

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

----- X
FELIX GLAUBACH, derivatively on behalf of
PERSONAL TOUCH HOLDING CORP.,

:
: Index No. 702987/2015
:

Plaintiff,

-against-

DAVID SLIFKIN, TRUDY BALK, ROBERT
MARX, JOHN L. MISICONE, JOHN D.
CALABRO, LAWRENCE J. WALDMAN,
ROBERT E. GOFF, JACK BILANCIA,
ANTHONY CASTIGLIONE, NANCY ROA and
JOSEPHINE DIMAGGIO,

:
:
: **AMENDED COMPLAINT**
:
:

Defendants.

PERSONAL TOUCH HOLDING CORP.; PT
INTERMEDIATE HOLDING, INC. and
PERSONAL TOUCH HOME CARE OF N.Y., INC.,

Nominal Defendants.

:
: X

PARTIES

Plaintiff, Felix Glaubach ("Glaubach"), by his attorneys Graubard Miller, as and
for his Amended Complaint, alleges as follows:

1. Plaintiff Glaubach is a resident of the State of New York, County of Nassau. Glaubach is one of the founders of Personal Touch Holding Corp. ("Personal Touch" or the "Company"), its President, a Special Director and he and his immediate family own in excess of 27% of the shares of outstanding stock. Personal Touch is a healthcare company which provides a variety of home health care services, including home health aides, nursing, medical, social services and physical therapy.

2. Defendant David Slifkin ("Slifkin") is a resident of the State of New York, County of Queens. Slifkin is a 4.5% shareholder in Personal Touch and became its Chief Executive Officer in 2011.

3. Defendant Trudy Balk ("Balk") is a resident of the State of New York, County of Queens. Balk is Slifkin's wife. She was also Vice President of Operations of Personal Touch, although Plaintiff is uncertain of her status at Personal Touch as of the filing of this Complaint.

4. Defendant Robert Marx ("Marx") is a resident of the State of New York, County of Queens. He, along with Glaubach, co-founded Personal Touch. He is the Executive Vice President, General Counsel and a Special Director of Personal Touch. Marx and his immediate family own in excess of 27% of the shares of Personal Touch.

5. Defendant John L. Misicone ("Misicone") is a resident of the State of New York. Misicone is a Director of Personal Touch.

6. Misicone is not an independent director. He works for Duff & Phelps. Duff & Phelps is on retainer by the Company and over the last several years has received hundreds of thousands of dollars in fees from the Company. Slifkin and Marx are responsible for the continued retention of Duff & Phelps. Misicone knows that Glaubach would like the Company to terminate Duff & Phelps' services.

7. Defendant John D. Calabro ("Calabro") is a resident of the State of New York. Calabro, in violation of the Stockholders' Agreement between and among the shareholders with a controlling vote, is acting as a Director of Personal Touch.

8. Defendant Lawrence J. Waldman ("Waldman") is a resident of the State of New York. Waldman, in violation of the Stockholders' Agreement between and among the shareholders with a controlling vote, is acting as a Director of Personal Touch.

9. Defendant Robert E. Goff ("Goff, and together with Calabro and Waldman, "Unauthorized Directors") is a resident of the State of New York. Goff, in violation of the Stockholder's Agreement between and among the shareholders with a controlling vote, is acting as Director of Personal Touch.

10. Defendants Anthony Castiglione, Jack Bilancia, Josephine DiMaggio and Nancy Roa all are employees of Personal Touch, reside or transact business in New York and have an actual place of business in Bayside, New York.

11. Personal Touch is a Delaware corporation qualified to and doing business in the State of New York and is made a party to this action only as a nominal defendant.

12. Personal Touch Home Care of N.Y., Inc. is a New York corporation and a wholly-owned subsidiary of PT Intermediate Holding, Inc., which in turn is a wholly-owned subsidiary of Personal Touch.

13. PT Intermediate Holding, Inc. is a New York corporation.

14. Personal Touch Home Care of N.Y., Inc. and PT Intermediate Holding Inc. are made parties to this action only as nominal defendants.

15. Prior to a corporate reorganization which took place in December 2010, Glaubach was a shareholder of Personal Touch Home Care of N.Y., Inc.

