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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 53**

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:
OMER GRGUREV and FERDO GRGUREV, as
Minority Shareholders Each Owning 25% of All
Outstanding Shares of Ocinomled, Ltd.,
:
Petitioner/Plaintiffs, :
:
-against- :
:
MILAN LICUL and BRANKO TURCINOVIC,
Respondents, as the Controlling Shareholders holding :
50 Percent of All Outstanding Shares of Respondent :
OCINOMLED, LTD., Defendants ANTHONY A. :
ANTONELLO and THE HARTFORD LIFE :
INSURANCE COMPANY, :
:
Respondents/Defendants. :
:
-----X

Index No. 157551/19

**AMENDED
VERIFIED PETITION AND
COMPLAINT**

By their respective attorneys, Randall S. D. Jacobs, PLLC for Petitioner/Plaintiff Omer Grgurev (“Omer”) and Slarskey LLC for Petitioner/Plaintiff Ferdo Grgurev (“Ferdo”) (collectively, “Petitioners” or “Plaintiffs”), hereby allege as follows against Respondent/- Defendants Milan Licul (“Licul”), Branko Turcinovic (“Turcinovic”), Ocinomled, Ltd.

(“Ocinomled” or the “Corporation”), Defendant Anthony A. Antonello (“Antonello”) and Additional Defendant The Hartford Life Insurance Company (“Hartford”):

NATURE OF THE ACTION

1. This is an action for equitable dissolution of Respondent Ocinomled, Ltd. under the common law of the State of New York to require a “buy-out” of Defendants Licul and Turcinovic’s equity interests based upon (i) a valuation of the Corporation, and (ii) a judgment or order that Licul and Turcinovic’s capital accounts be offset to repay to the Corporation millions of dollars in funds misappropriated to them, at their direction, and/or for their sole benefit.

2. Only in the alternative, if the Court finds equitable dissolution is not warranted, Petitioners seeks statutory remedies pursuant to New York Business Corporation Law §§ 626, 716, 719, and 720.

3. Relatedly, in addition to the ultimate relief, Petitioners seek the interim appointment of a temporary receiver under CPLR 6401 *et seq.*, with specific power to:

- a. oversee the finances of the Corporation, especially (i) the receipt and disposition of its cash receipts, which Defendants have been skimming and diverting to their own use, and (ii) the distribution of its reported profits, which the Respondents have been reporting as paid to Petitioners but which, in fact, have been wrongfully retained by Respondents; and
- b. negotiate a critical lease extension for the Corporation’s sole historic business location (the “Lease”) which expires at the end of 2021.

4. Urgently, per Petitioner's Order to Show Cause filed contemporaneously with the original Petition and Complaint¹ herein, Petitioners seek an Order affirmatively directing the Defendants (excluding Additional Defendant Hartford) to deliver to Petitioners or their counsel such signed documentation as Hartford may require to reinstate the life insurance policy insuring the Petitioner's Omer's life (the "Life Policy"), wrongfully unpaid by Defendants without informing Omer, resulting in its cancellation as of August 7, 2016, also without giving notice of termination to Omer; however, the Life Policy is subject to reinstatement and recovery of its value *if* unpaid premiums are paid by August 6, 2019² together with Licul's signature on the reinstatement documents.

5. Equally urgently, Petitioners seek an Order affirmatively directing Defendants to distribute to the Petitioners' their reported share of profits, in cash in Respondents' possession, custody, or control, which was reported annually on the Corporation's federal income tax returns and attached IRS K-1 Forms, from 2013 through 2018, as having been distributed to Petitioners in the aggregate amount of \$1,981,224.00.

6. However, in fact, these profits have been wrongfully retained by Defendants acting on behalf of Ocinomled; without such funds, Petitioner Omer is unable to pay Hartford the earned premiums overdue in order to reinstate his Life Policy and will lose all death and other accrued benefits.

7. In addition, Plaintiffs seek damages from Defendant Antonello for professional malpractice. Antonello has served as Plaintiffs' personal accountant and accountant of the

¹ Upon filing of the Original Petition and Complaint, Petitioner's counsel was advised by NYSCEF that the caption should be simplified essentially as it appears herein.

² The Court's temporary restraining Order dated August 5, 2019 stayed Hartford from allowing the reinstatement period of the Life Policy to expire on August 6, 2019 pending a hearing and further order of the Court.

Corporation, but takes direction solely from Licul. Antonello deliberately enabled Licul and Turcinovic's illegal and fraudulent practices, thus failing to meet any reasonable professional standard in handling Petitioners' tax matters, and injured Plaintiffs accordingly.

THE PARTIES

8. Omer Grgurev is an individual residing in Ft. Lee, New Jersey.
9. Ferdo Grgurev is an individual residing in Cliffside Park, New Jersey.
10. Ocinomled, Ltd. is a corporation duly organized and existing pursuant to the laws of the State of New York, doing business as the well-known "Delmonico's Restaurant" (and/or "Delmonico's Steakhouse," hereinafter "Delmonico's"), at its historic sole location since *circa* 1837, at 56 Beaver Street, New York, New York 10004.
11. Respondent Milan Licul is an individual residing, upon information and belief, in New York, New York, and regularly transacts business in the State of New York.
12. Respondent Branko Turcinovic is an individual residing, upon information and belief, in Syosset, New York, and regularly transacts business in the State of New York working with Respondent Licul.
13. Respondent Anthony A. Antonello, upon information and belief, is a certified public accountant, residing in Brooklyn, NY who regularly transacts business in the State of New York.
14. Additional Defendant Hartford is the named insurer on Petitioner Omer's Life Policy and whose only interest in this action arises from its obligations as issuer of Omer's Life Policy and related termination notice.

FACTUAL ALLEGATIONS

15. Ocinomled is owned by four equal shareholders (the “Shareholders”): Petitioners Omer and Ferdo Grgurev, and Respondents Licul and Turcinovic, each of whom owns 25% of the Corporation. Since 1999, the Corporation has owned and operated Delmonico’s, the famed steakhouse/restaurant located at 56 Beaver Street in the financial district of New York since 1837.

16. The Corporation has never had legitimate governance. There is no written shareholder’s agreement and there are no duly-elected directors. There have never been any shareholder meetings, corporate resolutions or elections of officers or directors.

17. Initially, Licul, an experienced restaurant operator and manager, assumed a dominant position over the Corporation by unwritten agreement; however, later by combining with Turcinovic through sheer force, possession of Delmonico’s bank accounts and funds, and its books and records (the “Books and Records”), Licul used physical threats and intentional financial coercion carried out with Antonello to suppress Petitioner’s rights and interests, damage them financially and attempt to coerce them into a poor settlement of their just claims.

Fraud Discovered in Ocinomled’s Books and Records

18. Discovery from related litigation - and Books and Records inspection obtained by New York Supreme Court order - has revealed that literally millions of dollars in misappropriated cash receipts and other corporate income by Respondents Licul, Turcinovic, and Antonello; and that the financial record keeping overseen by Licul and Antonello is plainly irregular, or incomplete, if not outright fraudulent. Ocinomled’s Books and Records are intentionally maintained in an incomplete manner, were inaccurate and incomplete upon Petitioner’s Court Ordered inspection on May 13, 2019, and appear designed to seem merely archaic and deficient in order to conceal Respondents’ financial misconduct.

