

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

FREEDOM HOLDING, INC., ELITE WORLD  
GROUP, LLC, E1972 INC., and SILVIO SCAGLIA,

Plaintiffs,

v.

JULIA HAART A/K/A JULIA HENDLER and  
HAART DYNASTY LLC,

Defendants.

Index No. 650661/2022

Date Filed: February 10, 2022

Mot. Seq. 001

Hon. Douglas E. Hoffman

**MEMORANDUM OF LAW IN SUPPORT OF MOTION  
TO DISMISS IN WHOLE OR IN PART SEVERAL OF THE REMAINING  
CAUSES OF ACTION OF PLAINTIFFS' FIRST AMENDED COMPLAINT**

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### Preliminary Statement

Defendants Julia Haart (“Haart”), sued herein as Julia Haart a/k/a Julia Hendler, and Haart Dynasty LLC (“Haart Dynasty”) (collectively, “defendants”), by their attorneys, Ajamie LLP, respectfully submit this memorandum in support of defendants’ order to show cause application to dismiss in whole or in part several of the five remaining causes of action of the first amended complaint of plaintiffs Freedom Holding, Inc. (“Freedom Holding”), Elite World Group, LLC (“EWG”), E1972 Inc. (“E1972”) and Silvio Scaglia (“Scaglia”) (collectively, “plaintiffs”), dated February 22, 2022 (the “amended complaint” or “Am. Compl.”; NYSCEF Doc. No. 4), pursuant to CPLR 3211(a) (3), (5) and (7).

Specifically, defendants seek the following relief:

(a) pursuant to CPLR 3211(a)(7), dismissing the first and third causes of action of the amended complaint for failure to state a cause of action (the first cause is for conversion, asserted by Freedom Holding and Scaglia against defendants; the third cause is for breach of contract, asserted by Scaglia against Haart);

(b) pursuant to CPLR 3211(a)(3), alternatively, should the first cause of action survive dismissal under CPLR 3211(a)(7), dismissing such cause of action as far as Scaglia asserts it on the ground that Scaglia lacks standing to sue on that claim;

(c) pursuant to CPLR 3211(a)(3), should the third cause of action survive dismissal under CPLR 3211(a)(7), dismissing such cause of action as far as Scaglia asserts it on the ground that Scaglia lacks standing to sue on that claim;

(d) pursuant to CPLR 3211(a)(5), alternatively, should the third cause of action survive dismissal under CPLR 3211(a)(7), dismissing such cause of action on the ground that it is barred by the statute of frauds (GOL § 5-701(a)(1));

(e) pursuant to CPLR 3211(a)(7), dismissing the fourth cause of action of the amended complaint (which is for unjust enrichment, asserted by Freedom Holding and Scaglia against defendants) for failure to state a cause of action as duplicative of the second cause of action (which is for breach of fiduciary duty, asserted by Freedom Holding against Haart) and/or the first cause of action;

(f) pursuant to CPLR 3211(a)(3), alternatively, should the fourth cause of action survive dismissal under CPLR 3211(a)(7), dismissing such cause of action as far as it is asserted by Scaglia on the ground that Scaglia lacks standing to sue on that claim;

(g) pursuant to CPLR 3211(a)(3), dismissing the fifth (and now last remaining) cause of action of the amended complaint (which is for a constructive trust, asserted by Freedom Holding and Scaglia against defendants) as far as it is asserted by Scaglia on the ground that Scaglia lacks standing to sue on that claim; and

(h) granting such other and further relief as the Court deems just and proper.

The amended complaint, consisting until recently of ten causes of action, is **Exhibit A** to the moving affirmation of Lewis S. Fischbein (the “Fischbein affirmation”), counsel to Ajamie LLP, which accompanies this memorandum. Plaintiffs’ notice of voluntary discontinuance of the sixth through tenth (and then last) causes of action pursuant to CPLR 3217(a)(1), dated May 27, 2022 (NYSCEF Doc. No. 25) is **Exhibit B** to the Fischbein affirmation. That leaves the first through fifth causes of action for adjudication and eliminates EWG and E1972 as plaintiffs; they had brought the sixth through ninth causes of action and EWG the tenth cause of action.