16. In December 2010, a group of companies which made up Personal Touch business, all of which Glaubach was a shareholder in, including Personal Touch Home Care of N.Y., Inc., went through a corporate reorganization pursuant to which Personal Touch became

the parent company of all the different Personal Touch entities and the shareholders of such entities exchanged their shares in such entities for shares in Personal Touch.

INTRODUCTION

17. This action arises out of the actions taken by Slifkin, Balk and Marx to loot Personal Touch and push Glaubach, the co-founder, President and significant shareholder, out of the Company so as to prevent him from exposing their wrongdoing. And so, Glaubach, a health care professional who has spent his entire life in meeting the health care needs of young and old, was betrayed by the Brutus-like Defendant Marx and his Brutus-like co-conspirators Slifkin and Balk. In a drama worthy of a Shakespearean tragedy, Glaubach had a vision encompassing the health care of an aging generation of Americans which ended up making Slifkin and Marx rich. Rather than recognize the good fortune Glaubach had caused to be bestowed upon them, Slifkin and Marx sought to destroy Glaubach. As Glaubach aged and took ill for the period 2008-2010, Slifkin and Marx engaged in a conspiracy to steal Personal Touch, a company that Glaubach had primarily created and caused to prosper. As more fully hereinafter detailed, said defendant co-conspirators did this by using classic forms of treachery, deceit, backstabbing and self-dealing. They engaged in a series of secret actions designed, ab initio, when Glaubach was not well to destroy Glaubach's role in Personal Touch, to embarrass him, to denigrate him, to make him irrelevant and ultimately to steal the profitable fruits ripening from the operations of Personal Touch.

18. Prior to commencement of this action, Plaintiff demanded, on numerous occasions, that Personal Touch's Board of Directors take action with respect to each of the causes of action asserted herein, other than those causes of action asserted against the Board

itself, and as to those items, demand would be futile. The Board of Directors has failed to take action with respect to each of the items set forth herein.

19. Thus, Glaubach has demanded that the Board of Directors:

- (a) Take action against Slifkin, Marx, Balk and others for their wrongful taking of compensation and hiding it as a reimbursement of education expenses;
- (b) Obtain proper information before awarding Balk a severance package that was beyond industry standard and gave Slifkin the unfettered ability to keep his wife on the payroll as a consultant even after she received an above industry standard severance payment; and
- (c) Investigate and take action against Slifkin and Balk for instigating employees to file sexual harassment complaints against Glaubach, not to benefit the Company, but to enhance their personal battle with Glaubach.

20. These demands were made as follows:

- (a) At a July 24, 2014 Board Meeting Dr. Glaubach informed the Board that they had been provided by Mr. Slifkin incorrect information regarding historical severance packages given to departing employees. Dr. Glaubach also stated that the Board should retain an expert with respect to severance packages given to health care executives prior to making a determination regarding a severance package for Dr. Balk.
- (b) In an October 30, 2014 letter to the Board Dr. Glaubach detailed not only his demand for action with respect to Dr. Balk's severance package, but also demanded that the Board to take action with respect to misappropriations by Mr. Slifkin and Dr. Balk which includes the educational expense issue.

(c) In a letter dated January 22, 2015 Dr. Glaubach requested that certain items be added to the agenda for the January 28, 2015 Board meeting, including (i) taking action against Mr. Marx, Mr. Slifkin and Dr. Balk for taking hidden compensation and categorizing it as reimbursement of "Educational Expense" which they did not incur, (ii) actions to be taken against Mr. Slifkin and Dr. Balk for getting employees to make sexual harassment complaints against Dr. Glaubach, not for the benefit of the Company, but to advance their position in their disputes with Dr. Glaubach, and (iii) taking action against Dr. Balk and Mr. Slifkin with respect to the severance package awarded to Dr. Balk based on misinformation given to Board members regarding historical severance arrangements with key Company personnel. Annexed to the letter was a list of employees who Dr. Glaubach believed had received unauthorized compensation in the form of unreimbursed educational expenses and the amount received by each employee.

(d) In an e-mail sent to Board Member Larry Waldman in which Dr. Glaubach detailed wrongdoing with respect to Mr. Slifkin, Mr. Marx and the other employee Defendants, including committing tax fraud by taking compensation but recording it as reimbursement of educational expenses. Dr. Glaubach demanded the Board take action against everyone who received hidden compensation in the form of educational expense.

