

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

In the Matter of the Application of
PATRICK K. YU,

Petitioner,

For the Judicial Dissolution of

MOKLAM ENTERPRISES, INC.,

Pursuant to Section 1104-a of the Business
Corporation Law

- against -

BONG YU, MAY YU, RAYMOND YU, and
CATHERINE YU,

Respondents.

Index No. _____

**VERIFIED PETITION FOR
DISSOLUTION**

Petitioner Patrick K. Yu, by and through his attorneys Kobre & Kim LLP, alleges as follows in support of this petition seeking judicial dissolution of Moklam Enterprises, Inc. pursuant to Section 1104-a of the Business Corporation Law and the common law of New York:

INTRODUCTION

1. Moklam Enterprises, Inc. (“Moklam”), is a New York corporation owned and operated by the Yu family to conduct its wide-ranging real estate business. The Yu family consists of parents Bong Yu and May Yu, and adult children Raymond Yu and Catherine Yu

(collectively, the “Yu Family” or “Respondents”), as well as Patrick Yu—the petitioner in this action (“Patrick” or “Petitioner”).

2. Patrick is a minority shareholder in Moklam. He owns 26% of the company and was previously employed as legal counsel to Moklam and various other Yu Family entities. The remaining 74% of Moklam is owned by Raymond and Catherine Yu.

3. This petition stems from the latest in a series of intra-family squabbles pitting Patrick against his parents and siblings. In late 2013, a dispute—unrelated to the business of Moklam—arose between Patrick and his father Bong Yu. This particular dispute, which began sometime after Patrick and his ex-wife divorced, centered on whether or not Patrick should remain living in a house he owned in Scarsdale or move into an apartment building in Manhattan, owned by another of the Yu Family business entities, 33 East 38th Street LLC (“East 38th Street”). Patrick believed it would be best for him and his children to sell his house in Scarsdale and return to Manhattan, while his father demanded that he remain in Scarsdale.

4. Notwithstanding his father’s wishes, in July of 2014, Patrick sold his house in Scarsdale and moved back to Manhattan. Thereafter, Bong Yu, together with the other Respondents, resolved to use every means at their disposal to marginalize Patrick’s role at Moklam and other family businesses, to divest Patrick of his ownership stake in Moklam and other family businesses, and to defeat Patrick’s reasonable expectation that he would realize some economic benefit from his ownership stake in Moklam and the other family businesses—an expectation Patrick had relied on in ordering his personal financial affairs. Respondents also subverted Patrick’s reasonable expectation that he would be entitled to play some role in, and be afforded access to information regarding, the management and operations of the entities he was a part owner of.

5. As described in more detail below, as a result of their personal animus towards Patrick, Bong Yu and the rest of the Yu Family have embarked upon a systematic course of conduct specifically designed to oppress Patrick, inflict economic harm on him, and eventually divest him of his ownership interest in Moklam and other family businesses. In so doing they have utilized the resources of multiple different business entities not for any legitimate corporate purpose or based on any honest belief that such actions were in the best interests of those entities, but rather simply to enrich themselves at Patrick's expense and extract revenge for personal grievances that have nothing to do with those entities' business operations.

6. Despite Patrick's consistent efforts to resolve the personal differences between him and his family and proceed to a fair resolution regarding his role in the family businesses, Respondents have continued and in fact increased their oppressive and bad faith conduct. As a result, Patrick has been left with no choice but to file, *inter alia*, the instant petition in an effort to ensure that his reasonable expectations with respect to Moklam are not frustrated and that he preserves the fair value of his interest in the corporation.

7. The allegations below describe a coordinated pattern of conduct in which the Yu Family has used resources at their disposal—including multiple business entities—to take action against Patrick. In addition to this Petition, and based on substantially the same conduct as that described herein, Patrick has also separately filed a lawsuit to dissolve East 38th Street and Guard Hill Estates, LLC ("Guard Hill") pursuant to New York Limited Liability Company Law § 702, and a complaint for declaratory and other relief against Guard Hill only.

