STATE OF NEW YORK
SUPREME COURT: COUNTY OF NIAGARA

JASON BURNS
Individually and Derivatively on Behalf of
C.R.B. HOLDINGS INC.

Plaintiff

vs

AMENDED COMPLAINT
Index No. E177079/2022

C.R.B. HOLDINGS INC.
ROBERT BURNS

Defendants

Plaintiff, JASON BURNS ("Plaintiff"), *Individually and Derivatively on Behalf of* C.R.B. HOLDINGS INC. ("CRB"), by and through his attorneys, Law Offices of John P. Bartolomei & Associates, for his Amended Complaint against the Defendants, C.R.B. HOLDINGS INC. and ROBERT BURNS ("Defendant Burns" or "Defendant") alleges as follows:

PARTIES

1. Plaintiff, Jason Burns, is a resident of the Town of Lewiston, New York, residing at 4641 Creek Road, Lewiston, New York 14092.

2. Upon information and belief, Defendant, C.R.B. Holdings Inc., is a New York domestic business corporation organized under Section 402 of the Business Corporation law, with an office for the transaction of business at 2019 River Road, Niagara Falls, New York 14304.

3. Upon information and belief, Defendant, Robert Burns, is a resident of the City of Niagara Falls, New York, residing at 8955 Rivershore Drive, Niagara Falls, New York 14304.

4. Defendant Burns is the father of Plaintiff.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to CPLR §301.

6. Venue in Niagara County is proper pursuant to CPLR §503 and §509.

SUMMARY OF ACTION

7. Over the past 15 years Defendant Burns has deprived his son of corporate profits and dividends. Defendant Burns has engaged in illegal, fraudulent and oppressive actions toward Plaintiff, and has caused and continues to cause CRB's property and assets to be wasted and diverted for his personal and non-corporate purposes.

8. In order to fully calculate the damage done to Plaintiff, Plaintiff seeks, *inter alia*, a full accounting of CRB and if deemed appropriate by this Court, the appointment of a receiver to prevent future waste. Over the past 15 years, Plaintiff has learned of defalcations by Defendant Burns, and the waste and diversion of CRB's assets. Despite Plaintiff's knowledge, Defendant Burns has and continues now to defalcate and conceal the books and records of CRB.

9. Aside from his egregious self-dealing, Defendant Burns fraudulently induced Plaintiff to enter into an Amendment to Buy-Sell Agreement and Shareholders Agreement, terminated Plaintiff from employment while on Paid Family Leave, and then used the fraudulent and invalid agreements to steal Plaintiff's Fifteen (15) shares in CRB without just compensation.

10. Defendant Burns has refused to move forward with the purchase and sale of CRB (including the franchised Tim Hortons), which was set to be in the amount of approximately $5,000,000, yet he now claims CRB (including the franchised Tim Hortons) are valued at $1,500,000. In fact, Plaintiff and Defendant Burns were in negotiations for Plaintiff to buy-out Defendant Burns under a similar valuation that was rejected by Defendant Burns.

11. Plaintiff asserts causes of action against Defendants as follows:

First Cause of Action –
Declaratory Judgment declaring the purported closing date for the transfer and sale of shares null and void

Second Cause of Action –
Rescission of Amendment to Buy-Sell Agreement

Third Cause of Action –
Fraudulent transfer of shares, assets and profits of CRB for own personal use

Fourth Cause of Action –
Breach of contract

Fifth Cause of Action –
Breach of fiduciary duty

Sixth Cause of Action –
Conversion

Seventh Cause of Action –
Unjust enrichment

Eighth Cause of Action –
Fraud

Ninth Cause of Action –
Employment Discrimination

Tenth Cause of Action –
Accounting

Eleventh Cause of Action –
Attorneys' Fees

FACTUAL ALLEGATIONS

Background of CRB

12. CRB is a New York domestic business corporation organized under Section 402 of the Business Corporation law, and is engaged in the business of owning and operating Tim Hortons franchises in or around Niagara County.

13. Defendant Burns is the Chief Executive Officer of CRB, and has exhibited complete control over the corporation.

14. When the franchise was granted to CRB in December 1999, it became the first Tim Hortons franchisee in the Niagara Falls, New York sales and service area.

15. The Plaintiff was one of the original employees of CRB and intimately involved in the opening of the first franchise location at Niagara Falls Boulevard and Military Road in Niagara Falls. During the Plaintiff's employment he was substantially involved with the financial record-keeping of CRB, store management, and CRB's expansion with the opening of eight additional restaurant locations in the territorial region of Niagara Falls and its surrounding communities (a couple have since closed).

