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

LARISSA OKUN NUSIMOW, derivatively on behalf of 600-602 10th Avenue Realty Corporation and on her own behalf, Plaintiff, -against- ESTER PINCHEVSKY, 600-602 10th AVENUE REALTY CORPORATION,	Index No.: 651435/2021 COMMERCIAL DIVISION Mot. Seq. No.: 001

MEMORANDUM OF LAW IN REPLY TO DEFENDANT'S MOTION TO DISMISS THE COMPLAINT AND FOR SANCTIONS AND IN OPPOSITION TO PLAINTIFF'S CROSS MOTION FOR SANCTIONS

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Defendant Ester Pinchevsky ("Pinchevsky" or "Defendant") respectfully submits this Memorandum of Law by and through undersigned counsel in opposition to the Plaintiff Larissa Okun Nusimow's ("Plaintiff" or "Nusimow") cross-motion for sanctions and in reply and further support to Defendant's motion for an order dismissing the Complaint and each of its causes of action in their entirety, and for sanctions.

INTRODUCTION

Despite Plaintiff's portrayal of this as alleged corporate mismanagement, the crux of Plaintiff's allegations is boilerplate claims that have been dismissed multiple times by this Court. The "new allegations" Plaintiff raises which post-date the Court's dismissal of the other boilerplate allegations, fail to state a claim as there are no damages to the corporation. Further, each of the "new" allegations Plaintiff points to have been utterly refuted by law or documentary evidence.

For example, there are no nominal damages in derivative actions; Plaintiff alleges that Pinchevsky misappropriated the Corporation's funds when, on the advice of the corporation's accountant, received a distribution for a prior year, which was ultimately returned. *See e.g.* Exhibit D[1]. Once this was brought to Pinchevsky's attention, albeit, through this lawsuit[2], any accounting mistakes were corrected unequivocally. *See* Exhibit B. This case is merely another harassment campaign by the Plaintiff, who is unable to assert her claims further in the related 2017 Action[3].

In addition, there are facts offered by the Plaintiff that require clarification. Plaintiff did not become a shareholder by operation of law when her husband Hy Nusimow passed away. She became a shareholder when the estate fiduciary refused to advise a Florida Surrogate's Court of

[1] All exhibit references are to the Defendant's motion-in-chief, unless otherwise stated herein.
[2] It is very likely a demand to Pinchevsky and the corporation regarding this amount, would have sufficed, as opposed to the commencement of this lawsuit.
[3] 600-602 10th Avenue Realty Corporation - v. - Estate of Hy Nusimow et al (New York County Supreme Court, Index 650120/2017) ("2017 Action")

the existence of pending litigation, the 2017 Action. Even then, she is not a shareholder as a matter of law and she has taken subject to the compulsory buyout rights of 600-602 10th Avenue Realty Corporation (the "Corporation"), which is the crux of the dispute still pending before this Court in the 2017 Action. Both Plaintiff and the Hy Nusimow Estate are defendants in that action. Indeed, the Estate was still as of recently, serving discovery response and interrogatories as a separate party from Plaintiff. The issue of Plaintiff's shareholdership for all purposes is contested in the 2017 Action and not resolved as a matter of law.

Pinchevsky is the only *bona fide* full shareholder of Plaintiff pending the resolution of the 2017 Action. This action contains nothing more than refutable allegations and a repeat of claims previously dismissed by this Honorable Court. For a number of reasons below, and in the Defendant's motion-in-chief, the instant action must be dismissed in its entirety.

I. PLAINTIFF'S ARGUMENTS AGAINST THE COMPLAINT'S DEFECTS ARE UNAVAILING

A. Complaint's Commingling of Derivative and Individual Claims and An Incorrect Caption

While the Defendant does not dispute that a plaintiff is able to maintain a hybrid action with both separately plead individual and derivative claim, this Complaint contains "Allegations Common to All Claims" which are incorporated by reference into each cause of action and clearly confuse derivative and individual claims. Contrary to Plaintiff's assertions, simply labeling each cause of action does not serve as a complete shield for Plaintiff. *See generally Barbour v. Knecht,* 296 A.D.2d 218, 228, 743 N.Y.S.2d 483, 491 (1st Dep't 2002). A trial court decision from Kings County serves as a similar example of what Plaintiff is attempting to do here.

