

SUPREME COURT ALBANY COUNTY
STATE OF NEW YORK

JUSTIN A. HELLER as Executor of the Estate of G. Eric Lewis,
directly and derivatively on behalf of HYPERBARIC TECHNOLOGIES, INC.

Plaintiff,

SUMMONS

-against-

Index No.:

PETER A. LEWIS, G. RICHARD LEWIS

Defendants.

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned to answer the Verified Complaint in this action, and to serve a copy of your answer or, if the Complaint is not served with this Summons, to serve a notice of appearance, on the plaintiff's attorney, within twenty (20) days after service of this Summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Verified Complaint.

Trial is to be held in the County of Albany.

The basis of venue is Plaintiff's residence and principal office is in Albany County.

Dated: September 9, 2015,



Law Offices of Daniel M. Sleasman

One Crumitie Road

Attorney for Plaintiff

Albany, New York 12211

518.433.0518

To the above named Defendants: The nature of the action is set forth in the annexed Verified Complaint.

SUPREME COURT ALBANY COUNTY
STATE OF NEW YORK

JUSTIN A. HELLER as Executor of the Estate of G. Eric Lewis,
directly and derivatively on behalf of HYPERBARIC TECHNOLOGIES, INC.

Plaintiff,

Verified Complaint

-against-

Index No.:

PETER A. LEWIS, G. RICHARD LEWIS

Defendants.

Plaintiff, Justin A. Heller ("Plaintiff"), by his attorney, Daniel M. Sleasman, states the following as and for a Complaint on behalf of Hyperbaric Technologies, Inc. derivatively pursuant to Section 626 of the Business Corporation Law of the State of New York, and as direct causes of action as stated herein, against the above named Defendants:

THE PARTIES

1. Plaintiff is a resident of Albany County, New York and has been duly appointed as Executor of the Estate of G. Eric Lewis by Surrogate's Court of Albany County, New York.
2. Plaintiff is a shareholder of Hyperbaric Technologies, Inc. ("HTI") owning one share of stock representing a one third interest of the corporation, as a trustee and as Executor of the Estate of G. Eric Lewis.
3. G. Eric Lewis, now deceased, established the trust of which Plaintiff serves as trustee for the benefit of his five (5) children and his surviving spouse.
4. Plaintiff's interest as a one third shareholder has devolved upon him by operation of law.
5. Plaintiff was also elected as a director of HTI in January 2015 to fill the vacancy created by the death of G. Eric Lewis
6. Plaintiff continued to serve as a director of HTI without compensation of any kind until

August 18, 2015 at which time he was removed without cause by the above named Defendants.

7. Plaintiff will fairly and adequately represent the interests of HTI in enforcing its rights and claims.
8. Before bringing the derivative claims herein, Plaintiff did not make any demand upon HTI that it commence an action against the Defendants. Such demand would have been futile because Plaintiff has already requested the Defendants to refrain from making a “settlement” of HTI claims and the Defendants have stated an intent to do so over Plaintiff’s objection, and because Defendants are now the sole directors of HTI and intend to exercise complete control over HTI and as such, will not be reasonably expected to prosecute any HTI claims against themselves.
9. Defendant G. Richard Lewis (“Richard Lewis”) is a resident of Albany County, New York.
10. Upon information and belief, Defendant Peter A. Lewis (“Peter Lewis”) is a resident of Schenectady County, New York.
11. HTI is a New York corporation having its principal place of business in Montgomery County, New York

HTI BUSINESS BACKGROUND, OWNERSHIP AND GOVERNANCE

12. HTI conducts business, and has conducted business for approximately 20 years as a developer and distributor of various models of hyperbaric chamber based on proprietary designs and trade secrets developed and owned by HTI.

Relationship with Breton Industries, Inc.

13. All HTI products are manufactured exclusively under contract with Breton Industries, Inc. (“Breton”) in Amsterdam, New York.
14. Breton is owned and controlled by the Defendants.
15. Breton manufactures HTI's products at industrial facilities owned and controlled by

Breton and by Breton employees under supervision and control of Breton management.

16. Breton is assigned responsibility for oversight and coordination, sales, manufacturing, and shipping of all HTI products.
17. Breton uses tools and equipment that in part are owned by HTI, possesses and uses HTI's proprietary designs and other trade secret information to manufacture HTI's products.
18. Defendants now control HTI and Breton and are able to negotiate and "agree" between themselves upon financial terms between the two entities in a manner that serves their personal interests and without accounting to Plaintiff as the HTI minority shareholder.
19. Specifically, by "negotiated" agreement, HTI pays rent to Breton for use of Breton facilities used to make HTI products, HTI pays for the cost of Breton employees who are engaged in the manufacture of HTI products and in addition, pays Breton a percentage of HTI sales proceeds as a fee for its services.
20. Breton is in complete domination and control over the manufacture of HTI products.
21. HTI's products are purchased by and sold throughout the world by a single distributor located in the State of California.
22. As a result of the above, HTI does not have any of its own employees and requires no employees to be responsible for the manufacture, sale or delivery of its products.