The court should completely disregard those latter causes of action and their allegations concerning Haart’s supposed “gross corporate overspending” – in reality her incurring image-related expenses for EWG and/or E1972 that were known to and approved by Scaglia and one or

more of his corporate deputies all along. In particular, the court should ignore the following paragraphs of the amended complaint: paragraphs 1-2; portions of paragraph 5; paragraphs 16-27; paragraphs 67-92; and paragraph 93, sections B-C. In addition, the court should ignore Scaglia's February 7, 2022 letter to Haart concerning the imminent dismissal as CEO of EWG, which is Exhibit 2 to the amended complaint and designed to poison the well. Even if the letter is considered during the course of this litigation, Haart will rebut the purported reasons for such corporate action at the appropriate time.

The first through fifth causes of action focus on Haart's withdrawal of \$850,000 from a Freedom Holding bank account at J.P. Morgan. Although it does not concern defendants' instant motion, apart from being an authorized signatory on the bank account, Haart properly withdrew such amount as she was and is owed several millions of dollars as her 50% (fifty percent) share of a management fee of 2% (two percent) of consolidated gross revenues of EWG and its subsidiaries payable by EWG to Freedom Holding.

### **Summary of Argument**

Preliminarily, Freedom Holding is a Delaware corporation, which is co-owned by Scaglia and Haart (Am. Compl. ¶¶ 6, 13). The first, fourth and fifth causes of action are brought by Freedom Holding and Scaglia; the second cause of action is brought by Freedom Holding; and the third cause of action is brought by Scaglia. Defendants seek dismissal in whole or in part of all of those causes of action except the second cause of action. For choice of law purposes, Delaware, the state of incorporation of Freedom Holding, determines the applicable law for substantive claims Freedom Holding and Scaglia, as a Freedom Holding shareholder, assert.

The first cause of action, which is for conversion of \$850,000 Haart withdrew from a Freedom Holding bank account, fails to state a cause of action (CPLR 3211(a)(7)). Delaware

law provides that a cause of action for conversion is improper where, as here, a claim for the payment of money is involved.

Moreover, Scaglia lacks standing (CPLR 3211(a)(3)) as a shareholder to assert the conversion claim. Delaware law also governs the question of standing, which is a substantive issue; the law of the state of incorporation of Freedom Holding again controls. Scaglia does not claim any individual harm sustained by reason of Haart's withdrawal apart from supposed damages that are not recoverable by him for breach of an alleged oral agreement between Scaglia and Haart that is also void under the statute of frauds (as discussed in connection with the third cause of action, for breach of contract) – let alone damages independent of injury to Freedom Holding, as is necessary for Scaglia to maintain a direct claim.

The third cause of action, for breach of an alleged January 19, 2022 oral agreement whereby Scaglia and Haart each supposedly committed that the sole withdrawals from the Freedom Holding account would be \$250,000 to Scaglia and \$250,000 to Haart, fails to state a cause of action (CPLR 3211(a)(7)) and/or Scaglia does not have standing (CPLR 3211(a)(3)) to maintain it. Freedom Holding, the owner of the account (Am. Compl. ¶ 39), is the only party that could sustain damages for breach of such alleged agreement. Moreover, the alleged oral agreement runs afoul of the statute of frauds (GOL § 5-701(a)(1); CPLR 3211(a)(5)) as an agreement of indefinite duration.

The fourth cause of action, for unjust enrichment as to the \$850,000 withdrawn by Haart, fails to state a cause of action (CPLR 3211(a)(7)) as duplicative of the second cause of action, for breach of fiduciary duty, under Delaware law. Alternatively, should the conversion cause of action (first cause) not be dismissed for failure to state a cause of action, the unjust enrichment cause of action fails to state a cause of action (CPLR 3211(a)(7)) as duplicative of the conversion

cause, likewise under Delaware law. At a minimum, Scaglia lacks standing (CPLR 3211(a)(3)) as a shareholder to assert this unjust enrichment claim, for the same reasons he lacks standing to assert the conversion cause of action.

Scaglia also lacks standing (CPLR 3211(a)(3)) as a shareholder to assert the fifth cause of action, for a constructive trust over the \$850,000 withdrawn, also for the same reasons he lacks standing to assert the conversion cause of action.

