SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

In the matter of the application of	:	
AMIT DOSHI, being the holder of 50% of the outstanding shares of BESEN & ASSOCIATES, INC.,	:	Index No.: 651696/2019
Petitioner,	:	I.A.S. Part 48
	:	(Masley, J.)
For the Judicial Dissolution of BESEN & ASSOCIATES, INC.,	:	
	:	(Mot Seq. No. 001)
- against -	:	
MICHAEL BESEN,	:	
Respondent.	:	

MEMORANDUM OF LAW IN OPPOSITION TO PETITION FOR JUDICIAL DISSOLUTION AND IN SUPPORT OF CROSS-MOTION TO DISMISS OR IN THE ALTERNATIVE TO CONSOLIDATE

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Table of Contents

Table of Authorities

Cases

Rules

Respondent Michael Besen ("Besen") respectfully submits this memorandum of law in opposition to petitioner Amit Doshi's ("Doshi") application for the judicial dissolution of Besen & Associates, Inc. ("Besen & Associates," "B&A" or the "Company") and in support of his cross motion for an Order, *inter alia*: (i) pursuant to CPLR §§ 404 and 3211(a)(7), dismissing the Petition in its entirety; and in the event that the Petition is not dismissed, (ii) pursuant to CPLR § 602(a), consolidating this proceeding with the action entitled *Besen v. Amit Doshi, et. al.*, Index No. 652691/2018, (NY County Supreme Court) (the "2018 Action" or the "Plenary Action"), and (iii) granting Besen leave conduct discovery, pursuant to CPLR § 408, and ordering an evidentiary hearing with respect to Doshi's entitlement to dissolve Besen & Associates.

PRELIMINARY STATEMENT

After working for years as a New York City real estate broker, Michael Besen founded Besen & Associates in 1988 as a boutique firm concentrating on real estate leasing and investments. Since that time, Besen has built B&A into one of the premier real estate investment sales brokerages in the city, with about ten employees and over $300 million in sales in 2018.

In 1989, Besen hired Doshi as a salesperson, and eventually brought him on as a 50% shareholder in the Company. After successfully operating Besen & Associates together for years, the Besen-Doshi relationship began to sour and, in 2018, Besen discovered that Doshi had been stealing from the Company by, among other things, syphoning company funds and investing them in personal deals. Upon learning of Doshi's theft and self-dealing, Besen filed the 2018 Action, in which he seeks, among other things, to recover millions of dollars misappropriated by Doshi.

In response to the filing of the lawsuit in June 2018, *Doshi did not seek to dissolve B&A*. Instead, Doshi walked away from the Company by *resigning his position as a director, officer and employee, in July 2018*, and joined forces with a director competitor of B&A, Meridian Capital

("Meridian"), to serve as a real estate broker. As of the present date, Doshi still works at Meridian, where he remains in direct competition with Besen & Associates.

Thus, Doshi took his conflicting vision for Besen & Associates and his historical gripes about Besen's decision-making right out the door. Since July 2018, Doshi has had no involvement in the affairs of B&A. Consequently, Doshi does not plead sufficient facts to obtain dissolution under Business Corporation Law ("BCL") § 1104(a)(1) and (3), which requires a petitioner to show that the "dissension" between the shareholders has resulted in a current "deadlock" negatively affecting the company's affairs. Any "deadlock" between Besen and Doshi ceased to exist when Doshi effectively "dropped off the keys" to the Company, in July 2018, and walked out the door to join forces with B&A's direct competitor.

Indeed, Doshi's petition fails to articulate how his *past disagreements* with Besen pose a *present and irreconcilable barrier* to the continued functioning and profitability of the Company, except in the most vague and conclusory fashion. He borrows heavily from Besen's allegations in the 2018 Action as a justification for dissolution, but Besen does not seek to dissolve B&A in the 2018 Action. Instead, Besen seeks to dissolve various jointly-owned entities holding title to real property, in which a current managerial deadlock actually exists (the "Property Entities"). Besen also asserts various claims (individually and derivatively) for money damages and other relief with respect to Besen & Associates. And, after borrowing those allegations from the 2018 Action, Doshi takes the position that they are "false" as applied to him.

In the event that the Court does not dismiss the petition, this proceeding should be consolidated with the 2018 Action. The 2018 Action is referenced repeatedly throughout Doshi's papers and is used as a basis for dissolution. The two matters involve overlapping factual

allegations and issues, requiring joint discovery and trial of the matters. Indeed, Doshi's Order to Show Cause acknowledges this fact. Accordingly, the matters should be consolidated.