16. CRB was initially equally owned by Defendant Burns and Cathy Burns, husband and wife, and then Defendant Burns alone after he bought out the interest of his wife when they were divorced in 2006. In November of 2007, Plaintiff became a minority owner with 15% of the common stock of CRB.

17. Currently, CRB is authorized to issue 200 shares of common stock without par value, 100 of which are presently issued and outstanding.

18. Defendant Burns owns 85 shares and Plaintiff owns 15 shares.

19. CRB is an S-Corporation for tax purposes.

CRB's Buy-Sell Agreement

20. On November 14, 2007, there was a C.R.B Holdings Inc. Buy-Sell Agreement entered into by and among CRB, Plaintiff and Defendant ("Buy-Sell Agreement"). A copy of the Buy-Sell Agreement is annexed hereto as **Exhibit A**.

21. The Buy-Sell Agreement contains a "Recitals" section which summarized the purpose of the agreement as follows:

> A. The Corporation is authorized to issue 200 shares of common stock without par value (the "Shares"), 100 of which are presently issued and outstanding.
>
> B. The Shareholders are presently the legal and beneficial owners of the Shares described on Schedule "A" attached hereto, free and clear of all options, liens, encumbrances, pledges or chargers of any kind except as set forth in this Agreement.
>
> C. The Corporation has entered into certain franchise and related agreements with T.H.D. Delaware, Inc. ("THD") and has entered into certain lease agreements with Tim Donut U.S. Limited, Inc. (collectively, the "THD Agreements") pursuant to which the Corporation has acquired and is presently operating three Tim Horton Donut franchises,
>
> D. The THD Agreements provide for certain restrictions on transfer of the Shares;
>
> E. To insure compliance with the restrictions on transfers of Shares in the THD Agreements, to provide for continuity of the Corporation's management, and to create a market for the Shares upon the occurrence of certain events, the Shareholders have agreed to the restrictions on the transfer of Shares and the creation of options and obligations for the purchase and sale of Shares as provided in this Agreement.

22. The Buy-Sell Agreement contains a "Sales Price", which contains the following language:

> 1.01 The following definitions apply to this Agreement:
>
> (a)"Sales Price" means the greater of the Agreed Value per Share or the Book Value per Share.

(b) "Agreed Value" means $5,000.00 per Share. The Agreed Value may change from time to time, providing that all Shareholders agree to the change in writing using the form set forth in Exhibit 1.01 (b), which is attached to this Agreement and incorporated by this reference.

(c) "Book Value" means book value per Share as determined in accordance with generally accepted accounting principles consistently applied as of the end of the calendar quarter preceding the date of closing of any purchase and sale of Shares hereunder, determined by the certified public accountant or certified public accounting firm then servicing the Corporation, which determination shall be final and conclusive and binding on all parties. "Book Value" shall include the cash surrender value, though not the proceeds, of any Corporation-owned insurance policies on the life of a Shareholder.

23. Section 2.01 of the Buy-Sell Agreement provides for a restriction on the transfer of shares as follows:

2.01 Restrictions on Transfer: Permitted Transfers. Each of the Shareholders hereby agrees to hold and dispose of any Shares now or hereafter owned or controlled by them only as provided in this Agreement. Without the prior written consent of the other Shareholders, no Shareholder shall at any time sell, assign, transfer or otherwise dispose of, or permit to be sold, assigned, transferred or otherwise disposed of (voluntarily, involuntarily or by operation of law), any Shares now or hereafter owned or controlled by such Shareholder in violation and contrary to the terms of this Agreement.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, a Shareholder may transfer some or all of his Shares by testamentary transfer to his children or to another Shareholder, and such transfer shall not be subject to any of the restrictions set forth in this Agreement:

24. Section 4.04 of the Buy-Sell Agreement provides for the voluntary transfer of shares as follows:

4.01 Voluntary Transfers
(a) If a Shareholder desires to transfer any Shares to any transferee other than the Corporation or another Shareholder, that Shareholder (the "Selling Shareholder") shall promptly give written notice (a "Sale Notice") to the Corporation, the remaining Shareholders, and THD, of his desire to transfer Shares. The Sale Notice shall state: (i) the number of Shares proposed to be transferred, (ii) the name and address of the proposed transferee, and (iii) the amount of the consideration and the other terms of the sale. The Selling Shareholder shall provide such additional information concerning the transfer

and the proposed transferee as the Corporation, the remaining Shareholders, and THD shall request.