PARTIES

8. Petitioner Patrick K. Yu is an individual and a resident of the County of New York and the State of New York. Petitioner owns 25.91% of the issued and outstanding voting shares of Moklam.

9. Moklam is a domestic Corporation duly organized and existing under and by virtue of the laws of the State of New York and having its principal place of business at 200 Park Avenue, 11th Floor, New York, New York 10166. Moklam is primarily engaged in the business of owning commercial real estate in New York City. Moklam is not a registered investment company under the federal Investment Company Act of 1940 and no shares in Moklam are listed on a national securities exchange or regularly quoted on an over-the-counter market.

10. Respondents Bong and May Yu are individuals and residents of the County of Westchester and the State of New York. They are a married couple, the parents of Raymond, Catherine, and Patrick Yu, and were previously the owners of Moklam, before gifting their shares in the corporation to their three children. Bong Yu continues to serve as Vice-President of Moklam and May Yu as Treasurer of the corporation.

11. Respondent Raymond Yu is an individual and a resident of the County of New York and the State of New York. He is the second son of Bong and May Yu, the brother of Patrick and Catherine Yu, the President of Moklam, and a Manager of Guard Hill and East 38th Street.

12. Respondent Catherine Yu is an individual and a resident of the County of New York and the State of New York. She is the daughter of Bong and May Yu, the sister of Patrick and Raymond Yu, the Corporate Secretary of Moklam, and a Manager of Guard Hill and East 38th Street.

VENUE

13. Venue is proper in this Court because Moklam has its principal place of business in the County of New York. *See* New York Business Corporation Law § 1112.

BACKGROUND OF MOKLAM AND OTHER YU FAMILY BUSINESSES

14. Moklam was originally incorporated in the State of New York in 1982, and sometime thereafter was purchased by Bong and May Yu. (Affidavit of Patrick K. Yu (“Patrick Yu Aff.”) ¶ 7.) Using Moklam as their primary cash producing business entity, Bong and May Yu gradually built a highly successful and profitable real estate business throughout the 1980s and to the present. (*Id* ¶ 7.) As their business branched out, they established various other entities to handle different areas of the business, but Moklam remains to this day the primary cash producing entity funding the Yu Family’s various real estate and other business activities. (*Id* ¶ 7.) In addition to owning real estate directly, Moklam also holds stakes in other Yu Family real estate entities as well as, on information and belief, non-family businesses including a bank and investment funds. (*Id* ¶ 7.)

15. To provide a rough sense of the size of the Yu Family businesses, in 2011, Moklam President Raymond Yu estimated the value of Patrick’s share of the Yu Family businesses to be approximately \$60 million. (*Id* ¶ 6.)

16. While various different legal entities nominally perform various different functions as a part of the Yu Family real estate empire, in reality all of these entities are under the same management and are operated as a cohesive unit. (*Id* ¶ 9.) The members of the Yu Family make all important final decisions relative to the operation of their businesses regardless of which legal entity the business is owned by. (*Id* ¶ 9.) On information and belief, there are no outside or independent officers or directors for any of the Yu Family businesses. Indeed, in the

case of Moklam, the governing shareholder agreement explicitly directs that all shares must be voted in favor of electing members of the Yu Family as the sole directors of the corporation. (Affidavit of Jonathan D. Cogan in Support of Petition for Dissolution (“Cogan Aff.”), Exhibit A ¶ 8.1.)

17. All three Yu children have spent much of their adult lives working for Moklam and other Yu Family entities. (Patrick Yu Aff. ¶ 10.) Raymond and Catherine Yu joined the family business in 1990 directly after they graduated from college, and eventually were named by their parents the President and Secretary of Moklam. (*Id* ¶ 10.) Patrick Yu first obtained a master’s degree in real estate development and investment, as well as a law degree, before becoming involved with the family business in approximately 1995, where his role included handling much of the company’s day-to-day landlord-tenant legal work, as well as other legal work for the company and other Yu Family entities. (*Id* ¶ 10.)

