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Counsel for Plaintiff Debora Warner.

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

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DEBORA WARNER, individually and :
derivatively on behalf of Mile High Run :
Club, LLC, : Index No.: _____/2018
Plaintiff, :
Date Filed: September 21, 2018

- against -

SUMMONS WITH NOTICE

WILLIAM HEATH, DAVID :
KUZMANICH, KIM Tabet, ROBERT : **Plaintiff designates New York**
NUELL, DAVID ROBINSON; : **County as the place of trial.**
Defendants, :
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TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to appear in this action by serving a copy of your notice of appearance upon the undersigned within twenty (20) days after service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete, if this summons is not personally delivered to you within the state of New York. If you fail to appear or answer, judgment will be taken against you by default for the relief demanded in the notice set forth below.

PLEASE TAKE NOTICE THAT the nature of this action is for judicial dissolution of Mile High Run Club, LLC (“Mile High”),¹ a New York limited liability company comprising approximately 20 members; for the appointment of Warner, the original founder and a managing member of Mile High, as liquidator of the company pursuant to terms of Mile High’s Operating Agreement (“OA”); for transfer to Warner of all intellectual property (“IP”) she contributed to Mile High pursuant her right of reversion to this IP assets under the terms of the OA; for equitable remedies, including, but not limited to: (1) rescission of certain contracts, including an approximately \$300,000 loan that one or more of the Defendants improperly procured on or about September 20, 2018, without proper notice and authorization, in violation of multiple fiduciary and other obligations and (2) injunctive relief restraining Defendants from further encumbering any remaining assets of Mile High, and exposing its members to further liabilities pending judicial dissolution, including an order restraining the expenditure of any portion of the \$300,000 loan described above. Warner also seeks other equitable and legal remedies against each Defendant, individually, jointly and severally, including, but not limited to, based on their wrongdoing sounding in bad faith and other breaches of fiduciary duties; breaches of the covenant of good faith and fair dealing; self-dealing; unjust enrichment; defamation; aiding and abetting breach of fiduciary duty; gross negligence and related common law and other causes of action arising out of each Defendant’s respective wrongdoing.

As a result of the Defendants’ misconduct, Mile High has been driven on the verge of bankruptcy and it is not reasonably practicable to carry on Mile High’s business in conformity with the purpose for which it was formed.

Warner conceived and was the original founder of Mile High, a boutique fitness studio

¹ See NY LLC § 702.

dedicated exclusively to running. Warner believed that she could establish a profit making business by providing a motivating, fun training experience where beginning and competitive runners could train side by side with expert coaching, programs and instruction on running form, all accompanied by music. Warner invested substantial time and effort to develop all the IP associated with her idea for this boutique running studio, including its brand and fitness programs. Warner transferred her IP to Mile High, subject to a right of reversion, in reliance on the Defendants' representations that they wanted to fund Warner so that she could develop and manage Mile High as its CEO and manager, and would remain one of its largest shareholders and the person leading the direction of the business and the use by Mile High of her valuable IP.

From its inception Mile High was formed for the purposes of running a business for profit under Warner's direction, which profit would then be distributed to Warner and Mile High's other members. In addition, Mile High was formed for the intent and purpose of finding institutional investors to either fund the opening of new studios, also for a profit, or sell the business if no funding could be obtained to expand the business.

Despite numerous efforts over the course of over a year, Mile High was unable to find *any* investor willing to fund it for any purpose. Instead, Mile High received a lucrative acquisition offer that would have enabled Mile High's members to preserve their initial investment as well as give them a substantial return on their investment. Acting in bad faith and out of self-interest, and with the purpose of appropriating for themselves (and without compensation) Warner's IP, role and equity, the Defendants sabotaged the acquisition offer on the false pretense that they had other investors lined up willing to pay more, including an investor named Jim Ellsworth. In fact, no other investor existed, and Mr. Ellsworth never had any real interest in Mile High, and had long ago abandoned any interest in investing in Mile

High.

As a result of their bad faith and fraudulent conduct, Defendants were able to place Mile High into a cash crisis, for the purpose of demanding immediate and sweeping changes that would benefit them. For instance, Defendant Heath removed Warner from her role at Mile High and appropriated for himself her role as CEO, even though he has no professional experience in fitness. In addition, Defendants demanded drastic changes to the OA and to the corporate structure of the company on the continued false pretense that Jim Ellsworth had recommended these sweeping changes, and that the changes were necessary in order to get funding, which was immediately necessary for Mile High to *survive*. Indeed, shortly before these changes were demanded, Mile High had practically no cash left to cover any of the increasing liabilities the Defendants have improperly taken on behalf of Mile High and its members, including Warner.

Defendants' false representations were made with the intent and purpose of illegally stripping Warner of her equity, her right to reversion in the IP currently being used by Mile High, and her substantial personal investment in Mile High. In addition, the sweeping changes Defendants have demanded have the effect of diluting all other members who are believed to have never been apprised by Defendants of the true facts, including the fact that the alternative investor and other proposals they put forward to justify turning down the acquisition offer did not exist and were not real.

PLEASE TAKE FURTHER NOTICE THAT for the reasons set forth above, and as will be more fully described in the Complaint, Warner, individually and derivatively as a member on behalf of Mile High, seeks judicial dissolution of Mile High pursuant to NY LLC § 702, her appointment as Liquidator of Mile High in accordance with the terms of the OA, the transfer of the IP currently being used by Mile High back to her in accordance with the terms of

the OA, as well as all other remedies available in equity and at law, including rescission of various contractual arrangements.

Warner also seeks to hold each of the Defendants jointly and severally liable for any restitutionary and/or legal damages, as well as for all attorney's fees and costs; and for punitive damages based on Defendants' spite, malice, and willful wrongdoing carried out in deliberate disregard for Warner's interests, as well as the interests of those other members of Mile High not named as Defendants herein. Finally, Warner seeks injunctive relief as described above and to be more fully described in the Complaint and related filings.

Respectfully submitted,



By: _____

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Counsel for Plaintiff Debora Warner.

Dated: New York, New York
September 21, 2018

TO:

WILLIAM HEATH
17 East 13th Street
Apt. 3E
New York, NY 10011

Defendant.

DAVID KUZMANICH,
15 West 17th Street,
Apt. 411
New York, NY 10011

Defendant.

ROBERT NUELLE,
15A Closter Road
Palisades
New York, NY 10964

Defendant.

KIM TABET,
481 Washington Street
Apt. 6N
New York, NY 10013

Defendant.

DAVID ROBINSON
779 Hart Street
Apt. 1R,
Brooklyn, NY 11237

And copy to below address for the benefit of
David Robinson:

28 East 4th Street
New York, New York

Defendant.