

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
MICHAEL MOSKOWITZ,

Index No.

Plaintiff,

-against-

**VERIFIED
COMPLAINT**

WILLIAM FISCHER
and
GRASSI & CO. CERTIFIED PUBLIC
ACCOUNTANTS, P.C.

Filed:

Defendants.
-----X

Plaintiff, Michael Moskowitz, by his attorneys Esseks, Hefter, Angel, Di Talia & Pasca, LLP, complaining of defendants, William Fischer and Grassi & Co. Certified Public Accountants, P.C., individually, alleges:

1. In this action, Plaintiff seeks damages for fraud and accounting malpractice stemming from (i) Defendants’ wrongful amendment of the 2014 tax return of an entity by the name of Quogue Street Development, LLC (“QSD”), in an attempt to wipe out Plaintiff’s \$1,042,487.11 guaranteed loan to QSD by changing the return to show Plaintiff’s loan as a contribution to QSD’s equity; (ii) Defendants’ failure to inform Plaintiff of the amendment either before or after it was filed with the IRS; (iii) Defendants’ intentional concealment of the change when Plaintiff questioned defendant Fischer about a post-amendment K-1 for the 2015 tax year showing an increase in Plaintiff’s equity by almost one million dollars, and (iv) Defendants’ attempts to convince the IRS to ratify that wrongful amendment during the course of an IRS audit that began in 2019 and continues to date.

PARTIES

2. Plaintiff Michael Moskowitz (“Plaintiff”) is and at all times relevant to this action has been an individual residing in the State of New York.

3. Upon information and belief, defendant William Fischer (“Fischer”) is and at all times relevant to this action has been a resident of the State of New York, County of Suffolk.

4. Upon information and belief, defendant Grassi & Co. Certified Public Accountants, P.C. (“Grassi”) is and at all times relevant to this action has been a domestic professional corporation duly organized under the laws of the State of New York, having its principal place of business at 50 Jericho Quadrangle, Suite 200, New York 11753 (Grassi and Fischer together are “Defendants”).

5. Upon information and belief, Fischer is a New York State-licensed certified public accountant and New York State-registered tax preparer.

6. Upon information and belief, at all times relevant to this action, Fischer was and still is a partner and/or employee of Grassi, acting within the scope of that relationship and in furtherance of Grassi’s business.

FACTS

7. QSD was formed in or about June 2007 in order to acquire and develop the real property located at 52 Quogue Street, Quogue, New York (the “Property”).

8. QSD purchased the Property in 2007 and, after failing to develop the Property as planned, sold it at auction in 2015, with the sale closing in January 2016.

9. Upon information and belief, Defendants have rendered continuous accounting and/or tax preparation services to QSD since at least 2010 to date.

10. The services rendered by Defendants to QSD include, but are not limited to, the

preparation of the state and federal tax returns for QSD for the tax years from 2010 to 2016 and the representation of QSD in an IRS audit that began in 2019 and remains open as of the date of this Verified Complaint.

11. Defendants were retained to provide the above-referenced services for QSD by an individual named Timothy Stevens (“Stevens”), who, at the time that Defendants were retained, was a 50% member of QSD and QSD’s tax matter’s partner.

12. Upon information and belief, Fischer is Stevens’ long-time personal accountant and the accountant for at least 15 other businesses that Stevens wholly owns or in which Stevens has an ownership interest.

13. In 2012, Stevens transferred a total 40% membership interest in QSD to Fischer, as trustee, for three irrevocable trusts that Stevens created for the benefit of Stevens’ children.

14. Upon information and belief, Fischer offered his services as trustee of the Stevens family trusts personally and not as a business service offered by Grassi.

15. Upon information and belief, Fischer is not a trustee for any of his other clients.

16. As of the date of this Verified Complaint, Plaintiff owns a 50% membership interest in QSD, Stevens owns a 10% membership interest in QSD and Fischer is the trustee for a 40% membership interest in QSD for the benefit of Stevens’ three children.

Plaintiff’s Loan to QSD

17. Upon the formation of QSD in 2007, in addition to his initial capital contribution, Plaintiff loaned QSD \$1,042,487.11 so that QSD would have additional capital until other financing to develop the Property could be obtained.

18. The terms of Plaintiff’s loan were set forth in a “Replacement Note” dated December 27, 2007 (the “Note”).

19. Stevens signed the Note on behalf of QSD.

20. As set forth in the Note, acknowledged by Stevens' separate signature, Stevens also "personally guarantee[d] payment of all sums due pursuant to [the] Note."