**Key Allegations of the First, Third, Fourth and Fifth Causes of Action of the Amended Complaint**

**First Cause of Action: Conversion of \$850,000 Withdrawn, Asserted by Freedom Holding and Scaglia Against Haart and Haart Dynasty**

*Am. Compl. ¶ 3 [incorporated by reference]:* “ ... [On February 8, 2022], Haart illegally transferred \$850,000 from Freedom Holding to Defendant Haart Dynasty LLC, a limited liability company controlled by Haart.”

*Am. Compl. ¶ 4 [incorporated by reference]:* “ ... “Haart’s withdrawal also breached a January 19, 2022 agreement between Haart and Plaintiff Silvio Scaglia. Under that agreement, Haart and Mr. Scaglia committed that the only withdrawals from the Freedom Holding account—other than to cover a mortgage, rent, and current living expenditures—would be \$250,000 to Haart and \$250,000 to Mr. Scaglia.”

*Am. Compl. ¶ 13 [incorporated by reference]:* “In 2019 ... Haart was ... provided access to a Freedom Holding bank account at J.P. Morgan.”

*Am. Compl. ¶ 37:* “Haart was entrusted with access to the Freedom Holding bank account at J.P. Morgan.”

*Am. Compl. ¶ 38:* “The funds in the account constitute a specific, identifiable fund, which Haart was obligated to treat consistent with her fiduciary duties to Freedom Holding and her agreement with Mr. Scaglia, dated January 19, 2022.”

*Am. Compl. ¶ 39:* “The funds in the account are the property of Freedom Holding.”

*Am. Compl. ¶ 40:* “Instead of adhering to her obligations [and] the limitations placed on her use of that account, Haart on February 8, 2022, misappropriated \$850,000 from the account.”

*Am. Compl. ¶ 42:* “Haart’s actions constitute conversion and have damaged Plaintiffs.”

**Third Cause of Action: Breach of Contract Regarding an Alleged January 19, 2022 Agreement, Asserted by Scaglia Against Haart**

*Am. Compl. ¶ 28 [incorporated by reference]:* “On January 19, 2022, Mr. Scaglia met with Haart and Freedom Holding’s accountant, Jeffrey S. Feinman of DDK & Company, to discuss Freedom Holding’s finances. The meeting was held at Mr. Scaglia and Haart’s home at 70 Vestry Street, New York, NY. At the meeting it was agreed that limits should be placed on withdrawals from the Freedom Holding bank account at J.P. Morgan. Haart and Ms. Scaglia agreed that the only withdrawals from the Freedom Holding account—other than to cover a mortgage, rent, and current living expenditures—would be \$250,000 to Haart and \$250,000 to Scaglia.”

*Am. Compl. ¶ 29 [incorporated by reference]:* “Pursuant to that agreement, neither Haart nor Mr. Scaglia were permitted to make any withdrawals totaling over \$250,000. Shortly after the agreement was entered, Haart withdrew \$250,000 from the account.”

*Am. Compl. ¶ 50:* “On January 19, 2022, Mr. Scaglia and Haart entered into a contract pursuant to which each committed that the only withdrawals from the Freedom Holding account would be \$250,000 to Haart and \$250,000 to Mr. Scaglia.”

*Am. Compl. ¶ 51:* “Shortly after the contract was entered, Haart withdrew at least \$250,000 from that account.”

*Am. Compl. ¶ 52:* “On February 8, 2022, Haart withdrew another \$850,000 from the account.”

*Am. Compl. ¶ 53:* “Haart’s withdrawal of \$850,000 constitutes a breach of her contract with Mr. Scaglia, and Mr. Scaglia has been damaged thereby.”

**Fourth Cause of Action: Unjust  
Enrichment as to the \$850,000  
Withdrawn, Asserted by Freedom  
Holding and Scaglia Against Defendants**

*Am. Compl. ¶ 55:* “Haart was entrusted with access to the Freedom Holding bank account at J.P. Morgan.”

*Am. Compl. ¶ 56:* “The funds in the account constitute a specific, identifiable fund, which Haart was obligated to treat consistent with her fiduciary duties to Freedom Holding and her agreement with Mr. Scaglia, dated January 19, 2022.”

*Am. Compl. ¶ 57:* “The funds in the account are the property of Freedom Holding.”

*Am. Compl. ¶ 58:* “Instead of adhering to her obligations [and] the limitations placed on her use of that account, Haart on February 8, 2022, misappropriated \$850,000 from the account by transferring it to a company under her control, Haart Dynasty LLC.”