19. By failing to keep proper financial records, Respondents have systematically diverted corporate cash receipts, under-reported sales, sales taxes and cash receipts, and misappropriated collected sales taxes, exposing the Corporation to the risk of significant regulatory penalties if not worse. Respondents have also intentionally falsely reported nearly \$2 million in profit distributions purportedly, but *not* actually paid to Petitioners, and withheld by Respondents.

Antonello Facilitated Respondents' Tax Fraud and Misconduct

20. Antonello has acted as corporate accountant to Delmonico's since 1998, and for approximately 40 years, for Licul and several other restaurants owned or controlled by Licul and Turcinovic.³ At the same time he also was the personal accountant to Petitioners, charged with preparing tax filings every year primarily because only Antonello has access to all of the necessary financial and tax information. Petitioners have relied on Antonello as their accountant, but Antonello has prepared false or incomplete tax filings for them to submit, and has facilitated

³ Through various entities, Respondents have had interests in at least the following restaurants:

Murano Restaurant - owned by Licul and Turcinovic (now d/b/a "**Delmonico's Kitchen**").

Arno Restaurant - owned by Licul and Turcinovic.

Scaletta Ristorante - owned by Licul, Turcinovic and Omer and Ferdo Grgurev.

Apetito Restaurant - owned by Licul and Turcinovic and a third party.

City Grill - owned by Licul, Turcinovic, Omer, Ferdo, and a third party.

Belluno Restaurant - owned by Licul, Turcinovic, Omer, Ferdo, and two other partners.

Aigo/One83 - believed to have been owned through MBOF4 Partners: Licul, Turcinovic, Omer, Ferdo and which purchased the Life Policy.

Delmonico's Kitchen - owned by Licul and Turcinovic (formerly Murano).

Delmonico's Southampton - owned by Licul, Turcinovic and possibly Dennis Turcinovic (Turcinovic's son and co-manager of Delmonico's Restaurant), Rocco Trotto and employee Corrado Goglia.

Baily's Bar & Grill - believed to be owned by Licul with Joe Olivia, who is the brother of Delmonico's Chef, Billy Olivia.

Jimmy's Restaurant - owned by Licul and Joe Licul (his deceased cousin's son).

Licul and Turcinovic's wrongful practices primarily for Licul and Turcinovic's benefit, thereby damaging Petitioners.

Respondents' Scheme to Force Petitioners into Settlement of All Claims

21. Of immediate concern, the Shareholders have since 2005 maintained valuable life insurance policies insuring the lives of each of them. The premiums therefore were paid by "MBFO4 Partners" ("MBFO4"), an entity created by the Shareholders to purchase another restaurant.

22. Defendants have intentionally attempted to deprive Petitioners of their income and assets since 2014 as part of a concerted series of malevolent actions designed to coerce Petitioners into a weak settlement of pending substantial legal actions against Defendants (the "Coerced Settlement Scheme").

23. Pursuant to Respondents' Scheme, by 2016 Licul had caused MBFO4 to surreptitiously cease making premium payments on Omer's Life Policy. Furthermore, Licul concealed from, and did not forward the resulting policy termination notice(s) to, Omer. Further, Licul has refused to allow Omer to reinstate his Life Policy whether paid for by MBOF4 (as had been the Parties' practice) or assumed by Petitioner individually as is his right. Permission from MBOF4 is required to reinstate Omer's Life Policy, which will become "non-reinstatable" if unpaid premiums are not paid in full and the MBOF4's written authorization is not provided.

24. In addition, as part of the Respondents' Coerced Settlement Scheme, Ocinomled - under the direction of Antonello and Licul - has intentionally reported to the IRS on corporate tax returns that Ocinomled paid approximately two million dollars in income equally to Omer and Ferdo during at least the 2013 through the 2018 tax years (continuing into 2019) *but which distributions were not, in fact, paid to Petitioners.*

25. Ocinomled has accordingly provided Omer and Ferdo with no economic benefit for several years, despite earning millions in profits and making ongoing and significant distributions of funds to Licul and Turcinovic, as well as payments to Antonello. Respondents' reporting of "phantom income" reportedly but not actually paid to Omer and Ferdo, has created significant ongoing harm and hardship to Petitioners.

26. Accordingly, Omer Grgurev does not have sufficient funds with which to pay earned but unpaid premiums on the Life Policy and will lose its all benefits unless the Court *Orders* Respondents to release Petitioners' reported share of the Corporation's profits and directs Licul to consent to reinstatement with future payments to be paid Omer. Ocinomled's failure to make actual cash distributions to Petitioners, while reporting those distributions as having been made on the Corporation's tax returns, has also caused significant hardship to Petitioners, including making it impossible for them to maintain true and accurate tax filings.

27. As a result of Respondents' Coerced Settlement Scheme, Petitioners now have no other source of regular income, because, as described below, in 2018 Licul caused Scaletta Ristorante - another restaurant owned jointly by Shareholders Ferdo, Omer, Licul, and Turcinovic under 50/50, and the Petitioners' sole remaining source of income - to go out of business, despite being profitable. Licul undermined and eventually terminated negotiations for Scaletta's otherwise anticipated lease renewal. Moreover, in conjunction with their Coerced Settlement Scheme, Respondents caused Scaletta Ristorante to cease paying salaries to Petitioners since approximately 2014-15, to apply even more financial pressure on them to settle and give up their rights and interests.

28. Of significant and related concern, Delmonico's only Lease to its sole and historical business location expires at the end of 2021. Reasonable business practices would warrant negotiating an extension or renewal of that Lease now.

29. Upon information and belief, however, Licul and Turcinovic maliciously intend to use a similar devastating tactic to waste and/or usurp the opportunity to extend Delmonico's Lease for the specific purpose of injuring Petitioners and benefitting only themselves, and are therefore currently neglecting the commercially reasonable and expected practice of negotiating an extension or renewal of that Lease. At the same time, upon information and belief, Respondents are further scheming to combine with others to obtain a lease for Delmonico's premises themselves. These actions are causing, and threaten to cause, immediate and irreparable injury to Petitioners, and warrant the imposition of an independent fiduciary to assure that - unlike the demise of Scaletta - the Delmonico's Lease is properly renewed or extended as soon as possible by tenant Ocinomled as this action progresses.

30. Finally, since 2013, the Corporation has been mired in litigation brought by Petitioners Omer and Ferdo Grgurev against Respondents Licul, Turcinovic and others. The most significant of those actions in the U. S. District Court, Southern District of New York (the "SDNY Litigation") arose out of Respondents' misuse of the Delmonico's historic and valuable name and trademarks (the "Marks") and Ocinomled's resources (including cash) to invest millions of Delmonico's cash receipts to open competing restaurants or related businesses, for which the proper consent of Ocinomled or Petitioners was not obtained, and for which no royalty or licensing fees for use of the Marks were paid. That litigation is still pending.