21. Pursuant to the Note, interest accrued at a rate of 10% per year and QSD was obligated to pay interest at certain intervals.

22. QSD paid Plaintiff some, but not all, of the interest on the Note as it became due.

23. The unpaid principal sum of \$1,042,487.11 and remaining interest thereafter became due in its entirety in or about July 2013.

24. In or about July 2013, QSD failed to pay Plaintiff any of the amount due and owing to him on the Note, defaulting on its repayment obligations to Plaintiff.

25. In or about July 2013, Stevens also failed to pay Plaintiff any of the amount due and owing to Plaintiff on the Note, defaulting on his guarantee of the Note.

Defendants Wrongfully Amend QSD's 2014 Tax Return
In an Attempt to Wipe Out Plaintiff's Loan to QSD

26. On March 10, 2016, Plaintiff filed an action against Stevens in New York State Supreme Court, Suffolk County, Index No, 603828/2016 seeking, among other things, enforcement of Stevens' personal guarantee of Plaintiff's loan, damages for Stevens' breaches of his fiduciary duties to Plaintiff; damages, derivatively on behalf QSD, for Stevens's conversion of QSD funds, an accounting of QSD's finances, which Stevens controlled, and judicial dissolution of QSD pursuant to N.Y. Limited Liability Company Law § 702 (the "QSD Action").

27. Stevens' counsel, Tom Fini ("Fini") of Catafago Fini LLP, accepted service of the Summons and Complaint for Stevens in the QSD Action on March 11, 2016.

28. Upon information and belief, shortly after Fini accepted service of the Summons and

Complaint in the QSD Action, Fischer and Stevens, aided by Stevens' lead counsel from Catafago Fini LLP, Jacques Catafago ("Catafago"), began discussions to amend QSD's 2014 tax return, which had been filed with the IRS in or about October 2015.

29. Upon information and belief, Fischer, Stevens and Catafago thereafter schemed to amend QSD's 2014 tax return to show Plaintiff's loan as a straight contribution by Plaintiff to QSD's equity, rather than a loan subject to repayment, attempting to wipe out the more than \$1,042,487.11 in principal and more than \$800,000.00 interest that was due Plaintiff – and guaranteed by Stevens – on the loan at that time.

30. For example, on March 30, 2016, Catafago sent Fischer an email with four attachments: (1) a February 7, 2014 agreement purportedly signed by Plaintiff that has since proven to be a forgery of Plaintiff's signature; (2) an email from Plaintiff "admitting that in fact his note was converted to capital" (even though it contains no such admission); (3) a purported breakdown of funds "advanced" by Stevens and Plaintiff to QSD; and (4) Plaintiff's personal financial statement to a QSD lender.

31. In that email, Catafago stated that he was sending the documents, "To move the ball to the finish line..." and asked Fischer to "[p]lease advise if anything further is needed in order to have the 2014 and 2015 tax filings accurately reflect that absence of any note obligation."

32. Following up, on May 9, 2016, Catafago emailed Fischer, stating: "we need the return amended without delay."

33. Upon information and belief, Fischer filed an amended 2014 tax return for QSD on or about May 12, 2016, attempting to wipe out Plaintiff's loan as set forth in the original 2014 tax return by changing it to a capital contribution.

34. Upon information and belief, the 2014 tax return was amended to create evidence to

undermine Plaintiff's guarantee claim against Stevens in the QSD Action and to reinforce Stevens' argument in the QSD Action that Plaintiff agreed in 2014 that his loan would be converted to equity.

35. If Defendants and Stevens had not manipulated the 2014 tax return, the initial tax return would act as an estoppel, preventing Stevens as a matter of law from arguing that Moskowitz's note was converted to equity and thus subjecting Stevens to almost \$2 million in liability on his guarantee. *See, Mahoney-Buntzman v. Buntzman*, 12 N.Y. 3d 415, 881 N.Y.S. 2d 369 (2009) (It is settled law that a party "having taken such position in an income tax return . . . is estopped from taking a different position in this litigation.").

36. Upon information and belief, Stevens would have had no purported defense, as a matter of law, to Plaintiff's almost \$2,000,000.00 guarantee claim in the QSD Action.