> "The second cause of action, for breach of fiduciary duty, includes derivative claims that Phyllis took excessive management fees, personally diverted funds from the Partnership, and failed to pay distributions to partners. However, it also *includes individual claims that Phyllis restricted Denise's access to the books and records of*

> *the Partnership*, failed to provide an accounting to Denise, and excluded Denise from acting as a general partner."

Wallace v. Perret, 28 Misc. 3d 1023, 1033, 903 N.Y.S.2d 888, 898 (Kings County Sup. Ct. 2010) (emphasis added).

Plaintiff's Complaint specifically Paragraphs 9 through 25 of the Complaint, which are incorporated by reference into Plaintiff's claimed derivative first and second causes of action, repeatedly confuse allegations of individual harm and corporate harm. *See* Exhibit K. For example, Paragraph 17 alleges that Defendant has failed to provide Plaintiff with a stock certificate, while Paragraph 18 alleges that Defendant has denied Plaintiff access to books and records. *Id.* With respect to the improper caption, Plaintiff effectually concedes that the Corporation is not properly identified in the Caption. *See Plaintiff's Memorandum* p. 5, ¶2. However, Plaintiff fails to request leave to amend the caption, despite having filed a cross motion, and the caption continues to be a defect in this matter.

B. Plaintiff Did Fail to Plead Demand Futility

It is undisputed that no demand was made prior to the commencement of this action. Further, contrary to Plaintiff's assertions, the Complaint in fact did not properly plead demand futility. Plaintiff's argument that a demand is futile because there is no Board of Directors is unavailing and contradicted by Plaintiff's recognition that demand could have still been made on Pinchevsky. Plaintiff in effect concedes that this action essentially arises out of four new allegations not before the Court in the 2017 Action. *See* Plaintiff's Memorandum p 8, ¶3.

As previously cited, the demand requirement is excused only when the complaint's specific allegations support the conclusion that "(1) a majority of the directors are interested in the transaction, or (2) the directors failed to inform themselves to a degree reasonably necessary about the transaction, or (3) the directors failed to exercise their business judgment in approving the transaction" *Marx v. Akers*, 88 N.Y.2d 189, 198, 644 N.Y.S.2d 121, 666 N.E.2d 1034 (1996).

Defendant's motion-in-chief outlines in detail how each of these actions are rebutted, or in the case of the distribution, are now moot. A demand would have likely yielded Plaintiff an explanation regarding the distribution and other items Plaintiff believes are allegedly improper. Given the fact that a distribution taken at the advice of a certified accountant was ultimately returned to the corporation's account, Plaintiff's justification that a demand would be futile simply because it would have been made on Pinchevsky is not sufficient to overcome the *Marx* test, with respect to Defendant's alleged "interest" in any transaction. It is also noteworthy that nowhere in the Complaint is it alleged that Pinchevsky is "interested" in any specific transaction, as required by *Marx.* See Exhibit K, ¶26-30.

Plaintiff does not even offer any rebuttal to the second prong of the *Marx* test, as it is clear that the actions taken by Pinchevsky were either in accordance with the 2008 Settlement and/or the advice of a professional. *See* Exhibits B,D. As to the third prong of the *Marx* text, Plaintiff's Complaint simply alleges that "the flagrant misappropriation of corporate assets by Pinchevsky, is so egregious that it could not have possibly been the product of sound business judgment[4]" despite the fact that that documentary evidence shows that Pinchevsky's actions are taken in accordance with the 2008 Settlement (Exh. E); rent control law (Ex. A); or the advice of a certified public accountant (Exh. D). Plaintiff offers no specifics as to why this conduct is "so egregious" and simply restates legal conclusions in the Complaint, without any specificity.

II. CONTRARY TO PLAINTIFF'S CONTENTIONS, EACH CAUSE OF ACTION WARRANTS DISMISSAL

A. Plaintiff's Position that Res Judicata Does Not Apply is Erroneous

In the 2017 Action, this Court dismissed the Plaintiff's counterclaims in their entirety, and allowed Plaintiff to replead certain counterclaims. *See* Exhibit H. Plaintiff still failed to properly

[4] Exhibit K at ¶29.

plead its counterclaims, and the Court again dismissed these counterclaims, without leave to replead. *See* Exhibit J. Plaintiff's position that the second dismissal of the 2017 Action was without prejudice and with leave to replead is erroneous and inconsistent with Plaintiff's own actions.

