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

In the Matter of the Application of JAMES TUFENKIAN, Holder of a 50% Membership Interest, Petitioner, For the Dissolution of, and Appointment of a Receiver or Liquidating Trustee for, Harvest Song Ventures, LLC, Pursuant to §§ 702 and 703 of the Limited Liability Company Law, -against- SYLVIA TIRAKIAN, Respondent.	Index No. 652875/2015 Justice Andrew Borrok Part 53 Motion Sequence No. 007

MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT AND COUNTERCLAIM PLAINTIFF'S MOTION FOR THEAPPOINTMENT OF A RECEIVER OR LIQUIDATING TRUSTEE AND TO ENFORCE THE COURT'S 11/17/16 ORDER GRANTING PETITION FOR DISSOLUTION OF HARVEST SONG VENTURES, LLC

Dated: New York, New York
February 4, 2019

Respectfully submitted,

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Respondent and Counterclaim Plaintiff Sylvia Tirakian respectfully submits this memorandum of law in support of her Motion for a Receiver or Liquidating Trustee and to Enforce the Court's 11/17/16 Order Denying Motion to Dismiss and Granting Petition for Dissolution of Harvest Song Ventures, LLC.

PRELIMINARY STATEMENT

This case arises from the Verified Petition filed in 2015, and amended in 2016, by Petitioner James Tufenkian (hereafter "Petitioner") against Respondent Sylvia Tirakian (hereafter "Respondent" or "Ms. Tirakian") for the judicial dissolution of their company, Harvest Song Ventures, LLC ("Harvest Song" or the "Company") of which they are each a 50% owner. Based directly on repeated representations by Petitioner, his counsel, and his Chief Financial Officer that the Company was insolvent and ***had shut down its active operations***, Justice Ramos ordered that Harvest Song be dissolved on November 17, 2016 (the "Dissolution Order"). *See* Exhibits A-C to the Affirmation of Tina Glandian dated February 4, 2019 (hereafter "Glandian Aff."), submitted in support of this Motion. Not only has Petitioner failed to make any efforts to dissolve the Company in conformity with the Court's Dissolution Order, but he has also actively concealed the ongoing operation of the Company (and his collection of revenues) by operating the sale of jams under Tufenkian Import/Export Ventures, Inc.--an unrelated carpet and rug business that Petitioner solely owns. As it turns out, all of the representations to Justice Ramos, on which the Dissolution Order was premised, were false.

Discovery has revealed that Petitioner and his Chief Financial Officer ("CFO"), Eric Jacobson--who both submitted sworn affidavits attesting to Harvest Song's insolvency and inactivity in order to convince Justice Ramos to grant judicial dissolution--were continuing (and

are likely still continuing) to operate Harvest Song and sell the Company's product (specialty jams and preserves) through an unrelated business that Petitioner solely owns under a purported licensing agreement with Harvest Song, until at least the end of June 2018 (more than a year and a half after the Dissolution Order was issued by the Court). *See* Glandian Aff. ¶¶ 24-25; *see also* Exhibit F to Glandian Aff.

Since this evidence came to light more than six months ago, Petitioner has further delayed the effectuation of the Dissolution Order and these proceedings. His counsel first delayed in responding to numerous emails trying to schedule Petitioner and his CFO's depositions. *See* Glandian Aff. ¶¶ 30-32, 35, 37. Petitioner's counsel subsequently failed to appear at two Court-ordered status conferences in October and November of 2018. *See id.* ¶¶ 33-36. Then, after finally scheduling the depositions of Petitioner and Mr. Jacobson for the end of January, Petitioner's counsel canceled the properly noticed depositions at the last minute based on a sudden absurd claim that Respondent's counsel "may" have violated Section 470 of the Judiciary Law by not maintaining a physical office in the State during some unidentified time period. *See id.* ¶¶ 41-49.

To this end, on January 14, 2019, Petitioner served a baseless and facially invalid Subpoena *Duces Tecum* on 7 W. 24th St. LLC ("Subpoena"), the entity that owns the building in which Respondent's counsel's office is located, containing eleven ridiculous and intrusive requests for information, most of which is privileged, which were obviously intended to burden and harass Respondent's counsel and to delay the scheduled depositions. *See id.* ¶ 41; *see also* Exhibit N to Glandian Aff. Petitioner did not serve Respondent with a copy of the Subpoena in contravention of CPLR 2303(a) and CPLR 3120(3). *Id.* The Subpoena was

simply a ruse for Petitioner and his CFO to avoid having to provide further deposition testimony and an effort to further delay the proceedings.