18. Over time, Bong and May Yu have made the choice to transfer their ownership interests in Moklam to each of their three children in various stages and amounts for tax and/or other reasons. As of the date of this petition, the Yu parents no longer own any of the outstanding issued stock in Moklam, and ownership of the company is divided as follows¹:

MOKLAM	
Individual	Ownership Percentage Of Moklam
Catherine Yu	37%
Raymond Yu	37%
Patrick Yu	26%

¹ See Cogan Aff. Ex. B at p. 2.

19. At the time he received stock in Moklam, Patrick reasonably expected that (a) he would have the right to participate in and have access to information regarding the management of the corporation; and (b) he would have the right to obtain financial benefits from the corporation. (Patrick Yu Aff. ¶ 12.) Furthermore, Patrick ordered his personal financial affairs in reliance on the reasonable expectation that his shares in Moklam and other entities were worth a substantial amount of money. (*Id* ¶ 12.) Patrick did not expect—and could not have reasonably expected—that he would be frozen out of the entities entirely, that he would be subject to taxation on income he never received, or that his family would use the entities to oppress him. But that, unfortunately, is exactly what has happened.

FAMILY TENSIONS

20. Bong Yu had never fully approved of Patrick’s decision to attend law school out of state, as he wanted Patrick to follow in his footsteps and take over the family business, and he viewed Patrick’s educational choice as an abandonment of the family. (*Id* ¶ 13.) Nonetheless, after his graduation the family welcomed him, at his mother’s urging, into the business where he utilized his legal skills for the benefit of the corporation and, like his brother and sister, was eventually included in his parents’ decision to transfer their ownership of Moklam and certain other businesses to their children. (*Id* ¶ 13.) However, the tension between Patrick and his father never fully subsided.

21. In early 2011, Patrick’s marriage of 13 years fell apart and he and his wife began divorce proceedings. (*Id* ¶ 14.) These proceedings re-opened old wounds in the relationship between Patrick and his father, who viewed Patrick’s failed marriage as an example (like going to law school out of state) of poor judgment. (*Id* ¶ 14.) This dynamic was exacerbated by the fact that Patrick’s financial situation had deteriorated significantly due to his divorce. (*Id* ¶ 14.)

22. In particular, in the wake of his divorce Patrick had several conversations with his parents about his financial status. (*Id.* ¶ 15.) Among other options, Patrick suggested that he could better manage his financial affairs were he to sell his house in Scarsdale and move back into the apartment building on East 38th Street. (*Id.* ¶ 15.) However, the Yu parents were opposed to the idea of Patrick selling his house in Scarsdale. (*Id.* ¶ 15.) Rather, on information and belief, they had already decided to use Patrick’s financial distress as a lever to get him to relinquish his stake in the family business at far below its fair value, and the sale of his house would provide Patrick a financial lifeline that would have made it harder for his parents to achieve this goal.

23. Indeed, instead of agreeing that Patrick should sell his house, Bong Yu demanded that Patrick sell 100% of his ownership stake in all Yu Family entities for approximately \$3 million—*approximately 5%* of its fair value according to information provided by Raymond Yu (the President of Moklam) in 2011. (*Id.* ¶ 16.) To add insult to injury, Bong Yu’s offer called for the \$3 million to be paid out over the course of 30 years. (*Id.* ¶ 16.)

24. Patrick knew that his shares of Moklam and the other family businesses were worth far more than the amount offered by his father, and that his father was clearly attempting to use Patrick’s financial distress and his control over Patrick’s livelihood as a lever to divest Patrick of his ownership stake in those entities at an unreasonably low price. (*Id.* ¶ 17.) Patrick, however, refused to acquiesce to his father’s strong-arm tactics. Thus, needing money and lacking other options, Patrick eventually sold his Scarsdale house in July of 2014 despite his parents’ opposition. (*Id.* ¶ 18.) He then moved back to Manhattan, although not to the East 38th Street house with the rest of his family. (*Id.* ¶ 18.)