31. It was through the SDNY Litigation that Petitioners discovered Licul, Turcinovic, Antonello, and Turcinovic's son Dennis (who Licul and Turcinovic appointed as a co-manager

of Delmonico's) had concealed their massive misappropriation of its cash receipts by a regular practice of entering "negative transactions" into the point-of-sale ("POS") records for Delmonico's thereby "zeroing-out" such actual sales records (*i.e.*, net reported sales = zero). Expert witness analysis of a limited period admitted by Respondents, concluded that more than \$1.2 million was diverted over a five-year period by means of only this documented wrongdoing alone.

32. More recently, in April 2019, Shareholders Omer and Ferdo obtained a Court Order directing the Respondents to open all Ocinomled's Books and Records to their inspection, only to be diverted by Respondents' providing intentionally insufficient access to relatively insignificant records which continue to conceal, rather than reveal the extent and amount of Respondents misappropriations.

33. Further, several million dollars in federal disaster relief that, upon information and belief, has gone missing and unreported. Delmonico's was damaged in Hurricane Sandy, in 2012. Shortly thereafter, Licul informed Petitioners that he would be facilitating an application for several million dollars in FEMA disaster relief funds. Upon information and belief, Licul in fact facilitated that application, funds were received by Licul, and/or another entity acting in concert with Licul, and those funds were misappropriated by Respondents.

Defendants' Refusal to Allow Grgurev to Inspect Ocinomled's Records

34. Upon information and belief, Defendant Milan created a nest of related corporate entities, often with confusingly similar names—including, for example, "Delmonico Ltd.," "Ocinomled LLC," "Balarini Realty II Corp.," and "Scaletta Restaurant Corp."—for the purpose of obfuscating various transactions that defeated corporate formalities (the "Alter Ego Entities").

35. In or around February 2018, Petitioners became aware of a corporate entity named “Delmonico Ltd.” that was being maintained by Defendants and Tony Antonello on behalf of the Controlling Shareholders. Plaintiffs noted the existence of a check to “Delmonico Ltd.” for \$60,000.

36. In February 2018, Antonello appeared at the Scaletta restaurant, as he typically did on a monthly basis, to perform some tax accounting and paperwork.

37. When Antonello appeared, Ferdo (Scaletta’s Maitre D’) inquired of Antonello as to the nature of Delmonico Ltd., asking Antonello to explain the bookkeeping and accounting for this entity, and other entities, along with the purposes for these entities and the flow of funds surrounding these entities.

38. Antonello became hostile, refused Ferdo’s inquiries, and told him that Ferdo would not be provided access to the books and records or an explanation of the bookkeeping or expenditures. He physically threatened Ferdo with a heavy glass bottle full of water, intimidating Ferdo, and intimating that if Ferdo continued to ask questions, he would injure him. Plaintiff Omer (Scaletta’s Head Chef) was also present, and came between the parties to avoid a physical altercation.

39. Upon information and belief Defendant Milan instructed Antonello not to provide Ferdo or Omer with access to Ocinomled’s books and records, or to answer their questions about Milan’s bookkeeping with respect to payments and transactions in the Alter Ego Entities.

Respondents’ Wrongful Conduct Requires Equitable Dissolution

40. There is simply no way to legitimately govern this Corporation, given the absence of any operating agreement and the deadlock between two competing blocks of shareholders

each block representing 50% of the shares. As a result, Respondents are using their controlling position to perpetuate their current, improper corporate practices, from which only they benefit.

41. The primary purposes of this litigation are: (i) to preserve the assets and financial condition of the highly-profitable Corporation operating Delmonico's; (ii) to implement reasonable and prudent record keeping practices for the Corporation so that proper financial accounting practices, tax collections and payments for all of Delmonico's income can be enforced; and (iii) to obtain equitable, common-law relief to oust Respondents from the Corporation, on terms that take into account the full scope of their misconduct. Funds improperly advanced to Respondents, or misappropriated by Respondents, should be re characterized as loans to the Respondents which should be ordered to be repaid as part of the equitable dissolution of this Corporation.

42. Only in the alternative, if common law equitable relief is not available to oust Respondents, Petitioner seeks an order pursuant to BCL § 716, removing and barring Respondents Licul and Turcinovic from serving as officers or directors of Ocinomled, and pursuant to BCL §§ 719 and 720, imposing liability upon Defendants for their misconduct.

SECTION I

FIRST CAUSE OF ACTION EQUITABLE DISSOLUTION OF OCINOMLED **(against Respondents Licul and Turcinovic)**

43. Petitioners repeat and reallege the foregoing allegations as if fully set forth herein.

44. Ocinomled is the corporation jointly owned by the Shareholders operating Delmonico's, a highly-profitable restaurant, *reporting* gross sales of at least approximately \$80 million since 2004 and millions in gross profits each year on its tax returns.

45. Petitioners Omer Grgurev and Ferdo are each minority owners of 25% of the shares of Ocinomled. Licul and Turcinovic are each also minority shareholders owning 25% of the shares of the Corporation.

46. The Corporation has never had any duly-elected directors. Licul has assumed for himself sole and complete control over the Corporation, with the support and assistance of Turcinovic.

47. Neither Petitioner has ever signed a check, had signatory power on Ocinomled's bank accounts nor controlled Ocinomled's cash receipts or general finances. All of those functions were controlled and/or performed by Licul.

48. Respondents have overseen the misappropriation of millions of dollars of Ocinomled's cash receipts, for the benefit of Licul and Turcinovic (and their unrelated businesses), both by means of adulterating the Corporation's point-of-sale records documenting their use of illegitimate purported "negative transactions" to conceal their theft of cash receipts and collected sales tax funds, and by authorizing improper payments and transfers from Ocinomled for illegitimate purposes.

49. Licul has mismanaged the affairs of the Corporation in failing to make proper distributions of dividends to Petitioners, while taking distributions for himself and Turcinovic. Licul, and with Antonello's assistance, he has reported to Petitioners and to tax authorities that approximately one million dollars in income had been paid by Ocinomled to each of Omer and Ferdo, since at least January 1, 2013, while in fact, Petitioners have received none of those reported distributions.

50. Licul has mismanaged the affairs of the Corporation by systematically under-reporting sales, sales tax collections and underpaying sales tax remittances.

51. Respondents have not maintained accurate or complete financial statements or financial information concerning the Corporation, or have failed to produce such records despite Petitioner's requests since December 2018, and an April 16, 2019 Court Order (Schechter, J.) requiring books and records inspection. Among other records, Respondents have not produced (i) complete sales tax records; (ii) credit card reports; (iii) ledgers of private party revenues; (iv) records of house accounts; (v) accountant work papers; and (vi) invoicing for key suppliers. Recently, Respondents agreed to enable Petitioners to access Ocinomled's POS system, a critical component of any inspection, but have yet to provide any dates for such inspection.