As explained below and in further detail in the Affirmation of Tina Glandian, Petitioner cannot and should not continue to be trusted with exclusive control over Harvest Song while Respondent's interests are irreparably harmed. This Motion requests that the Court immediately appoint a third-party receiver or liquidating trustee (as Justice Ramos had initially done), order an accounting, and enforce the Dissolution Order so that Petitioner can cease acting against the interests of Harvest Song. Without Court intervention and adequate oversight, Petitioner will continue to ignore the Dissolution Order and self-deal. The Court should also order Petitioner to pay Respondent's reasonable attorneys' fees and costs expended in defending against Petitioner's frivolous and dilatory tactics.

STATEMENT OF RELEVANT FACTS

The Affirmation of Tina Glandian sets forth the detailed factual record (which is not repeated here) and attaches documents relevant to this Motion. Only a few key facts are elaborated on below.

Petitioner's Verified Petition for Judicial Dissolution was accompanied by sworn statements by Petitioner and others averring that Harvest song was insolvent and had shut down its active operations. *See, e.g.,* Verified Petition [Doc. 1], ¶ 1 (describing Harvest Song as "an insolvent and currently non-operating limited liability company"); Exhibit A to Glandian Aff. at 7-8 (Petitioner's counsel representing to Justice Ramos that "***[t]he company has shut down its active operations.*** It has about $4,000 in the bank account. □. . . There is no □reason to continue this business. ***It's been shut down.***") (emphasis added). Based on the repeated pleas of

insolvency and representations that Harvest Song's operations were completely shut down, Justice Ramos granted the judicial dissolution of Harvest Song in November of 2016. *See* Glandian Aff. ¶¶ 9-12.

Until that time, Petitioner maintained that the appointment of a receiver was urgently needed (and he had requested his own appointment). *See* Glandian Aff. ¶ 16. However, because the Court granted the appointment of a ***third party*** receiver (rather than appointing Petitioner as the receiver as he had requested), Petitioner promptly filed on December 2, 2016 a Notice of Request to Voluntarily Discontinue Third Cause of Action in which he represented to the Court, under penalty of perjury, that "[s]ince the Court heard oral argument, the Company has shut down its active operations, and, as of December 1, 2016, has: (a) only $776 in cash . . ., (b) zero inventory . . ., (c) only $1,980 in accounts receivable." *Id.*; Exhibit D to Glandian Aff. Because he claimed that "[t]he Company is obviously unable to pay the costs of a Receiver" and "a business with virtually no assets and no operations would unnecessarily cause the Company and the parties to incur significant costs and expenses with little, if any, benefit," *id.*, the Court allowed Petitioner to discontinue its claim for a receiver. *See* Glandian Aff. ¶ 20.

On December 15, 2016, Respondent filed her Second Amended Answer and Counterclaims in which she asserted a counterclaim for the appointment of a Receiver. *See id.* ¶ 18. Respondent also asserted a counterclaim for an Accounting given that--even back in 2016--Petitioner had engaged in misconduct that caused Harvest Song financial loss, requiring an accounting of how much money has been expended and what funds are in Petitioner's possession. *See id.* ¶ 19.

On June 21, 2018, Respondent's counsel began to take the deposition of Petitioner's CFO, Eric Jacobson. *See id.* ¶ 24. As noted above, Mr. Jacobson had submitted a number of affidavits in which he informed the Court of Harvest Song's insolvency and inability to continue to carry on the business of the Company; he also submitted financial statements purporting to show insolvency, zero inventory, and net income loss. *See* Glandian Aff. ¶¶ 4-5, 7-8.