THE YU FAMILY'S OPPRESSIVE AND RETALIATORY ACTIONS

25. Bong Yu was outraged when he learned that Patrick had “defied” him by selling the Scarsdale house against his wishes and told him he was “out” of the family business. (*Id.* ¶ 19.) Soon thereafter, upon information and belief, Bong Yu directed Moklam and other Yu Family entities no longer to utilize Patrick for legal work. (*Id.* ¶ 19.) Patrick did not receive any new legal matters from the Yu Family entities thereafter, depriving him of his main source of income. (*Id.* ¶ 19.)

26. Worse, Bong Yu further exacerbated Patrick’s financial situation by, on information and belief, directing Moklam to cease paying dividends to Patrick. (*Id.* ¶ 20.) This step was particularly significant because, after several years of posting losses, Moklam reported a substantial gain in 2014—the 2014 K-1 form issued to Patrick attributed over \$400,000 of taxable income to Patrick based on his 26% share of the company. (Cogan Aff., Exhibit C at p. 5.) Patrick was thus stuck with a sizeable tax bill and no distribution from the company to offset it.² (Patrick Yu Aff. ¶ 20.)

27. In an effort to establish some kind of acceptable path out of this financial and familial morass, Patrick decided to try to determine the actual value of his stake in the Yu family entities with an eye towards negotiating a fair deal with his father. (*Id.* ¶ 21.) To that end, he decided to use his statutory right to inspect the books and records of Moklam and the other Yu Family entities of which he was an owner via a letter sent to Raymond Yu on May 28, 2015. (Cogan Aff., Exhibit D.)

² The “phantom income” attributed to Patrick from his stake in Moklam and other entities has had additional harmful effects, such as disqualifying him from consideration for affordable housing lotteries despite the fact that his actual income is well within the parameters to qualify. (Patrick Yu Aff. ¶ 20.)

Response to Patrick's Books and Records Request

28. The Yu Family responded to Patrick's decision to exercise his rights as a minority shareholder by doubling down on their oppressive and retaliatory tactics. On or around July 9, 2015—less than six weeks after Patrick submitted his request for books and records from the Yu Family entities in which he had an ownership stake—he received three separate demand letters from three separate Yu Family entities. (Patrick Yu Aff. ¶ 22.)

29. The first letter was from Moklam and demanded repayment of two promissory notes issued to Patrick in 2005 and 2011 in an aggregate amount of \$750,000 plus interest and expenses. (Cogan Aff., Exhibit E at p. 2.) As the letter itself noted, the last payment on either note had been made over *four years earlier*, in July of 2011. (*Id.*) In fact, Patrick had stopped making payments on the notes in 2011 pursuant to an agreement with his father on behalf of Moklam. They later agreed that the notes would not be called until 2036 at the earliest. (Patrick Yu Aff. ¶ 23.) Bong Yu honored that agreement for 4 years and Moklam had taken no action in all that time to call the allegedly defaulted notes—until, that is, the Yu Family found it expedient to ignore this agreement and use the notes to exert pressure on Patrick.

30. The second letter was from Yuco Equity Corp., another entity owned and controlled by the Yu Family, and demanded repayment of two “loans” in the aggregate amount of \$125,000 plus interest, allegedly provided to Patrick in 1998 and 2004 (neither of which loans was evidenced by a written instrument). (Cogan Aff., Exhibit F.) These unpapered “loans” had nothing to do with the business of Yuco Equity Corp.—in fact, according to Yuco Equity, the “loans” were made primarily to help Patrick pay his wedding expenses. (*Id.*, Exhibit G ¶ 6.) Patrick had never made any payment on either of these purported loans, which, according to Respondents, had each been outstanding for *over ten years* at the time Yuco sent its demand.

(Patrick Yu Aff. ¶ 24.) Yet Yuco Equity had made no previous attempt to collect on these alleged debts until it saw fit to do so mere weeks after Patrick’s books and records request. (*Id.* ¶ 24.)

