SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

In the Matter of the Application of JOSEPH M. TROFFA, as Sole Director and Holder of Shares Representing One-Half of the Votes of All Outstanding Shares of Jos. M. Troffa Landscape and Mason Supply, Inc., Petitioner, For the Dissolution of JOS. M. TROFFA LANDSCAPE AND MASON SUPPLY, INC., a Domestic Corporation, Pursuant to Sections 1102 and 1104 (a)(3) of the Business Corporation Law, - against - JONATHAN TROFFA, Respondent.	Index No. 17-00902 Date Purchased: 2-17-2017 Hon. Jerry Garguilo **VERIFIED PETITION**

Petitioner M. Troffa ("Joseph"), by his attorneys, Farrell Fritz, P.C., as and for his Verified Petition, alleges and shows as follows:

NATURE OF THE PROCEEDING

1. This is a special proceeding for judicial dissolution of Jos. M. Troffa Landscape and Mason Supply, Inc. (the "Corporation") pursuant to Sections 1102 and 1104 (a)(3) of the Business Corporation Law ("BCL").

2. The Corporation has two equal shareholders: Joseph, and his son, Respondent Jonathan Troffa ("Jonathan").

3. There is profound internal dissension and conflict among the two shareholders.

4. Jonathan utterly refuses to comply with the reasonable directives of Joseph, who has the inviolable right, as President and sole Director of the Corporation, to manage the Corporation's operations and affairs.

5. As a result of Jonathan's intransigence, Joseph and Jonathan are totally deadlocked.

6. Joseph and Jonathan are so deeply divided that dissolution would be beneficial to the shareholders.

7. Joseph and Jonathan have recognized for years that the Corporation cannot continue to function under such divided control.

8. Starting in 2014, Joseph and Jonathan attempted to resolve their impasse by negotiating a division of the business between them as an alternative to dissolution. The negotiations failed.

9. In 2016, Jonathan finally sued Joseph for dissolution, after which the Court, Garguilo, J., became directly involved in settlement negotiations. The negotiations failed again, in part because Jonathan at that time claimed he was entitled to an ownership interest in real property transactions that went back decades, some before he was even a shareholder of the Corporation.

10. Eventually, Joseph consented to dissolution, but Jonathan withdrew his petition for dissolution before the Court could rule on the merits.

11. At last, despite this Court's many efforts, all attempts at settlement have failed.

12. The ongoing dissension, conflict and litigation among Joseph and Jonathan is having a substantial adverse impact upon the finances of the Corporation, as evidenced by the Corporation's preliminary financial statements for the year ended December 31, 2016, which

report, among other things, a $577,000 (13%) decline in sales versus the previous year, bringing the Corporation's sales to their lowest point since 2010; an approximate $71,000 (185%) decline in net income versus the previous year; and a net loss over $34,000.

13. As a result, Joseph, as sole Director of the Corporation, duly adopted a resolution of the Board of Directors of the Corporation, determining that dissolution of the Corporation and liquidation of the Corporation's assets will be beneficial to, and in the best interest of, the shareholders, and authorizing Joseph, as sole Director, to file a petition for judicial dissolution of the Corporation.

14. Based on the foregoing, Joseph respectfully petitions for the following relief:

15. *First*, Joseph respectfully requests that the Court order judicial dissolution of the Corporation under BCL § 1102 based upon the Board's adoption of a resolution to petition the Court for dissolution as beneficial to and in the best interest of the shareholders.

16. *Second*, Joseph respectfully requests that the Court order judicial dissolution of the Corporation under BCL § 1104 (a)(3) based on internal dissention and deadlock among the two equal shareholders.

17. *Third*, Joseph respectfully requests that the Court appoint a receiver to wind up the Corporation's affairs under BCL § 1113.

THE CORPORATION AND ITS SHAREHOLDERS

18. The Corporation is a domestic corporation organized under the BCL.

19. On August 12, 1975, Joseph incorporated the Corporation under the name "Jos. M. Troffa Excavating Corp."

20. **Exhibit "1"** is a true copy of the Corporation's Certificate of Incorporation.