37. Fischer did not consult with Plaintiff – who, in addition to being owed close to \$2 million on the Note and guarantee, was also the 50% member and a manager of QSD – before he amended the 2014 tax return attempting to wipe out Plaintiff's loan.

38. Upon information and belief, emails on which Fischer was copied reflect Fischer's awareness of the dispute between Stevens and Plaintiff in regard to Plaintiff's loan. For example:

- a. On January 19, 2014, Plaintiff emailed Stevens, cc'ing Fischer and others: "...the repayment of your inter company loans in the face of the loan and interest I am owed is just wrong."
- b. On January 22, 2016, Stevens responded to Plaintiff, cc'ing Fischer and others: "You continue to represent the loan you participated in . . . and that you want interest and payment. I told you many times that loan was consolidated [i]n the agreement you signed at the February 6, 2014 Madison closing..."

39. Had Plaintiff known or been aware of Defendants' plan to amend the 2014 tax return

as they did, Plaintiff would have immediately objected and sought court intervention to prevent the change.

Defendants Cover Up the Wrongful Amendment

40. Defendants did not send Plaintiff the amended 2014 tax return or an amended 2014 K-1 after they amended the return.

41. After the amended return was filed, Plaintiff continued to email Fischer in regard to his estimated contributions and loan to QSD, stating in regard to his loan in an April 18, 2016 email to Fischer and Plaintiff's own accountant: "10 percent interest only compounded I believe quarterly. Originating in December 2007. \$1,048,000 Tim personally signed."

42. Fischer forwarded this April 18, 2016 email to Stevens and Catafago and did not respond to Plaintiff.

43. Plaintiff was, and remained, unaware of the amendment until the 2014 amended return, amended K-1s and related documents were confirmed in depositions in the QSD Action.

44. After amending QSD's 2014 tax return, Defendants also prepared QSD's 2015 tax returns.

45. Defendants prepared QSD's 2015 tax returns in or about July 2016 without sending Plaintiff the amended 2014 QSD tax return, an amended 2014 K-1 or otherwise informing Plaintiff that the 2014 return had been amended.

46. In preparing QSD's 2015 tax return, Defendants made sure that those returns reflected, and were consistent with, the wrongfully amended 2014 return, showing Plaintiff's loan as an equity contribution,

47. Upon information and belief, the initial drafting of Plaintiff's 2015 K-1 was assigned to a tax accountant at Grassi by the name of Jessica Gomes ("Gomes"), who was working with

Fischer on QSD's 2015 return.

48. Gomes emailed Fischer Plaintiff's 2015 K-1 on July 7, 2016, stating, "The recourse shows both the loan and the due to affiliates – just as we show on the amended 2014 return. Let me know if this is what you need or you need me to make any changes."

49. Fischer replied to Gomes by email: "I owe you lunch."

50. The same day, July 7, 2016, Fischer emailed Plaintiff his QSD K-1 for 2015.

51. Fischer also emailed Plaintiff's K-1 to Stevens (via his secretary) and Stevens' counsel, Catafago, stating, "Forgot to blind cc you on this."

52. Upon receiving his 2015 K-1 on July 7, 2016, Plaintiff immediately emailed Fischer back and asked, "Why did my equity number increase by over a million?"

53. Fischer replied: "Is exactly the same as last years K-1."

54. Plaintiff took Fischer at his word and relied on Fischer's representation that the K-1 was "exactly the same as last years K-1."

55. Upon information and belief, however, Fischer was aware of something that Plaintiff was not: "last years K-1" was the wrongfully amended 2014 K-1, and the amendment was the reason that Plaintiff's equity number increased "by over a million."

56. Upon information and belief, Fischer replied that the 2015 K-1 was "same as last years K-1" to cover up the change to the 2014 return and so as not to arouse Plaintiff's suspicion or garner objections from Plaintiff at that time.

57. Upon information and belief, Defendants filed QSD's 2015 tax return, which reflected the wrongful change of Plaintiff's loan to equity, in or about July or September 2016.

58. Thereafter, Defendants also prepared QSD's 2016 tax returns.

59. The 2016 QSD tax return also wrongfully reflects Plaintiff's loan as a contribution to

equity.

60. Further, because the 2016 tax return was the final return for QSD, Plaintiff's purported equity was reflected as a loss, once again making it appear that Plaintiff had agreed that his loan should be converted to equity when he did not.