HTI Ownership and Governance

23. Since HTI was founded, three (3) shares of stock were issued to three shareholders, each owning one (1) share representing a one-third interest in the corporation.
24. The initial three shareholders and directors of HTI were G. Eric Lewis, MaryRose Lewis and Peter Lewis. MaryRose Lewis was the spouse of Defendant Richard Lewis.
25. Peter Lewis was removed as a director by the majority vote of the shareholders of HTI in January 2015 leaving a vacancy on the board.
26. At or about that time, the board vacancy was filled by the election of M. Tracey Brooks

as a director, and as of that time, the three directors of HTI were MaryRose Lewis, M. Tracey Brooks and Plaintiff.

27. MaryRose Lewis died on or about June 26, 2015.
28. The death of MaryRose Lewis created a vacancy on the board of directors.
29. MaryRose Lewis office as a director, from the time of her death and until August 18, 2015, remained vacant and during that time, Plaintiff and M. Tracey Brooks were the two directors of HTI.
30. Upon information and belief, upon her death, Richard Lewis succeeded to the interest of his wife MaryRose Lewis and by operation of law, now owns one share representing a one third ownership interest in HTI.
31. Peter Lewis continues to own one share of HTI stock representing a one third interest.
32. Plaintiff, as Executor and trustee, owns the remaining share representing a one third interest of HTI.

HTI EMPLOYMENT OF PETER LEWIS AND MISCONDUCT BY DEFENDANTS

33. Under a written employment agreement effective in or about October, 2007, (“Employment Agreement”) Peter Lewis was designated as HTI's President and “Chief Executive Officer”. Apart from part time employment of Richard Lewis as Chief Financial Officer and a part time administrative assistant/financial record-keeper, Peter Lewis was the only employee of HTI.
34. As a director and as HTI Chief Executive Officer, Peter Lewis at all times owed a fiduciary duty of utmost care and loyalty to HTI.
35. Under the Employment Agreement, HTI agreed to pay Peter Lewis an annual salary of \$175,000.00 and to provide specified benefits that at no time included payment of Peter Lewis personal living expenses, travel and entertainment expenses.
36. In and after 2007, Defendant Richard Lewis was designated as HTI's “Chief Financial

Officer” and acted in that capacity on a part time basis until approximately January 30, 2015. Richard Lewis was paid \$60,000.00 per year for his part time services as HTI Chief Financial Officer.

37. As Chief Financial Officer, Richard Lewis owed a fiduciary responsibility to HTI and its shareholders, including his wife MaryRose Lewis, to his son G. Eric Lewis and to Plaintiff.
38. As a fiduciary, Defendant Richard Lewis was required to exercise the utmost duty of care and loyalty to HTI and its shareholders, and in doing so, to monitor and control the use of corporate funds by Peter Lewis in accordance with the Employment Agreement and in general, to protect the assets from misuse and waste and to ensure accurate accounting for use of the assets of the corporation for the benefit of HTI shareholders.
39. Before entering into the Employment Agreement, Richard Lewis knew, or as Chief Financial Officer, should have known that Peter Lewis was withdrawing approximately \$27,966.66 per week in purported salary payments without the knowledge, approval or authorization of the other board of directors or shareholders.
40. Peter Lewis received wages in excess of \$470,000.00 from HTI in 2007.
41. Peter Lewis compensation paid by HTI in 2007 was a material fact withheld from the directors and shareholders by Peter Lewis and Richard Lewis in order to induce the approval of the Employment Agreement.
42. Upon information and belief, Defendant Peter Lewis' 2007 salary withdrawals were taken by Defendant Peter Lewis by HTI payroll checks signed by Peter Lewis to himself approved and authorized only by Defendant Richard Lewis and specifically, without disclosure to or approval of the HTI directors.
43. The 2007 withdrawals taken by Peter Lewis under the guise of salary constituted self dealing and was unreasonable and wrongful misappropriations of HTI assets and had the effect of depriving the other shareholders of the economic benefits of their shares.