However, shortly after his deposition began, Respondent's counsel was shocked to discover that Petitioner, Petitioner's counsel, and Mr. Jacobson's repeated representations to the Court in support of the judicial dissolution (including in sworn affidavits) about the inactivity and insolvency of the Company were, in fact, false. *See* Glandian Aff. ¶¶ 24-28. Mr. Jacobson's testimony revealed that despite the Court's Dissolution Order more than a year and a half earlier, Petitioner had actively continued to operate Harvest Song through Tufenkian Import/Export Ventures, Inc. under an alleged licensing agreement with Harvest Song which was never disclosed to Respondent (the other 50% owner of the Company) or to the Court. *See* Exhibit F to Glandian Aff. at 72 ("Q. And Tufenkian Import/Export is the one who's running the business. Correct? A. Running? They're operating -- they're operating the sales of jams, yes."); *id.* at 66 ("we have been selling -- buying and selling product with Import/Export as a means of continuing to keep shelf space and what have you so that hopefully at the end of this legal situation, that the two parties can resolve and end up with something, I suppose.").

In fact, the Harvest Song operation was apparently so active in June of 2018 that Petitioner's own CFO, who submitted numerous affidavits in support of the Petition for Judicial Dissolution, testified that he was not even aware that the Court's dissolution order was final! *See* Exhibit F to Glandian Aff. at 41 ("Q. Before or after the judge ordered Harvest Song

dissolved? A. I don't know when the judge ordered Harvest Song."); *id* at 64; ("What I said was I know that there was an order to dissolve. Not being a lawyer, I also understood that that order to dissolve was being contested. As far as I knew, the status was unclear therefore. But I'm not a lawyer, so I don't know exactly what that means."; *id.* at 65 ("I heard there was an order, I heard it was contested. And so I don't know what the status is.").

Mr. Jacobson's testimony also revealed that by virtue of Petitioner's self-dealing, the financial records of Harvest Song would not accurately show the sale of jams post-2016:

> Q. Okay. Product sales report looks like it's 28 pages. It looks to me like you specifically limited, or whoever printed this out limited the date range. Is that correct? You can take a look. It looks like the date range was limited on that report.
>
> A. I would say it was -- I don't know. I didn't actually generate the report myself. What I asked my person to do is generate the product sales report for the sale of Harvest Song products.
>
> Q. Okay. Do you see anything in there that postdates July or August of 2016?
>
> A. I mean, flipping through it quickly, no.
>
> Q. Okay. Do you know for a fact that Harvest Song has still been selling product post July or August of 2016; correct?
>
> A. There has been Harvest Song product sold post –
>
> Q. 2016?
>
> A. Right.
>
> Q. Post July or August 2016.
>
> A. Right.
>
> Q. Why did you have, or why -- was the person who generated this report instructed not to show anything post July or August 2016?

A. No.

Q. Do you know when the judge's order was dissolving this corporation?

A. No.

Q. Or this LLC.

A. No.

Q. Would it be a coincidence if it was in 2016?

A. Again, I don't know when the date was. I don't know why that report stops at that date.

Q. Does the jump -- what do you call it, a USB or a jump drive that you produced?

A. I call it a flash drive or a thumb drive.

Q. Okay. So the flash drive that you produced, does that include information up until the day that you downloaded it, the financial information?

A. Well, again, that's QuickBooks. So we switched over from QuickBooks in 2015, I believe.

Q. So did you produce the SBT?

A. Yes. So that's the SBT for Harvest Song.

Q. And does that SBT go up until today?

A. The SBT goes up until today.

Q. And why did this just stop at August or July of 2016?

A. ***Because at some point in 2016 Harvest Song, Tufenkian Import/Export Ventures, purchased goods directly to be able to sell and to keep the brand alive. And so those goods were sold by Import/Export Ventures.***

Q. So what you're saying is that at some point Tufenkian Import/Export started operating Harvest Song. Is that your understanding of what happened?

A. Well, they've been operating since we took the inventory and what have you over from Sylvia in 2015.

Q. And then when you say they've been operating, have you been using the Harvest Song name?

A. Yes. The Harvest Song name was used.

Q. And have you been buying product since 2016?

A. Yes.

Q. Have you been buying product as of this year, 2018?

A. I provided the last purchase, which I think was in 2017. I think. I think that's what it is.

. . .

Q. Exhibit B. Who is the entity that's doing the purchasing for the products that are going to be sold as Harvest Song?

A. Tufenkian.

Q. What?

A. Tufenkian.

Q. Tufenkian Import/Export. Correct?

A. Correct. But still using the Harvest Song brand?

A. Correct.

Q. When they sell it. Correct?

A. Yes.

. . .