(e) In a March 30, 2015 e-mail to Board Member Waldman, Dr. Glaubach complained that the Audit Committee was not seriously pursuing my demand to take action against Mr. Slifkin.

21. The Board in each instance has failed to act diligently to pursue the claims and, in several instances, has failed to even obtain sufficient information to fully inform themselves on such issues.

22. Thus, the Board has failed to obtain information on a timely basis even though statute of limitations could imminently expire regarding Slifkin's, Marx's, Balk's and others taking of unauthorized compensation.

23. The Board failed to inform itself regarding industry norms with respect to severance packages at the time it awarded Balk her severance package and consulting agreement.

24. Plaintiff brings this action pursuant to BCL §720 and derivatively on behalf of Personal Touch pursuant to Delaware Corporate Law and New York Business Corporation Law §626.

BACKGROUND FACTS

25. The business that would eventually be Personal Touch was co-founded by Glaubach and Marx in 1974. Glaubach was the President of the Company and functioned as Chief Executive Officer until 2011.

26. In the early years, Glaubach owned 65% of the Company and Marx owned 35% of the Company. Thereafter, the percentages changed and Glaubach and his immediate family owned 52½% of the Company and Marx owned 47½% of the Company.

27. Glaubach's wife Miriam was a nurse and was heavily involved in launching and managing Personal Touch.

28. Under Glaubach's leadership, from 1974 through 2011 Personal Touch grew from having a single office in Queens servicing only the Queens community to a company with offices in 11 states servicing hundreds of communities.

29. Marx was not involved in the daily operations of Personal Touch, except for the management of certain of its legal affairs. He did not come into Personal Touch's offices on a daily basis and spent most of his business time dealing with his other business ventures,

including a law practice, real estate and the operation of facilities to care for the geriatric population.

30. In or around 1990, Marx approached Glaubach about becoming more actively involved in the business. Marx said he would leave his law practice and work at Personal Touch full time if Glaubach would make him an equal partner. Thereafter, Marx met Glaubach in Glaubach's house and said he would work in the business full time if he was made an equal partner. Glaubach agreed and Marx became an equal partner.

31. Notwithstanding Marx's agreement to spend his full time efforts at Personal Touch, within a matter of months Marx stopped coming into Personal Touch's office on a full time basis.

32. Balk was hired by Personal Touch in or around 1980. She had no prior experience in the home health care field. She was hired by Marx to act as his eyes and ears in the business because of Marx's absence from the business.

33. Balk acted as Personal Touch's Vice President assisting with the Company's legal matters.

34. In or around 1990, Personal Touch retained Slifkin as the Chief Financial Officer of the Company.

35. In 2010 Slifkin became Chief Operating Officer of the Company. Glaubach agreed to give Slifkin 1,949,000 shares in the Company.

36. Upon information and belief, in or around 2000, Slifkin and Balk married.

37. From the point of their marriage forward Slifkin lost all perspective regarding the quality of Balk's work at Personal Touch.

38. In 2008, Glaubach, who was then in his mid-seventies, became seriously ill. As a result of such illness from 2008 through much of 2010 he was not able to see projects through to completion. Therefore, he delegated this work to Slifkin.

39. By 2010 Marx and Glaubach each approached their eighties, Personal Touch had grown to be a large company and significant changes were occurring within Personal Touch.

40. Glaubach was unaware at the time these changes were starting to take place that Slifkin, Balk and Marx would use these changes to try to push Glaubach out of management of the Company so as to cover up the thefts from the Company and mismanagement of the Company during the period of Glaubach's illness.

41. Part of the changes which came about was for Glaubach and Marx to over time transition to a lesser role in the Company.

42. Later, in 2010, Glaubach and Marx sold a portion of their shares in a transaction with an Employee Stock Ownership Plan ("ESOP").

43. Glaubach, Marx and the Stockholders of the Company other than the ESOP signed a Stockholder's Agreement dated December 13, 2010 ("Stockholder's Agreement").

44. Pursuant to the Stockholder's Agreement, the signatories agreed that the Company would have a maximum of eight Directors. Glaubach and Marx were designated as Special Directors, each with control of three of the eight director votes.

45. In 2011 Slifkin was raised from Chief Operating Officer and Chief Financial Officer to Chief Executive Officer.

46. By 2011 Glaubach had recovered and became much more heavily involved in the operations of the Company. However, it was made clear to him that Slifkin, Balk and Marx did not want Glaubach exerting any management control.