Plaintiff relies on a non-binding and distinguishable federal case and obfuscates the full quote from the Court. In *Johns v. Town of E. Hampton,* the Court, in a footnote, held that "[w]here the Court is silent as to whether leave to replead a particular claim is permitted, the parties shall assume that leave to replead has been granted "*except to the extent that such would expressly contradict the Court's analysis herein.*" 942 F. Supp. 99, 105 (E.D.N.Y. 1996)(emphasis added). It is also noted that this was dicta in a decision on motion to dismiss an initial Complaint in federal court under the Federal Rules of Civil Procedure, not one where leave to replead had already been granted, as in the 2017 Action[5]. It is telling that the Plaintiff cites to no authority for its position that a party essentially gets unlimited opportunities to replead; this is also at odds with Plaintiff's own conduct in the 2017 Action, as Plaintiff *did not attempt to replead its counterclaims for a third time*. In the first dismissal, the Court explicitly stated that Plaintiff had leave to replead certain causes of action. *See* Exhibit H. In the second dismissal, the Court did not state that the Plaintiff had leave to replead any causes of action and stated in detail why each of Plaintiff's causes of action required dismissal. *See* Exhibit J; *See generally Strange v. Montefiore Hosp. & Med. Ctr.,* 59 N.Y.2d 737, 738, 450 N.E.2d 235, 236 (1983)(an order does not have to contain certain words to be given res judicata effect). Plaintiff's opposition papers to Pinchevsky's second dismissal motion did not contain a request to replead or leave to amend their counterclaims. *See* Exhibit A hereto for Plaintiff's opposition papers in the 2017 Action; *See generally Rabos v. R & R Bagels*

[5] Plaintiff also relies on an equally inapplicable case from the U.S. Supreme Court dealing with the constitutionality of certain statutes of the State of Texas.

& Bakery, Inc., 100 A.D.3d 849, 850, 955 N.Y.S.2d 109, 112 (2d Dep't 2012), as amended (Apr. 15, 2013).

As such, the premise that Plaintiff's claims, which were thoroughly considered and dismissed twice by this very Court, do not have a res judicata effect on this action is simply contrary to the record of the 2017 Action. *See Plattsburgh Quarries, Inc. v. Palcon Indus., Inc.*, 129 A.D.2d 844, 845, 513 N.Y.S.2d 861, 862 (1987) (a dismissal pursuant to CPLR 3211(a)(7) will be deemed conclusive as to the point it decided). Nor can Plaintiff simply "extend" the same claims that have already been rejected by the Court on numerous occasions, simply because the Plaintiff alleges more occurrences of the rejected claims after the dismissal. Thus, Plaintiff cannot maintain the same derivative causes of action, which have already been dismissed on two occasions by this Court.

B. Plaintiff Has Failed to Rebut the Documentary Evidence Which Utterly Refutes The Only New Allegations for its Derivative Claims and Failed to Plead with Particularity.

By Plaintiff's own admission, there are only four new allegations that Defendant has refuted with documentary evidence, sufficient to warrant dismissal pursuant to CPLR 3211(a)(1). "If the documentary proof disproves an essential allegation of the complaint, dismissal pursuant to CPLR 3211(a)(1) is warranted even if the allegations, standing alone, could withstand a motion to dismiss for failure to state a cause of action." *Kolchins v. Evolution Markets, Inc.*, 128 A.D.3d 47, 58, 8 N.Y.S.3d 1, 8 (1st Dep't 2015), *aff'd*, 31 N.Y.3d 100, 96 N.E.3d 784 (2018); *See also McGuire v. Sterling Doubleday Enters., L.P.,* 19 A.D.3d 660, 661, 799 N.Y.S.2d 65 (1st Dep't 2005).