21. The Certificate of Incorporation names Brookhaven, New York, in the County of Suffolk, Tenth Judicial District, as the location of the office of the Corporation.

22. At the time of the filing of this Petition, and at all relevant times, the Corporation's principal place of business was 70 Comsewogue Road, East Setauket, New York 11733, in the County of Suffolk, Tenth Judicial District.

23. On August 16, 1994, Joseph changed the name of the Corporation to its current name, "Jos. M. Troffa Landscape and Mason Supply, Inc."

24. **Exhibit "2"** is a true copy of the Certificate of Amendment of the Certificate of Incorporation.

25. The Corporation is authorized to issue 200 voting shares of common stock without par value.

26. 80 shares of stock are issued and outstanding.

27. Joseph owns 40 shares of stock, representing one-half of the votes of all outstanding shares of the Corporation entitled to vote in an election of directors.

28. Jonathan owns 40 shares of stock, representing one-half of the votes of all outstanding shares of the Corporation entitled to vote in an election of directors.

29. **Exhibits "3," "4"** and **"5"** are true copies of Stock Certificate Nos. 1, 2 and 3, evidencing each of Joseph and Jonathan's record ownership of 40 shares of stock of the Corporation.

30. Upon information and belief, the Corporation has no by-laws.

31. Joseph is President of the Corporation.

32. Joseph is the sole Director of the Corporation.

33. Jonathan is Vice President of the Corporation, a title Joseph informally gave him. There have never been any meetings or minutes officially designating or appointing Jonathan an officer.

34. Jonathan is not, and has never been, a Director of the Corporation.

JURISDICTION AND VENUE

35. The Court has jurisdiction over Jonathan pursuant to CPLR §§ 301, 303, 304 and/or 308.

36. Venue is proper in Suffolk County pursuant to BCL § 1112, which provides that a special proceeding under BCL § 1104 shall be brought in the supreme court in the judicial district in which the office of the corporation is located at the commencement of the special proceeding.

FACTS COMMON TO ALL CAUSES OF ACTION

The Early History of the Corporation

37. Joseph is Jonathan's father.

38. In 1972, before Jonathan was born, Joseph founded an excavation business, which grew and ultimately became the Corporation.

39. The Corporation now consists primarily of two lines, or "segments," of business — the "hard goods" segment and the "bulk materials" segment.

40. The hard goods segment consists of wholesale and retail sales of brick, stone pavers, decorative stone, cement blocks, building stone, cobblestone, flagstone, tools and equipment.

41. The bulk materials segment consists of wholesale and retail sales of organic and construction materials like mulch, compost, soil, sand, gravel, stones, boulders and concrete.

42. In 1973, Jonathan was born to Joseph and his first wife.

43. In 1975, when Jonathan was two years old, Joseph incorporated the Corporation and became its sole shareholder, sole Director and President.

44. In 1988, when Jonathan was 15 years old, Joseph and his first wife divorced.

45. It was a highly contentious and bitter divorce and, to this day, Joseph's ex-wife's antagonism toward Joseph continues to influence Jonathan's behavior towards his father.

46. In 1991, the summer after Jonathan graduated high school, Jonathan went to work for Joseph.

47. Joseph urged Jonathan to go to college and take business courses instead, but Jonathan refused.

48. When Jonathan went to work for the Corporation, he had no college degree, no full time work experience, and no job prospects.

49. Jonathan wanted, and unfortunately, Joseph gave him, the comfortable experience of working for his dad, who did not hold him accountable for poor judgment or performance.

50. In hindsight, Joseph made a grave mistake.

51. In 1991, when Jonathan joined the Corporation, he had the good fortune of entering into a turnkey business that had substantial assets and equipment and a reliable customer base, having already been in business for 20 years.

52. In 1995, out of love and as an acknowledgment of Jonathan's hard work and efforts developing the relatively-new "hard goods" side of the business, Joseph gifted Jonathan 40 shares of stock, 50% of the Corporation's outstanding shares, and gave him the title of Vice President.

53. Joseph was pleased to let Jonathan run the hard goods business while he continued to concentrate on "bulk sales" side of the business and the Corporation's back office and finances.