47. As Glaubach sought to exert his authority as President of the Company, he expressed concerns about Balk's poor performance.

48. In the beginning, Balk filled a need in the Company, but as time went by she caused lots of problems within the Company. For example, Balk failed to enforce Company policies with respect to the safeguarding of proprietary information and company assets.

49. In response to Glaubach's complaints about her performance, Balk took actions to intentionally harm Glaubach and gain favor with Marx.

50. Thus, for example, Balk was in charge of managing points awarded on Company executives' American Express cards. As part of her duties, she was supposed to make certain that each executive was allocated the proper number of points.

51. Due to an intentional effort to harm Glaubach, in or around early 2012 Balk caused 2,000,000 points that should have been allocated to Glaubach to instead be allocated to her and Marx.

52. Upon information and belief, Slifkin, Balk and Marx did not want to allow Glaubach to be reinvolved with the management as (a) they were concerned that he would uncover that they had been taking payments from the Company they were not entitled to, (b) Glaubach was calling into question Slifkin's management of the Company based on the fact that Slifkin had not taken appropriate steps to grow the Company, and (c) due to Slifkin's, Balk's and Marx's incompetence, the Company started to be pursued by various regulatory agencies alleging various types of wrongdoing by the Company.

53. Notwithstanding Slifkin, Balk and Marx's objections, Glaubach insisted in having an active role in the management of the Company as the President of the Company.

54. This caused substantial friction between Glaubach on one hand and Slifkin, Balk and Marx on the other.

55. As Marx had participated and benefitted in some of the wrongful actions taken by Slifkin and Balk, he sided with them when disputes arose between them and Glaubach.

56. The more Glaubach got involved and the more information he obtained about the operations of the Company during the period of his illness, the more he realized he could not trust Slifkin, Balk and Marx and that they had committed some serious wrongdoing at the expense of the Company.

FIRST CAUSE OF ACTION

57. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 56 of this Complaint as if fully set forth herein.

58. Upon information and belief, during the period 2008 through 2010 when Glaubach was incapacitated, Slifkin caused Personal Touch to pay him undeclared and undisclosed income in the sum in excess of \$500,000.

59. Slifkin hid this unauthorized income by having it classified as reimbursement of education expense which he never incurred.

60. Slifkin also caused unauthorized income to be paid to Balk, Marx and others, also in the form of reimbursement of educational expenses which they never incurred.

61. Slifkin's actions of receiving unauthorized payments in the form of unreimbursed educational expenses and authorizing similar payments to Jack Bilancia, in the amount of at least \$70,000, Anthony Castiglione, Vice President and Treasurer, in the amount of

at least \$88,968, Nancy Roa, Director of Human Resources, in the amount of at least \$17,500 and Josephine DiMaggio, Executive Assistant, in the amount of at least \$10,000, all exposed the Company to risk by having the Company participate in his attempt to cover up taxable income received by him and others.

62. Slifkin's actions constituted a breach of a fiduciary duty and waste of corporate assets for which recovery is allowed under BCL § 720.

63. Due to Slifkin's actions, the Company was damaged in the sum of unauthorized compensation paid to the Company employees and hidden as reimbursement of education expenses.

SECOND CAUSE OF ACTION

64. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 56 and 58 through 63 of this Complaint as if fully set forth herein.

65. Slifkin's taking of at least \$500,000 from the Company as reimbursement for educational expenses he did not incur constitutes unjust enrichment and waste of corporate assets for which recovery is called for under BCL § 720.

THIRD CAUSE OF ACTION

66. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 56, 58 through 63 and 65 of this Complaint as if fully set forth herein.

67. Balk's taking of at least \$85,000 as reimbursement for educational expenses she did not incur constitutes unjust enrichment and waste of corporate assets of the Company for which recovery is called for under BCL § 720.

FOURTH CAUSE OF ACTION

68. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 56, 58 through 63, 65 and 67 of this Complaint as if fully set forth herein.

69. Balk's actions of accepting payment of reimbursement of educational expenses she did not incur constituted a breach of her fiduciary duty to the Company and intentional mismanagement for which recovery is called for under BCL § 720.

FIFTH CAUSE OF ACTION

70. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 56, 58 through 63, 65, 67 and 69 of this Complaint as if fully set forth herein.