*Am. Compl. ¶ 59:* “Haart and Haart Dynasty LLC have been unjustly enriched by Haart’s misappropriation, at the expense of Freedom Holding and Mr. Scaglia.”

*Am. Compl. ¶ 60:* “It is against equity and good conscience to permit Haart and Haart Dynasty LLC to retain the \$850,000 she misappropriated.”



**Fifth Cause of Action: Constructive Trust as to the \$850,000 Withdrawn, Asserted by Freedom Holding and Scaglia Against Defendants**

*Am. Compl. ¶ 62:* “Haart was entrusted with access to the Freedom Holding bank account at J.P. Morgan.”

*Am. Compl. ¶ 63:* “The funds in the account constitute a specific, identifiable fund, which Haart was obligated to treat consistent with her fiduciary duties to Freedom Holding and her agreement with Mr. Scaglia, dated January 19, 2022.”

*Am. Compl. ¶ 64:* “The funds in the account are the property of Freedom Holding.”

*Am. Compl. ¶ 65:* “Instead of adhering to her obligations [and] the limitations placed on her use of that account, Haart on February 8, 2022, misappropriated \$850,000 from the account by transferring it to a company under her control, Haart Dynasty LLC.”

*Am. Compl. ¶ 66:* “Haart and Haart Dynasty LLC are thereby holding the \$850,000 in constructive trust for Freedom Holding.”

**Argument**

The standards for dismissal under CPLR 3211(a) (3), (5) and (7) are well-known and therefore will not be repeated here.

**I. Delaware Law Governs the Causes of Action Maintained by Freedom Holding, a Delaware Corporation, and Scaglia, as a Shareholder**

Preliminarily, for choice of law purposes, Delaware, the state of incorporation of Freedom Holding, determines the applicable law for substantive claims asserted by Freedom Holding and by Scaglia as a shareholder. *Hart v. General Motors Corp.*, 129 A.D.2d 179, 182-84, 517 N.Y.S.2d 490, 492-93 (1st Dept. 1987) (“Uniform treatment of directors, officers and shareholders,’ the Restatement notes, ‘is an important objective which can only be attained by

having the rights and liabilities of those persons with respect to the corporation governed by a single law.’ (*Restatement, Second, Conflict of Laws*, § 302, comment e, at 309.)”); accord *Vaughan v. Standard General L.P.*, No. 653918/2015, 2016 WL 4529040, at \*2 (Sup. Ct. N.Y. Co. Aug. 30, 2016), *aff’d*, 154 A.D.3d 581, 63 N.Y.S.3d 44 (1st Dept. 2017) (“Under New York rules governing the choice of law, Delaware law will apply to the claims because AA is incorporated in Delaware.”).

“In deciding disputes between and among corporate actors, Delaware subscribes to the internal affairs doctrine, a conflict of laws principle under which the internal affairs of a corporate entity are governed by the laws of the state of incorporation ... “ *Xcell Energy & Coal Co., LLC v. Energy Inv. Grp., LLC*, 2014 WL 2964076, at \*5 (Del.Ch. June 30, 2014) (footnote omitted).

## **II. The First Cause of Action Fails to State a Cause of Action for Conversion Under Delaware Law**

Freedom Holding and Scaglia’s conversion claim comprising the first cause of action should be dismissed pursuant to CPLR 3211(a)(7) for failure to state a cause of action for conversion. The conversion claim concerns the withdrawal of certain funds – \$850,000 – and thus seeks the payment of money to plaintiffs (*see* Am. Compl. ¶ 93, § A). However, under Delaware law, “an action in conversion will not lie to enforce a claim for the payment of money.” *Anschutz Corp. v. Brown Robin Cap., LLC*, No. CV 2019-0710-JRS, 2020 WL 3096744, at \*18 (Del. Ch. June 11, 2020) (internal quotation marks and citation omitted), *rearg. granted on other grounds*, 2020 WL 4249874 (Del. Ch. July 24, 2020); *AM Gen. Holdings LLC on behalf of Ilshar Cap. LLC v. Renco Grp., Inc.*, No. CV 7639-VCN, 2013 WL 5863010, at \*16 (Del. Ch. Oct. 31, 2013) (internal quotation marks and citation omitted).