54. By the latter part of the 1990s, the hard goods business segment had surpassed bulk sales and, in recent years, accounted for around 75% of all revenues.

The Longstanding Dispute Over Documenting Purchases and Sales

55. Even before Joseph and Jonathan's relationship soured, Jonathan considered the hard goods business his "turf" and resented Joseph's efforts to put in place internal controls and computerized accounting, billing, purchasing, and inventory systems.

56. For many, many years, Joseph has attempted to implement a point-of-sales cash register system to document and record the Corporation's sales to customers.

57. Jonathan has always refused to implement such a system.

58. To date, the Corporation still has no point-of-sales system, not even a cash register to record cash transactions.

59. Without one, there is no real way of knowing where inventory is going, what products are being sold to customers, and how much of the Corporation's receivables are actually being collected.

60. Joseph was never able to update the Corporation's systems on his own because, the way Jonathan ran his side of the business, he alone retained all the critical pricing and other information.

61. When business was good, as it was for many years through the 1990s and early 2000s, Joseph let slide Jonathan's refusal to upgrade the Corporation's systems.

62. However, after the business suffered the effects of the Great Recession beginning in 2008, Jonathan's antiquated way of doing business became a serious problem and contributed greatly to the state of dysfunction that has existed over the last six or seven years.

63. Two years ago, Joseph decided to make a large capital investment in a modern, point of sales record keeping system for the Corporation.

64. Jonathan refused to let the Corporation use the equipment.

65. Lacking a point of sales system, Jonathan totally refuses to record purchases and sales.

66. Rather than account to the Corporation, as any normal owner does, Jonathan is running his own business within a business.

67. The Corporation's customers call Jonathan for sales on his private cell phone.

68. This affords him the opportunity to take an unrecorded sale with no paperwork.

69. Deliveries take place with Jonathan's knowledge only, and of course, there is no record of payment as well.

70. **Exhibit "6"** and **"7"** are just two examples of customers to whom Jonathan made unrecorded, undocumented sales.

71. Joseph recently found those documents hidden in Jonathan's office.

72. The first exhibit consists of sales tickets for sales to a company called Cases Creek, a good customer of the Corporation. The problem with these sales tickets is that Jonathan did not record them with the business office, so this customer, according to the Corporation's records, was never billed. There is no record of any payment either. Joseph and the Corporation have no way of knowing whether the customer was charged, whether it paid, and if it did pay,

what happened to the money. It is a complete mystery. Jonathan has a hidden stash of documents like these.

73. The second exhibit consists of checks Joseph found in Jonathan's office laying around under piles of paper and junk. The Corporation has no record of the payments, nor were the checks ever deposited, as best anyone can ascertain. For whatever reason, Jonathan held these checks and did not record or process them, as any normal businessperson would.

The Seeds of Dissension

74. The souring and ultimate demise of Joseph and Jonathan's relationship can be traced back to around 2010-2011.

75. As mentioned, this was during far tougher economic times for the business which required greater diligence in all aspects of running the operations and keeping track of finances.

76. Around that time, which followed Jonathan's own divorce from his wife, the Corporation's accountants discovered and brought to Joseph's attention that Jonathan had placed about $250,000 of charges on company and personal credit cards supposedly for purchase of materials – none of which he told Joseph about much less got his authorization – against which Jonathan was making bulk payments on account by company checks drawn in round numbers, and that all of this was going on without any backup or recordkeeping whatsoever. There was no way to trace the on-account payments to specific invoices and no way to know what charges were for his personal purchases.

77. Around 2014, adding fuel to the fire, the Workers Compensation Board audited the Corporation and specifically targeted Jonathan's credit card charges, trying to build a case that the owners were avoiding payroll taxes by using company funds to pay personal expenses.

78. Jonathan then impeded the inquiry by refusing to turn over credit card statements and even refusing to authorize Joseph – the company's President – to speak directly with American Express to obtain records of the corporate account which Jonathan had opened.

79. Thereafter, the Corporation's outside accountant and Joseph both directed Jonathan not to make any additional on-account, bulk payments to credit card companies. He ignored the directions and made at least five additional bulk payments, after which Joseph was forced to exercise his authority as President and sole Director to terminate Jonathan's banking and check-writing authority. This was in 2015.