STATEMENT OF FACTS

The facts upon which Besen opposes Doshi's petition, and cross-moves, are set forth in the accompanying Affidavit of Michael Besen, the exhibits annexed thereto, the Affirmation of Michael P. Regan, and the exhibits annexed thereto.

ARGUMENT

I.

DOSHI'S PETITION SHOULD BE DISMISSED

Doshi's petition should be dismissed because it fails to allege a basis for dissolution under Business Corporation Law § 1104(a).

Business Corporation Law ("BCL") § 1104(a) allows for judicial dissolution on three grounds:

> 1. That the directors *are so divided* respecting the management of the corporation's affairs that the votes required for action by the board *cannot be obtained.*
>
> 2. That the shareholders *are so divided* that the votes required for the election of directors *cannot be obtained.*
>
> 3. That *there is internal dissension* and two or more factions of shareholders *are so divided* that dissolution would be beneficial to the shareholders.

(Italics added).

Judicial dissolution is a "drastic" measure and should only be granted as a last resort. *See In re Parveen,* 259 A.D.2d 389, 391 (1st Dept. 1999); *see also In re Glamorise Foundations*, 228 A.D.2d 187, 189 (1st Dept. 1996). Conclusory allegations of "deadlock" are legally insufficient to

obtain dissolution. *See, e.g., In re Parveen*, 259 A.D.2d at 391 (claim that 50% shareholder exercises sole control over daily management of corporation does not create a cause of action for dissolution, in the absence of allegations that the control gives rise to a "deadlock" over management decisions); *Schneck v Schneck,* 27 Misc.3d 1237(A), at *8 (Sup. Ct. N.Y. Co. 2010) (standard for dissolution is not who is at fault, but whether an actual "deadlock" exists, as evidenced by significant dissension resulting in an irreconcilable barrier to the continued functioning and prosperity of the corporation).

A petition should be dismissed, without an evidentiary hearing, for failure to state a cause of action where it does not allege facts sufficient to justify dissolution on any grounds set forth in Section 1104. *See, e.g., Matter of Dubonnet Scarfs,* 105 A.D.2d 339, 342 (1st Dept. 1985) (affirming dismissal of petition without an evidentiary hearing); *Matter of Kaufmann,* 225 A.D.2d 775, 775-76 (2d Dept. 1996) (affirming dismissal of petition for dissolution, without an evidentiary hearing, where petitioner did not show that the disagreements between him and the respondent posed and irreconcilable barrier to the continued functioning and prosperity of the corporation).

A. <u>There Is No Current "Deadlock" as to the Management of Besen & Associates</u>

Doshi's petition makes no mention of shareholder votes or board meetings. Indeed, Doshi's petition does not speak to corporate formalities at all. Instead, the Petition appears to focus on BCL § 1104(a)(3), which allows for a dissolution when "there is internal dissension and two or more factions of shareholders are so divided that dissolution would be beneficial to the shareholders."

The Petition fails as a matter of law, however, because Doshi resigned from B&A in July 2018. Instead of focusing on current issues affecting the Company -- which he clearly cannot speak to -- Doshi seeks dissolution based on the historical "animosity and distrust" that was built

up between the parties before he exited the company. (Petition, ¶¶ 2-3, 5) However, Doshi fails to articulate how this historical "animosity" or "distrust" has resulted in a *current* "deadlock" that impedes the *continued functioning* of the Company.

Indeed, the only "disagreement" identified in the Petition with respect to the Company relates to Besen's past efforts to grow other divisions of Besen & Associates. Doshi argues that this initiative forced him to "pick up the slack" in generating the Company's revenue. (Petition, ¶¶ 10-12) However, with respect to the day-to-day affairs of the Company, that is just "water under the bridge."

Doshi has not been involved in the management of the Company since he quit in July 2018. (Besen Aff., ¶ 7) He is no longer seeking to generate revenue for Besen & Associates, because he resigned his post as director, officer and employee. The Company has continued to function effectively in his absence. (Besen Aff., ¶ 8) Thus, there is no basis for Doshi to assert that his prior disagreements with Besen regarding the Company have resulted in a current "deadlock" warranting the drastic step of judicial dissolution. *See Matter of Kaufmann,* 225 A.D.2d at 775; *In re Fazio Realty Corp.*, 10 A.D.3d 363, 365 (2d Dept. 2004) (reversing grant of petition to dissolve).