52. Licul has mismanaged the affairs of the Corporation by directing payments and distributions to be made to Licul and Turcinovic, or for the benefit of Licul or Turcinovic, on an improper priority basis, to the complete exclusion of Petitioners from equal distributions.

53. Licul has mismanaged the affairs of the corporation by using Ocinomled's intellectual property and resources to build separate, sometimes competing, businesses either wholly-owned by Respondents or operated primarily for the benefit of himself and Turcinovic, without paying Ocinomled or Petitioners any royalty or licensing fees.

54. Licul has mismanaged the affairs of the corporation by neglecting to extend Delmonico's Lease on commercially reasonable terms.

55. There is no practical way to properly manage or redress Respondents' improper governance of the Corporation, given the 50%/50% deadlock between Licul and Turcinovic on the one hand and Petitioners Omer and Ferdo Grgurev on the other.

56. Licul and Turcinovic have breached their fiduciary duties to Ocinomled and to Petitioners.

57. In light of the inequitable conduct by Licul and Turcinovic, the Court should equitably dissolve Ocinomled, without actually dissolving the Corporation and while maintaining its value as a going business, by (i) determining the value of the Corporation; (ii) determining the amount of funds and the value of Ocinomled property that has improperly been misappropriated and/or diverted by Licul and Turcinovic, and re characterizing those amounts as loans to Licul and Turcinovic to be repaid immediately; and (iii) determining the price at which Licul's and Turcinovic's equity interests are "bought out" from Ocinomled.

58. Upon information and belief, that "buy out" amount is a negative number, and will require Licul and Turcinovic to make restitution to Ocinomled as part of equitable dissolution.

SECOND CAUSE OF ACTION
PROFESSIONAL NEGLIGENCE
(against Defendant Antonello)

59. Petitioners repeat and reallege the foregoing allegations as if fully set forth herein.

60. Antonello has professional duties to Plaintiffs Omer and Ferdo Grgurev because he acts as and has been their personal accountant, in addition to acting as the accountant for Ocinomled. For years, Antonello has prepared Plaintiffs' personal tax filings and also overseen Ocinomled's bookkeeping, and the accounting of Ocinomled's purported distributions to Plaintiffs.

61. Antonello has engaged in negligent and deliberate activity in violation of accounting industry rules and standards. This includes failing to keep and maintain proper books for Ocinomled (*i.e.*, maintaining the Corporation's capital account at a valuation of "\$0.00" notwithstanding the transfer of funds in and out thereof) failing to properly account for distributions of cash and expenditures, failing to maintain and preserve complete and proper

work papers for Ocinoled, failing to properly account for corporate distributions, preparation of improper tax returns, aiding and abetting Licul and Turcinovic's embezzlement of funds, deviation from generally acceptable accounting principles, and wrongful certification of financial statements.

62. Antonello has prepared false and misleading personal tax returns on behalf of Plaintiffs, in knowing disregard of the fact that the information underlying Plaintiffs' tax returns was false, incomplete, and misleading. In addition, Antonello has failed to provide Ferdo and Omer Grgurev information about both the Ocinoled books and records, as well as information about the tax returns he prepared for them, in violation of professional standards.

63. Antonello's direct assistance of Respondents' misconduct has violated professional standards and caused Petitioners significant financial damages. In addition, Antonello's grossly negligent preparation of personal materials for Plaintiffs has caused them to file false and misleading tax returns, thereby further damaging Plaintiffs.

THIRD CAUSE OF ACTION
LIABILITY PURSUANT TO THE NEW YORK BUSINESS CORPORATION LAW
(against Respondents Licul and Turcinovic)

64. Petitioners repeat and reallege the foregoing allegations as if fully set forth herein.

65. As an alternative to equitable common-law dissolution, Petitioners seek relief under the New York Business Corporation Law for Licul and Turcinovic's corporate misconduct.

66. Pursuant to Section 626(c) of the Business Corporation Law, demand upon the Corporation by Petitioners to seek relief under the Business Corporation Law is excused because Licul and Turcinovic are self-interested in the matters that give rise to Petitioner's request for

relief, Licul exercises sole control over corporate affairs, and the parties are deadlocked at 50%/50%. Any demand for action would be futile.

67. Petitioners seek an order pursuant to BCL § 716 (i) removing Licul and Turcinovic from any actual or acting role as officer of the Corporation; and (ii) barring Licul and Turcinovic from re-election or re-appointment as an officer of Ocinomled for a period of ten years.

68. Licul and Turcinovic have caused and/or concurred in improper loans and advances to themselves, in violation of BCL § 719(a)(4), and are accordingly jointly liable for such loans and advances. Cash proceeds misappropriated to Licul and/or Turcinovic, or for the benefit of Licul and/or Turcinovic, should properly be characterized as improper loans, contrary to BCL § 714.

69. Petitioners seek judgment pursuant to BCL § 720(a)(1), requiring Licul and Turcinovic (i) to account for official conduct in the neglect of, or failure to perform, or other violation of duties in the management and disposition of cash committed to their charge; (ii) the acquisition by Licul and/or Turcinovic, the transfer to others, loss or waste of corporate cash due to neglect, failure to perform, or other violation of duties; (iii) to set aside unlawful conveyances, assignments, or transfers of cash to Licul and/or Turcinovic, for their benefit, or to entities that they own or control which Licul or Turcinovic knew were unlawful; (iv) to enjoin further transfers to Licul and/or Turcinovic, for their benefit, or to entities that they control, including through family members or friends, all to the detriment of the Petitioners.

70. Only as an alternative to equitable dissolution that would keep the Corporation intact and operational, Petitioners seek an order pursuant to BCL § 1104 judicially dissolving Ocinomled because (i) the shareholders are so divided that the votes required for the election of

directors cannot be obtained, and (ii) there is internal dissension and two factions of shareholders are so divided that dissolution would be beneficial to the shareholders.

71. Only as an alternative to equitable dissolution that would keep the Corporation intact and operational, Petitioners seek an order of dissolution pursuant to BCL § 1104(a), because (i) Licul and Turcinovic have been guilty of illegal, fraudulent or oppressive action toward the complaining shareholders, (ii) the property or assets of the corporation are being looted, wasted, or diverted for non-corporate purposes by Licul and Turcinovic.

72. Petitioners specifically allege, pursuant to BCL § 1104-a (b) and (d) that liquidation of Ocinomled is not the only feasible means whereby the Petitioners may reasonably expect to obtain a fair return on their investment, because the Corporation may be kept operational and intact, and Respondents may be removed from control of the Corporation for misconduct by conducting a valuation of the Corporation, and making a determination as to the amounts and value of corporate assets that have been diverted by Respondents, and adjusting their respective capital accounts accordingly for purposes of calculating the buyout of, or repayment by, Licul and Turcinovic.

FOURTH CAUSE OF ACTION
RELEASE OF WRONGFULLY WITHHELD PROFITS
(against Respondents Licul, Turcinovic and Ocinomled)

73. Petitioners repeat and reallege the foregoing allegations as if fully set forth herein.

74. In furtherance of their Coerced Settlement Scheme, Respondents Licul and Turcinovic have controlled the profits generated by Delmonico's profitable Restaurant business to solely benefit themselves and to the detriment of Petitioners.