44. Peter Lewis and Richard Lewis did not disclose Peter Lewis' 2007 salary payments prior to entering into the Employment Agreement.
45. Defendant Peter Lewis has retained all of the assets that he wrongfully withdrew from HTI prior to entering into the Employment Agreement.
46. Without benefit of knowledge of Peter Lewis withdrawals prior to entering into the Employment Agreement, the HTI directors and shareholders were fraudulently induced to enter and did enter into the Employment Agreement.
47. During 2014, Peter Lewis made a claim that in prior years he had been underpaid by HTI under the Employment Agreement and demanded payment by HTI of an amount in excess of \$280,000.00.
48. In their review of Peter Lewis' demand for payment, the other directors of HTI (G. Eric Lewis and MaryRose Lewis), examined HTI financial records and concluded that since entering the Employment Agreement in 2007 and into 2014, Peter Lewis, with the approval and participation of Richard Lewis, had engaged in self dealing and misappropriation of HTI assets for their own personal benefit and to the detriment of the shareholders. The self dealing and misappropriations included unauthorized payments of Peter Lewis' personal and family expenses incurred on Peter Lewis personal credit cards, payments of cash "bonuses" to Peter Lewis and to Richard Lewis, and payment by HTI of Peter Lewis' personal attorneys' fees.
49. In December, 2013, Defendant Peter Lewis took from HTI a cash bonus in the amount of \$100,000.00 that was not authorized by or known to the HTI directors other than Peter Lewis himself.
50. In December, 2014, Defendant Peter Lewis took from HTI an additional cash bonus in the amount of \$120,000.00 that was not authorized by or known to the HTI board of directors other than board member Peter Lewis himself.
51. In December, 2013, Defendant G. Richard Lewis took from HTI a cash bonus in the

amount of \$100,000.00 that was not authorized by or known to the HTI board of directors other than board member Peter Lewis..

52. In December, 2014, Defendant G. Richard Lewis took from HTI an additional cash bonus in the amount of \$60,000.00 that was not authorized by or known to the HTI board of directors other than board member Peter Lewis.
53. At the HTI shareholders meeting held in January 2015, based on findings of misappropriation and breaches of the Employment Agreement, a majority of the shareholders and directors (MaryRose Lewis and Plaintiff as successor to G. Eric Lewis) terminated the Employment Agreement and removed Peter Lewis as a director for cause. (See, Exhibit "A")
54. At the January 15, 2015 meeting, the shareholders removed Peter Lewis as a director for cause and elected Plaintiff and M. Tracey Brooks as directors.
55. Shortly after the shareholders and directors meeting, in late January 2015, Richard Lewis resigned his position as "Acting Chief Financial Officer".
56. Having been elected at the January 2015 meeting, Plaintiff and M. Tracey Brooks served as HTI directors without compensation of any kind from January 2015 until August 18, 2015.
57. In or about February 2015, Peter Lewis commenced an action against HTI in Supreme Court, Schenectady County asserting claims, among other things, that HTI had breached the Employment Agreement and demanded damages. (Lewis vs. Hyperbaric Technologies, Inc. Index No. 2015-138 referred to herein as the "Schenectady Action").
58. HTI served an answer and asserted affirmative defenses and counterclaims in the Schenectady Action against Peter Lewis, among other things, based upon breach of the Employment Agreement, misappropriation and fraud.
59. As majority shareholders, on or about July 28, 2015, Peter Lewis and Richard Lewis served Plaintiff with a notice of special meeting of the shareholders of HTI to be held on August

18, 2015.

60. On August 18, 2015, Plaintiff attended the special shareholders meeting which was also attended by Peter Lewis and Richard Lewis.
61. On August 18, 2015, Peter Lewis and Richard Lewis voted their majority shares to remove Plaintiff and M. Tracey Brooks as directors without cause.
62. At the August 18, 2015 shareholders' meeting, Peter Lewis and Richard Lewis then elected themselves as the sole directors of HTI.
63. Upon information and belief, on August 18, 2015, immediately after the shareholders' meeting, Richard Lewis and Peter Lewis, the newly elected directors, conducted a special meeting of the directors.
64. Plaintiff was excluded from the special directors meeting conducted on August 18, 2015.
65. The agenda for the special directors meeting conducted on August 18, 2015 was not disclosed to Plaintiff.
66. Upon information and belief, at the August 18, 2015 directors meeting, and without the knowledge or consent of Plaintiff, Richard Lewis and Peter Lewis resolved between themselves to "settle" and discontinue claims that had been asserted as HTI counterclaims against Peter Lewis and to withdraw a motion that had been filed, among other things, to add Richard Lewis as a defendant in the Schenectady Action.
67. Upon information and belief, the purported settlement agreement made by Peter Lewis and Richard Lewis with HTI consisted of retroactive reinstatement of the Employment Agreement, including payment of Peter Lewis back pay, continued salary and fringe benefits, retroactively to January 2015.
68. Upon information and belief, this improper self dealing is a renewal and continuation of past practices of misuse and misappropriation of HTI assets, and intended to enrich Defendant Peter Lewis and Defendant G. Richard Lewis and to siphon and divert funds from the

corporation in order to reduce or eliminate equitable pro-rata distribution of profits and dividends to each of the shareholders of the corporation.

CLAIMS

FIRST CAUSE OF ACTION AGAINST DEFENDANT RICHARD LEWIS AND DEFENDANT PETER LEWIS (Fraud-Derivative Claim)

69. Plaintiff repeats and restates all of the previous allegations.

70. Defendants' failure to disclose the actual salary payments made to Defendant Peter Lewis to HTI's directors or other shareholders, prior to the Employment Agreement, or at any time thereafter until approximately September, 2014, was a fraudulent misrepresentation by omission.