Regarding Plaintiff's allegation that Pinchevsky breached her fiduciary duties by "improperly subleasing an apartment in the Building with a rental value of approximately $2,000 per month," (Exhibit K, ¶33), Pinchevsky has offered irrefutable documentary evidence namely, a

Lease Renewal document issued Under Section 2523.5(a) of the Rent Stabilization Code. *See* Exhibit A. This unit is bound by the Rent Stabilization Code and thus, it cannot be "improperly sublet." Plaintiff has not offered any facts to rebut the irrefutable fact that this apartment is properly rented in accordance with the Rent Stabilization Code; Plaintiff pleads no alternative apartment number, no reasons why the apartment should not be rent stabilized, and nothing that could otherwise refute Defendant's documentary evidence. Legal regulated rents may be increased or decreased only as provided in the Rent Stabilization Code. *See* N.Y. Comp. Codes R. & Regs. tit. 9, § 2522.1. As a matter of law, a rent stabilized unit cannot be rented above its legal maximum, and this allegation is utterly refuted.

The next allegation is the Plaintiff's allegation of a "wrongful distribution in the amount of $64,000 in December 2020" (Exhibit K, ¶33), which was utterly refuted by the fact that a) any distributions were taken at the advice of an accountant (Exhibit D); and b) more importantly, the distribution was returned to the Corporation's account (Exhibit B), and thus, there is no harm to the Corporation, nor is there any sums to recover within the context of the derivative action. "A plaintiff asserting a derivative claim seeks to recover for injury to the business entity." *Yudell v. Gilbert*, 99 A.D.3d 108, 113, 949 N.Y.S.2d 380, 383 (1st Dep't 2012). Plaintiff fails to state the harm to the Corporation, given any distributions were returned in full, and there are no further sums to recover.

The third allegation by Plaintiff is that "Plaintiff improperly adjusted her own salary" (Exhibit K, ¶33). Pinchevsky noted in her motion-in-chief that this allegation is nothing more than conclusory. It does not allege how the salary was adjusted, what amount it was adjusted by, why the salary was improper, and what alleged procedures were not followed. Plaintiff did not cure this fatal flaw in its opposition.

Lastly, Plaintiff alleges that Pinchevsky has "taken reimbursements without the proper receipts." *Id.* Pinchevsky irrefutably rebutted this allegation by Presenting the 2008 Settlement Agreement, which authorizes Pinchevsky to take a payment of $350.00 a month. *See* Exhibit E, p.5, ¶12-13 ("2008 Settlement Agreement"). The 2008 Settlement Agreement clearly stipulates that Pinchevsky "continue to be paid $350 a month." It is immaterial how that is classified, as there is no harm to the corporation, given that this monthly amount has both been stipulated to and authorized. Plaintiff's arguments regarding categorization are simply distractions; Plaintiff, who is in full receipt of the monthly reports[6], does not allege that Pinchevsky took an additional salary or further unauthorized amounts beyond $350.00. Plaintiff simply attempts to create a nonexistent issue over an authorized monthly payment to Pinchevsky, but does not plead any allegations for any amounts above what has already been authorized by the parties.

"Mere speculation cannot support a cause of action for corporate waste or breach of fiduciary duty." *Kassover v. Prism Venture Partners, LLC*, 53 AD3d 444, 450 (1st Dept. 2008). Plaintiff's complaint is ripe with speculation and boilerplate allegations. Plaintiff has completely failed to plead with the requisite particularity, offering mere general allegations, which Pinchevsky has outlined are deficient. For the reasons set forth herein and in the Defendant's motion-in-chief, Plaintiff's derivative claims are dismissible as a matter of law, based upon documentary evidence, and are not plead with the requisite particularity.

C. Plaintiff's Corporate Waste Claim Cannot Be Maintained

Waste occurs when assets were utilized improperly or unnecessarily in breach of fiduciary duty. *Chun You Cheng v. Yang*, 67 Misc. 3d 1241(A), 129 N.Y.S.3d 266 (Queens Cty. Sup. Ct. 2020). In addition to the above, Plaintiff's waste claim is insufficient as there are no amounts or

[6] Defendant again notes that monthly financial reports are prepared by an independent, third-party management company. *See* Exhibit C.

"wasted assets" the Corporation is able to recover. *See e.g.,* Exhibit B. Corporate waste is also an element of breach of fiduciary duty and cannot be independently maintained.