75. Respondents not only skimmed cash from Ocinomled's cash receipts for their own use as set forth above, but have also caused Ocinomled to report profits in the sum of

\$990,612, each year from 2013 through 2018 on Ocinomled's Federal Income tax returns and K-1 statements, as having been distributed to each of the Petitioners, but which Respondents caused Ocinomled to withhold from Petitioners (the "Wrongfully Withheld Profits").

76. Respondents retained within Ocinomled's bank accounts the Wrongfully Withheld Profits in an effort to cause Petitioners to incur tax liability thereon for "phantom income" reported, but not actually received, and to economically injure Petitioners so as to coerce them into accepting a less-than-fair settlement of their rightful share of Ocinomled's profits.

77. As a result of the foregoing, Respondents are liable to each of the Petitioners in the amount of at least \$990,612, aggregating \$1,984,221.00 plus applicable interest and penalties, if any, attributed to them by the IRS.

FIFTH CAUSE OF ACTION
EQUITABLE BUY-OUT OF DEFENDANTS' INTERESTS
(against Defendants Milan and Branko)

78. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

79. Each of Plaintiff Ferdo and Omer Grgurev is a minority shareholder of Ocinomled, with a 25% interest in the corporation.

80. Judicial dissolution of Ocinomled would be warranted under the circumstances of this case, because Omer and Ferdo Grgurev, who represent 50% of the voting shareholders of Ocinomled, would deadlock with Defendants Milan and Branko, who represent the other 50% of the voting shareholders of Ocinomled, in any vote concerning control over the corporation.

81. Without a shareholders' agreement to govern the resolution of this impasse, the company would not be governable.

82. While dissolution would be warranted in this case, dissolution is not in the interest, at this time, of the Plaintiffs or of the Corporation. Delmonico's is a very successful restaurant that, upon information and belief, earns millions of dollars each year.

83. This court has the power to compel an equitable buy-out of Defendant Milan and Branko's shareholder interests in Ocinomled, taking into account, inter alia, (i) the value of the corporation and its ability to repurchase Defendant's interests; and (ii) the damage done to Ocinomled by Defendant's conduct.

84. Plaintiffs seek an order directing the acquisition by Ocinomled of Defendant Milan and Branko's shares, upon such terms as are equitable and just.

SIXTH CAUSE OF ACTION
CONTRIBUTION AND INDEMNIFICATION
(against Defendants Milan and Branko)

85. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

86. Ocinomled is alleged to be liable to various taxing authorities, creditors and/or others by virtue of the facts alleged herein that give rise to Respondents' liability to Ocinomled.

87. Further, Controlling Shareholders, Respondents Milan and Branko, have caused Ocinomled to file federal and state income tax returns for years without taking the annually available deduction for "tip credit" which would have properly reduced Ocinomled's income tax liability as well as Plaintiff's income tax payments.

88. Upon information and belief, Ocinomled's alleged liability on account of the wrongful and/or criminal acts, practices, and related misconduct alleged arises, in whole or in part, from the knowing, reckless, disloyal and/or bad faith acts or omissions of the Controlling Shareholders, such that Ocinomled is entitled to contribution and indemnification from Defendants Milan and Branko in connection with all such claims that have been, are, or may in the future be asserted against Ocinomled by virtue of the Controlling Shareholders' misconduct.

SECTION II

Introduction

89. This is an action brought both individually on behalf of Plaintiffs and as a shareholder derivative action on behalf of Ocinomled, Ltd. (“Ocinomled”)⁴ and 50/50 Restaurant Corp. (“50/50”) (collectively, the “Nominal Defendants”) for trademark-related claims, and claims related to Defendants’ misconduct as officers and employees of Ocinomled.

90. More specifically, Plaintiffs assert trademark infringement, unfair competition and false designation of origin, and trademark dilution based on Defendants’ blatant use of the valuable service mark and trademark owned by Ocinomled, in the world-renowned “Delmonico’s” name, in connection with Defendants’ own restaurants and products without authorization, license, or just compensation to Plaintiffs.

91. Second, certain Defendants have breached fiduciary duties and duties of loyalty to Plaintiffs and the Nominal Defendants by, among other things, misappropriating funds and property belonging to Plaintiffs and Ocinomled, tortiously interfering with 50/50’s contract, and using Ocinomled as their personal “cash cow” to fund their own business ventures, all to the detriment of Plaintiffs and the Nominal Defendants. Defendants’ unauthorized use of the Delmonico’s name and Ocinomled’s funds and property also constitutes unfair competition, deceptive trade practices, conversion, and waste, causing damage to Plaintiffs and Ocinomled.

92. Upon information and belief, Defendants have also subjected Ocinomled to substantial liability for demonstrably false sales and income tax returns prepared and filed by certain Defendants, which concealed and/or misrepresented Defendants’ misappropriation of

⁴ “Ocinomled” is “Delmonico” spelled backwards.

large amounts of cash receipts and sales tax payments received by Ocinoled. In addition, Defendants, motivated by malice, have also intentionally interfered with a lease renewal process between 50/50 and its landlord, to the detriment of Plaintiffs and 50/50.

SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION FALSE DESIGNATION OF ORIGIN
UNDER 15 U.S.C. 1125(a)

(against Defendants Milan, Branko, Five M, SH Restaurant and Delmonico's Distribution)

93. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

94. Ocinoled applied for federal registration of its Marks and such applications are pending, subject to approval upon resolution of a separate unrelated concurrent use proceeding Defendants' use of the Delmonico's designation in connection with their offering of products and services is a false designation of origin and/or a false or misleading representation and description.

95. The use of the Delmonico's brand in connection with unaffiliated restaurants and the Delmonico's Sauces has caused and is likely to cause confusion, cause mistake or deceive as to an affiliation, connection or association of Defendants with Ocinoled and/or as to the origin, sponsorship or approval of Defendants' products or services by Ocinoled.

96. Defendants' activities are in willful disregard of Ocinoled's rights.

97. Defendants have used and continue to use the Marks with the knowledge that they are likely to cause confusion, mistake or deceive as to an affiliation, connection or association of Defendants' products and services with Ocinoled.

98. Ocinoled is suffering irreparable harm and damage as a result of Defendants' false designation of origin and false and misleading representations and descriptions, such that money damages would not adequately compensate Ocinoled for the harm to its proprietary

rights, established goodwill and business reputation, and such that a permanent injunction enjoining Defendants continued use of the Marks is necessary.

99. Accordingly, Defendants' actions constitute trademark infringement under 15 U.S.C. §1125(a).

EIGHTH CAUSE OF ACTION
DILUTION UNDER 15 U.S.C. §1125(c)
(against Defendants Milan, Branko, Five M, SH Restaurant and Delmonico's Distribution)

100. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

101. The Delmonico's Marks are famous and distinctive under 15 U.S.C. §1125(c), as the Delmonico's name is recognized by diners nationwide and internationally and serves as an iconic symbol of high-end dining.