71. Upon information and belief, HTI would not have entered into the Employment Agreement if Defendant Peter Lewis' previous self-dealing and unauthorized salary payments had been disclosed to HTI or its directors and other shareholders.

72. Based on the foregoing, the alleged Employment Agreement is null and void and not enforceable against HTI by reason of inducement by Defendants' fraudulent misrepresentation that continued until its discovery in or about September 2014, namely, Defendants failure to disclose the grossly excessive and unauthorized salary payments paid prior to October 2007.

SECOND CAUSE OF ACTION AGAINST PETER LEWIS (Misappropriation-Derivative Claim)

73. Plaintiff repeats and restates all previous allegations.

74. From and after October 2007, without disclosure to HTI or authorization of the directors or other shareholders, Peter Lewis approved and directed payments of corporate funds for bonuses, reimbursement of personal expenses for himself and his immediate family members or for the benefit of himself and his family members, including his wife, Glenda Lewis and his son, Michael E. Lewis. Such payments were not agreed to or authorized to be paid by the board of directors of HTI under the terms of the Employment Agreement.

75. From 2007 through January, 13, 2015, Peter Lewis used HTI assets within its depository bank account without authorization to pay himself and family members funds which included unauthorized bonus payments to himself in amounts that exceed \$220,000.00 in 2013 and 2014, payments of personal expenses and personal attorneys fees, payment of automobile costs for the benefit of his wife, Glenda Lewis, unauthorized salary, health insurance and automobile costs for the benefit of his son, Michael E. Lewis.

76. The payments and reimbursements referred to above were not authorized and not disclosed to the HTI board of directors or all shareholders until in or about September 2014 as a result of the shareholders' review of HTI books and records in response to Peter Lewis salary underpayment claim.

77. In fact, after the HTI directors' discovery of the misuse of its funds, unauthorized payments and reimbursements, Defendant Peter Lewis continued to cause payments to be made for his own benefit up until January 13, 2015 despite demands by the board of directors and other shareholders to cease and desist from such conduct. In January 2015, Peter Lewis directed HTI's depository bank to make another advance payment from HTI's bank account in the approximate amount of \$10,000.00 upon a personal credit card owned by Peter Lewis. .

78. The HTI directors and shareholders relied on good faith to their detriment on financial reports provided to them by or at the direction of Peter Lewis.

79. Defendant's self-dealing and misuse of HTI assets as described herein were conducted in secret, were intentionally and incorrectly characterized in HTI financial reports prepared at Plaintiff's direction as "compilation" reports by HTI external accountants, as legitimate and reasonable business expenses. Such reports were misleading and were submitted to the directors and other shareholders by Peter Lewis or at his personal direction without disclosure of the personal nature of the disbursements, and were undertaken without the knowledge, consent or authorization of HTI or its directors or shareholders and with intent to fraudulently conceal facts

from Defendant's other directors and shareholders.

80. Peter Lewis' self-dealing and conversion of HTI assets was carried out with intent to conceal and defraud HTI, its directors and other shareholders.

81. By reason of the foregoing, HTI has been damaged to the extent of Plaintiff's misappropriation of funds in an amount to be proven at trial.

**THIRD CAUSE OF ACTION AGAINST PETER LEWIS
(Breach of Contract-Derivative Claim)**

82. Plaintiff repeats and re-alleges all previous allegations.

83. Defendant Peter Lewis' conduct was an intentional and material breach of the Employment Agreement.

84. By reason of the foregoing, HTI has been damaged to the extent of payments that were not authorized under the Employment Agreement and in amounts to be proven at trial.

**FOURTH CAUSE OF ACTION AGAINST PETER LEWIS
(Breach of Fiduciary Duty-Derivative Claim)**

85. Plaintiff repeats and restates all previous allegations.

86. At all times referenced herein, Peter Lewis was a trusted fiduciary as an HTI officer and director and had a legal duty of utmost care and loyalty to HTI and all of its shareholders.

87. Peter Lewis' misuse of HTI funds, including payment to himself of excessive and undisclosed salary in 2007 and subsequent misuse of HTI assets constituted a material breach of his fiduciary duties.

88. By reason of the foregoing, upon information and belief, HTI has been damaged to the extent of Defendant Peter Lewis' use of HTI funds for unauthorized salary, bonus and expense reimbursements including his own personal attorneys fees, in amounts that, upon information and belief, are in excess of \$800,000.00 in more exact amounts to be proven at trial.

FIFTH CAUSE OF ACTION AGAINST DEFENDANT G. RICHARD LEWIS

(Misappropriation-Derivative Claim)

89. Plaintiff repeats and restates all previous allegations.

90. Defendant Richard Lewis was paid cash bonuses: in 2013 in the amount of \$100,000.00 and in 2014 was paid an additional cash bonus in the amount of \$60,000.00.

91. The bonuses paid to Richard Lewis were never authorized by the HTI. board of directors

92. The bonus payments taken by Richard Lewis were misappropriations of HTI funds.

93. By reason of the foregoing, HTI has been damaged and demands judgment against Richard Lewis in the amount of \$160,000.00.