**III. In Addition, as a Shareholder,  
Scaglia Has No Standing to  
Maintain the Conversion Claim**

Preliminarily, whether a shareholder, such as Scaglia (Am. Compl. ¶ 6), has standing to sue qualifies as a substantive issue in which the law of the state of incorporation – here Delaware, as noted – also applies. *Yusufzai v. Owners Transp. Comm'n, Inc.*, 18 Misc. 3d 1127(A), 856 N.Y.S.2d 504, 2008 WL 343022, at \*2 (Sup. Ct. Queens Co. 2008) (table).

Scaglia lacks standing under Delaware law to assert a conversion claim against defendants; that claim as far as asserted by Scaglia should be dismissed in the absence of standing pursuant to CPLR 3211(a)(3). He does not allege *any* individual harm suffered as a result of defendants' alleged misappropriation apart from damages that are not recoverable by him for breach of a void agreement under the statute of frauds (*see* discussion below regarding the third cause of action for breach of contract) – much less harm independent of any claimed injury to Freedom Holding, as is required for Scaglia to maintain a direct claim. *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1039 (Del. 2004) (“The stockholder's claimed direct injury must be independent of any alleged injury to the corporation. The stockholder must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.”); *accord Hribar v. Marsh & McLennan Companies, Inc.*, 73 A.D.3d 859, 860, 900 N.Y.S.2d 449, 451 (2d Dept. 2010).

The proper analysis must be based “solely” on the *Tooley* criteria. *Tooley*, 845 A.2d at 1035. Scaglia's classification of his claim as direct (*see* Am. Compl. ¶ 42: “Haart's actions constitute conversion and have damaged Plaintiffs.”), is irrelevant. *Tooley, supra*. Paragraph 39 of the amended complaint admits that “[t]he funds in the [Freedom Holding bank] account are the property of Freedom Holding” – the only purportedly injured party.

**IV. The Third Cause of Action Fails to State a Cause of Action for Breach of Contract and/or Scaglia Has No Standing to Maintain That Claim**

The third cause of action, for breach of a supposed January 19, 2022 oral agreement whereby Scaglia and Haart each purportedly committed that the only withdrawals from the Freedom Holding account would be \$250,000 to Scaglia and \$250,000 to Haart, fails to state a cause of action and/or Scaglia does not have standing to assert it. Freedom Holding, the owner of the account (Am. Compl. ¶ 39, incorporated by reference in the third cause of action (Am. Compl. ¶ 49), is the only party that would suffer damages for breach of such alleged agreement and does not assert the third cause of action. Absent “a clear demonstration” of damages, a cause of action for breach of contract cannot be maintained. *Milan Music, Inc. v. Emmel Commc'ns Booking, Inc.*, 37 A.D.3d 206, 206, 829 N.Y.S.2d 485, 486 (1st Dept. 2007).

**V. In Addition, the Statute of Frauds Prohibits the Breach of Contract Claim**

The alleged January 19, 2022 agreement, said to be made in New York, not claimed to be in writing and clearly verbal (*see* Am. Compl. ¶ 28), is barred by the statute of frauds (GOL § 5-701(a)(1); CPLR 3211(a)(5)) as an agreement of indefinite duration. *D & N Boening, Inc. v. Kirsch Beverages, Inc.*, 63 N.Y.2d 449, 457, 483 N.Y.S.2d 164, 167 (1984) (“[T]he oral agreement between the parties called for performance of an indefinite duration and could only be terminated within one year by its breach during that period. As such, the agreement fell within the Statute of Frauds and was void.”). As here, “[c]ontracts of indefinite duration, which by their terms an obligor can neither perform nor unilaterally terminate without breach or death within one year of making, require a writing to be enforceable.” *McCagg v. Schulte Roth & Zabel LLP*,

No. 601566/04, 2005 N.Y. Slip Op. 30357(U), 2005 WL 6229838 (Sup. Ct. N.Y. Co. Sept. 23, 2005), *aff'd*, 36 A.D.3d 424, 825 N.Y.S.2d 643 (1st Dept. 2007).