71. Marx's actions of accepting payment of reimbursement of educational expenses and other monies he did not incur, constitutes a breach of his fiduciary duty to the Company, intentional mismanagement, unjust enrichment and waste of corporate assets for which recovery is called for under BCL § 720.

SIXTH CAUSE OF ACTION

72. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 56, 58 through 63, 65, 67, 69 and 71 of this Complaint as if fully set forth herein.

73. Bilancia's taking of unauthorized compensation hidden as reimbursement of educational expenses constitutes a breach of fiduciary duty and unjust enrichment.

SEVENTH CAUSE OF ACTION

74. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 56, 58 through 63, 65, 67, 69, 71 and 73 of this Complaint as if fully set forth herein.

75. Castiglione's taking of unauthorized compensation hidden as reimbursement of educational expenses constitutes a breach of fiduciary duty and unjust enrichment for which recovery is allowed under BCL §720.

EIGHTH CAUSE OF ACTION

76. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 56, 58 through 63, 65, 67, 69, 71, 73 and 75 of this Complaint as if fully set forth herein.

77. Roa's taking of unauthorized compensation hidden as reimbursement of educational expenses constitutes a breach of fiduciary duty and unjust enrichment for which recovery is allowed under BCL §720.

NINTH CAUSE OF ACTION

78. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 56, 58 through 63, 65, 67, 69, 71, 73, 75 and 77 of this Complaint as if fully set forth herein.

79. DiMaggio's taking of unauthorized compensation hidden as reimbursement of educational expenses constitutes a breach of fiduciary duty and unjust enrichment.

TENTH CAUSE OF ACTION

80. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 56, 58 through 63, 65, 67, 69, 71, 73, 75, 77 and 79 of this Complaint as if fully set forth herein.

81. By 2014, Glaubach thought he obtained Balk's agreement to resign from Personal Touch. In fact, Slifkin e-mailed that he and Balk would both resign by the end of 2014.

82. However, Glaubach soon learned that Slifkin refused to resign so that he could continue to funnel money to Balk and that Balk's agreement to resign from Personal Touch was just part of a plan for Slifkin and Balk to funnel money to Balk.

83. Thus, Slifkin and employees under his direct control came up with a severance package for Balk for her to receive \$465,000 of severance payments equaling 18 months of Balk's compensation.

84. In addition, Balk was given a consulting job under which, in essence, Slifkin controlled the term and amount she would be paid.

85. Glaubach objected to this severance package as both extravagant and really a disguised way for Balk to continue on Personal Touch's payroll for as long as Mr. Slifkin wanted. The Board members, however, approved the package without taking even the most cursory steps to inform themselves as to what was the norm for severance packages for senior executives in the health care industry.

86. Slifkin and Balk, in an effort to stop Glaubach from pursuing and obtaining information about their wrongdoing and to stop him from raising issues to the Board, formulated a plan to isolate Glaubach from the Company so that he could not obtain further information from Company employees.

87. As part of this plan, Slifkin and Balk, with the assistance of the Assistant General Counsel of Personal Touch and with the admitted knowledge of Marx, solicited employees to make sexual harassment complaints against Glaubach.

88. In a report prepared at the request of the Board Members about the sexual harassment complaints alleged against Glaubach, the investigator reported that “the evidence suggests that the allegations of sexual harassment against Glaubach correspond with the elevation of his dispute with Balk.” The report states further and specifically that “moreover, it appears unlikely that Complainants would have pursued filing “formal” complaints against Glaubach, or that Glaubach’s conduct would have been investigated, but for the escalating issues between Glaubach and Balk.” In essence, the report indicated that Complainants generally did not document Glaubach’s behavior until late August or early September 2014 when Glaubach felt that Balk’s work performance deteriorated even further. Finally, the report indicated that Slifkin and Balk did not decide to investigate Glaubach’s behavior until after Balk claimed that Glaubach slammed the door to her office.

89. Glaubach is 83 years old. He has conducted himself over his lifetime as an honorable person. The allegations of sexual harassment was an attempt to destroy a reputation built over that lifetime.

90. When the trumped up allegations of sexual harassment were made against him Glaubach became very upset and tried to find out the basis for such allegations.

91. Such attempts were then used to make false allegations that Glaubach was retaliating against the parties who were solicited to make sexual harassment complaints against Glaubach.