SIXTH CAUSE OF ACTION AGAINST G. RICHARD LEWIS

(Breach of Fiduciary Duty-Derivative Claim)

94. Plaintiff repeats and restates all previous allegations.

95. Since sometime in or about 2007, Richard Lewis was appointed and/or elected as the “Chief Financial Officer” and held himself out as such to the directors of HTI.

96. As HTI Chief Financial Officer, Richard Lewis was compensated for his service and he was charged with and assumed the fiduciary and legal duty as an officer to exercise utmost care and loyalty and to manage and supervise the financial affairs of HTI in a trustworthy manner, including compliance with HTI agreements.

97. As HTI Chief Financial Officer, Richard Lewis was charged with and accepted the fiduciary and legal duty to protect the assets of HTI, to oversee its financial dealings and to act at all times in a manner that was in the best interests of all of its shareholders.

98. Defendant Richard Lewis failed to protect the assets of HTI and failed to protect the interests of its shareholders by engaging in self-dealing, by misappropriating corporate assets to himself under the guise of “bonus” payments and by permitting and authorizing Peter Lewis to

misappropriate corporate assets to himself and his immediate family members.

99. Richard Lewis breached his fiduciary duty to HTI and its shareholders, including the interests of his son and his wife, by participating with Peter Lewis in a scheme, in breach of the Employment Agreement, to provide unreasonable, unauthorized and excessive compensation, “bonus” payments, expense account payments, fringe benefits for the personal benefit of Peter Lewis and that of his immediate family, all to the detriment of the other shareholders.

100. In addition to the foregoing, Richard Lewis also permitted and acquiesced to payment by HTI of Peter Lewis' personal attorneys' fees, in matters that are in direct conflict with the interests of HTI in the approximate amount of \$25,000.00.

101. None of the payments described above were authorized under the Employment Agreement and were not approved by or known to the remaining HTI directors.

102 Richard Lewis knew or should have known of Peter Lewis' misappropriations and unauthorized use of HTI funds but failed to disclose them to the board of directors

103. Plaintiff has been damaged by the foregoing conduct.

104 By reason of the foregoing, Richard Lewis breached his fiduciary duty to HTI, to his wife and son, G. Eric Lewis, to Plaintiff and to MaryRose Lewis as HTI shareholders.

105. Plaintiff demands judgment against Richard Lewis in an amount to be proven at trial.

SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Conspiracy-Derivative Claim)

106 Plaintiff repeats and restates all previous allegations..

107. By reason of the foregoing, Richard Lewis conspired with Peter Lewis in a scheme to defraud and mislead HTI directors and shareholders and to induce them to approve the Employment Agreement, by withholding disclosure of Peter Lewis unauthorized salary withdrawals for 2007 prior to entering into the Employment Agreement and in furtherance of that scheme, thereafter to misappropriate HTI funds to themselves under the guise of salaries, bonuses and fringe benefits for

their own personal benefit and to the detriment of the HTI minority shareholder.

108. By reason of the foregoing, the Defendants have damaged HTI and is accountable to the shareholders of HTI including, without limitation, the Estate of G. Eric Lewis.

109. Richard Lewis' conduct and that of Peter Lewis has been willful and intended to harm the interests of HTI and its shareholders for their own personal benefit.

EIGHTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Declaratory Judgment)

110. Plaintiff repeats and restates all previous allegations.

111. On August 18, 2015, Defendant Peter Lewis and Defendant Richard Lewis as the sole directors of HTI voted to authorize HTI to enter into a Settlement Agreement (“Settlement Agreement”) and to execute a general release of Defendant Peter Lewis from all HTI claims and to discontinue the Schenectady Action “with prejudice”.

112. On August 18, 2015, Defendant Peter Lewis entered into the Settlement Agreement with HTI and executed a general release of HTI claims.

113. Defendant Peter Lewis and Defendant Richard Lewis, as the sole directors of HTI as of August 18, 2015 also voted on that date to pay Defendant Peter A. Lewis for back pay and other considerations in the amount of \$114,119.00, to execute an amendment of Defendant Peter Lewis' Employment Agreement and to pay a salary of \$125,000.00 per year “together with benefits”.

114. Defendant Peter Lewis and Defendant Richard Lewis, as the sole directors of HTI as of August 18, 2015 also voted to enter into an employment agreement with Defendant G. Richard Lewis which is an action that is in breach of a binding resolution of the HTI directors dated June 16, 2015 which prohibits such actions or the payment of compensation to shareholders without the consent of all shareholders..

115. The salary and other benefits and terms of the employment agreement between HTI and Defendant Richard Lewis have not been disclosed to Plaintiff and have not been unanimously

approved by the shareholders as required by the Employment Agreement and are also in breach of a binding resolution of the directors of HTI dated June 16, 2015 which prohibits such action without approval of all shareholders.