31. The third letter was a breach notice sent to Patrick from his parents, notifying him that his sale of the Scarsdale house constituted a breach of a surety agreement executed between Patrick and his parents in 2012 in connection with the refinancing of his mortgage on the property. (Cogan Aff., Exhibit H.) Bong and May Yu alleged that the surety agreement essentially gave them veto power over any proposed sale of Patrick’s Scarsdale home (as well as over his personal use of funds acquired from the refinancing), and that Patrick’s decision to sell the house had caused them damages in excess of \$750,000. (*Id.*)

32. Also on or around July 9, 2015, the Yu Family took additional actions to marginalize and oppress Patrick with respect to his ownership of and participation in the affairs of Guard Hill and East 38th Street. On that date, Patrick’s siblings, Raymond and Catherine Yu, caused the operating agreements of those two entities to be amended such that Patrick was removed as a “managing member”, divesting Patrick of his right to perform managerial functions on behalf of those two entities. (Cogan Aff., Exhibit I at p. 3; Exhibit J at p. 2.) Prior to these amendments, neither operating agreement had been amended since 2005—again *over 10 years* prior to the July 2015 amendment. (Patrick Yu Aff. ¶ 26.)

33. The Yu Family’s actions against Patrick on July 9, 2015, were transparently an attempt to bring him to heel and to get him to accept Bong Yu’s lowball offer for Patrick’s stake in Moklam and the other family businesses he partially owns. Just as transparently, the Yu Family used multiple entities under its ownership and control in a coordinated effort to achieve this end.

34. Despite the threat of over \$1.5 million in personal liability hanging over his head, and his personal income as well as corporate distributions being cut off, Patrick refused to acquiesce and instead continued to press for the books and records in order to fairly evaluate his interests in the family business. (*Id.* ¶ 28.) But the rest of the family basically stonewalled these requests, producing only bare-bones, unaudited financial statements for the relevant entities that, as discussed in more detail below, raised more questions than they answered. (*Id.* ¶ 28.) Nevertheless, Patrick refused to bend to his family’s unfair and oppressive demands and continued to try to engage them in negotiations to arrive at a fair result. (*Id.* ¶ 28.)

The Yu Family Ratchets Up the Pressure

35. Sensing that even more pressure was needed to achieve their goal of enriching themselves by forcing Patrick to give up his valuable interests in the family businesses for a fraction of their worth, in early 2016 the Yu family took additional steps to punish Patrick for his refusal to bow to their oppressive tactics. Between January 13 and February 18, 2016, they commenced three lawsuits against Patrick based on the three demand letters sent on July 9, 2015:

- *Moklam Enterprises, Inc. v. Patrick Yu*, Index No. 650162/2016 (N.Y. Cnty.), seeking summary judgment in lieu of a complaint with respect to the notes from Moklam allegedly in default and damages in excess of \$500,000. (Cogan Aff., Exhibit K.)
- *Yuco Equity Corp. v. Patrick Yu*, Index No. 650850/2016 (N.Y. Cnty.) (the “Yuco Equity Action”), alleging one count of breach of contract and seeking a declaratory judgment as to the terms of the “loans” from Yuco, and damages in excess of \$125,000. (Cogan Aff., Exhibit G.)
- *Bong Yu et al. v. Patrick Yu*, Index No. 51237/2016 (Westchester Cnty.), alleging two counts of breach of contract and damages in excess of \$750,000. (Cogan Aff., Exhibit L.)

At that point the family’s strategy had become abundantly clear: force the already cash-strapped Patrick to defend himself in multiple litigations until he had no choice but to succumb to their wishes.