(b) If the Corporation determines that the proposed transfer is not permitted under the terms of the THD Agreements, or, if after receipt of the notice and all additional information requested, THD shall fail to consent in writing to the proposed transfer, then the proposed transfer shall not be made.

(c) If the Corporation determines that the proposed transfer is consistent with the THD Agreements, and THD consents in writing to such transfer, then within 60 days of the Corporation's receipt of THD's written consent to the transfer, the Corporation may exercise an option to purchase all or any portion of the Shares proposed to be transferred for the price and upon the terms hereafter provided. If the Corporation does not exercise its opinion to purchase all or any of such Shares, the remaining Shareholders, within 120 days of the Corporation's receipt of THD's written consent, may exercise an option to purchase all of the unpurchased Shares.

(d) The Corporation and the remaining Shareholders must in the aggregate exercise their options to purchase all of the Shares proposed to be transferred or forfeit their options.

25. Under the Buy-Sell Agreement, Plaintiff was afforded certain rights prohibiting Defendant Burns from taking his shares. Notably, the Buy-Sell Agreement does not provide for the involuntary transfer of shares in the event of assault (and other criminal acts) or termination of employment. Article IV, Section 4.02 addresses involuntary transfers, and while it provides numerous circumstances that could result in an involuntary transfer, termination of employment is not listed.

26. Section 5.07 of the Buy-Sell Agreement provides for an amendment of the agreement as follows:

5.07 Amendment. This Agreement may be modified, amended or waived only by a written agreement executed by the party against whom enforcement of such modification, amendment or waiver is sought.

January 28, 2010 Amendment to the Buy-Sell Agreement

27. On October 14, 2009, there was a physical altercation between Plaintiff and Defendant Burns that was initiated by Defendant Burns. Despite starting the altercation, Defendant Burns filed a Domestic Incident Report. A copy of the Domestic Incident Report is annexed hereto as **Exhibit B**.

28. In an attempt to compound a crime and extort Plaintiff, on January 28, 2010, Defendant Burns presented Plaintiff with an Amendment to the Buy-Sell Agreement, and fraudulently represented to him that its purpose was to reduce criminal charges, if signed by Plaintiff ("Amendment to the Buy-Sell Agreement"). In reality, Defendant Burns made a material misrepresentation to Plaintiff, and his sole purpose for the Amendment to the Buy-Sell Agreement was to make it easier to take his shares. A copy of the Amendment to the Buy-Sell Agreement is annexed hereto as **Exhibit C**.

29. Plaintiff was not provided an opportunity to consult counsel prior to being presented with the Amendment to the Buy-Sell Agreement. Without the opportunity to contact or benefit of independent counsel, Plaintiff signed the Amendment to the Buy-Sell Agreement and Defendant Burns agreed to reduce criminal charges, which resulted in an Adjournment in Contemplation of Dismissal. Plaintiff had to essentially stay out of trouble for six months, which he did, and the charges were dismissed. A copy of the Certificate of Disposition is annexed hereto as **Exhibit D**.

30. The Amendment to the Buy-Sell Agreement was the result of a material misrepresentation made by Defendant Burns to Plaintiff. Plaintiff justifiably relied on this material misrepresentation because it was made by his father, who demonstrated complete control over CRB. In reality, the Amendment to the Buy-Sell Agreement substantially

diminished Plaintiff's rights and standing within the corporation, making it easier for Defendant Burns to take ownership of Plaintiff's shares, without compensation. For example, the Amendment to Buy-Sell Agreement provided that Defendant Burns could (based on a self-serving affidavit) take ownership of Plaintiff's shares, without compensation if he should "assault, strike, harass, menace, intimidate or threaten" Defendant Burns. There was no correspondence clause benefiting Plaintiff. Specifically, the Amendment to the Buy-Sell Agreement provides that:

> FIRST: A new additional Article at the end of Article IV is hereby added:
>
> I. In consideration of Robert W. Burns, permitting reduction of the criminal charges initiated by him, as complaining witness against Jason R. Burns in the Wheatfield Town Court (P.L. 240.26-1) on October 14, 2009. Jason R. Burns agrees that anytime in the future should he assault, strike, harass, menace, intimidate or threaten Robert W. Burns as evidenced and attested to by Robert W. Burns' Affidavit of such occurrence giving the time, date and place of such an act shall be deemed sufficient to automatically actuate the following:
>
> (A) Article III of said Agreement as to the rights of Jason R. Burns will be cancelled and annulled, and
>
> (B) Jason R. Burns agrees to forfeit his stock and convey any and all shares of such stock he owns in CRB Holdings, Inc., or to Robert W. Burns as he may choose, without payment or remuneration of any kind.
>
> (C) To resign in writing any office or position he may hold in the corporation including Director or Officer as the case may be.
>
> (D) Cancel and annul any other rights he may have under any other Article of said Buy Sell Agreement.
>
> (E) Release and discharge Robert W. Burns and the corporation from any alleged claims, liability or cause of action he may have against Robert W. Burns or the Corporation.
>
> (F) Agrees to turn over all corporate documents in his possession or any articles of personal property belonging to the corporation.
>
> (G) Nothing herein contained shall be deemed to limit Robert W. Burns from bringing any action against Jason R. Burns in connection with his employment

> or officer of the Corporation, in law oar(sic) equity because of any acts of Jason r.(sic) Burns including the acts enumerated above causing his forfeiture. (Emphasis added by Plaintiff).

31. Not only could Defendant Burns take ownership of Plaintiff's shares, without compensation, the Amendment to Buy-Sell Agreement required Plaintiff to release and discharge Defendant Burns from any claims and causes of action. To the contrary, Defendant Burns retained all rights to bring claims and causes of action against Plaintiff.

32. The Amendment to the Buy-Sell Agreement is null and void and forms no basis for anything concerning the ownership, sale, surrender or vanquishment of Plaintiff's shares in CRB.

33. A plain reading of the Amendment to the Buy-Sell Agreement makes it clear that it is unconscionable by its very terms, and the facts and circumstances of how the agreement was caused to be executed by Plaintiff demonstrates that it is not legally enforceable. Plaintiff was not given an opportunity to consult an attorney regarding the contents of the Amendment to the Buy-Sell Agreement, and justifiably relied on the material misrepresentations of his father, Defendant Burns, in executing the Agreement. The Amendment to the Buy-Sell Agreement is unconscionable because it is so grossly unreasonable as to be unenforceable because of an absence of meaningful choice on the part of Plaintiff, and its terms are unreasonably favorable to Defendant Burns. Instead, Defendant Burns used the Amendment to the Buy-Sell Agreement to compound a crime, extort Plaintiff, and make it easier for him to obtain his shares without compensation.

Shareholders Agreement

34. When Plaintiff did not "assault, strike, harass, menace, intimidate or threaten" Defendant Burns, Defendant Burns had to conjure up another scheme to take Plaintiff's shares in the corporation. While the above-mentioned provisions were again added to the Shareholders Agreement (See Section 4.1), Defendant Burns added a Section allowing him to obtain the shares owned by Plaintiff, based on termination of employment, which Defendant Burns controlled. Understanding that Plaintiff did not, and would not engage in a physical confrontation with his father, Defendant Burns needed to come up with another scheme to deprive Plaintiff of his shares.

35. A Shareholders Agreement was entered into on October 1, 2014, by and among CRB, Plaintiff and Defendant Burns ("Shareholders Agreement"). A copy of the Shareholders Agreement is annexed hereto as **Exhibit E**.

36. The Shareholders Agreement was drafted at the direction of Defendant Burns by attorney Christopher Greene, Esq. of Barclay Damon LLP.

37. Section 6.14 of the Shareholders Agreement provides that the Shareholders Agreement "supersedes all prior and contemporaneous undertakings and agreements by and between the parties…"

38. Section 2.1 and 2.1 of the Shareholders Agreement demonstrates the unconscionability of the Agreement with respect to the transfer of shares which are grossly favorable to Defendant Burns. Specifically:

> 2.1 Restrictions on Transfer by Jason. Jason hereby expressly covenants and agrees that he will not Transfer any of his Shares except in accordance with the provisions of this Agreement. Any purported Transfer by Jason of his Shares in violation of the terms of this Agreement shall be void and of no force or effect whatsoever. Compliance with the provisions of this Agreement is a condition precedent to the Transfer by Jason of any of his Shares and to the recording of

such Transfer upon the books of the Corporation. The restrictions on Transfer herein set forth shall not apply to Robert.

2.2 Permitted Transfer. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, Jason may Transfer any or all of his Shares to Robert. Any Transfer of Shares by Jason to Robert pursuant to this Section 2.2 shall not be subject to any of the restrictions set forth in this Agreement. (Emphasis added by Plaintiff).