And now that Doshi is working for a direct competitor of Besen & Associates (Meridian Capital), he is hardly in a position to claim that he is concerned with the day-to-day affairs of the Company. *See In re Petition of Kaplan*, 78 A.D.2d 603, 603 (1st Dept. 1980) (petitioner who sought to dissolve corporation for benefit of competitor did not demonstrate any "deadlock" or situation where corporation could not function on a day-to-day basis).

In any event, although Doshi may have disagreed, in the past, with Besen's plans for the Company, those prior objections do not warrant judicial dissolution. *See In re Glamorise*

Foundations, 228 A.D.2d at 189 (disagreement over the plan for the company's future and the existence of multiple lawsuits between the parties does not warrant the extraordinary step of judicial dissolution); *Matter of Ades v. A&E Stores, Inc.*, 2018 N.Y. Slip Op. 30128(U), 2018 WL 513205 at *4 (Sup. Ct. N.Y. Co. 2018) (Scarpulla, J.) (the claimed "internal dissension" did not arise from the day-to-day operations of the business but rather principally derives "from a philosophical business disagreement").

This proceeding is very similar to *In re Admiral Rubber Corp.*, 12 Misc.2d 355 (Sup. Ct. Kings. Co., March 27, 1958). In that case, the I.A.S. Court denied a petition for judicial dissolution because, just like this case, the petitioner had "left the employ" of the company, the petitioner failed to show that he was "in active management" of the company at the time the petition was filed, and there was no showing that the corporate functions were "stalemated." *In re Admiral Rubber Corp.*, 12 Misc.2d at 356. Likewise, here, Doshi left the employ of Besen & Associates and is not involved in managing the company.

The cases cited by Doshi are inapposite. In *Neville v. Martin*, 29 A.D.3d 444 (1st Dept. 2006), a corporate deadlock was found to exist under BCL 1104(a)(2), relating to the votes required for the election of directors. That provision has no application here. Indeed, Doshi's petition makes no mention of shareholder votes or board meetings. Further, the Court held that the evidentiary record "left no doubt" that the corporation could not continue to function effectively. *See Neville*, 29 A.D.3d at 444-45. Here, there is *no evidentiary support* for Doshi's petition. Instead, Doshi simply "copies and pastes" Besen's allegations – from the 2018 Action – with respect to his request to dissolve different entities.

Doshi's reliance on *ANO, Inc. v. Goldberg*, 167 A.D.3d 731 (2d Dept. 2018) and *Petition of Petters*, 117 Misc.2d 21 (Sup. Ct. N.Y. Co. 1982) is misplaced for the same reason. In fact, the

decision in *Petters* helps Besen, not Doshi, because the Court placed great emphasis on the fact that the parties "are not working together" due to their disagreements, resulting in a "deadlock." Here, however, Doshi quit many months ago and acquiesced in allowing Besen to manage the day-to-day affairs. *Id.* at 23. Accordingly, Doshi cannot claim that a current "deadlock" exists.

Similarly, in *Matter of T.J. Ronan Paint Corp.*, an order of dissolution was entered because the parties were both involved in the active management of the corporation and could not agree on management decisions, resulting in a deadlock precluding the successful and profitable conduct of the corporation's affairs. *See Matter of T.J. Ronan Paint Corp.*, 98 A.D.2d 413, 421-22 (1st Dept. 1984). Here, again, Doshi quit many months ago and is therefore not involved in managing the Company. Accordingly, there cannot possibly be a "deadlock."

Doshi has failed to identify or prove: (i) a current "deadlock" between Besen and Doshi; (ii) as to the Company's day-to-day affairs; (iii) that is preventing the successful operation of the Company. Accordingly, the Petition should be dismissed.

B. Besen Does Not "Agree" That Dissolution Is Warranted

Doshi relies on Besen's allegations in the 2018 Action as evidence that the parties "agree" that dissolution is necessary. (Petition, ¶¶ 2, 14, 16.) Doshi is wrong.

In the 2018 Action, Besen is seeking the judicial dissolution of several single-purpose entities that hold title to apartment dealings that he currently *co-manages* with Doshi (the "Property Entities"). (Besen Aff., ¶ 17) Doshi has not resigned as an officer or principal of those entities. Accordingly, the conflict between Besen and Doshi with respect to the management of those companies has resulted in an actual deadlock which necessitate dissolution, and Doshi agrees because he consented to dissolve those entities. *Id.*

Moreover, in contrast to the Property Entities, this proceeding deals with Besen & Associates, which is a multi-faceted investment-sales brokerage firm. (Besen Aff. ¶ 18.) Doshi resigned his position with the Company and has not been involved in the management of Besen & Associates since July 2018. Therefore, there is no "deadlock" regarding management decisions which prevents the continued operation of Besen & Associates.