36. The Yu Family also ratcheted up the pressure on Patrick with respect to his ownership stakes in East 38th Street and Guard Hill. On January 29, 2016, Raymond and Catherine Yu caused a further amendment to the operating agreements of Guard Hill and East 38th Street. (Cogan Aff., Exhibit M, Exhibit N.) These amendments added a “Capital Contribution” provision to the operating agreements which essentially provided that the managers of these entities—that is, Raymond and Catherine only, by virtue of their earlier amendment which stripped Patrick’s managerial role—could make a capital call “[i]f the Managers determine that additional Capital Contributions are required.” (*Id.* Exhibit M at 6, ¶ 8.4(a), Exhibit N at 6, ¶ 8.4(a).) Furthermore, if any shareholder failed to contribute the requisite amount to a capital call, the other shareholders would have the right to essentially foreclose on the non-payer’s equity. (*Id.* Exhibit M. at 6, ¶ 8.4(b), Exhibit N at 6, ¶ 8.4(b).)

37. Put simply, this mechanism was intended as a permanent sword of Damocles hanging over Patrick’s head. Knowing that Patrick had no cash to contribute to a capital call, Raymond and Catherine could essentially take away his equity in Guard Hill and East 38th Street at will, subject only to the modest notice provisions included in the amendment. Again, the strategy behind this maneuver was obvious: if Patrick did not succumb to their attempt to divest him of his ownership interests of the family business at their low-ball amount, his family would simply take away his valuable ownership interest in these two entities altogether. The capital call provisions were antithetical to these LLCs stated and long-established purposes of passively holding a single piece of property each.

Further Retaliatory and Oppressive Actions

38. In August of 2016, seeking to resolve the ongoing costly litigation, Patrick initiated settlement discussions regarding the amounts allegedly outstanding on the promissory notes at issue in the litigation the Yu Family brought against him on behalf of Moklam. Despite the fact that Patrick had colorable defenses to the claims in that action, and despite the fact that his father had promised him he could have until at least 2036 to pay them back, he agreed to pay in full the amounts allegedly outstanding on the notes to resolve the litigation. (Cogan Aff., Exhibit O ¶ 1.)

39. In response, Moklam made an additional demand that Patrick pay it substantial attorneys' fees. (*Id.*, Exhibit P at 2.) Despite extensive efforts by Patrick, Respondents have refused to meaningfully compromise on the amount of such fees, and instead have opted for further litigation in a transparent attempt to further exacerbate Patrick's financial problems.

40. Also in August of 2016, and again in September, Patrick made additional, detailed requests for books and records from Moklam and the other entities. (*Id.* Exhibit Q, Exhibit R.) In response, on September 22, 2016, *less than a week* after receiving Patrick's renewed books and records requests on September 15, 2016, the Yu Family invoked the capital call provision it had inserted into the operating agreement of Guard Hill. Respondents sent Patrick a letter demanding contributions of approximately \$600,000—purportedly to (1) reimburse Bong and May Yu for upgrades and renovations made to the property held by the Guard Hill entity; and (2) to pay off the outstanding mortgage on the property. (*Id.*, Exhibit S.) No explanation was provided as to the timing of this request. Indeed, none was needed as it is transparently a further effort to retaliate against and oppress Patrick for his temerity in exercising his statutory and common law rights to inspect the books and records of entities in which he holds a significant

minority stake. Moreover, the capital call is completely out-of-step with Guard Hill's purpose as an entity—which is to passively hold the Yu Family's Bedford country estate. The capital call also renders continued operation of Guard Hill financially unfeasible, as the entity has no revenue generating function yet supposedly requires an immediate cash infusion of over \$1.5 million.³

41. Throughout September, and October of 2016, the Yu family has also repeatedly refused and/or placed onerous conditions on Patrick's access to his own files that are in storage at Moklam's flagship building at 622 Broadway. In so doing, Defendants have offered varying justifications for their intransigence, as well as various unfair and unworkable proposals for permitting Patrick to retrieve his files. (*Id.*, Exhibit T.)

