

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

_____ X
: MICHAEL KORDONSKY, individually and on :
: behalf of Dial Car Inc., and JEFFREY GOLDBERG, :
: individually and on behalf of Dial Car Inc., :
:

Plaintiffs, :

- against - :

ALEX BRUDOLEY, MARK LEVSHITS, :
DEMETRIOS SARDELIS, ANASTASIOS :
KOSTARELOS, MARK BARISHMAN, DAVID :
UKILIS, LEV BEYEDER, AVENUE X REALTY :
NY LLC, WEBSTER BANK NATIONAL :
ASSOCIATION, :

Defendants, :

and :

DIAL CAR, INC. :

Nominal :

Defendant. :

X

EDWARD R. FINKELSTEIN, an attorney duly admitted to practice law before the
Courts of the State of New York, affirms under penalties of perjury.

1. I am a member of the law firm of Finkelstein Filler, LLP, attorneys for Plaintiffs
Michael Kordonsky and Jeffrey Goldberg and I am fully familiar with the matters set forth herein.

BACKGROUND

2. As set forth in the Complaint (**Exhibit 1** hereto), this is a shareholder derivative
action brought on behalf of Dial Car, Inc. (“Dial”) and its shareholders.

3. Dial was once one of the leading black car corporate limousine services in the New York City metropolitan area. However, over the past thirteen years, the entire black car service industry and Dial have been decimated by the ever-changing economic landscape and the proliferation of app-based car services such as Uber and Lyft.

4. Dial is being run by an unauthorized, illegitimate and illegal board whose members (the individual defendants) have been using Dial's remaining assets and income to fund salaries, other perks and vindictive lawsuits against several of Dial's former board members and Dial's former attorneys.

5. The unauthorized, illegitimate and illegal board has: (a) not held an annual shareholders' meeting in at least three years; (b) not issued any financial statements in at least three years; (c) has not held a board election since 2018; and (d) did not notify and/or obtain the approval of Dial's shareholders when in July 2022, Dial sold its headquarters building, Dial's only substantial asset of value.

6. The illegal, illegitimate and unauthorized board and the individual defendants have been keeping Dial alive solely for their own benefit while engaging in self-dealing and other breaches of their fiduciary duties to Dial and its shareholders.

7. Accordingly, the Complaint seeks damages to remedy and compensate Dial and its shareholders for the self-dealing, breaches of fiduciary duties and duties of good faith and loyalty of the unauthorized, illegal and illegitimate board and the individual defendants.

8. Moreover, it appears that Dial and the individual defendants have failed to pay shareholders monies they are owed under various corporate programs and are living off the proceeds of the sale of its headquarters building.

9. If the illegal, illegitimate and unauthorized board and the individual defendants are allowed to continue exhausting Dial's remaining assets, there will be nothing left for Dial to distribute to its shareholders. Consequently, Plaintiffs seek the dissolution of Dial and the distribution of its remaining assets to the shareholders.

THE PROPOSED INTERVENORS ARE DIAL SHAREHOLDERS

19. After commencement of this lawsuit, Plaintiffs were contacted by at least 32 Dial shareholders (the "Proposed Intervenors") who want to join this action as *pro se* plaintiffs.

11. Plaintiffs believe the Proposed Intervenors are entitled to join and it would be beneficial to Dial's shareholders and Dial to have the Proposed Intervenors participate in this action even as *pro se* plaintiffs.

12. Rather than burden the Proposed Intervenors having to file 32 separate *pro se* intervention motions and then burden the Court with the same 32 separate motions, Plaintiffs are submitting the Proposed Intervenors' request to join the action as *pro se* plaintiffs in this one motion.

13. Annexed hereto as **Exhibit 2** are the affidavits of the 32 Proposed Intervenors who together with the Plaintiffs represent 34 shareholders owning **112 Dial shares**. This is **over 10%** of Dial's outstanding shares. Attached as **Exhibit 3** is a list of the shareholders and the amounts of Dial shares, they each own.

INTERVENTION SHOULD BE GRANTED

a. Intervention as of Right

14. Under CPLR §1012, intervention is allowed as of right when an intervenor: (a) has a strong interest in the action; and (b) will likely be adversely affected by rulings or outcome of said action. *See HSBC Bank USA, N.A. v. Chapman*, 209 A.D.3d 848 (2d Dep't 2022); *Perelmuter*

v. LRM Builders, LLC. 127 A.D.3d 1154 (2d Dep’t 2015).

b. Permissive Intervention

15. Under CPLR §1013 “intervention should be permitted ‘where the intervenor has *a real and substantial interest in the outcome of the proceedings.*’” *Global Team Vernon, LLC. v. Vernon Realty Holding, LLC*, 93 A.D.3d 819 (2d Dep’t 2012) (emphasis added). *See also American Home Mortgage Servicing v. Sharrocks*, 92 A.D.3d 620 (2d Dep’t 2012).

16. It makes little practical difference whether intervention is sought as of right under CPLR 1012(a) or as a matter of discretion under CPLR 1013 because under both provisions intervention should be granted “where the intervenor has a real and substantial interest in the outcome of the proceedings.” *Wells Fargo Bank, N.A. v. McLean*, 70 A.D.3d 676, 677 (2d Dep’t. 2010).

c. The Proposed Intervenors Satisfy Both Standards and Are Timely

17. The Proposed Intervenors satisfy both standards because as shareholders of Dial, they have a “real and substantial interest in the outcome of the proceedings” and they would be adversely affected by a judgment in this action.

18. The Proposed Intervenors request to intervene is timely because the action is less than three months old. In fact, most of the defendants have not yet even answered the complaint.

19. Finally, as they state in their affidavits, the Proposed Intervenors wish to adopt the Complaint (Exhibit 1 hereto) as their complaint.

20. No prior application has been made for the relief sought herein.

WHEREFORE it is respectfully submitted that the Proposed Intervenor be allowed to intervene as *pro se* plaintiffs in this action.

Dated: Staten Island, New York
November 6, 2023

Edward Finkelstein
EDWARD R. FINKELSTEIN

CERTIFICATE OF COMPLIANCE

This document complies with the word count limitation of Section 202.8-b of the Uniform Rules for the N.Y. State Trial Courts because it contains **1,054 words**, exclusive of the caption, and signature block.

Dated: November 6, 2023

Edward R. Finkelstein