Besen does not seek the dissolution of Besen & Associates in the 2018 Action. And, in any event, Doshi claims that most or all of the material allegations directed at him, as asserted in the Amended Complaint in the 2018 Action, are "false." (Doshi Affidavit, ¶ 12.) Accordingly, Besen's allegations in the 2018 Action cannot be relied upon as sufficient grounds to justify the dissolution of Besen & Associates.

Doshi also relies on the Amended Complaint as evidence of the "discord and distrust" between the parties, such that they "can no longer be in business together." (Petition, ¶ 14.) While Besen made that point in the context of seeking dissolution of the Property Entities, that statement does not carry the day on this application where, again, Doshi is no longer involved in the day-to-day affairs of Besen & Associates. (Besen Affidavit, ¶¶ 17 – 23.)

In any event, the mere existence of discord and distrust between shareholders, even as borne out by multiple lawsuits, is insufficient to warrant judicial dissolution. *See In re Glamorise Foundations,* 228 A.D.2d at 188 ("the tenor of the lawsuit cannot be cited to bootstrap the arguments made or justify the relief sought."); *Matter of Ades*, at *4 (rejecting argument that application should be "summarily granted" on basis that the parties "cannot work together," in light of conflicting allegations and submissions).

Accordingly, Doshi's reliance on the allegations of the 2018 Action, alone, to support his request for the dissolution of Besen & Associates is both misplaced and legally insufficient. The

allegations contained in the 2018 Action -- with respect to the dissolution of the Property Entities -- are not relevant to establishing whether a current "deadlock" exists with respect to Besen & Associates, in satisfaction of the statutory requirements of BCL § 1104(a).

C. Doshi Can Be Bought Out

Despite the absence of any legitimate corporate deadlock, Doshi nevertheless elected to pursue dissolution under BCL § 1104(a). And, tellingly, Doshi did not bring this proceeding under BCL § 1104-a, which focuses on "illegal, fraudulent or oppressive" actions, or the "looting," "wasting" or improper "diversion" of company assets. Apparently, Doshi does not truly believe that Besen has engaged in any conduct of that sort.

Further, if Doshi sought dissolution under BCL § 1104-a, it could potentially give rise to a buy-out under BCL § 1118. Now that he is competing against Besen & Associates with Meridian Capital, we can infer that Doshi would rather see Besen & Associates simply fold. In any event, with no statutory basis to seek dissolution under BCL § 1104(a), Doshi can always negotiate a sale of his shares to Besen.

II.

IN THE EVENT THAT THE PETITION IS NOT DISMISSED, DISCOVERYAND A HEARING ARE WARRANTED

A. Besen Has Established Good Cause for Discovery

In the event that the Petition is not dismissed, Besen has established good cause, pursuant to CPLR § 408, to obtain discovery in this proceeding. *See Schlesinger v. Schlesinger*, 11 Misc.3d 1078(A), at *5 (Sup. Ct. Nassau Co. 2006) (petition to dissolve denied without prejudice for renewal upon completion of discovery); *see also, Plaza Operating Partners v. IRM (U.S.A.) Inc.*,

143 Misc.2d 22, 23-24 (Civ. Ct. N.Y. Co. 1989) (where a need for disclosure has been established in a special proceeding, it should be permitted).

If the Petition is not dismissed, there will be several issues necessitating discovery, including the basis upon which Doshi claims a current "deadlock" as to Besen & Associates, and whether Doshi commenced this proceeding in bad faith. And, as set forth below, we believe that this proceeding should be consolidated with the 2018 Action, so that discovery can proceed together given the overlapping issues.

B. An Evidentiary Hearing Is Appropriate

In the event the Petition is not dismissed, there are contested issues to be resolved at a hearing. *See Matter of Ades*, at *4-5 (ordering a hearing where the parties' "conflicting submissions and allegations" created material issues of fact as to whether the whether dissension and deadlock existed, and whether the petitioner acted in bad faith in bringing proceeding); *see also, In re Glamorise Foundations,* 228 A.D.2d at 189.

If this Court does not dismiss the Petition, there will be, at a minimum, the following issues to be resolved at a hearing: (i) whether any current "dissension" actually exists as to B&A's day-to-day affairs, and if so (ii) whether it has caused a current "deadlock" that (iii) poses an irreconcilable barrier to the current functioning of the company. In addition, even if current dissension and/or a deadlock is found to exist (which is impossible given that Doshi quit on the company in July 2018), a hearing is warranted to determine Doshi's true motives for commencing this proceeding.