61. Defendants filed the 2016 QSD tax return in or about September 2017.

62. Plaintiff filed his personal 2016 tax return in September 2017, including as a loss the number from the K-1 prepared by Defendants which number, unbeknownst to Plaintiff and in reliance on Defendants' professional obligation to give him the correct information to include in his return, included his loan.

63. Plaintiff was unaware at the time that he filed his 2016 personal tax return that the loss number he used from his 2016 QSD K-1 included his loan.

Defendants Take Orders from Stevens

64. Upon information and belief, Defendants serve at Stevens' command.

65. Initially, Defendants stymied Plaintiff's attempts to get information from them about QSD's financials and the closing of the sale of the Property.

66. For only one example of many, on Feb. 2, 2016, after Plaintiff emailed Fischer looking for financial information related to QSD, Fischer forwarded the email to Stevens, stating: "Keeps crying into his coffee. Call me later today if you can."

67. When Plaintiff stated to Fischer in another email dated Feb. 2, 2016, that Plaintiff's involvement in QSD "is as close to bankruptcy for me as I have ever experienced," Fischer again forwarded the email to Stevens, with Fischer commenting: "More tears."

68. On February 3, 2016, Fischer emailed Stevens: “I am going to give them [Plaintiff and his accountant] the basic project accounting by the end of the week will show you what I will give him before I do though.”

69. On February 9, 2016, after several emails to Fischer attempting to get information on the sale of the Quogue property, Plaintiff sent Fischer an email stating:

The partners saw money at closing Bill. Closely held companies majority owned by Tim Stevens are de facto Tim Stevens, you know that. Paying off Island Exterior, and Northeast Materials, etc after closing was not in my interest, this was Tim’s equity, should have been treated as such. There was a complete violation of the operating agreement and all basic accounting rules for a wind up of a real estate entity. . . .

70. Fischer texted Stevens after receiving this email from Plaintiff as follows: “Just give me the green light to give him some info so he stops his crying.”

71. Fischer also forwarded Plaintiff’s email to Stevens, stating: “I don’t mind being in the middle but you need to let me know what I am doing here.”

72. Later that same month (February 2016), after Moskowitz again asked Fischer for financial information related to QSD, Fischer emailed Stevens’ secretary: “I am ready to just call him an asshole and tell him to F off.”

The IRS Audit and Defendants’
Attempts to Confirm the Wrongful Amendment

87. By letter dated August 20, 2019, Grassi informed Moskowitz that the IRS was auditing QSD’s 2016 tax return.

88. Upon information and belief, Fischer and another Grassi employee, “Tax Controversy Senior Manager” Matthew McCullough, have been representing QSD in the meetings with the IRS.

89. Upon information and belief, McCullough at all relevant times has been acting within the scope of his employment relationship with Grassi in regard to the audit and in furtherance of Grassi's business.

90. Upon information and belief, the audit remains open as of the date of this Verified Complaint.

91. As set forth in the IRS agent's Information Document Requests (IDRs), the issue of the 2014 conversion of Plaintiff's loan to equity has been raised by the IRS in the audit.

92. Upon information and belief, the IRS has issued six IDRs to date.

93. IDR number 0002, dated June 27, 2019, specifically asks QSD to "[p]rovide all relevant documentation to substantiate the amended 2014 return when the partner's accounts were changed (increased)" and "[a]ny and all other documentation necessary to justify the partner's basis and capital accounts."

94. IDR number 0003 adds a request for "[d]ocumentation (i.e. conversion document) that clearly defines and includes language that future monetary advances were to be reclassified to capital contributions." These requests are repeated in IDRs 0005 and 0006.

95. Because these IDRs relate to a central issue in the QSD Action, Plaintiff's counsel in that Action requested that Grassi provide her with all of the documentation produced to, and correspondence with, the IRS during the audit.

96. Grassi, through its counsel, agreed to provide these items.

97. Thereafter, pursuant to that agreement, Plaintiff learned that Defendants had given the IRS a post-amendment summary basis sheet that wrongfully shows Plaintiff's loan as a contribution to equity.

98. Pursuant to that agreement, Plaintiff also learned that Defendants had given the IRS an amendment to QSD's operating agreement signed in connection with a 2014 financing that Stevens relies on in the QSD Action to purported "prove" that Plaintiff's loan was correctly converted to equity because the amendment does not reference Plaintiff's loan.