> Q. That's SBT. So why did you -- why doesn't it have up to date?
>
> A. Because that, those goods were purchased by Import/Export. And they were paying a license, license fee to Harvest Song.

Exhibit F to Glandian Aff. at 30-38 (emphasis added).

When Responded later demanded a copy of the purported licensing agreement between Harvest Song and Tufenkian Import/Export Ventures, Inc., Petitioner conceded that no such licensing agreement exists. *See* Glandian Aff. ¶ 26.

Since this evidence came to light in June of 2018, Petitioner has further delayed the effectuation of the Dissolution Order and these proceedings. Petitioner's counsel failed to respond to repeated emails regarding deposition dates for Petitioner and his CFO. *See* Glandian Aff. ¶¶ 30-32, 35, 37. Petitioner's counsel failed to appear at two Court-ordered status conferences in October and November of 2018. *See id.* ¶¶ 33-36. And Petitioner and his CFO recently failed to appear at their timely and properly noticed depositions on January 30 and 28, 2019, respectively, to answer questions regarding Harvest Song operations and the status of the dissolution proceedings, among other issues. *See id.* ¶¶ 51-52; *see also* Exhibits P & Q to Glandian Aff. To compound matters, Petitioner has now lodged a baseless accusation against Respondent's counsel, which has taken a significant amount of time to address both by way of Objections to the Subpoena as well as preparation of the instant Motion and related filings.

ARGUMENT

I. Respondent Has Made a Clear Evidentiary Showing that the Appointment of a Receiver or Liquidating Trustee Is Necessary to Protect Respondent's Property Interests.

Section 703(a) of the New York Limited Liability Company Law provides that "[u]pon

cause shown, the supreme court in the judicial district in which the office of the limited liability company is located may wind up the limited liability company's affairs upon application of any member, or his or her legal representative or assignee, and in connection therewith may appoint a receiver or liquidating trustee."

In addition to the LLC Law, CPLR 6401(a) also authorizes the appointment of a temporary receiver as a provisional remedy when property that is the subject of litigation is in danger of harm, injury or damage and such remedy is necessary to protect the interests of the parties. Specifically, CPLR 6401(a) provides that "[u]pon motion of a person having an apparent interest in property which is the subject of an action in the supreme or a county court, a temporary receiver of the property may be appointed, before or after service of summons and at any time prior to judgment, or during the pendency of an appeal, where there is danger that the property will be removed from the state, or lost, materially injured or destroyed." A receiver may be appointed for any form of identifiable property, including any rents, profits or other income produced therefrom. *See, e.g.,* Butler v. Gibbons, 225 A.D.2d 335, 335, 638 N.Y.S.2d 634, 634 (1st Dep't 1996).

A moving party seeking the appointment of a temporary receiver as a provisional remedy need only demonstrate that a receiver is necessary to prevent further harm or irreparable loss to the property. *See* S. Z. B. Corp. v. Ruth, 14 A.D.2d 678, 678, 219 N.Y.S.2d 889, 890 (1st Dep't 1961); *see also* Nelson v. Nelson, 99 A.D.2d 917, 917-18, 473 N.Y.S.2d 40, 41 (1984) (although appointment of a temporary receiver should not be granted lightly, when plaintiff has satisfied its burden it is entitled to such relief, even where an ongoing business is involved; receiver appointed without evidentiary hearing).

In *Meagher v. Doscher*, 157 A.D.3d 880, 884, 69 N.Y.S.3d 708, 712 (N.Y. App. Div. 2018), the court found that the appointment of a receiver was necessary to protect the parties' interests, given the state of affairs between them, and that one party's unilateral actions presented a danger of material injury to the other party's property. The court explained that

> the plaintiffs submitted evidence: that there was litigation between Emerson Associates and a corporation owned by Doscher concerning which entity owned certain trademarks, including the name "The Sloppy Tuna"; that Doscher executed a license agreement on behalf of Emerson Associates, pursuant to which Emerson Associates was obligated to pay licensing fees to Doscher's corporation to use the trademarks in connection with the operation of The Sloppy Tuna; and that Doscher was using Emerson Associates' funds to pay his legal bills in Action No. 1 and Action No. 2. Accordingly, under these circumstances, the court properly granted the plaintiffs' motion to appoint a temporary receiver.

Id.