D. Plaintiff's Third Cause of Action Demanding Books and Records is Procedurally Improper and Defective and Must Be Dismissed

Under New York law, shareholders have both statutory and common-law rights to inspect a corporation's books and records so long as the shareholders seek the inspection in good faith and for a valid purpose. *Ret. Plan for Gen. Emps. of City of N. Miami Beach v. McGraw-Hill Companies, Inc.*, 120 A.D.3d 1052, 1055, 992 N.Y.S.2d 220, 223 (1st Dep't 2014). Plaintiff does not dispute that the proper method to bring a books and records claim under Business Corporation Law §624(d) is by order to show cause, and not as a separate cause of action. Therefore, at a minimum, Plaintiff's third cause of action seeking relief under §624(d) is procedurally improper and must be dismissed. Plaintiff's Complaint is also deficient in pleading a common law cause of action for books and records. First, it alleges the only relevant demand[7] was made on July 23, 2016, nearly *five (5) years* prior to the commencement of the instant action. *See* Exhibit K at ¶18. If Plaintiff had a good faith and valid purpose, it would not be relying on a five-year old demand to bring its common-law cause of action. Second, Defendant maintains there is no good faith and reason and valid purpose, given each of the Plaintiff's allegations are utterly refuted. Plaintiff, aside from the refuted allegations in other portions of the Complaint, simply pleads their entitlement to books and records as "concern over Pinchevsky's mismanagement and wrongful misappropriation of corporate assets, a good faith and valid purpose" without any further specification. *Id.* at ¶45. Citing Plaintiff's own authority, Courts have denied causes of action for books and records where "the plaintiffs' allegations failed to identify with particularity the

[7] Plaintiff's complaint also alleges "demand for the annual balance sheet and profit and loss statement ***pursuant to BCL § 624(e)*** on December 9, 2020." (Exhibit K at ¶18)(emphasis added).

transactions" that would give rise to "a 'proper purpose' for the inspection." *See JAS Fam. Tr. v. Oceana Holding Corp.*, 109 A.D.3d 639, 642-43, 970 N.Y.S.2d 813 (2d Dep't 2013). Further, despite being in possession of the 2008 Settlement Agreement (Exhibit E), monthly reports which are the complete and only reports of the Corporation (Exhibit C), Plaintiff continues to plead a vague request for "books and records" despite being provided with same. *See also* Warwick Affidavit. As such, this cause of action should also be dismissed.

E. Plaintiff's Failure to Demand an Accounting is a Fatal Flaw

It is quite noteworthy that Plaintiff's opposition fails to state that a specific demand was made for an accounting, nor does it include a copy of a demand for an accounting made upon Pinchevsky. Nor does Plaintiff's fourth cause of action plead a demand for accounting occurring. "In order to enlist the aid of a court of equity in vindicating the right to an accounting, a plaintiff must show a demand for an accounting and a failure or refusal by the partner with the books, records, profits or other assets." *Conroy v. Cadillac Fairview Shopping Ctr. Properties (Maryland), Inc.*, 143 A.D.2d 726, 533 N.Y.S.2d 446, 447 (2d Dep't 1988); *Raymond v. Brimberg*, 99 A.D.2d 988, 989, 473 N.Y.S.2d 437, 439 (1st Dep't 1984). No demand for accounting is made or alleged, and Plaintiff relies solely on its five-year old demand for books and records. *See generally Atlantis Mgmt. Grp. II LLC v. Nabe*, 177 A.D.3d 542, 543, 113 N.Y.S.3d 79, 80 (1st Dep't 2019) (holding "the right to an accounting is distinct from a claim for an equitable accounting" which results from refusal to respond to demands for access to books and records).

Instead, Plaintiff relies upon clearly distinguishable law. In the first case it relies upon, *Non-Linear Trading Co. v. Braddis Assocs., Inc.*, the Plaintiff therein made specific demands that the Defendant provide "an accounting of the Partnership funds." 243 A.D.2d 107, 112, 675 N.Y.S.2d 5 (1998). No such specific demand was made here. Plaintiff thereafter relies only upon

a non-binding, trial court decision from Delaware County to support a premise that the Complaint is sufficient to serve as a demand for accounting. Aside from the non-binding nature of the case, the case Plaintiff cites is a real estate partition case dealing with an estate, and specifically discussed an accounting as it related to the Surrogate's Court Procedure Act and the Estates Powers and Trusts Law. *See Banker v. Banker*, 23 Misc. 3d 1111(A), at *1 (N.Y. Sup. Ct. Jan. 26, 2009). Plaintiff cites to no binding authority to support its erroneous position, where essentially, demands never need to be made until the filing of a Complaint. It is evident from the above that the First Department has set out a clear requirement of a demand for accounting, prior to seeking Court intervention, and Plaintiff failed to make such demand.