116. On August 18, 2015, Defendant Peter Lewis, as a director of HTI, had a substantial financial interest in the Settlement Agreement, the release and the amended Employment Agreement.

117. On August 18, 2015, Defendant Richard Lewis, as a director of HTI had a substantial financial interest in the employment agreement between HTI and Defendant Richard Lewis.

118. Defendant Richard Lewis also had a substantial financial interest in the Settlement Agreement in that he was induced to vote as an HTI director to approve the Settlement Agreement in exchange for the vote of Defendant Peter Lewis to authorize HTI to enter into his own employment agreement.

119. Defendant Peter Lewis also had a substantial financial interest in the employment agreement between HTI and Defendant Richard Lewis because that transaction was made for the bad faith purpose of inducing Defendant Peter Lewis to vote to authorize his own Settlement Agreement.

120. Defendant Richard Lewis has no meaningful employment responsibilities and his employment by HTI provides no benefit to HTI. As such, any payments made to him under such an employment agreement are a waste and misuse of HTI assets.

121. Defendant Peter Lewis has no meaningful employment responsibilities and his employment by HTI provides no benefit to HTI. As such, any payments made to him under the Settlement Agreement and under an employment agreement are a waste and misuse of HTI assets.

122. The actual purpose of the Settlement Agreement, the employment of Defendant Peter Lewis and the employment of Defendant Richard Lewis at the expense of HTI were improperly authorized in bad faith and for the ulterior purpose of siphoning HTI profits and its assets to themselves and to the detriment of Plaintiff's distributable share of the profits

123. The vote of Defendant Peter Lewis as an HTI director and the vote of Defendant Richard Lewis as an HTI director to approve the Settlement Agreement and general release with Defendant Peter Lewis and the employment agreement with Defendant Richard Lewis violated the legal and fiduciary duties of the Defendants as set forth in Section 717 of the Business Corporation Law of the State of New York.

124. By reason of the foregoing, the transactions between HTI and the Defendants were not authorized by any vote other than the vote of the interested directors and are null and void pursuant to Section 713 of the Business Corporation Law of the State of New York and Plaintiff requests judgment declaring all of the self-dealing transactions null and void.

125. By reason of the foregoing, the transactions referred to above were not fair and reasonable to HTI and were the result of self dealing and not the result of good faith arm's length dealings.

126. The Settlement Agreement, general release and the employment agreement between HTI and Defendant Richard Lewis are void pursuant to Section 713 of the Business Corporation Law of the State of New York and Plaintiff requests judgment declaring the transactions to be null and void.

FIRST INJUNCTION REQUEST AGAINST ALL DEFENDANTS

(Derivative Claim)

127. Plaintiff repeats and restates all previous allegations.

128. As of August 18, 2015, Richard Lewis and Peter Lewis have taken control of the HTI board of directors.

129. As of August 18, 2015, Richard Lewis and Peter Lewis, under the guise of a "Settlement Agreement" within the Schenectady Action, voted as directors to "discontinue" HTI's claims against Peter Lewis and to authorize HTI to use its assets for their own personal benefit in the form of retroactive salary payments and other employee benefits.

130. Upon information and belief, HTI payments to Peter Lewis and Richard Lewis, if and when made, will substantially diminish the cash assets of the corporation which are now available

for distribution to all of the shareholders, including Plaintiff, on a pro-rata basis. Defendants' "votes" as directors were bad faith and specifically intended to deprive Plaintiff of the dividend distributions of profits to which Plaintiff is entitled as a one third shareholder of HTI.

131. Such payments have been and will be the result of self dealing without full and adequate disclosure to the shareholders, will be a misuse and waste of HTI assets and will irreparably harm HTI and Plaintiff.

132. Plaintiff requests an order of this Court retroactively and prospectively enjoining the payment of back pay, bonus payments or benefits to Peter Lewis or to Richard Lewis and any other use of HTI assets for Defendants' personal benefit.

SECOND INJUNCTION REQUEST AGAINST ALL DEFENDANTS

(Derivative Claim)

133. Plaintiff repeats and restates all previous allegations

134. As a result of Defendants' joint complete control of HTI and of Breton and as a result of the complete dominion and control that Breton has over the day to day operations of HTI's business, HTI is vulnerable to the whim of Peter Lewis and Richard Lewis, as the controlling shareholders and directors of Breton and HTI.

135. Breton, Peter Lewis and Richard Lewis as its controlling shareholders and directors have a fiduciary duty to HTI and to Plaintiff to exercise utmost care and loyalty and to refrain from action that is adverse to the interests or damaging to the assets, good will or enterprise value of HTI.

136. Upon information and belief, as the sole remaining minority shareholder of HTI, Plaintiff is in a state of imminent jeopardy and danger, including loss of profits, dividends and loss of share value.