The Yu Family's Complete Lack of Transparency and Dilatory Tactics

42. On their own, the foregoing facts evidence a clear case of minority shareholder oppression under Business Corporation Law 1104-a, as well as a palpable breach of Respondents fiduciary duty to Petitioner sufficient to warrant dissolution under New York common law. But they are bolstered even further in light of the Yu Family's consistent refusal to provide Patrick with any meaningful access to information about the entities in which he is a significant shareholder. This refusal to grant access, together with the limited information gleaned from what little access Patrick has managed to obtain, give rise to a reasonable inference that the Yu Family is engaged in misconduct with respect to its operation of Moklam, Guard Hill, and East 38th Street, and that corporate assets are being wasted, looted, and/or diverted to the benefit of the Yu Family and at the expense of Patrick.

³ As noted above, Patrick has filed an action to dissolve Guard Hill and East 38th Street, as well as an action for a declaratory judgment that the Guard Hill capital call is invalid.

43. As noted above, in response to Patrick's original books and records requests in May of 2015, the Yu Family provided only bare-bones, unaudited financial information regarding Moklam, Guard Hill, and East 38th Street. (Cogan Aff., Exhibit U.)

44. In response to Patrick more detailed books and records requests in August of 2016, the Yu family largely refused to provide the documents requested, and eventually produced only a small set of documents largely consisting of materials that it knew were already in Patrick's possession (such as the amendments to the operating agreements of Guard Hill and East 38th Street that, as described above, were enacted for the purpose of divesting Patrick of his ownership interest in those entities). (*Id.*, Exhibit V.)

45. Nonetheless, even the extremely limited information the Yu Family has provided raises serious questions about the management and operation of these entities, and whether corporate assets are being improperly used to benefit the Yu Family shareholders at Patrick's expense.

46. For example, Moklam's 2015 financial statements show approximately \$15 million of cash on hand, yet Moklam has paid no dividends to Patrick since 2009. (*Id.*, Exhibit W.) Similarly, the Moklam financials show almost \$18 million in "loans to related companies," but the Yu Family has refused to provide any information regarding which "related companies" these are, what the loans are for, and on what terms they were given. (*Id.*) Moklam's 2013 and 2014 financial statements show similar numbers. (*Id.*, Exhibit U at 2, Exhibit X at 3.) The Yu Family's refusal to provide any information about these items gives rise to a reasonable inference that the Yu Family is actively managing Moklam to ensure that none of the profits generated by

the company make their way to Patrick by withholding dividends and diverting Moklam assets to entities in which other family members, but not Patrick, have an interest.⁴

47. Similarly, the tax returns provided for East 38th Street show hundreds of thousands of dollars in “travel and entertainment” expenses incurred during the years 2013-2015, a curious line item given that East 38th Street is an entity created solely to own the townhouse in which Catherine and Raymond Yu live with their families, and has no other business activities. (*Id.*, Exhibit Y.) Indeed, over that same period, East 38th Street reported less than \$1500 gross income. (*Id.*)

48. Also questionable is the Yu Family’s refusal to provide Patrick with the minutes of any shareholder meetings, as he is entitled to under Business Corporation Law § 624. While Moklam has asserted in recent correspondence that no such minutes exist (*id.*, Exhibit Z.), that assertion is inconsistent with the statutory requirement that corporations must hold Shareholder meetings at least annually (*see* BCL § 602), as well as the Moklam By-Laws, which also requires at least one annual shareholder meeting to, among other things, elect directors. (Cogan Aff., Exhibit AA at 3.)

49. Respondents’ litigation strategy in the Yuco Equity Action provides further evidence of the Yu Family’s oppressive conduct and lack of transparency. The complaint in that case alleged that the terms of the promissory notes issued by *Moklam* in favor of Patrick should be imputed to the alleged loans parceled out to Patrick by *Yuco*. (*Id.*, Exhibit G ¶ 9.) However, when Patrick sought relevant discovery as to whether either Yuco or Moklam had made similar loans to other members of the Yu Family, Respondents chose to *withdraw their complaint with prejudice* rather than give up a single document or witness in discovery. (*Id.*, Exhibit BB.) This