**VI. The Fourth Cause of Action, for Unjust Enrichment, Is Duplicative of the Second Cause of Action, For Breach of Fiduciary Duty**

The unjust enrichment claim should be dismissed pursuant to CPLR 3211(a)(7) as duplicative of the second cause of action for breach of fiduciary duty under Delaware law. *Vaughan*, 2016 WL 4529040, at \*6 (citing Delaware cases). Both claims are based on the same alleged breach of fiduciary duty (*see* Am. Compl. ¶¶ 45, 56), and are therefore duplicative. *Id.* The same principle applies under New York law. *Corsello v. Verizon NY, Inc.*, 18 N.Y.3d 777, 790-91, 944 N.Y.S.2d 732, 740 (2012) (“An unjust enrichment claim is not available where it simply duplicates ... a conventional contract or tort claim.”).

**VII. Alternatively, Should the Conversion Claim Survive Dismissal, the Unjust Enrichment Claim Is Duplicative of the Conversion Claim**

This follows under Delaware law, requiring dismissal of the unjust enrichment claim pursuant to CPLR 3211(a)(7). *Weiner v. King*, 43 Misc. 3d 1203(A), 990 N.Y.S.2d 440, 2014 WL 1258230, at \*7 (Sup. Ct. N.Y. Co. 2014) (table) (construing Delaware law). “Identical facts are alleged in support of the claims for conversion and unjust enrichment,” *id.*, in view of the same or substantively the same language of paragraphs 3-4, 28-36, 37-41, 43-47, 49-53, and 54-58 of the amended complaint. Again, the same principle applies under New York law. *Corsello*, *supra*.

**VIII. In Addition, as a Shareholder,  
Scaglia Has No Standing to Maintain  
the Unjust Enrichment Claim**

Similarly, Scaglia lacks standing under Delaware law to assert an unjust enrichment claim against defendants; that claim as far as asserted by Scaglia should be dismissed in the absence of standing pursuant to CPLR 3211(a)(3). As with the breach of contract claim, he does not allege *any* individual harm suffered as a result of defendants' alleged unjust enrichment – let alone harm independent of any claimed injury to Freedom Holding, as is required for Scaglia to maintain a direct claim. *Tooley*, 845 A.2d at 1039.

Also similarly, Scaglia's classification of his claim as direct (*see* Am. Compl. ¶ 59: “Haart and Haart Dynasty LLC have been unjustly enriched by Haart's misappropriation, at the expense of Freedom Holding and Mr. Scaglia.”), is irrelevant. *Tooley*, 845 A.2d at 1035. Paragraph 57 of the amended complaint admits that “[t]he funds in the [Freedom Holding bank] account are the property of Freedom Holding” – again, the only purportedly injured party.

**IX. As a Shareholder, Scaglia  
Has No Standing to Maintain  
the Constructive Trust Claim**

Likewise, Scaglia lacks standing under Delaware law to assert a constructive trust claim against defendants; that claim as far as asserted by Scaglia should be dismissed in the absence of standing pursuant to CPLR 3211(a)(3). As with the breach of contract and unjust enrichment claims, he does not allege *any* individual harm suffered as a result of defendants' actions – let alone harm independent of any claimed injury to Freedom Holding, as is required for Scaglia to maintain a direct claim. *Tooley*, 845 A.2d at 1039.

In that regard, paragraph 64 of the Amended Complaint admits that “[t]he funds in the [Freedom Holding bank] account are the property of Freedom Holding” – once again, the only

purportedly injured party. Indeed, paragraph 66 of the amended complaint admits that only Freedom Holding is entitled to assert the constructive trust claim: “Haart and Haart Dynasty LLC are thereby holding the \$850,000 in constructive trust for *Freedom Holding*” (emphasis added).

### Conclusion

For all of the aforementioned reasons, defendants respectfully request that plaintiffs’ first, third, fourth and fifth causes of action be dismissed in whole or in part pursuant to CPLR 3211(a)(1), (5) and (7), as set forth in defendants’ order to show cause application.

Dated: New York, New York  
May 31, 2022

Respectfully submitted,

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**CERTIFICATION AS TO WORD COUNT**

LEWIS S. FISCHBEIN, an attorney duly admitted to practice before the Courts of the State of New York, hereby certifies under penalties of perjury that the within document the undersigned is filing on NYSECF contains 3,871 words and that it complies with the word count limit of the Court set forth in section 202.8-b(a) of the Uniform Civil Rules for the Supreme Court and the County Court.

*Lewis S. Fischbein*  
LEWIS S. FISCHBEIN

Affirmed this 31st  
day of May, 2022.