80. Also around that time, Joseph discovered approximately $68,000 in bank overdraft charges that Jonathan had racked up. Even after Joseph took him off the account, the Corporation incurred additional overdraft charges on around $15,000-$20,000 in post-dated checks that Jonathan had secretly given to vendors before he was taken off the account, of which he told Joseph nothing.

81. These incidents seriously eroded Joseph's trust in Jonathan and, combined with Jonathan's ongoing refusal to put in a point-of-sales system, raised serious concern that he was diverting cash receipts and had been using company funds on a large scale for personal credit card purchases.

82. Another serious problem that began to fester in this period was Jonathan's pattern of over-purchasing inventory which became obsolete and remained sitting in the yard for years degrading and losing value in the hundreds of thousands of dollars.

83. Jonathan would not respond to any of Joseph's entreaties to clean up the resulting mess and at least secure some salvage value.

The Events Leading to Litigation

84. Since late 2014, the atmosphere at work between Jonathan and Joseph has become positively toxic.

85. Civil and constructive conversation has ceased completely.

86. Jonathan has allowed Joseph no oversight of the hard goods business.

87. Jonathan does not send, or delays sending, purchase tickets to the Corporation's bookkeeper.

88. The staff under Jonathan's supervision does not always make tickets for sales.

89. Jonathan allows employees to handle cash purchases with no controls.

90. Jonathan does not record all cash sales.

91. Cash literally is dropped into a box with no security measures or recordkeeping.

92. Jonathan runs a multi-million dollar business like a lemonade stand.

93. Aside from point-of-sales, Jonathan refuses to allow the use of a computerized purchase order system to track inventory the Corporation purchases.

94. In the last two years, Jonathan has gone on off-season buying sprees with vendors without Joseph's permission and even bypasses Joseph's directions to vendors that they not honor any purchase orders without Joseph's signature.

95. In 2015, as President, in an attempt to stop this practice, Joseph attempted to implement a computerized modern purchase order system by which the Corporation could track incoming and outgoing inventory. Jonathan refused to agree to comply with the purchase order system by continuing to order large quantities of hard goods product from suppliers without purchase orders approved by Joseph as President of the Corporation.

96. The Corporation's hard goods business segment is particularly vulnerable to Jonathan's secretive business practices because the Corporation has no prices recorded in a computer system. Prices for goods are all in Jonathan's head. Jonathan has stonewalled Joseph regarding the recording of prices, which are desperately needed to manage segments.

97. Joseph has tried for more than ten years to persuade Jonathan to cooperate with the Corporation's computer staff to put pricing into the computer. Jonathan refuses.

98. Jonathan extends credit or makes sales to customers who are not current on their existing balances and are on credit-hold or C.O.D. status, meaning that they are forbidden from receiving any further credit.

99. When Joseph confronts Jonathan about these issues, Jonathan refuses to tell Joseph what balances the Corporation's credit account customers owe the Corporation, and any payments Jonathan does receive from these credit accounts are not recorded on the Corporation's books.

100. As a result, the Corporation does not get paid for many of these credit transactions, and the business loses thousands of dollars as a result.

101. **Exhibit "8"** is an example of Jonathan's sales to a customer Joseph placed on credit hold.

102. Joseph discovered these tickets hidden in Jonathan's office.

103. Four years ago, Joseph gave explicit instructions to Jonathan, and everyone at the sales counter, that the named customer was on credit hold since it had defaulted on payments and was too high of a risk to extend further credit. Jonathan refused to listen to Joseph and extended credit anyway. These documents also show that Jonathan is not recording invoices in the office.

104. The foregoing three documents are just a minuscule fraction of the documents Jonathan is withholding from the Corporation's record keeping system and bookkeeper.

105. In 2015, Joseph attempted to install an updated telephone system at the Corporation. Jonathan physically chased away the vendor's employees three times when they came to install the phones. Jonathan then stole several of the new phones, about $2,000 worth of new telephone equipment purchased for use by the Corporation, and has not returned them. These phones are needed to direct company purchases to the proper personnel. Jonathan does not want the phones because they would make it more difficult for him to dominate the business.