⁴ This inference is bolstered by the fact that Patrick’s siblings, Raymond and Catherine, live lavish lives including exclusive private schools for their children, luxury cars, and multiple vacations per year, while Patrick is struggling to make ends meet and raise his three young children. (Patrick Yu Aff. ¶ 31.)

conduct—bizarre for a litigant bringing an action in good faith—makes sense for the Yu Family only in light of the following two inferences: first, that the litigations initiated by the Yu Family against Patrick were oppressive measures designed not to further the interests of the entities that brought them, but solely to punish and/or exert pressure on Patrick; and second, that the Yu Family’s categorical refusal to grant Patrick meaningful access to the books and records of the entities he owns means that there is something in those books and records that they do not want him to see.

50. In addition to their general refusal to provide the information necessary for Patrick to fairly value his stake in the Yu Family entities, Respondents have also done everything in their power to delay, obfuscate, and hinder Patrick’s attempts to assert his rights as a shareholder. From their shifting justifications for why they could not allow Patrick to retrieve *his own files* from 622 Broadway, to their refusal to engage in discovery in a litigation that *they initiated*, Respondents’ actions have been carefully designed to frustrate and antagonize a member of their family whom they view as weak and vulnerable.

51. As noted above with respect to the Yuco Equity Action, there are two possible justifications for Respondents’ general lack of transparency and dilatory tactics. The first possibility is that they are part and parcel of Respondents’ broader oppressive scheme—they know that Patrick is financially vulnerable, and the longer they can keep him in the dark and prolong their maltreatment of him, the better chance there is that he will eventually crack and accept whatever buyout they offer. The second possibility is that the Yu Family is loath to release any information about their business because it would reveal misconduct in their management and operation of those businesses.

52. In either case, Respondents' conduct constitutes a palpable breach of their fiduciary duties to Patrick, and demonstrates that they are using Moklam (and other Yu Family companies) to enrich themselves at Patrick's expense.

**DISSOLUTION IS PATRICK'S ONLY MEANS TO
REALIZE HIS REASONABLE EXPECTATIONS**

53. While each individual action taken by the Yu Family might be defensible in a vacuum, when taken together they provide overwhelming evidence of a sustained and coordinated effort to oppress Patrick and eventually force him completely out of his interests in Moklam, Guard Hill, and East 38th Street, thereby frustrating his reasonable expectation to participate in the operation of these entities and realize financial benefits from their profits.

54. The Yu Family has repeatedly retaliated against Patrick for exercising his rights as a shareholder, has taken steps to put enormous financial pressure on him at a time when they knew very well he was under financial duress, and has denied him any meaningful access to the books and records of Moklam, Guard Hill, and East 38th Street. Moreover, they have taken these steps not in an effort to further the interests of these entities but rather to pursue a personal vendetta against Patrick, while at the same time enriching themselves through the acquisition of his shares at a cost far below their fair value.

55. Judicial dissolution is, therefore, warranted and required pursuant to Section 1104-a of the Business Corporation Law and/or the common law of New York for Moklam.

56. Patrick has no adequate remedy at law for the wrong and injuries complained of herein.

57. No prior application for the relief sought herein has been made.

WHEREFORE, Petitioner Patrick K. Yu respectfully requests that the accompanying Order to Show Cause be signed, that Moklam, and all persons interested in Moklam (including the Respondents) show cause before this Court why Moklam should not be dissolved and liquidated pursuant to the applicable provisions of Section 1104-a of the Business Corporation Law of the State of New York and/or the common law of New York, along with such other relief as shall be outlined in the Order to Show Cause, and that Petitioner has any and all other relief as this Court may deem just and proper.

Dated: December 15, 2016
New York, New York

KOBRE & KIM LLP

By: _____


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VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF New York) ss.:

PATRICK K. YU, being duly affirmed, deposes and says:

I am the petitioner in this proceeding. I have read the foregoing Petition and know the contents thereof; and the same is true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.



Patrick K. Yu

Sworn to before me this
15 Day of December, 2016



Notary Public