137. Based on the past misconduct and misappropriations of Peter Lewis and Richard Lewis with respect to HTI, the corporation itself and Plaintiff as its minority shareholder, will be

irreparably harmed as and when those controlling parties take action to divert profits by increasing HTI costs or otherwise adversely affect or dilute HTI's interests with respect to the manufacture of its products by Breton.

138. Plaintiff requests an order enjoining Defendants from taking any action as directors and officers of Breton to increase HTI costs or otherwise to adversely affect HTI's interests.

NINTH CAUSE OF ACTION FOR REMOVAL OF OFFICERS AND DIRECTORS

(Direct Claim)

139. Plaintiff repeats and restates all previous allegations.

140. Based on the foregoing, and in particular, Defendants' substantial financial interests, past misconduct and misappropriations, and the self-dealing non-arm's length transactions purportedly authorized and entered in bad faith on August 18, 2015, HTI's best interests will not and can not be advanced by Defendants as its sole directors and officers.

141. Plaintiff requests this Court to remove Defendants Peter A. Lewis and G. Richard Lewis as officers and directors of HTI pursuant to Sections 706 and 716 of the Business Corporation Law.

TENTH CAUSE OF ACTION FOR BREACH OF CONTRACT AND ANTICIPATORY BREACH OF CONTRACT

(Direct Claim)

142. Plaintiff repeats and restates all previous allegations.

143. On or about June 16, 2015, the HTI board of directors resolved and approved an agreement between HTI and each of its shareholders and intended expressly for their benefit, as third party beneficiaries to make scheduled monthly dividend distribution payments to each shareholder.

144. The dividend payment plan was intended to enable each of the shareholders to satisfy income tax liabilities incurred by reason of the profits earned by HTI and to provide for regular economic benefits for each of the shareholders

145. Each HTI shareholder is a third party beneficiary of the approved dividend distribution plan adopted by the HTI directors.

146. Upon information and belief, Peter Lewis and Richard Lewis have caused HTI to breach the dividend distribution plan by failing and refusing to make payments due to Plaintiff.

147. Upon information and belief, Plaintiff reasonably anticipates, based on past conduct and the fact that Defendants have seized control of HTI and excluded Plaintiff from the HTI board of directors, that Defendants intend to breach the plan into the future by diverting corporate profits to themselves in the form of salary, bonus and fringe benefit payments.

148. Plaintiff demands damages caused by such breach in an amount to be proven at trial.

WHEREFORE, Plaintiff demands judgment for damages in such amount as will be proven at trial upon each of the Causes of Action stated herein, together with interest, costs and reasonable attorneys fees pursuant to the provisions of the Employment Agreement and as authorized by law, demands judgment to declare the Settlement Agreement between HTI and Defendant Peter Lewis null and void and the employment agreement between HTI and Defendant Richard Lewis as null and void, and further demands punitive damages against Defendants and such other relief against Defendants as to this Court may seem just and proper and further, Plaintiff demands injunctive relief as requested herein and demands an order removing Defendants as directors and officers of HTI for cause and Plaintiff requests such other equitable relief as deemed appropriate by the Court to protect HTI assets from further misuse or diversion and such other relief as to the Court seems just and proper.

Dated: September 9, 2015
Albany, New York

s/Daniel M. Sleasman
Law Offices of Daniel M. Sleasman
Attorney for Plaintiff Justin A. Heller, as Executor
One Crumitie Road
Albany, New York 12211
518.433.0518

VERIFICATION

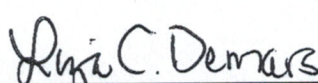
STATE OF NEW YORK)
)
COUNTY OF ALBANY)

Justin A. Heller, being duly sworn, deposes and says:

I am the Plaintiff named in the within action; that deponent has read the foregoing Complaint, and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes them to be true. The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are based on review of business records and documents in my possession and of the subject corporation.


Justin A. Heller

Sworn to before me this
9th day of September, 2015


Notary Public, State of New York

LIZA C. DEMARS
Notary Public, State of New York
No. 01DE6226727
Qualified in Albany County
Commission Expires August 16, 2018

Hyperbaric Technologies, Inc.

January 15, 2015

Unanimous Consent and Resolution of the Directors
Pursuant to Business Corporation Law, Section 708 (b)

The undersigned, being all of the directors of Hyperbaric Technologies, Inc. ("Company") state their unanimous written consent to the following resolutions:

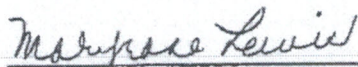
RESOLVED that the resolutions of the shareholders of the Company authorizing the termination of the Employment Agreement dated as of October 30, 2007 between the Company and Peter A Lewis ("Employment Agreement") and removal as a director are ratified and confirmed based on the determinations made by the shareholders with respect to cause for termination, including without limitation: (a) persistent use of HTI funds to pay substantial bonus payments (including without limitation, a \$100,000.00 bonus paid in December 2013, unauthorized quarterly bonuses paid in 2014 and an additional bonus paid in the amount of \$120,000.00 in December, 2014) none of which were properly disclosed or in any way authorized by the board of directors of the Company, along with reimbursement of Peter Lewis' personal expenses (to the extent declared by Peter A. Lewis on adjusted W-2 statements) as well as personal expenses of family members that were not authorized by the terms of the Employment Agreement or by the HTI board of directors (b) placing Peter's son, Michael, on the HTI payroll on a salary and with benefits without meaningful responsibilities and without authorization or approval by the directors, (c) presentation of a claim without merit for alleged salary underpayment in the amount of approximately \$300,000.00 all the above in a manner that is considered to be gross misconduct and a breach of fiduciary duty and of the provisions of the Employment Agreement; and

