belief, NWA engages in a business that competes with RR.

15. Upon information and belief, NWA engages in a business that competes with RR TOLA.

16. Commencing on or about September 30, 2015, Defendant began soliciting vendors who had been engaging in business with RR.

17. Commencing on or about September 30, 2015, Defendant began soliciting the LLCs' sales representatives to become independent contractors of NWA.

18. Commencing in October 2015, many vendors who were solicited by Defendant terminated their relationship with the LLCs at the specific instance and request of

Defendant.

19. Commencing in October 2015, many independent contractors who were solicited by Defendant terminated their relationship with the LLCs at the specific instance and request of Defendant.

20. Upon information and belief, Weintraub is the sole owner of NWA.

21. Upon information and belief, Weintraub is the President of NWA.

**AS AND FOR A FIRST CAUSE OF ACTION  
FOR BREACH OF FIDUCIARY DUTY**

22. Plaintiffs repeat, reiterate, and reallege each and every allegation set forth above as if set forth at length herein.

23. Weintraub, as a member of the LLCs, owed and owes a duty to act in good faith and in the best interests of the Plaintiffs.

24. Weintraub's actual competition with the LLCs constitutes a breach of fiduciary duty owed to Plaintiffs.

25. Gilbert and Weintraub have engaged in litigation concerning the issue of Weintraub's actual and threatened competition in violation of his fiduciary duty.

26. Weintraub has consistently maintained that he owes no fiduciary duty to the Plaintiffs.

27. By virtue of Weintraub's stance in the pending litigations, any further efforts to compel Weintraub to act would be futile.

28. By virtue of the foregoing breach of fiduciary duty, Plaintiffs are entitled to

judgment in an amount not yet capable of determination, but anticipated to be not less than \$250,000.

**AS AND FOR A SECOND CAUSE OF ACTION  
FOR A PERMANENT INJUNCTION**

29. Plaintiffs repeat, reiterate, and reallege each and every allegation set forth above as if set forth at length herein.

30. Defendant's actual competition with the LLCs will result in serious and irreparable injury to Plaintiffs.

31. The equities are balanced in the Plaintiffs' favor.

32. Plaintiffs have no adequate remedy at law.

33. By virtue of the foregoing, Plaintiffs are entitled to a permanent injunction restraining, prohibiting, and enjoining Defendant from engaging in any employment, association, business, or venture involved in competition with the LLCs.

**WHEREFORE** Plaintiffs demand judgment as follows:

- A. On the first cause of action Plaintiffs are entitled to judgment in an amount not yet capable of determination, but anticipated to be not less than \$250,000 plus applicable interest;
- B. On the second cause granting a permanent injunction against Defendant enjoining him from engaging in any employment, association, business, or venture involved in competition with the LLCs, including but not limited to NWA;
- C. Together with the costs and disbursements of this action.

Dated: Garden City, New York  
November 9, 2015

**ROSENBERG FORTUNA  
& LAITMAN, LLP**

By: \_\_\_\_\_

**BRETT D. ZINNER**

Attorneys for **Plaintiffs**

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