102. Defendants' use of the Delmonico's name in connection with other restaurants that are unrelated to Ocinomled and do not bear the same standard of dining as Delmonico's Restaurant causes dilution of the distinctive quality of Ocinomled's Marks.

103. Defendants are using the designation Delmonico's with the willful intent to trade upon the world-renowned reputation of Plaintiff Ocinomled's Delmonico's Restaurant and to cause dilution to Ocinomled's Marks.

104. Ocinomled is suffering irreparable harm and damage as a result of Defendants' actions, such that money damages would not adequately compensate Ocinomled for the harm to its proprietary rights, established goodwill and business reputation, and such that a permanent injunction enjoining Defendants continued use of the Marks is necessary.

105. Accordingly, Defendants' actions constitute trademark infringement under 15 U.S.C. §1125(c).

**NINTH CAUSE OF ACTION
BREACH OF THE DUTY OF LOYALTY
(against Defendants Milan, Branko and Dennis)**

106. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

107. The Controlling Shareholders, Defendants Milan and Branko, are 50% co-owners of Ocinomled, and Defendant Dennis is employed by Ocinomled as one of two co-managers of Delmonico's Restaurant, handling its day-to-day operations.

108. As owners of Ocinomled, Defendants Milan and Branko owe a duty of loyalty to Ocinomled. As co-manager of Delmonico's Restaurant, Defendant Dennis owes a duty of loyalty to his employer, Ocinomled.

109. Defendants have engaged in a variety of self-dealing, including without limitation: (i) misappropriating cash receipts and revenues received at Delmonico's Restaurant for their own benefit; (ii) assisting in the concealment of such misappropriation; and (iii) assisting in transactions for the benefit of the corporate Defendants using Ocinomled's funds.

110. Moreover, Defendant Milan and, upon information and belief, Defendant Dennis, intentionally altered Ocinomled's general ledger, payroll and tax documentation to conceal revenues and to misuse Ocinomled's resources for their own benefit and for the benefit of the other corporate Defendants whom they separately own and/or control.

111. Defendants Milan, Branko and Dennis' breaches of their duty of loyalty have damaged Ocinomled in an amount to be determined at trial, but believed to be no less than \$7,500,000

**TENTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY
(against Defendants Milan and Branko)**

112. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

113. As 50% owners of Ocinomled and ~~50/50~~, Defendants Milan and Branko owe fiduciary duties to Ocinomled.

114. In a bad faith attempt to wrest power and control over the Delmonico's brand away from Ocinomled, Defendants Milan and Branko breached their fiduciary duties to the Nominal Defendants by, among other things: (i) using Ocinomled's Cash Receipts and personnel to benefit unrelated restaurants operated by the corporate defendants; (ii) intentionally misappropriating Ocinomled's Marks without obtaining authorization or providing compensation for such use; and (iii) withholding federal disaster relief funds from Ocinomled and pocketing such funds for their own use and benefit.

115. Controlling Shareholders, Defendants Milan and Branko, breaches of their fiduciary duties have damaged Ocinomled in an amount to be determined at trial, but believed to be no less than \$7,500,000.

116. Ocinomled does not have an adequate remedy at law to fully compensate Plaintiffs and to prevent Milan from continuing to breach his fiduciary duties to Ocinomled.

117. In a bad faith attempt to punish Plaintiffs Ferdo and Omer for disputing Defendants' wrongdoing with respect to the Delmonico's brand, Defendant Milan abused his position in negotiating the lease renewal for Scaletta, interfering with 50/50's ability to reach terms with its landlord.

118. Defendant Milan's malicious interference constitutes, among other things, a breach of his fiduciary duty to Plaintiffs, and has caused harm to them in an amount to be determined at trial, but believed to be no less than \$2,500,000.

119. Indeed, because Defendant Milan's manipulation of the lease negotiations for 50/50 and Scaletta was undertaken intentionally and in bad faith, and because it caused the closure of Scaletta, Plaintiffs are also entitled to punitive damages, in an amount to be proven at trial but believed to be in excess of \$7.5 million.

ELEVENTH CAUSE OF ACTION
DECEPTIVE TRADE PRACTICES UNDER N.Y. GEN. BUS. LAW §349
(against Defendants Milan, Branko, Five M, SH Restaurant, and Delmonico's Distribution)

120. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

121. Defendants' use of the Delmonico's designation on their restaurants, Delmonico's Kitchen and Delmonico's of Southampton, as well as on the Delmonico's Sauces, was and continues to be a false or misleading representation and description.

122. The use of the Delmonico's brand has caused and is likely to cause confusion, cause mistake or deceive as to an affiliation, connection or association of Defendants with Ocinomled and/or as to the origin, sponsorship or approval of Defendants' products or services by Ocinomled.

123. Defendants' activities are in willful disregard of Ocinomled's rights.

124. Defendants have used and continue to use the Marks with the knowledge that they are likely to cause confusion, mistake or deceive as to an affiliation, connection or association of Defendants' products and services with Ocinomled.

125. Ocinomled is suffering irreparable harm and damage as a result of Defendants' deceptive trade practices.

TWELFTH CAUSE OF ACTION
CONVERSION
(against all Defendants)

126. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

127. Defendants inappropriately misappropriated cash and revenues belonging to Ocinomled by, among other things: (i) using Ocinomled's cash receipts and revenue for their own benefit; and (ii) misappropriating federal disaster relief funds paid to Ocinomled for their own use and benefit.

128. Defendants' willful misappropriation of Ocinomled's revenue and assets constitutes conversion.

129. Defendants' conversion has damaged Ocinomled in an amount to be determined at trial, but believed to be no less than \$7,500,000.

THIRTEENTH CAUSE OF ACTION
UNJUST ENRICHMENT
(against all Defendants)

130. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

131. Defendants inappropriately misappropriated cash, revenues and the goodwill of Marks that belong to Ocinomled by, among other things: (i) using Ocinomled's cash receipts and revenue for their own benefit; (ii) misappropriating the goodwill and value of the Delmonico's Marks for their own benefit; and (iii) misappropriating federal disaster relief funds paid to Ocinomled for their own use and benefit.

132. As a result of Defendants' misappropriation of Ocinomled's resources, Defendants were enriched unjustly.

133. Ocinomled was harmed by Defendants' misappropriation.

134. It is against equity and good conscience to permit Defendants to retain the funds and the value of Marks.

135. There is no written operating or shareholders' agreement between the parties.

136. Defendants have thus been unjustly enriched and have damaged Ocinoled in an amount to be determined at trial, but believed to be no less than \$7,500,000.

FOURTEENTH CAUSE OF ACTION
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIP
(against Defendant Milan Licul)

137. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

138. 50/50 Restaurant Corp. has had a long term relationship with the landlord of the space in which Scaletta Restaurant operated.

139. As President of 50/50, Defendant Milan took control of the negotiation of the renewal of 50/50's lease with its landlord for the space in which Scaletta operated.