The First Department's recent decision in *Matter of Eugene*, 160 A.D.3d 506, 507, 75 N.Y.S.3d 8, 9 (N.Y. App. Div.), *appeal dismissed sub nom. Matter of Accounting by Eugene,* 32 N.Y.3d 1070, 113 N.E.3d 466 (2018), is also instructive. There, the First Department held that the surrogate court did not improvidently exercise its discretion in granting a motion to appoint a temporary receiver where the potential objectants demonstrated by clear and convincing evidence that continued control by the executor of the decedent's estate would result in irreparable harm to their interests. *Id.* The "potential objectants submitted evidence showing that executor commingled funds, delayed proceedings, failed to comply with stipulation requiring sale of estate property, engaged in self-dealing, and failed to account for revenues generated by the estate properties." *Id.* The court further held that "the potential objectors' attorney's affirmation was sufficient to make a prima facie showing of the executor's dilatory conduct in that the attorney had first-hand knowledge of the facts stated therein."

Here, the misconduct by Petitioner is even more egregious than that in *Matter of Eugene, supra*. As detailed in the Affirmation of Tina Glandian, nearly $500,000 in Company assets has been depleted by Petitioner since the commencement of this case. *See* Glandian Aff. ¶¶ 5, 8, 11. And less than a year after this action was filed, financial records submitted by Petitioner revealed that the loan to himself had been paid down by several hundred thousand dollars. *Id.* ¶ 8. Furthermore, the deposition of Eric Jacobson revealed that Petitioner has utterly failed to comply with the Court's Dissolution Order, he has delayed and continues to delay proceedings, he has commingled funds with his other business, he has engaged in self-dealing, and he has failed to properly account for revenues generated by the Company. *See generally* Exhibit F to Glandian Aff. All of this misconduct has harmed and threatens to further harm Respondent's property interests, including the value and income generated by Harvest Song.

Although Respondent has asserted a claim for a receiver or liquidating trustee and for an accounting in her Second Amended Answer and Counterclaims, the facts outlined in the Affirmation of Tina Glandian demonstrate that prompt action is required. Because Respondent has made a clear evidentiary showing that the immediate appointment of a receiver or liquidating trustee is necessary to protect her property interests, the Court should grant her motion.

II. An Accounting of Harvest Song's Affairs Should Be Ordered.

As set forth herein and as detailed in the accompanying Affirmation of Tina Glandian, Petitioner continues to sell product under the Harvest Song brand name despite entry of the Dissolution Order. Petitioner was charged with complying with the Court's directive of dissolving the Company; yet he failed to do so. To the contrary, he actively tried to conceal the ongoing operations of the Company (and his collection of revenues) by operating the sale of

jams under Tufenkian Import/Export Ventures, Inc.--an unrelated carpet and rug business that Petitioner solely owns.

Respondent has a right to an accounting given her status as a party to a dissolution proceeding and the 50% owner of Harvest Song. Petitioner respectfully requests that the Court order Petitioner to account to the Court-appointed receiver or liquidating trustee for its full business affairs and expenses, including any and all business conducted through Tufenkian Import/Export Ventures, Inc. or any of Petitioner's other entities.

III. The Dissolution Order Should Be Enforced.

Respondent respectfully respects that the Court set an aggressive schedule for the winding down and liquidation of Harvest Song following appointment of the receiver or liquidating trustee, as well as for the remainder of this case (which has been pending for almost three and a half years with only Respondent's deposition completed to date).

Petitioner's CFO testified--more than six months ago in June of 2018 and more than a year and a half after Justice Ramos entered the Dissolution Order--that Harvest Song products were continuing to be sold. Despite having submitted a number of affidavits in this case in support of a judicial dissolution, Mr. Jacobson testified that he was not even aware in June of 2018 that the Court had entered a Dissolution Order.

A deadline for the completion of dissolution should be set, as well as other related milestones. Without a receiver, oversight, and a schedule, the Dissolution Order will continue to be undermined by Petitioner.

IV. Respondent Should Be Awarded Her Attorneys' Fees And Costs In Defending Against Petitioner's Frivolous and Dilatory Conduct.

It is well settled that an attorney or party who fails to properly investigate the facts and proceeds to take legal action may be subjected to financial sanctions for conducting "frivolous" litigation. *See* 22 NYCRR § 130-1.1. Rule 130-1.1 provides that a party's conduct is "frivolous" if:

(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;

(2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or

(3) it asserts material factual statements that are false.