106. Jonathan refuses to cooperate and to secure the employees' assistance in moving and getting rid of materials in the yard in connection with Joseph's efforts to achieve compliance with town regulations governing outside storage.

107. Jonathan continues to purchase cement blocks from a supplier who charges $200 more per truckload than another reputable supplier that Joseph asked him to use selling identical product.

108. The list goes on and on and on.

109. Compounding these problems, Jonathan has anger-management issues.

110. When Joseph presses Jonathan on business issues with which they disagree, such as installing a point of sale cash register, purchase order system, upgrading antiquated telephone systems, insisting that delinquent customers stay on credit hold, etc., Jonathan becomes enraged and violent.

111. It is impossible to discuss these issues with Jonathan without him becoming irate.

112. Jonathan has cursed Joseph out a number of times at the sales counter about these subjects in front of the Corporation's employees.

113. Jonathan has gone into many rages and become violent.

114. Jonathan has thrown a rolling file cabinet at the wall.

115. Jonathan has thrown a hammer through an open doorway where customers come and go.

116. Jonathan's behavior is a danger to himself and others.

117. Jonathan has done everything in his power to divide the Corporation into two factions, those loyal to him, and those loyal to Joseph.

118. Jonathan tells the Corporation's employees not to listen to Joseph.

119. Jonathan tells the Corporation's employees that he is running the Corporation and that it belongs to him alone.

120. Jonathan harasses and mistreats employees perceived to be loyal to Joseph.

121. Joseph treats the Corporation's employees well, but they are afraid to cooperate or be friendly with Joseph for fear of angering Jonathan.

122. Jonathan depicts Joseph as powerless and inept to employees perceived to be loyal to him.

123. Jonathan also has engaged in verbal abuse, physical intimidation and violence directed at Joseph and any staff he perceives to be loyal to Joseph, including Joseph's wife, Laura Troffa, and the Corporation's bookkeeper, Sharon.

124. On May 31, 2016, Joseph was forced to send Jonathan a letter warning him to cease and desist engaging in such behavior. The letter also demanded that Jonathan comply with Joseph's requests concerning purchase orders, invoicing, and other areas of non-cooperation on his part.

125. **Exhibit "9"** is a true copy of Joseph's letter to Jonathan.

126. Jonathan ignored the letter.

127. Realizing the inevitable, *i.e.*, that Jonathan and Joseph cannot remain business partners, Joseph attempted since the latter part of 2014 to reach an agreement with Jonathan along the lines of a split of the bulk and hard goods business.

128. Joseph offered for Jonathan to take all of the assets associated with the hard goods business (inventory, equipment, etc.) comprising the lion's share of the tangible assets and about 75% of the company revenues, leaving Joseph with the much smaller bulk business.

129. Joseph and Jonathan each engaged legal counsel, but Jonathan delayed and delayed, and refused to commit to anything, while the situation continued to deteriorate.

Jonathan's Petition for Dissolution

130. On June 27, 2016, as Joseph was preparing to file his own dissolution petition, Jonathan filed his own petition to dissolve the Corporation in a proceeding captioned *Jonathan Troffa, et al. v Joseph M. Troffa, et al.*, Supreme Court, Suffolk County, Index No. 609510/2016 (Garguilo, J.).

131. In the Verified Petition/Complaint, Jonathan swore that the Corporation is "hopelessly deadlocked" and that its two shareholders are "irreparably divided."

132. **Exhibit "10"** is a true copy of Jonathan's Summons and Petition/Complaint.

133. In an Affidavit in support of an application for a temporary restraining order against Joseph, Jonathan swore that Joseph and Jonathan are "deadlocked," that their relationship is "deteriorating," and that a claim for dissolution is "highly likely to be successful."

134. **Exhibit "11"** is a true copy of Jonathan's Affidavit.

135. Each of Jonathan's sworn statements is absolutely true.

136. Joseph and Jonathan are hopelessly deadlocked and their relationship has deteriorated to its lowest depths.

Joseph's Consent to Dissolution

137. On July 14, 2016, the parties made their first appearance in connection with Jonathan's petition for dissolution before Justice Garguilo.