140. Upon information and belief, Defendant Milan intentionally interfered with the negotiation of the lease renewal and 50/50's long-standing relationship with its landlord.

141. Defendant Milan was motivated solely by malice in obstructing the negotiations between 50/50 and its landlord to renew the lease of Scaletta.

142. Defendant Milan's interference has damaged, and continued to damage Plaintiffs by souring Scaletta's relationship with its landlord and causing it to go out of business on or about March 31, 2018.

143. As a result of Defendant Milan's interference with 50/50's business relationship with its landlord, Plaintiffs have been damaged in an amount to be determined at trial, but believed to be no less than \$2,500,000.

144. Indeed, because Defendant Milan's interference was done in bad faith, and because it threatens the continued existence of Scaletta, Plaintiffs are also entitled to punitive damages, in an amount to be proven at trial but believed to be in excess of \$7.5 million.

**FIFTEENTH CAUSE OF ACTION
DECLARATORY JUDGMENT
(against all Defendants)**

145. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

146. Defendants have asserted that Plaintiffs lack standing to pursue their trademark-related claims because Ocinomled Ltd. is purportedly not an owner of the Marks, and is only a licensee of the marks by virtue of the License Agreement or the Leases.

147. Plaintiffs seek a declaratory judgment that they have standing to pursue the trademark-related claims, either because Ocinomled, Ltd. owns the Marks, or because the Tucci Parties and Beaver Equities L.P. have authorized Ocinomled to pursue the Marks pursuant to the terms of the License Agreement.

**SIXTEENTH CAUSE OF ACTION
WASTE
(against Defendants Milan and Branko)**

148. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

149. Defendants Milan and Branko, the Controlling Shareholders' conduct, as alleged herein, constituted a waste of the corporate assets of Ocinomled.

150. Upon information and belief, Defendants Milan and Branko have wasted Ocinomled's assets by causing it to make payments on behalf of Milan and Branko's separately owned businesses, or otherwise causing payments to be made, including premiums for insurance policies, that benefitted third parties and were not reasonably justifiable business expenses of Ocinomled.

151. The following list of such insurance policies and payment recipients are only those known as of the date hereof and will likely be supplemented upon examination of Ocinomled's books and records. Upon information and belief some or all of the following

policies and/or payments are not justifiable as reasonable expenditures related to Ocinoled's business:

- a. Hartford Life Insurance Company Policies 406030965, 406030967 and 406030980.
- b. American International Comp: WC5340859 and WC6878862.
- c. Conference Associate Inc.: NB 79-0228.
- d. Aicco Inc. Policies 1500-3061002-6, 15003074621-1.
- e. Flat Iron Capital Policy 1CCCL00101702.
- f. First International Funding Company Policy 0533000011840237.

152. Specifically, payments made to:

- a. AIG Insurance
- b. Allied North America Insurance
- c. Arch Insurance
- d. Disability Assistance Group
- e. Emblem Health Services Co. LLC
- f. Hub International Northeast Insurance Limited
- g. International Assistance Group
- h. Massachusetts Casualty Insurance Comp
- i. Union Central Life, and
- j. Union Contract Light Insurance Company

153. As a direct and proximate result of the Controlling Shareholders' wasteful conduct, Ocinoled has suffered, and will continue to suffer, damages for which the Defendants Milan and Branko are liable.

154. Plaintiffs have no adequate remedy at law.

SEVENTEENTH CAUSE OF ACTION
INJUNCTIVE RELIEF
(against all Defendants)

155. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

156. As a result of the foregoing, with respect to all or any part of Ocinomled's assets, including especially its cash or proceeds thereof, in the Controlling Shareholders' possession, custody or control, all Defendants should be permanently enjoined and restrained from:

- a. Transferring, expending or otherwise disposing of all or any part of Ocinomled's assets;
- b. Failing to preserve and maintain Ocinomled's Cash Receipts or proceeds thereof, in their custody, possession or control;
- c. Destroying, altering or failing to preserve all their books and records relating to Ocinomled's revenues and Cash Receipts or business operation;
- d. Entering into Ocinomled's Premises for any reason without further order of this Court; and
- e. From conducting any business of any kind on behalf or in the name of Ocinomled.

157. Further, all Defendants should be affirmatively directed to immediately turn over and full and complete access to Plaintiffs' counsel or designated accountant:

- a. All of Ocinomled's books and records, including but not limited to, all bank account statements or related records, cancelled checks, employee records, POS records, customer's sales checks, liquor inventories, unused checks, receipts or any other records of Cash Receipts or cash expended, and

- b. All of Ocinomled's keys to its business premises of any kind together with all passcodes, computer codes, or access passwords.

**EIGHTEENTH CAUSE OF ACTION
ATTORNEYS FEES AND COSTS
(against Defendants Milan and Branko)**

158. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

159. Pursuant to Business Corporation Law §626(e), Plaintiffs seek recovery of statutory legal fees and costs incurred in prosecuting this Shareholders' Derivative Action against Defendants Milan and Branko.

DIRECT CLAIMS

160. Plaintiffs bring the following claims on behalf of themselves individually.

**NINETEENTH CAUSE OF ACTION
BREACH OF THE DUTY OF LOYALTY
(against Defendants Milan, Branko and Dennis)**

161. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

162. Plaintiffs are, collectively, 50% shareholders of Ocinomled.

163. Defendants Milan and Branko, collectively own the other 50% of the shares of Ocinomled.

164. As co-owners of Ocinomled, Defendants Milan and Branko owe a duty of loyalty to Plaintiffs.

165. Defendants have engaged in a variety of self-dealing, including intentionally and wrongfully misappropriating Cash Receipts and collected sales taxes from Ocinomled and withholding Ocinomled dividend distributions reported on Ocinomled's federal income tax returns and compensation from Plaintiffs Ferdo and Omer.

166. Defendants Milan and Branko's breaches of their duty of loyalty have damaged Plaintiffs in an amount to be determined at trial, but believed to be no less than \$7,500,000.

**TWENTIETH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY
(against Defendants Milan and Branko)**

167. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

168. As 50% owners of the shares of Ocinomled and 50/50, Defendants Milan and Branko owe fiduciary duties to Plaintiffs.

169. Defendant Milan maintained sole and exclusive control over the books, records, and accountings of Ocinomled's restaurant business.

170. Defendants Milan and Branko breached their fiduciary duties to the Plaintiffs by, among other things, intentionally withholding Ocinomled's distributions from co-owners Ferdo and Omer.

171. Defendants Milan and Branko's breaches of their fiduciary duties have damaged Plaintiffs in an amount to be determined at trial, but believed to be no less than \$7,500,000.

172. Milan is president of Ocinomled.

173. Plaintiffs do not have an adequate remedy at law to fully compensate Plaintiffs and to prevent Milan from continuing to use Ocinomled to breach his fiduciary duties to Plaintiffs.