Indeed, allegations that a petitioner acted in bad faith by creating the underlying disputes to justify dissolution constitute a defense to a dissolution proceeding, and a hearing is required. *See Matter of Ades,* at *4-5. Here, there is plenty of evidence of bad-faith conduct by Doshi.

This proceeding was clearly commenced in bad faith. Doshi is currently working as a real estate broker at Meridian Capital, in direct competition with Besen & Associates. (Besen Aff. ¶ 30.) Since his resignation from Besen & Associates, Doshi has taken steps to undermine the Company by, among other things, instructing third-party sellers not to pay commissions to the Company (Am. Cmplt. ¶¶ 12, 108 – 111) and, we believe, sharing proprietary information of Besen & Associates to Meridian Capital. (Besen Aff. ¶ 20)

Moreover, the timing of this application is suspicious. Doshi concedes that the purported "conflict" between the parties has existed for "several years" (Doshi Aff. ¶ 8). Thus, this proceeding could have been initiated by Doshi while he was, in fact, actively involved in the management of the Company. Instead, Doshi chose to commence this proceeding now – about nine months after resigning, and after going into business with a direct competitor. Accordingly, the timing of this application suggests bad faith.

Further, Doshi points to the allegations of the Amended Complaint in the 2018 Action as grounds for dissolution, but those allegations put Doshi – not Besen – in a bad light. As set forth in the Amended Complaint, Doshi has:

- Converted millions of dollars from Besen & Associates (Am. Cmplt., ¶¶ 97-101);
- Misappropriated B&A funds to participate in deals not involving B&A (Am. Cmplt., ¶ 102);
- Loaned money to clients of B&A through his own entity, without earning fees or commissions for B&A (Am. Cmplt., ¶ 107); and
- Interfered with the payment of commissions to B&A (Am. Cmplt., ¶ 108).

Doshi cannot rely on his own bad-faith conduct as the basis to dissolve Besen & Associates. In any event, these allegations suggest that Doshi's aim was to undermine Besen & Associates's success and continued operations. We are entitled to discovery on that issue as well.

Thus, in the event that the Court does not dismiss the Petition, an evidentiary hearing should be held to determine, *inter alia*, whether a current "deadlock" truly exists, and whether Doshi is barred from obtaining dissolution based on his bad-faith conduct and motives. *See, e.g., Matter of Ades v. A&E Stores, Inc.*, 2018 N.Y. Slip Op. 30128(U), at *5.

III.

THIS PROCEEDING SHOULD BE CONSOLIDATED WITH THE 2018 ACTION

In the event that the Petition is not dismissed, Besen cross-moves to consolidate this proceeding with the 2018 Action.

Consolidation is favored in the interest of judicial economy and efficiency where cases present common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right. *See, e.g., Firequench, Inc. v. Kaplan,* 256 A.D.2d 213, 213 (1st Dept. 1998). Where a judicial dissolution proceeding is "inextricably intertwined" with a plenary action, the two cases should be consolidated. *See Matter of Tosca Brick Oven Bread (Lubena)*, 243 A.D.2d 416, 416 (1st Dept. 1997) (consolidation of dissolution proceeding with plenary action was appropriate because allegations of misappropriation of company assets, and intent to further the interests of a competitor, as asserted in the plenary action, could affect the "fair value" of the petitioner's shares).

If the Court does not dismiss the Petition, these matters should be consolidated because they involve similar questions of law and fact. Doshi recognizes that these actions are inextricably linked together. In fact, in the "Wherefore" clause of the Petition, Doshi seeks a resolution of the claims and counterclaims in the 2018 Action, as part of the special proceeding, as follows: "[U]pon dissolution, an accounting of the Company [should] be conducted, *including a resolution of the claims and counterclaims asserted by Petitioner and Respondent in the [2018 Action]*[.]"

(underscoring and italics added). Thus, Doshi readily concedes that the issues in the two matters are inextricably linked together.