39. Section 3.4 of the Shareholders Agreement provides for the optional purchase of shares upon termination of employment of Plaintiff, if certain deadlines were met:

3.4 Optional Purchase of Shares Upon Termination of Employment of Jason. In the event that Jason shall cease to be an employee of the Corporation for any reason, the Corporation shall have the option to purchase from Jason any or all of the Shares which Jason owned at the time of his termination as an employee of the Corporation, for the purchase price and upon the other terms specified in Section 3.5 below. The right of the Corporation to purchase all or any portion of the Shares then owned by Jason shall be exercisable by giving written notice to Jason within thirty (30) days following the effective date of the termination of his employment. In the event that the Corporation shall exercise such option, the Corporation shall be required to purchase, and Jason shall be required to sell, such Shares owned by Jason. The consummation of any purchase of Jason's Shares by the Corporation shall take place on a date not more than sixty (60) days following the effective date of termination of the employment of Jason. (Emphasis added by Plaintiff)

40. Section 3.5 provides for the purchase price as closing as follows:

3.5 Purchase Price: Closing.

(a)Purchase Price

(i) The purchase price of any Shares purchased pursuant to Sections 3.1, 3.2, 3.3 and 3.4 above shall be the Purchase Price.

(ii) The Corporation shall pay the Purchase Price in cash or by wire transfer of immediately available funds. Notwithstanding the foregoing, the Corporation shall have the option, in its sole discretion, to pay a maximum of seventy-five percent (75%) of the Purchase Price by promissory note, which promissory note shall be upon the following terms: (A) seven (7) equal annual installments of principal and interest, the first such installment to be paid not more than sixty (60) days from the date of closing; (B) interest to accrue at a per annum rate equal to the Wall Street Journal Prime Rate as reported on the date of the closing

> or, if not reported on such date, on the prior date nearest thereto; and (C) no prepayment penalty.
>
> (b) Closing The closing of any sale and purchase of Shares pursuant to Sections 3.1, 3.2, 3.3 and 3.4 above shall take place at the then principal office of the Corporation. (Emphasis Added by Plaintiff).

41. Thus, while it made it easier for Defendant Burns to take Plaintiff's shares, certain deadlines and procedures had to be followed in order for the transfer to be complete. If the deadlines and procedures were not complied with, Plaintiff would continue to have possession of his shares, and continue to be entitled to profits and disbursements of the corporation, in addition to other rights.

42. Section 6.21 provides for separate counsel to review the terms of the Shareholders Agreement as follows:

> 6.21 Separate Counsel. Each party to this Agreement acknowledges and agrees that such party has been provided the opportunity and encouraged to consult with counsel of such party's own choosing with respect to this Agreement and that no party other than the Corporation has engaged Damon Morey LLP to represent his interest. Each party has negotiated, reviewed and entered into this Agreement of their own free will and by the exercise of their own independent judgement after having the opportunity to be represented by legal counsel of their own choice and selection.

43. As is set forth in further detail herein, Plaintiff was wrongfully terminated from CRB in November of 2020, just over six years after the execution of the agreement. Defendant Burns contends that the Shareholders Agreement governs, among other things, the ownership of Plaintiff's Fifteen (15) shares in CRB.

44. The Shareholder's Agreement is null and void and forms no basis for anything concerning the ownership, sale, surrender or vanquishment of Plaintiff's shares in CRB. A plain reading of the Shareholder's Agreement makes it clear that it is unconscionable by its

very terms, and the facts and circumstances of how it was caused to be executed by Plaintiff demonstrates that it is not legally enforceable.

45. Defendant Burns demanded that Plaintiff meet him at the office of Barclay Damon LLP to sign the agreement, which they drafted at the direction of Defendant Burns. Plaintiff was not "provided the opportunity and encouraged to consult with counsel of such party's own choosing." Rather, the Shareholders Agreement was presented to him for signature, which was the first time he had viewed the document.

46. Plaintiff was not told by his father what he was signing or that he would be "provided the opportunity and encouraged to consult with counsel of such party's own choosing." Rather, Plaintiff was told by Defendant Burns that he had to go meet with new attorneys and "sign some papers." There was no specific mention of what the document was prior to it being placed in front of him for signature. Plaintiff was told by Defendant Burns that it was the same document that was previously signed and that it had to be redone because the corporation switched law firms. This was a material misrepresentation by Defendant Burns which was justifiably relied on by Plaintiff based on their relationship and Defendant's complete control over the corporation.

47. The Shareholders Agreement is unconscionable because it is so grossly unreasonable as to be unenforceable because of an absence of meaningful choice on the part of Plaintiff, and its terms are unreasonably favorable to Defendant Burns. In addition, the Shareholder's Agreement is of dubious legal validity on unconscionability grounds, did not involve a meeting of the minds and was not supported by consideration.

