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

ALVIN CLAYTON FERNANDES, Petitioner, -against- MATRIX MODEL STAFFING, INC. Respondent.	**Index No. 160294/2021** **AFFIRMATION OF THOMAS M. MULLANEY**

Thomas M. Mullaney, an attorney in good standing in the State of New York, attorney for MATRIX MODEL STAFFING, affirms the truth of the following under penalties of perjury:

1. I make this affirmation in support of Respondent's application to this Court to: i) permit the Notice of Election, dated May 3, 2022, of Respondent's majority shareholder, Jacquelyn Willard, to purchase the ownership shares of Petitioner in Respondent at their fair value, past ninety (90) days after the filing of the corrected Verified Petition on November 11, 2021 to elect to purchase Petitioner's shares pursuant to New York Business Corporation Law § 1118(a), and ii) to limit the scope of the reference of this matter to the Special Referees Part by this Court, dated April 27, 2022 to the determination of the fair value of Petitioner's shares.

2. Unless otherwise noted, I base this affirmation on my own personal knowledge and review of pleadings filed in this case. On November 11, 2022 I notified Petitioner's counsel of my intention to file the instant application, and the time, date, place and manner thereof, as required by 22 N.Y.C.R.R. § 202.8(e).

3. Attached as Exhibit A is a true and correct copy of the May 3, 2022 Notice of Election of Ms. Willard.

4. Respondent has made no objection to that Notice of Election.

5. On November 4, 2022, some six (6) months of silence after that Notice of Election, one of Petitioner's counsel unilaterally declared the Notice of Election a nullity, and summarily declined to agree to limit the reference to a determination of the fair value of Petitioner's shares.

6. Petitioner's counsel has declined to say why Petitioner is unwilling to accept a purchase of his minority ownership stake at fair market value – even though that exactly the relief he is entitled to receive by the Petition he filed and the statute upon which it is based.

7. Respondent's Ms. Willard made her election mindful of the April 20, 2022 ruling of this Court (attached hereto as Exhibit B), which was that "[i]t is, therefore, 'incumbent upon the parties seeking to forestall dissolution to demonstrate to the court the existence of an adequate, alternative remedy.' [Matter of Kemp & Beatley], 64 N.Y.2d 63, 74 (1984)." (NYSCEF Doc. No. 35) This Court continued, "[a]n election after the 90 days is subject to the Court's discretion (see BCL § 1118[a])." (Id. at 7) In addition: "[R]espondent Matrix cannot avoid dissolution via BCL § 1118 at this time; Willard having not elected to exercise her rights under § 1118." (Id. at 7)(underlining added)

8. Respondent took the Court's suggestion to heart, and promptly offered exactly that adequate alternative. Petitioner having rejected it, without any substantive explanation, Respondent now seeks the Court's exercise of its discretion to permit the election after the 90 days.

9. Respondent respectfully submits that there can be no prejudice to Petitioner if the election were permitted after the 90-day period had ended, and only two (2) weeks after this

Court's April 22, 2022 Decision and Order. This is particularly true where Petitioner allowed six (6) months to pass before it even acknowledged the Notice of Election, by branding it "a nullity."

10. Petitioner has not articulated any such prejudice, although I have repeatedly asked Petitioner's counsel why he will not accept the full and fair value of Petitioner's shares.

11. In support of the requested exercise of this Court's discretion, it is respectfully noted that this Court also held that: "In determining whether involuntary dissolution is appropriate, the Court must consider whether dissolution is the only feasible means that petitioner will reasonably expect a fair return on investment and whether dissolution is reasonably necessary to protect the rights and interests of shareholders or petitioner (BCL §§ 1104-a[b][1] and [2])." (Id. at 6)

12. Petitioner has not suggested why a liquidation of Respondent's assets, and the termination of employment of its approximately one hundred and seventy (170) employees, is the only reasonable way to protect his single-person investment interest.

13. Petitioner also does not suggest why a dissolution and public asset liquidation is the only feasible means of obtaining a fair return on his investment.

14. To the contrary, if this Court independently determines the fair value of Petitioner's ownership interest, he will be provided a fair return on his investment by definition.

15. In fact, Petitioner's receipt of the fair value of his shares is not just a fair remedy, it is a compulsory one. "Every order of dissolution, however, must be conditioned upon permitting any shareholder of the corporation to elect to purchase the complaining shareholder's stock at fair value." *E.g.*, *Matter of Kemp & Beatley, Inc.*, 64 N.Y.2d 63, 74, 473 N.E.2d 1173, 1180 (1984)

16. Accordingly, given Ms. Willard's Notice of Election and provision of an adequate, alternative remedy to dissolution, a hearing to determine the merits of the Petition for Dissolution and the underlying facts is entirely unnecessary. It would also cause an utter waste of this Court's limited judicial resources.

17. Respondent is already offering to Petitioner one hundred percent (100%) of the relief and award that he would be entitled to obtain if he were victorious.

18. Accordingly, Respondent requests leave to permit the May 3, 2022 Notice of Election, in the Court's discretion, and requests a limitation of this Court's April 20, 2022 reference to the Special Referees Part to the determination of the fair value of Petitioner's shares in Respondent.

Dated: November 14, 2022
New York, New York

By: _____
Thomas M. Mullaney