F. Plaintiff's Fifth Cause is Defective, and Plaintiff Cannot Amend the Complaint as She Did Not Request Affirmative Relief in Her Cross Motion

The text of the Complaint only requests removal of Pinchevsky as President pursuant to Business Corporation Law §706(d), not §716(c). Plaintiff's Complaint does not plead removal of Pinchevsky as both officer and director, as Plaintiff claims in its opposition. Plaintiff's claim specifically titled "Removal of Pinchevsky as President," (¶53) only pleads conduct it alleges "constitutes cause warranting her removal from the office of President of the Corporation" (¶55) and only requests "an order removing Pinchevsky as President of the Corporation for cause, and barring her from re-election for a period to be determined by the Court," (¶56). *See* Exhibit K, ¶53-56. The Complaint, for example, does not seek relief to bar Pinchevsky from serving on the Board of Directors, rather, just not to seek re-election as President. Further, it would be legally insufficient to seek to remove Pinchevsky from the Board of Directors, as the law requires any board to consist of at least one member. Bus. Corp. Law § 702(a). Plaintiff plead its cause of action under the wrong statute and failed to take steps to cure this fatal flaw.

Further, to the extent that Plaintiff makes a request in her opposition papers for leave to amend her Complaint, this request should not be entertained as it is not properly before the Court. Despite filing a cross motion for other relief, Plaintiff failed to request leave of the Court to amend her Complaint, nor did Plaintiff put a proposed amended pleading before the Court. "A party seeking relief in connection with another party's motion is, as a general rule, required to do so by way of a cross motion…" *Fried v. Jacob Holding, Inc.*, 110 A.D.3d 56, 64–65, 970 N.Y.S.2d 260, 267 (2013). "Otherwise, a party who seeks relief by way of a notice of cross motion would be in a position less favorable than that of a party who merely makes the request without a notice of cross motion: the party who makes a formal cross motion would be required to comply with the notice and service requirements and deadlines imposed by the statute…" *Id.* In addition, Plaintiff's papers fail to include a proposed amended pleading, which, in and of itself, warrants the denial of leave to amend. *See Loehner v. Simons*, 224 A.D.2d 591, 639 N.Y.S.2d 700 (2d Dept.1996).

III. PLAINTIFF'S CROSS-MOTION FOR SANCTIONS SHOULD BE DENIED IN ITS ENTIRETY

Plaintiff's cross-motion for sanctions should be denied in its entirety. Defendant's request for sanctions was precipitated on the fact that, despite Plaintiff's claims being dismissed on multiple occasions by this Court, Plaintiff attempted to revive the same claims in this action, as the 2017 Action provided her no vehicle to do so. "To avoid sanctions, at the least, the conduct must have a good faith basis." *Dank v. Sears Holding Mgmt. Corp.*, 69 A.D.3d 557, 558, 892 N.Y.S.2d 510, 511 (2d Dep't 2010). Pinchevsky's basis for moving for sanctions, due to the multiple prior dismissals, was a good faith basis to request sanctions. Defendant's position was that the new allegations were not really new allegations, but allegations that could be and that are, utterly refuted, incorrect, or boilerplate allegations; that the vast number of allegations in Plaintiff's Complaint are recycled allegations from the 2017 Action, which Plaintiff is trying to

extend to the present. Given that Pinchevsky has expended time and money in the defense of the instant action, despite having defeated Plaintiff's derivative claims on multiple occasions in the 2017 Action, her request for sanctions was proper, and as such, warrants denial of Plaintiff's cross-motion for sanctions in its entirety.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests an order (i) denying Plaintiff's cross motion in its entirety; (ii) dismissing the Complaint in its entirety; (iii) granting sanctions in favor of Defendant Pinchevsky; and (iv) granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 3, 2021

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RULE 17 CERTIFICATION
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I hereby certify pursuant to Rule 17 of the Commercial Division Rules that the foregoing memorandum was prepared on a computer using Microsoft Word.

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Dated: New York, New York
August 3, 2021

/s/ Andreas E. Christou
Andreas E. Christou, Esq.