138. The Court declined to sign Joseph's Order to Show Cause.

139. Instead, the Court directed the parties to engage in settlement discussions.

140. For about one month after the initial court appearance, with the Court's active encouragement and assistance, the parties and their counsel engaged in settlement negotiations based on Joseph's longstanding proposal to give Jonathan the assets associated with the hard goods business and allow him to run his own, new business at the same premises.

141. In mid-August 2016, the negotiations broke down, in part because Jonathan demanded a large cash payment from Joseph based on a fantastical idea that he was entitled to half the value of real properties owned by other entities, based on transactions that went back as far as decades ago, before Jonathan was even a shareholder of the Corporation.

142. On August 15, 2016, having come to believe that the prospect of dissolution did not provide Jonathan the leverage he once thought, Jonathan sent the Court a letter informing it that he intended to withdraw his claim of dissolution.

143. **Exhibit "12"** is a true copy of Jonathan's letter to the Court.

144. On August 16, 2016, Joseph filed a formal consent to dissolution of the Corporation.

145. **Exhibit "13"** is a true copy of Joseph's consent to dissolution.

146. On August 16, 2016, Jonathan filed a Verified Amended Complaint omitting his claim for judicial dissolution.

147. **Exhibit "14"** is a true copy of the Verified Amended Complaint.

148. On August 16, 2016, Joseph filed a notice of rejection of Jonathan's withdrawal of his claim for dissolution without the Court's permission as violative of BCL § 1116.

149. **Exhibit "15"** is a true copy of the notice of rejection.

The Motions for Dissolution, Dismissal and Withdrawal

150. On September 16, 2016, Joseph filed a motion for a consent judgment of dissolution of the Corporation.

151. On September 16, 2016, Joseph filed a motion to dismiss the non-dissolution claims in the Verified Petition/Complaint, or alternatively, to dismiss the Verified Amended Complaint.

152. On October 12, 2016, Jonathan filed a cross-motion for leave to withdraw his claim for dissolution under BCL § 1116.

The Court's Decision

153. On January 11, 2017, the Hon. Jerry Garguilo issued a Short Form Order resolving the three pending motions in Jonathan's dissolution proceeding.

154. **Exhibit "16"** is a true copy of Short Form Order

155. First, the Court held that Joseph's formal consent to dissolution did not comply with the statutory requirements for dissolution under BCL § 1106. The Court held, "If Defendants seek to dissolve the corporation they may, if advised, counterclaim for dissolution and must submit a new order to show cause."

156. Second, the Court denied Jonathan's cross-motion for leave to withdraw his claim for dissolution as moot.

157. Third, the Court held that the Verified Amended Complaint was properly filed, and directed Joseph's dismissal motion against the claims in the Verified Amended Complaint.

158. Fourth, the Court dismissed the First Cause of Action in the Verified Amended Complaint for breach of fiduciary duty as time-barred for any acts or transactions prior to June 27, 2013, include five of the six real property transactions for which Jonathan alleged he was entitled to compensation. The Court also dismissed the First Cause of Action's demand for an accounting, ruling that Jonathan may only seek an accounting derivatively.

159. Fifth, the Court dismissed the Second Cause of Action for constructive trust in its entirety.

160. Sixth, the Court dismissed the Third Cause of Action for quiet title in its entirety.

161. Seventh, the Court declined to dismiss the Fourth Cause of Action for derivative liability under BCL § 720.

162. As a result of the Court's denial of Joseph's motion for a consent judgment of dissolution, Joseph was required to commence this proceeding for dissolution.

The Current State of Affairs

163. Matters since Jonathan filed for dissolution have not improved, and if anything, have worsened.

164. Effectively Joseph remains locked out of the hard goods business which Jonathan continues to operate with no accountability.

165. Upon information and belief, Jonathan is taking advantage of the Corporation's lack of a modern record keeping system for inventory and sales to skim thousands of dollars a week from the Corporation for his own personal benefit.