Letter of Intent From Kelton Enterprises, LLC

48. In late 2019 and into early 2020, Defendant Burns notified Plaintiff that he was considering retiring and selling CRB. Defendant Burns notified Plaintiff that Plaintiff would have the first option to purchase his shares.

49. On January 3, 2020, CRB received a Letter of Intent from Kelton Enterprises, LLC who is a franchisee of various Tim Hortons restaurants in the Western New York area. A copy of the Letter of Intent is annexed hereto as **Exhibit F**.

50. The Letter of Intent states that, "You will sell substantially all of the assets comprising the Restaurants and ensure the proper assignment of the Leases to the Buyer (the "Acquisition") for a purchase price of no more than Five Million USD ($5,000,000.00) (the "Price"). The final Purchase price will ultimately be determined under the terms of the Valuation Practice Handbook."

51. The Letter of Intent further states that, "The Buyer will pay the Price as follows: $5,000,000.00 at closing, in good and readily available funds by wire transfer…"

52. There was no sound basis for Defendant Burns to reject this offer, especially when he now claims CRB is valued at $1,500,000. Plaintiff urged Defendant Burns to move forward with the deal, which was rejected by Defendant Burns. Notably, the deal was rejected after Defendant Burns had already notified Plaintiff that he was considering retiring and selling CRB. It is Plaintiff's belief that Defendant Burns did not go through with the purchase and sale because he did not want to compensate Plaintiff for his 15% ownership of CRB.

Plaintiff's Letter of Intent

53. As noted, in late 2019 and into early 2020, Defendant Burns notified Plaintiff that he was considering retiring and selling CRB. Defendant Burns notified Plaintiff that Plaintiff would have the first option to purchase his shares.

54. Defendant Burns had already, without sound basis, declined to accept a buy-out valued at approximately $5,000,000.

55. Based on prior representations of his father, which turned out to be a misrepresentation relied on by Plaintiff, on January 8, 2020, Plaintiff provided Defendant Burns with a Letter of Intent to purchase his 85 shares in CRB, which was consistent with the offer of $5,000,000 that was rejected by Defendant Burns. A copy of the Letter of Intent is annexed hereto as **Exhibit G**.

56. As is set forth in the Letter of Intent, "The closing on the purchase of your shares will be contingent on our ("Buyer's["]) obtaining a written commitment letter from a bank or other lending institution…"

57. In furtherance of the purchase and sale under the Letter of Intent, on March 1, 2020, Plaintiff received a term sheet from Bank on Buffalo. A copy of the email is annexed hereto as **Exhibit H**.

58. Despite his prior representations to Plaintiff, Defendant Burns did not go through with the purchase and sale as offered.

Lawn mower Accident involving Plaintiff's son

59. On June 1, 2018, Plaintiff's minor son, Gavin Burns, suffered a traumatic lawnmower accident resulting in the eventual amputation of his left foot.

60. Following the accident, Defendant Burns stole the lawnmower from Plaintiffs, which has yet to be recovered.

61. Multiple surgeries were performed beginning in 2018 to address the injury and continued into July/August of 2020.

62. Gavin's post-surgical rehabilitative care is continuing to this day. This includes, but is not limited to: physical therapy, prosthetic/orthotic consultations and treatment, and personal and family counseling to help Gavin.

63. The Plaintiff and the rest of the family have had to process the effects of the injury on Gavin's life, required the Plaintiff to file for Paid Family Leave benefits he needed to care for his family, and also scheduled necessary and protected time off from work.

64. The application for Paid Family Leave benefits was timely submitted on August 20, 2020 with the first scheduled day off being August 24, 2020. The effective dates of the medical authorizations from Gavin's doctor in support of the benefits initially ran from August 12, 2020 through December 12, 2020 and then were extended to August 11, 2021.

65. At the time that Plaintiff submitted his Paid Family Leave application he had been an employee of CRB for nearly 20 years, had become a part owner, and had a completely unblemished personnel/employment record.

66. Despite having an unblemished personnel/employment record, Defendant Burns terminated Plaintiff's employment on the sole basis that he applied for Paid Family Leave, and

while he was on Paid Family Leave. This is important to note, because it is in clear violation of New York's anti-discrimination laws.