**TWENTY FIRST CAUSE OF ACTION
UNJUST ENRICHMENT
(against all Defendants)**

174. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

175. Defendants misappropriated cash and revenues belonging to Plaintiffs by, among other things, intentionally withholding Ocinomled distributions from Plaintiffs Ferdo and Omer.

176. As a result of Defendants' misappropriation of Plaintiffs' distributions, Defendants were enriched unjustly.
177. Plaintiffs were harmed by Defendants' misappropriation.
178. Plaintiffs and Defendants are not parties to any shareholder agreement or other written agreement concerning the management of Ocinomled.
179. It is against equity and good conscience to permit Defendants to retain the funds.
180. Defendants have thus been unjustly enriched and have damaged Plaintiffs in an amount to be determined at trial, but believed to be no less than \$7,500,000.

WHEREFORE, Petitioners request the following relief:

- a. ON THEIR FIRST CAUSE OF ACTION, an order directing equitable, but not legal, dissolution of Ocinomled Ltd., determining the amounts and terms under which Petitioners and/or Ocinomled shall "buy out" Licul and Turcinovic, *or* in the alternative, relief under the BCL barring Licul and Turcinovic from serving as directors, requiring repayment of amounts misappropriated by Licul and Turcinovic, and/or judicial dissolution of Ocinomled;
- b. ON THEIR SECOND CAUSE OF ACTION, damages in an amount to be determined at trial for Antonello's professional negligence, but believed to be in excess of \$3 million for each Petitioner;
- c. ON THEIR THIRD CAUSE OF ACTION, for an order pursuant to BCL §§716, 719(a)(4), 720(a)(1), 1104, 1104(a) and 1104-a (b) and (d) granting damages as may be proved at trial and appropriate relief thereunder;

- d. ON THEIR FOURTH CAUSE OF ACTION, damages for withholding profits reported as income to Omer which were wrongfully retained by Respondents against Licul, Turcinovic and Ocinomled in favor of Petitioners in the amount of at least \$990,612 for each Petitioner, plus applicable interest and penalties together with damages in favor of Petitioner Omer Grgurev in the amount of at least \$150,000 to compensate for the loss of accrued benefits under the Life Policy;
- e. ON THEIR FIFTH CAUSE OF ACTION, for damages in an amount to be determined at trial but believed to be at least \$2.5 million, plus punitive damages believed to be at least \$7.5 million, and for a judicial order directing Milan Licul's and Branko Turcinovic's forfeiture of shares in the Nominal Defendants, on such terms as are equitable and just, removing Milan Licul as president of Ocinomled, barring him from re-election or reappointment as an officer of Ocinomled for a period to be determined by the Court, and appointing Plaintiffs as co-presidents of Ocinomled for a period to be determined by the Court;
- f. ON THEIR SIXTH CAUSE OF ACTION, contributing and indemnifying Petitioners to the extent that Respondents' actions cause damages to the Corporation and/or Respondents.
- g. ON THEIR SEVENTH CAUSE OF ACTION, for permanent injunctive relief enjoining Defendants from unfair competition using the Marks in connection with Defendants' unauthorized restaurants and products and awarding damages in an amount to be determined at trial and trebled

caused by Defendants' willful dilution but believed to be at least \$1 million;

- h. ON THEIR EIGHTH CAUSE OF ACTION, for permanent injunctive relief enjoining Defendants from using the Marks in connection with Defendants' unauthorized restaurants and products and awarding damages in an amount to be determined at trial and trebled caused by Defendants' willful unfair competition and false designation of origin, but believed to be at least \$1 million;
- i. ON THEIR NINTH CAUSE OF ACTION, for damages in an amount to be determined at trial but believed to be at least \$7.5 million;
- j. ON THEIR TENTH CAUSE OF ACTION, for damages in an amount to be determined at trial but believed to be at least \$2.5 million, plus punitive damages believed to be at least \$7.5 million;
- k. ON THEIR ELEVENTH CAUSE OF ACTION, for damages in amount Defendants' deceptive trade practices;
- l. ON THEIR TWELFTH CAUSE OF ACTION, for damages in an amount to be determined at trial, but believed to be no less than \$7.5 million;
- m. ON THEIR THIRTEENTH CAUSE OF ACTION, for damages in an amount to be determined at trial but believed to be at least \$7.5 million;
- n. ON THEIR FOURTEENTH CAUSE OF ACTION, for damages in an amount to be determined at trial but believed to be at least \$2.5 million, plus punitive damages believed to be at least \$7.5 million;

- o. ON THEIR FIFTEENTH CAUSE OF ACTION, declaratory relief determining that Plaintiffs are permitted to pursue the stated trademark claims related to the Marks, on behalf of Ocinomled, either as owner of the Marks or pursuant to the terms of the License Agreement;
- p. ON THEIR SIXTEENTH CAUSE OF ACTION, for injunctive relief, enjoining Defendants from transferring, expending, or otherwise disposing of Ocinomled's assets; failing to preserve or maintain Ocinomled's Cash Receipts; destroying, altering, falsifying, or failing to preserve Ocinomled's books and records; entering Delmonico's premises; and conducting any business of any kind on behalf of or in the name of Ocinomled;
- q. ON THEIR SEVENTEENTH CAUSE OF ACTION, for injunctive relief, enjoining Defendants from transferring, expending, or otherwise disposing of Ocinomled's assets; failing to preserve or maintain Ocinomled's Cash Receipts; destroying, altering, falsifying, or failing to preserve Ocinomled's books and records; entering Delmonico's premises; and conducting any business of any kind on behalf of or in the name of Ocinomled;
- r. ON THEIR EIGHTEENTH CAUSE OF ACTION, for recovery of Petitioners' legal fees and costs pursuant to BCL §626(e);
- s. ON THEIR NINETEENTH CAUSE OF ACTION, for damages in an amount to be determined at trial, but believed to be no less than \$7.5 million;

- t. ON THEIR TWENTIETH CAUSE OF ACTION, for damages in an amount to be determined at trial, but believed to be no less than \$7.5 million;
- u. ON THEIR TWENTY FIRST CAUSE OF ACTION, for damages in an amount to be determined at trial, but believed to be no less than \$7.5 million;
- v. PUNITIVE DAMAGES against Licul and Turcinovic for their intentional and malicious perpetration of the Coerced Settlement Scheme damaging Petitioners;
- w. PETITIONERS' ATTORNEYS' FEES, COSTS, AND DISBURSEMENTS; and
- x. Such other and additional relief as this Court deems just and equitable.

Dated: New York, New York
September 13, 2019

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Attorneys for Petitioner Ferdo Grgurev

VERIFICATION

STATE OF NEW JERSEY,)
) ss.:
COUNTY OF BERGEN.)

Omer Grgurev, being duly sworn, deposes and says:

I am the Petitioner in the above-referenced case. I have read the above Verified Petition, know the contents thereof to be true to my own knowledge, except as to those matters stated on information and belief to be true, and as to those matters I believe them to be true.

/s/ Omer Grgurev
Omer Grgurev

Sworn to Before Me this 16th
Day of September 2019

/s/ Notary Public
Notary Public