166. Jonathan refuses to acknowledge his father's right to manage the Corporation, and has emasculated his authority with the Corporation's employees.

167. Joseph and Jonathan's business relationship as 50/50 co-owners is fatally wounded.

168. Jonathan has hijacked the company.

169. Joseph and Jonathan no longer have any productive communication.

170. The Corporation cannot function or continue to exist under its present ownership.

171. There is a total breakdown of communication, no cooperation, and constant workplace bullying.

172. The Corporation cannot function or continue to exist under its present ownership.

173. The conditions are completely unacceptable and intolerable.

174. Joseph and Jonathan been mired in an exhausting, emotionally draining, deadlocked position for two and a half years.

175. Joseph has largely given up on his attempts to manage the business segments since Jonathan is stonewalling him, and Joseph do not want a violent confrontation if he tries to enforce the use of a cash register, computer system, purchase order system, or transparency.

176. The dysfunction and disagreement in the business has poisoned Joseph and Jonathan's family relationships to the point that Jonathan refuses to let Joseph have any contact with his grandchildren, Jonathan Thomas (age 13) and Mackenzie (age 12).

177. The last time Joseph visited with his grandchildren was over two years ago, when Jonathan's ex-wife invited Joseph to come have cake at her home for Mackenzie's birthday.

178. When Jonathan learned Joseph was there, he was livid.

179. Jonathan stormed over to intervene.

180. However, in order to avoid a confrontation, Joseph left before Jonathan arrived.

181. To this day, Jonathan refuses to allow Joseph's grandchildren to answer his phone calls, texts, gifts or greeting cards.

182. There is no realistic chance of a turnaround in Joseph and Jonathan's relationship.

183. Having spent two and a half years fruitlessly trying to persuade Jonathan to enter into an amicable separation agreement that would have allowed him to have his own, separate "hard goods" business, which presently brings in 75% of the revenues, the time has come to put the Corporation to rest by granting the judicial dissolution that Jonathan originally requested, to which Joseph formally consented, and which equity and good conscience requires.

The Effect on the Corporation's Finances

184. The ongoing dissension, conflict and litigation among Joseph and Jonathan is having a substantial adverse impact upon the finances of the Corporation.

185. Rather than focus on the growth and financial well-being of the business, Joseph and Jonathan are more focused on prosecuting and defending legal claims against one another.

186. The Corporation's approximate annual sales over the past several years were as follows:

2010: $3.8 million

2011: $4.1 million

2012: $4.2 million

2013: $4.1 million

2014: $4.6 million

2015: $4.5 million

2016: $3.9 million

187. In February 2016, the Corporation's certified public accounting firm, Cullen and Danowski, LLP, prepared preliminary financial statements for the Corporation for the year ended December 31, 2016. **Exhibit "17"** is a true copy of the Corporation's 2016 preliminary financial statements.

188. As reflected on the Corporation's preliminary financial statements for the year ended 2016, the Corporation has suffered a sudden, dramatic drop in sales, from $4,519,321 in 2015 to $3,942,164 in 2016.

189. That amounts to an unprecedented $577,000 (13%) decline in sales versus the previous year, bringing the Corporation's sales to their lowest point since 2010.

190. The large decline in sales is largely due to breakdown of relations between Joseph and Jonathan, who reached the apex of their dysfunction and antagonism in 2016.

191. As a result of declining sales, the Corporation will report an approximate $71,000 (185%) decline in net income versus the previous year, and a net loss of over $34,000 in 2016 as compared to a net profit in 2015 of $37,000.

192. In addition to these grim statistics, the Corporation's preliminary financial statements show that the Corporation's inventory has gone up dramatically, from $301,225 in 2015 to $436,600 in 2016.

193. The large increase in the Corporation's inventory is mainly the result of Jonathan's unauthorized bulk purchase of materials in the offseason against Joseph's express instructions and directives.

194. Finally, Note 2 to the Corporation's preliminary financial statements portends additional financial difficulties in the future. The Corporation has almost fully depreciated its machinery and equipment. As a result, the Corporation will not be able to claim similar deduction for depreciation on its machinery and equipment in the future, which will further harm the Corporation's profitability.