Plaintiff's Wrongful Termination and discrimination

67. On November 7, 2020, Defendant Burns sent Plaintiff a termination email, terminating his employment effective November 6, 2020. There was no valid basis for Defendant Burns to terminate Plaintiff from his employment, and its sole basis was to take his shares in the corporation, without just compensation. Defendant Burns used the unenforceable and unconscionable agreements to ultimately terminate Plaintiff, and take his shares under terms favorable to Defendant Burns, including to without just compensation. Without the benefit of the Shareholders Agreement, Defendant Burns would not have the wrongfully take Plaintiff's shares in the event of a termination. Specifically, the email states:

> Jason, as you know we have been going back and forth with our attorneys an (sic) cannot resolve the issues we have between us, there fore (sic) you leave me no choice but to terminate your employment with CRB Holding Inc. As of November 6 TH (sic) 2020 was your last day with the company, you can call me to make arrangements to pick up your personal items that you may have at the office. My lawyer has a letter of termination for you as to which you will be receiving shortly, Robert W. Burns, President of CRB Holding INC.

A copy of the email is annexed hereto as **Exhibit I**.

68. In a letter dated November 5, 2020, Plaintiff was terminated by CRB via letter, effective November 6, 2021. According to the termination letter:

> Termination of Employment
> Your unsatisfactory performance, lack of attention to detail and insubordinate attitude have had a detrimental effect on the Company and have made it impossible for you to continue as an employee in our work environment, and therefore, your employment with the Company is hereby terminated effective as of the end of the day on Friday, November 6, 2020.
>
> Of course, you will be paid all compensation and benefits, including accrued vacation pay, through the date of termination. You will be provided the standard COBRA notice so that your health insurance can continue at your expense.

> Further, the indebtedness owed to you, as accrued on the books of the Company, will be honored and paid to you.

A copy of the termination letter is annexed hereto as **Exhibit J**.

69. The Plaintiff's termination occurred during a resurfacing in the summer of 2020 of a different degree of familial discord. In 2020 the familial breakdown was not directly between Plaintiff and Defendant Burns, but instead arose out of an unfortunate dissolution of the grandparent relationship between Defendant Burns and his grandson, Gavin. The only thing Plaintiff was in the middle of during this time frame that impacted his employment was his need to take time off to be with his son whom Defendant Burns had substantially excommunicated himself from on his own terms.

70. Plaintiff's only "wrong" during this time was standing by his son during the estrangement that occurred between Gavin and his grandfather, Defendant Burns. Plaintiff's regularly scheduled Paid Family Leave days off on a near-weekly basis, though initially accepted as it should have been (not only as required by law, but also in the moral framework of the family relationship between the parties), eventually became the "rub" that Defendant Burns decided had to come to an end by early November, 2020.

71. Quite simply, when Defendant Burns no longer cared about his grandson, he also no longer saw the need to accommodate his employee/son's needs to take time off to provide the medical support and care the grandson (and the Plaintiff) needed at that time.

72. Defendant Burns' motivation was to punish the Plaintiff as an extension of his estrangement from the Plaintiff's son and family, and to take his shares, without just compensation. No other independently documented grounds to justify the Plaintiff's discharge for employment-related non-performance of duties exist. Defendant Burns exercised his dislike of the Plaintiff's entitlement for time off under the Paid Family Leave to attend to the medical

needs of the person whom Defendant sought to exact his disdain toward, his grandson Gavin. Having days off for that purpose became unacceptable to Defendant and resulted in the discriminatory discharge of the Plaintiff under these circumstances.

73. The November 5, 2020 termination letter contains a section for the repurchase of Plaintiff's shares, which states as follows:

> Repurchase of Your Shares
> Pursuant to Section 3.4 of the Shareholders Agreement, dated as of October 1, 2014, to which you are a party, the Company hereby exercises its option to purchase all of the Shares of the Company owned by you, for the purchase price and upon the terms specified in Section 3.5 of that Agreement. I have asked the Company's CPA, Mike Dolan, to assist in the calculation of the Purchase Price and have asked the Company's counsel, Chris Greene, to prepare the necessary paperwork to complete the transaction in accordance with the Agreement. They will work with your attorney John DelMonte on this matter.

74. The November 5, 2020 termination letter contains a section for a conditional severance offer, which states:

> Conditional Severance Offer
> Apart from the above, on behalf of the Company, I offer you an additional lump sum severance payment in the gross amount of $40,000, to be reduced by lawful withholdings, provided that you execute a release of all claims you may have against me, the Company, or an of its shareholders, officers, employees, or representatives. This offer is conditioned upon your written acceptance of this offer not later than November 13, 2020 at Noon. Chris Greene will prepare the release agreement, to include standard terms typically included in a severance arrangement, and will provide it to John DelMonte.