99. Although it had not initially been turned over pursuant to the agreement, Plaintiff also eventually learned that Defendants had given the IRS the email attached to Catafago's March 30, 2016 email to Fischer, also used to purportedly justify Defendants' amendment of the 2014 return.

100. Upon information and belief based on the above, Defendants gave these documents to the IRS to attempt to convince the IRS to ratify the amendment of the 2014 return to reflect the conversion of Plaintiff's loan to a capital contribution and to ratify the subsequent returns and K-1s reflecting this wrongful conversion.

101. At the time that Defendants gave these documents to the IRS, Defendants were aware that there was a conflict between Stevens' position that the loan was converted to equity Plaintiff's position that it was not.

FIRST CAUSE OF ACTION
FRAUD

102. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 101 as if fully set forth herein.

103. Defendants deceived Plaintiff by materially misrepresenting, purposely concealing, and/or knowingly failing to disclose the material fact that they intended to amend, and did amend, QSD's 2014 tax return to reflect the purported conversion of Plaintiff's loan, at the time worth close to \$2 million with interest, to a straight contribution to equity.

104. In reliance on Defendants' false statements and material omissions related to the amendment of QSD's 2014 tax return and the basis for the numbers set forth in Plaintiff's 2015 and 2016 K-1s, Plaintiff did not object to the amendment and was unaware in subsequent years that he was including incorrect information in his own tax returns.

105. Plaintiff's reliance on Defendants' misrepresentations and omissions was both foreseeable and reasonable in light of the expertise and familiarity with established and accepted standards of professional accounting practice that Fischer held himself as possessing.

106. Plaintiff's continued reliance on Defendants' misrepresentations and omissions was both foreseeable and reasonable in light of the long professional relationship between Plaintiff and Defendants in regard to QSD.

107. Plaintiff's continued reliance on Defendants' misrepresentations and omissions was both foreseeable and reasonable because Defendants were obligated under the AICPA Code of Professional Conduct to provide impartial services to QSD, not to do Stevens' bidding, take advice from Stevens' counsel and advocate on Stevens' behalf and against Plaintiffs' interests.

108. As a direct and proximate result of Defendants' material misrepresentations and omissions, Plaintiff has suffered damages in excess of \$2,000,000.00

109. As a result of this willful and wanton conduct, Plaintiff should be awarded punitive damages in an amount determined by the Court.

SECOND CAUSE OF ACTION
ACCOUNTING MALPRACTICE

110. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 109 as if fully set forth herein.

111. Defendants have failed, and continue to fail, to exercise the degree of skill and expertise exhibited by the accepted standards of accounting practice.

112. The AICPA Integrity and Objectivity Rule is set forth in AICPA Code of Professional Conduct section 1.100.001.01 for CPAs in public practice, such as Defendants.

113. Section 1.100.001.01 of the AICPA Code of Professional Conduct states that “in the performance of any professional service, a member shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.”

114. And, under AICPA Rule 1.110.010.04(e), “Representing two clients at the same time regarding the same matter who are in a legal dispute with each other, such as during divorce proceedings or the dissolution of a partnership” is expressly a situation that could (and in this case, did) give rise to a conflict of interest.

115. While Defendants were obligated to provide objective advice and services to QSD, it is clear that Defendants considered Stevens to be their client, taking direction from Stevens, advice from Stevens’ counsel and ignoring and disparaging Plaintiff, despite the fact that Plaintiff was a manager and 50% member of QSD.

116. Defendants and Stevens had an undeniable conflict of interest with Plaintiff in regard to the 2014 amendment of QSD’s tax return, the tax returns and K-1s thereafter and the continuing IRS audit.

117. Plaintiff in the QSD Action is seeking damages for, among other things, Stevens’ breach of his guarantee of Plaintiff’s loan to QSD—the very loan that Defendants attempted to abolish as a matter of law by the amendment of the 2014 tax return.

118. The failure of Defendants to act according to established and accepted standards of professional accounting practice has caused Plaintiff to expend substantial sums of money in legal fees for the work and time involved in attempting to rectify and refute Defendants' amendment of QSD's tax return and the incorrect returns and K-1 that flowed from it, among other liabilities.