The Board's Resolution to Dissolve

195. On February 15, 2017, immediately upon receiving the Corporation's preliminary financial statements for the year ended December 31, 2016, Joseph, as sole Director of the Corporation, duly adopted a resolution of the Board of Directors of the Corporation determining that dissolution of the Corporation and liquidation of the Corporation's assets will be beneficial to, and in the best interest of, the shareholders. The Board resolved to authorize Joseph, as sole Director, to file a petition for judicial dissolution of the Corporation. **Exhibit "18"** is a true copy of the Action by Unanimous Written Consent of the Board of Directors of the Corporation.

196. This Petition is filed pursuant to, and in accordance, with the Board's resolution.

FIRST CAUSE OF ACTION
(Dissolution under BCL § 1102)

197. Joseph repeats and realleges each of the foregoing allegations as if set forth fully herein.

198. Joseph is the sole Director of the Corporation.

199. In his capacity as sole Director, Joseph duly adopted a resolution of the Board, by Unanimous Written Consent of the Board of Directors of the Corporation, pursuant to BCL §

708, determining that dissolution of the Corporation and liquidation of the Corporation's assets will be beneficial to, and in the best interest of, the shareholders, and resolving, among other things, to authorize Joseph, as sole Director, to file a petition for judicial dissolution of the Corporation.

200. By reason of the foregoing, dissolution of the Corporation is authorized and warranted under BCL § 1102.

201. Dissolution of the Corporation will not be injurious to the public and the rights of all persons who have dealt with the Corporation will be unaffected by such dissolution.

202. An orderly dissolution of the Corporation and liquidation of its assets will result in the payment of all of its debts and creditors.

SECOND CAUSE OF ACTION
(Dissolution under BCL § 1104 (a)(3))

203. Joseph repeats and realleges each of the foregoing allegations as if set forth fully herein.

204. There is internal dissension and the two factions of shareholders, Joseph and Jonathan, are so divided that dissolution of the Corporation would be beneficial to the shareholders.

205. Joseph and Jonathan are deadlocked in every aspect of their management and operations of the Corporation.

206. By reason of the foregoing, dissolution of the Corporation is authorized and warranted under BCL § 1104 (a)(3).

207. Dissolution of the Corporation will not be injurious to the public and the rights of all persons who have dealt with the Corporation will be unaffected by such dissolution.

208. An orderly dissolution of the Corporation and liquidation of its assets will result in the payment of all of its debts and creditors.

THIRD CAUSE OF ACTION
(Appointment of Receiver under BCL § 1113)

209. Joseph repeats and realleges each of the foregoing allegations as if set forth fully herein.

210. Pursuant to BCL § 1113, the Court is authorized to appoint a receiver to wind up the Corporation's affairs, liquidate its assets by public auction, pay its just debts, and distribute any remaining net proceeds to the owners.

211. Appointment of a receiver to wind up the Corporation's affairs would be in the best interest of the Corporation's shareholders and its creditors.

WHEREFORE, Joseph respectfully demands judgment as follows:

(i) On the First Cause of Action, dissolving the Corporation under BCL § 1102;

(ii) On the Second Cause of Action, dissolving the Corporation under BCL § 1104 (a)(3);

(iii) On the Second Cause of Action, appointing a receiver to wind up the Corporation's affairs under BCL § 1113;

(iv) Awarding Joseph attorneys' fees, costs and disbursements; and

(v) Awarding such other and further relief as the Court deems just, equitable and proper.

Dated: February 17, 2017

FARRELL FRITZ, P.C.

By:________________________

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VERIFICATION

JOSEPH M. TROFFA, being duly sworn, deposes and says:

I am the Petitioner. I have read the foregoing Verified Petition and know the contents thereof. The contents are true to my own knowledge, except as to matters stated upon information and belief, and as to those matters, I believe them to be true.

Joseph Troffa
JOSEPH M. TROFFA

Sworn to before me this
17th day of February, 2017.

Kelly A. Harris
Notary Public

KELLY A. HARRIS
Notary Public, State of New York
No. 01HA6018708
Qualified in Nassau County
Commission Expires Jan. 19, 2019

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