92. In reliance on such false allegations, Slifkin and Marx, using armed security personnel and without Board authorization, physically barred Glaubach from Personal Touch's offices.

93. That the real motive behind the sexual harassment allegations was to extort Glaubach was revealed when Slifkin made it known that if Glaubach would stop objecting to the severance package proposed for Balk, the sexual harassment allegations would go away. Such extortion was specifically designed to keep Glaubach from performing his duties as an officer and director of the Company.

94. Slifkin and Balk breached their fiduciary duty to the Company by getting employees to make sexual harassment complaints against Glaubach, the President of the Company, not for a Company purpose but to advance their own personal agenda of neutralizing Glaubach.

95. Slifkin's and Balk's actions have caused the Company damage reputationally and to its integrity.

96. Slifkin's and Balk's conduct has caused the Company to waste assets in the form of legal and other expenses for which they should reimburse the Company.

97. Further, Slifkin's and Balk's conduct constitute intentional acts of mismanagement of the Company for which recovery is warranted under BCL § 720.

ELEVENTH CAUSE OF ACTION

98. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 56, 58 through 63, 65, 67, 69, 71, 73, 75, 77, 79 and 81 through 97 of this Complaint as if fully set forth herein.

99. Slifkin's and Marx's ultra vires acts of barring Glaubach from Personal Touch's office constitutes a breach of their fiduciary duty.

100. As a result of such actions the Company has incurred significant expenses which are a waste of corporate assets which Slifkin and Marx should reimburse the Company pursuant to BCL § 720.

TWELFTH CAUSE OF ACTION

101. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 56, 58 through 63, 65, 67, 69, 71, 73, 75, 77, 79, 81 through 97 and 99 through 100 of this Complaint as if fully set forth herein.

102. On or about December 26, 2012, Glaubach and Marx each transferred 2,790,000 of their shares in Personal Touch to trusts for the benefit of their children.

103. Pursuant to the December 13, 2010 Stockholders' Agreement, the Board was to be composed of a maximum of eight members. Glaubach and Marx each controlled three member votes.

104. As to the remaining two Board seats, the Stockholders' Agreement required the signing shareholder to designate David Slifkin and John Misicone.

105. In July 2014, Corporate Counsel for Personal Touch circulated an Amendment to the Stockholders' Agreement. This amendment provided that the Board be expanded to ten members. Glaubach and Marx each retained their three seats. In addition to

Glaubach's and Marx's seats, the amendment provides that John D. Calabro, Lawrence S. Waldman and Robert E. Goff be appointed to fill the other seats.

106. The Amendment provided that it only became effective when executed by the holders of at least 85% in voting power of all shares of stock subject to the Stockholder's Agreement.

107. Counsel for the Company informed Glaubach that the required number of shareholders had executed the Amendment such that it was effective.

108. This was not correct.

109. Unbeknownst to Glaubach, the holders of at least 85% in voting power of all shares of stock subject to the Stockholders' Agreement had not executed the Amendment.

110. In fact, as neither the trusts for Marx's children nor the trusts for Glaubach's children signed the Amendment, the holders of at least 85% of the stock subject to the Stockholders' Agreement had not agreed to the Amendment.

111. Based on counsel's representation that 85% or more in voting power of all shares of stock subject to the Stockholders' Agreement had signed the Agreement, a majority of stockholders signed a consent resolution expanding the Board to ten members and appointing Waldman, Goff and Calabro to the Board.

112. As the Amendment was not valid at the time of the consent resolution, the consent resolution was signed in violation of the Stockholders' Agreement and is null and void.

113. Therefore, (a) the Board was not properly expanded to ten members, and (b) Waldman, Goff and Calabro were not properly elected as Board members.

114. All actions taken by the Board during the period Waldman, Goff and Calabro acted as Board Members are null and void.

115. David Slifkin resigned from the Board effective July 2, 2013.

116. Marx and Glaubach have not agreed on a replacement director for Slifkin.

117. Since Waldman, Goff and Calabro were not properly elected as Directors of the Company, they do not have indemnification rights that might otherwise go to Directors of the Company.