22 NYCRR § 130-1.1(c)(1)-(3).

In order to determine if conduct is frivolous, the Court considers "the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party." 22 NYCRR § 130-1.1(c).

Here, new counsel entered their appearances in this matter on January 7, 2019, Glandian Aff. ¶ 39, and served the Subpoena alleging a potential Section 470 violation by Respondent's counsel exactly one week later, on January 14, 2019, *id.* ¶ 41. The brief time that elapsed between entry of the appearances and service of the Subpoena show that counsel did not conduct an adequate investigation of the facts prior to taking legal action. And Petitioner's existing

counsel who has represented Petitioner since the inception of this case, has never leveled such an absurd accusation against Respondent's counsel during the pendency of this case for nearly three and a half years.

Rather, it is obvious that the Subpoena was served for a purely frivolous purpose, namely to delay the sworn testimony of Petitioner and Mr. Jacobson. Furthermore, despite numerous detailed representations by Respondent's counsel that their firm had not violated Section 470 of the Judiciary Law at any time, including detailed representations about Mr. Geragos's purchase of the building located at 7 W. 24th Street, when Respondent's counsel began to occupy Suite 2 of the building, and how many individuals had worked from the office at that location, as well as a lengthy meet and confer telephone discussion in which Respondent's counsel disclosed additional details about their firm's compliance with Section 470, Petitioner's counsel refused to withdraw the Subpoena and failed to appear for the properly noticed depositions of Petitioner and Mr. Jacobson. *See* Glandian Aff. ¶¶ 44, 47-48.

Petitioner's dilatory tactics, including 1) failing to appear at two status conferences with the Court, 2) serving a facially invalid and unenforceable Subpoena *Duces Tecum* accusing opposing counsel of violating Section 470 of the Judiciary Law without adequate investigation of the facts, 3) refusing to withdraw that Subpoena in the face of contrary facts and representations by counsel, and 4) canceling two key depositions at the eleventh hour on contrived Section 470 grounds constitutes frivolous conduct.

Significant time and money was spent to prepare for Petitioner and Mr. Jacobson's depositions and for Mr. Geragos to travel cross-country to attend. In addition to those expenses, Respondent's counsel has also incurred substantial costs to prepare Objections to a frivolous

subpoena as well as the instant Motion and related documents. Petitioner's failure to appear at two status conferences in October and November of 2018 also caused unnecessary time and expense for Respondent's counsel. *See* Glandian Aff. ¶¶ 33, 36, 53. Accordingly, Respondent respectfully requests that Petitioner be ordered to pay Respondent's reasonable attorneys' fees and costs expended on all of these efforts. *See, e.g.,* *Visual Arts Found., Inc. v. Egnasko*, 91 A.D.3d 578, 578, 939 N.Y.S.2d 13 (1st Dep't 2012) (directing lower court to hold hearing on amount of damages "incurred from those aspects of [the party's] litigation conduct that were 'frivolous,' including [] impeding discovery, . . . and conduct which was 'undertaken primarily to delay or prolong the resolution of the litigation'").

CONCLUSION

For the foregoing reasons, Respondent and Counterclaim Sylvia Tirakian respectfully requests that the Court grant this Motion for a Receiver or Liquidating Trustee and to Enforce the Court's 11/17/16 Order Denying Motion to Dismiss and Granting Petition for Dissolution of Harvest Song Ventures, LLC, and that the Court award Respondent her reasonable attorneys' fees and costs related to this matter.

Dated: New York, New York
February 4, 2019

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to Commercial Division Rule 17, I certify that the foregoing Memorandum of Law in Support of Respondent and Counterclaim Plaintiff's Motion for the Appointment of a Receiver or Liquidating Trustee and to Enforce the Court's 11/17/16 Order Granting Petition for Dissolution of Harvest Song Ventures, LLC, which was prepared using Times New Roman 12-point typeface, contains 4,348 words, excluding the caption, table of contents, table of authorities, and signature block. This certificate was prepared in reliance on the word-count function of the word processing system (Microsoft Word) used to prepare the document.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: February 4, 2019
New York, New York

/s/ Tina Glandian
TINA GLANDIAN