Further, Doshi relies heavily on the allegations contained in the 2018 Action to support his argument that dissolution is necessary, and even annexes the Amended Complaint to his moving papers. For example, in support of dissolution, Doshi alleges:

> • Respondent, both in his original complaint and in his amended complaint filed on March 12, 2019, declared his view that the level of distrust that exists between the two shareholders has made it "impossible" for him "to continue to operate any business with" Petitioner. (Doshi's Memorandum of Law, at p. 2)
>
> • Respondent stated in his amended complaint that the "differences between [Respondent and Petitioner] are irreconcilable" and that any attempt to settle their differences "will continue to be fruitless." (*Id.*)
>
> • In his amended complaint, Respondent repeatedly swears that the level of distrust between the two shareholders has made it "impossible" for him "to continue to operate any business with" Petitioner and that his differences with Petitioner are "irreconcilable." (Petition, ¶ 2.)
>
> • Based on [allegations in the amended complaint] alone, it is clear that Respondent agrees with Petitioner's assertion herein that they can no longer be in business together and that, therefore, the Court should order the dissolution of B&A to enable the parties to separate their business interests lawfully and properly. (*Id.*, ¶ 16.)

There is a substantial amount of overlap between these cases. For example, Doshi's central argument in support of dissolution is that a dispute exists with respect to Besen's use of company funds to grow Besen Affiliates (Petition, ¶¶ 10-12). That same issue forms the basis of Doshi's counterclaims in the 2018 Action. (*see*, Answer and Counterclaims, ¶¶ 324-339). Similarly, the foundation for Besen's bad faith defense in this proceeding – that Doshi is now working for a direct competitor – is made part of his claim of breach of fiduciary duty in the 2018 Action. (Am. Complt. ¶¶ 123-125).

Not surprisingly, there will also be overlapping discovery in both cases. In the 2018 Action, Doshi seeks documents relating to Besen & Associates and the Besen Affiliates:

> • All documents exchanged between Besen and Doshi concerning ownership, management, operation and finances of B&A (Request No. 5)
>
> • All documents concerning the financial records of the Besen Affiliates, including all bank statements, records of payables and receivables, payments made and received, bills, invoices, distributions, loans, including inter-company loans from B&A or each other, and all other documents necessary for the conduct of an audit of each such entity by defendant's accountants (Request No. 11)
>
> • All documents since 2001 concerning the formation, ownership, management, operation, finances or closing of the operations of [Besen Affiliates], including all documents relating to communications between Besen and Doshi regarding the Besen Affiliates…(Request No. 10).
>
> • All documents concerning all withdrawals or distributions of funds by Besen from B&A or any of the Besen affiliated companies, or payments made to or on behalf of Besen by B&A or any of the Besen Affiliates (Request No. 39).

(Regan Aff., Ex. D)

Similarly, in the 2018 Action, Besen seeks documents relating to several issues that are critical in this proceeding:

> • All Documents and Communications concerning or evidencing Doshi's allegations in Paragraph 15 of the Petition filed in *In the matter of the application of Amit Doshi for the Judicial Dissolution of Besen & Associates, Inc.*, Index No. 651696/2019 (Sup. Ct. N.Y. Co.) [the "Petition"], of Besen's purported breach of his fiduciary duties, including, but not limited to, Besen's improper "use of Company funds," Besen's "diversion" of funds from Besen & Associates for his "own personal investments and other uses," and Besen's "instruction" to company accountants and bookkeepers to use company funds for the payment of Besen's personal expenses. (Request No. 42)

- All Documents and Communications concerning or evidencing Doshi's claim, in this action and in the special proceeding to dissolve Besen & Associates, that Besen has breached his fiduciary obligations to Besen & Associates and/or the Besen Affiliates. (Request No. 43)

- All Documents and Communications upon which Doshi relies for his assertion that there is a current "deadlock" with respect to the management of Besen & Associates, as alleged in the Petition. (Request No. 47)

(Regan Aff., Ex. F).

Based on the foregoing, it is clear that consolidation of these two matters is both appropriate and efficient. *See In re Cocolicchio*, 6 Misc. 3d 1041(A) (Sup. Ct. N.Y. Co. 2005) (consolidating a dissolution proceeding and a plenary action where the matters involved common questions of fact and law.) Accordingly, in the event that the Petition is not dismissed, these two matters should be consolidated.

CONCLUSION

For all of the foregoing reasons, it is respectfully requested that the Petition be dismissed and that the Court grant such additional and further relief as it deems just and proper.

Dated: New York, New York
April 19, 2019

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NEW YORK STATE SUPREME COURT - COMMERCIAL DIVISION
WORD COUNT CERTIFICATION

I hereby certify pursuant to Commercial Division Rule 17 that the total number of words in the foregoing brief, excluding the caption, table of contents, table of authorities, and signature block is 4,436.

Dated: New York, New York
April 19, 2019

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