118. Thus, to the extent that the Company expends funds on behalf of the Board Members in defense of this action, the Board Members should reimburse the Company.\

THIRTEENTH CAUSE OF ACTION

119. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 56, 58 through 63, 65, 67, 69, 71, 73, 75, 77, 79, 81 through 97, 99 through 100 and 102 through 118 of this Complaint as if fully set forth herein.

120. Glaubach first notified the Board of Slifkin's, Balk's, Marx's and others receipt of compensation hidden as phony unreimbursed education expenses in early 2014.

121. For months, the Board did absolutely nothing about Glaubach's assertions.

122. Finally, at a Board meeting held in February 2015, the Board appointed a committee, made up of Misicone, Calabro, Waldman and Goff (the "Committee"), to investigate the allegations.

123. Notwithstanding that certain of the acts complained of by Glaubach had statute of limitations coming close to expiring, the Committee failed to act with respect to Glaubach's claims with any urgency.

124. Indeed, upon information and belief, even after more than a month had passed from the formation of the Committee to investigate Glaubach's allegations against

Slifkin, Marx, Balk and others, the Committee had done nothing more than interview Slifkin and Marx.

125. The Committee had not even interviewed the two outside professionals who had done a tax audit of the Company and discovered the false educational expense issue.

126. While the Committee was dragging its feet, the statute of limitations was expiring on certain claims the Company had to recover the compensation wrongfully taken by Slifkin, Marx and Balk.

127. The Committee's conduct constitutes a breach of fiduciary duty and a violation of their duties of management for which recovery is warranted under BCL § 720.

128. As a result of the Committee's actions, the Company has lost or may have lost the right to recover some of the unauthorized compensation taken by Slifkin, Marx, Balk and others.

129. The Committee has damaged the Company in the amount of the unauthorized compensation which the Company will not be able to recover due to expiration of the statute of limitations. This constitutes waste and mismanagement for which recovery is allowed under BCL § 720.

WHEREFORE, Plaintiff Felix Glaubach respectfully demands relief on behalf of the Company as follows:

(a) On the First Cause of Action against David Slifkin in the sum of all unauthorized compensation paid to employees of the Company in the form of unreimbursed educational expenses;

(b) On the Second Cause of Action against David Slifkin in the sum of the unauthorized compensation received by him in the form of unreimbursed education expenses;

(c) On the Third and Fourth Causes of Action against Trudy Balk in the sum of unauthorized compensation received by her in the form of reimbursement of educational expenses;

(d) On the Fifth Cause of Action against Robert Marx in the sum of the unauthorized compensation received by him in the form of reimbursement for educational expenses;

(e) On the Sixth Cause of Action against Jack Bilancia in the sum of the unauthorized compensation received by him in the form of reimbursement for educational expenses;

(f) On the Seventh Cause of Action against Anthony Castiglione in the sum of the unauthorized compensation received by him in the form of reimbursement for educational expenses;

(g) On the Eighth Cause of Action against Nancy Roa in the sum of the unauthorized compensation received by him in the form of reimbursement for educational expenses;

(h) On the Ninth Cause of Action against Josephine DiMaggio in the sum of the unauthorized compensation received by him in the form of reimbursement for educational expenses;

(i) On the Tenth Cause of Action against Slifkin and Balk in an amount to be determined by the Court but believed to be in excess of \$100,000;

(j) On the Eleventh Cause of Action against Slifkin and Marx for reimbursement of expenses incurred by the Company due to their ultra vires acts;

(k) On the Twelfth Cause of Action (i) declaring that (a) the election of Calabro, Waldman and Goff violated the Shareholders Agreement, and (b) Calabro, Waldman and Goff are not properly designated as directors of the corporation, and (ii) against Calabro, Waldman and Goff for reimbursement of any expenses paid by the corporation for their defense in connection with this action;

(l) On the Thirteenth Cause of Action against Misicone, Calabro, Waldman and Goff in sum equal to any unauthorized compensation received by employees of the Company for which they did not pursue on a timely basis thereby causing the Company to lose the right to obtain recovery of such unauthorized compensation; and

(m) All, together with cost as allowed under BCL § 626, including reasonable attorneys' fees, incurred by Plaintiff, disbursements and interest.

Dated: New York, New York
January 13, 2016

GRAUBARD MILLER

By: 
Edward H. Pomeranz

The Chrysler Building
405 Lexington Avenue – 11th Floor
New York, New York 10174

Attorneys for Felix Glaubach