119. Defendants' failure to inform Plaintiff that they intended to, and did, amend QSD's 2014 tax return to purportedly wipe out Stevens' almost \$2 million obligation to Plaintiff, their subsequent issuance of K-1s and filing of tax returns reflecting the wrongful amendment (unbeknownst to Plaintiff) and their continuing attempts in the IRS audit to have the IRS ratify the amendment represent continuing and ongoing violations of Defendants' duty to exercise a level of care, skill and diligence as accountants and registered tax preparers and a continuing and ongoing failure to discharge their duties in a proper, skillful and diligent manner.

120. As a direct and proximate result of Defendants' misconduct as set forth above, which continued up through and until at least the present, Plaintiff was and continues to be harmed.

121. As a result of these willful and wanton acts, Plaintiff should be awarded punitive damages in an amount to be determined by the Court.

THIRD CAUSE OF ACTION
AIDING AND ABETTING STEVENS' BREACH
OF FIDUCIARY DUTY TO PLAINTIFF

122. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 121 as if fully set forth herein.

123. As a Manager and tax matters partner of QSD, Stevens had a fiduciary duty to act in the best interests of the other members of QSD, including Plaintiff, and not to put his own personal interests ahead of those of the other members.

124. Upon information and belief, Stevens' breached, and continues to breach, his fiduciary duty to Plaintiff by amending QSD's 2014 tax return in an attempt to create evidence in the QSD Action, attempting to prevent himself from being subject to an estoppel in regard to a \$2 million liability in the QSD Action and continuing to represent to the IRS even to the present that the amendment was proper, in an attempt to convince the IRS of the same.

125. Upon information and belief, Defendants knew or should have known that Plaintiff had not consented to the change of his loan to equity in 2016 or anytime thereafter, including up through the time of the pending IRS audit.

126. Defendants were and are indispensable, and providing substantial assistance to, Stevens in his continuing breach of his fiduciary duties to Plaintiff.

FOURTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION,
IN THE ALTERNATIVE

127. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 126 as if fully set forth herein.

128. Defendants were aware that the K-1s they prepared were to be used by Plaintiff for the particular purpose of preparing his own personal tax returns.

129. Plaintiff detrimentally relied on the incorrect K-1s prepared by Defendants in preparing his own tax returns.

130. Defendants had a duty to Plaintiff to provide him with the correct information on his K-1s and/or at the very least, to inform Plaintiff that Defendants intended to, and did, file an amended 2014 QSD tax return.

131. Defendants knew, or should have known, that the amendment of QSD's tax return and the subsequent K-1 issued were incorrect.

132. Defendants were aware that Plaintiff would rely on their misstatements and omissions in regard to the amended 2014 QSD tax return and the QSD K-1s that Defendants prepared thereafter.

WHEREFORE, plaintiff Michael Moskowitz demands judgment against defendants William Fischer and Grassi & Co. Certified Public Accountants, P.C.:

1. on the first cause of action:

- a. judgment in an amount to be determined by the court, but no less than \$2,000,000.00;
- b. punitive damages in an amount to be determined by the court but no less than \$2,000,000.00;

2. on the second cause of action:

- a. judgment in an amount to be determined by the court, but no less than \$2,000,000.00;
- b. punitive damages in an amount to be determined by the court but no less than \$2,000,000.00;

3. on the third cause of action:


- a. judgment in an amount to be determined by the court, but no less than \$2,000,000.00;

- b. punitive damages in an amount to be determined by the court but no less than \$2,000,000.00;
- 4. on the fourth cause of action:
 - a. judgment in an amount to be determined by the court, but no less than \$2,000,000.00;
- 5. interest;
- 6. costs and disbursements of this action; and
- 7. such other and further relief as may seem proper to the court.

Dated: Riverhead, New York
March 29, 2021

Esseks, Hefter, Angel,
Di Talia & Pasca, LLP
Attorneys for Plaintiff

By:



Kim A. Smith
108 East Main Street
P. O. Box 279
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VERIFICATION

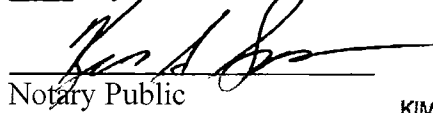
STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

Michael Moskowitz, being duly sworn, deposes and says:

I am the plaintiff in the above action. I have read the foregoing complaint and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.


Michael Moskowitz

Sworn to before me this
24th day of March, 2021


Notary Public

KIM A. SMITH
NOTARY PUBLIC-STATE OF NEW YORK
NO. 023M6308561
QUALIFIED IN SUFFOLK COUNTY ²²
MY COMMISSION EXPIRES JULY 28, 20