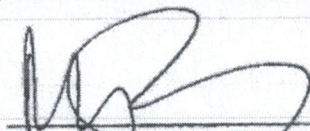
RESOLVED that pursuant to Section 7.2 of the Employment Agreement, the facts determined by the shareholders and determined by the undersigned directors are sufficient to constitute material breaches of duty, gross misconduct and/or willful misconduct and that they provide cause for termination of the Employment Agreement and there is no practical or feasible way for Peter A. Lewis to cure such breaches; and

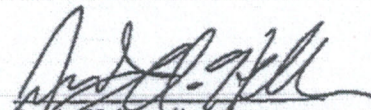
RESOLVED that the Secretary of HTI is directed and authorized to provide a notice of termination to Peter A. Lewis pursuant to the Employment Agreement and consistent with these resolutions, and

RESOLVED that the removal of Peter A. Lewis as a director for cause by the shareholders is hereby ratified and confirmed pursuant to By-Laws Article III, Section 5, and

RESOLVED that accrued salary, benefits or other payments otherwise deemed to be due to Peter A. Lewis will be withheld pending final investigation and reconciliation of unauthorized payments made to Peter A. Lewis or on his behalf including, without limitation, an unauthorized use of the HTI bank account on January 13, 2015, for payment to Peter A. Lewis' personal credit card account in the amount of \$10,800.00.


Mary Rose Lewis, director


Tracey Brooks, director


Justin Heller, director

Dated: January 15, 2015

"A"

Verified Complaint

**Hyperbaric Technologies, Inc.
One Sam Stratton Road
Amsterdam, New York 12010**

January 16, 2015

Peter A. Lewis
8 Marilyn Drive
Scotia, New York 12302
via certified mail, regular mail and email

Re: Notice of Termination of Employment Agreement

Dear Mr. Lewis:

Reference is made to the Employment Agreement between Hyperbaric Technologies, Inc. ("HTI" or "Company") and Peter A. Lewis dated as of October 30, 2007 ("Employment Agreement"). Pursuant to determinations and resolutions of HTI shareholders and directors, and pursuant to the direction of the shareholders and directors, this letter is notice of termination pursuant to Section 7.2 of the Employment Agreement. Please take further notice that in accordance with the terms of the Employment Agreement, the effective date of this termination is deemed to be February 15, 2015. Please be advised, however, that effective January 13, 2015, HTI has relieved you of further service or authority as an officer and employee of the Company. As of that date, you have had, and will have, no authority to transact business on behalf of the Company, to deal with the assets of the Company or otherwise to represent yourself as an agent or representative of HTI with any third party. You are also required immediately to deliver all HTI books and records that are now in your possession or control to the HTI offices.

The Company was advised by its depository bank on January 14, 2015 that without notice or authority, on or before January 13, 2015, the bank was directed by you to make a payment of approximately \$10,800.00 in corporate funds as an advance payment on account for your personal credit card. This payment was not disclosed by you or your attorney prior to or at the shareholders' meeting on January 14. To the extent that these funds are not being used to pay for proper and authorized Company expenses, HTI considers this act as an unlawful and unauthorized conversion of corporate assets. Without limitation, in an effort to remedy this, any accrued salary or other benefits or payments otherwise due to you will be withheld until such time as there is a reconciliation and justification of this credit card payment.

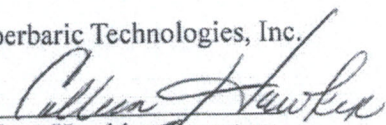
Subject to withholding of payments pending reconciliation of the credit card payment referenced above, salary and fringe benefits will accrue at the current rate until February 14, 2015. In addition, accrued salary or other payments to which you may otherwise be entitled will also be applied to any overpayment balance determined to be due to the Company based on excess compensation and benefits paid since 2007.

I have been asked by the directors to provide, and I enclose herewith, a copy of the unanimous written consent and resolution of the directors of the Company dated January 15, 2015 related to this notice of termination. In addition, I also enclose a courtesy copy of supplemental resolutions that were also adopted by unanimous consent of the directors on January 15, 2015.

Sincerely,

Hyperbaric Technologies, Inc.

by:


Colleen Hawkins, Secretary
er

encs.

cc: Arkley Mastro, Esq.

Cc: Daniel M. Sleasman, Esq.

Cc: HTI Directors

cc: G. Richard Lewis