75. The terms of the Conditional Severance Offer were not accepted by Plaintiff, who disputes the termination and validity of the Shareholders Agreement.

76. On November 8, 2020, counsel for Plaintiff sent a letter to counsel for CRB in response to the November 5, 2020 termination letter, and disputed the termination and validity of the Shareholders Agreement. A copy of the letter is annexed hereto as **Exhibit K**.

77. As was explained by Plaintiff's counsel, the termination letter alleges certain pre-textual grounds for the termination which Plaintiff strongly disagrees with, and maintains that there was not (nor is there) any lawful or justifiable grounds for the termination. Rather, it is well documented and factually indisputable that the termination has been wrongfully triggered as a vindictive and illegal retaliatory discharge of Plaintiff based on his filing of necessary time off under Paid Family Leave.

CRB Informs Plaintiff That It Has Elected to Purchase His Shares Under the Shareholders Agreement

78. In a letter dated June 17, 2021 CRB notified Plaintiff of: (a) the termination of his employment with CRB; and (b) CRB's election to purchase Plaintiff's shares under the terms of the Shareholders Agreement. A copy of the letter is annexed hereto as **Exhibit L**.

79. In the letter dated June 17, 2021, Defendants contend that the valuation of Plaintiff's shares and the terms under which they are to be purchased and sold are governed by the Shareholders Agreement. The letter goes on to state that CRB's accountant, Tronconi Segarra & Associates LLP, provided CRB with a valuation of the shares of One Million Five Hundred Thousand Dollars ($1,500,000). According to said valuation, Defendants contend that the value of Plaintiff's shares is Two Hundred Twenty-Five Thousand Dollars ($225,000).

80. The June 17, 2021 letter further states that, CRB scheduled a definite closing date of June 25, 2021 at 10:00 am at the offices of Barclay Damon LLP, located at 200 Delaware Avenue, Suite 1200.

81. The June 17, 2021 letter further states that Plaintiff is required to bring the stock certificate with him representing his shares and that CRB will provide Plaintiff with a certified check for Fifty-Six Thousand Two Hundred Fifty Dollars ($56,250) and a Promissory Note for One Hundred Sixty Eight Thousand Seven Hundred Fifty Dollars ($168,750).

82. Plaintiff's shares in the corporation are his property, and he did not sell or authorize the sale of his shares to anyone. There has been no agreement or acknowledgment of any intention to sell Plaintiff's shares and there has certainly been no acceptance or agreement of a calculation of their current fair market value which might ever support a sale.

83. In an email dated June 18, 2021, Plaintiff's counsel rejected acceptance of the letter based on the fraudulent, unconscionable, and illegal nature of the termination and the Shareholders Agreement. A copy of the email is annexed hereto as **Exhibit M**.

84. Notwithstanding, to the extent that the Shareholders Agreement was to have any legal viability and enforceability (which it does not), Section 3.4 states:

> 3.4 Optional Purchase of Shares Upon Termination of Employment of Jason. In the event that Jason shall cease to be an employee of the Corporation for any reason, the Corporation shall have the option to purchase from Jason any or all of the Shares which Jason owned at the time of his termination as an employee of the Corporation, for the purchase price and upon the other terms specified in Section 3.5 below. The right of the Corporation to purchase all or any portion of the Shares then owned by Jason shall be exercisable by giving written notice to Jason within thirty (30) days following the effective date of the termination of his employment. In the event that the Corporation shall exercise such option, the Corporation shall be required to purchase, and Jason shall be required to sell, such Shares owned by Jason. The consummation of any purchase of Jason's Shares by the Corporation shall take place on a date not more than sixty (60) days following the effective date of termination of the employment of Jason. (Emphasis added by Plaintiff).

85. None of the dates have been invoked or complied with and though Plaintiff dismisses the Shareholders Agreement as a whole, the dates serve to extinguish any option to purchase Defendant Burns or the corporation may have ever had even if the Shareholders Agreement were to somehow be considered valid and enforceable. In addition, the location of the closing, as set forth in Mr. Greene's June 17, 2021 letter, in contrary to what the Shareholders Agreement requires, i.e., that the closing take place "at the then principal office of the Corporation." As a result, Plaintiff remains a shareholder of CRB.

86. None of the above dates or location of the closing were complied with, yet Defendants claim that the purported closing is complete. This is also contrary to the Shareholders Agreement. The Shareholders Agreement states that the shares shall be endorsed with a legend in substantially the following form (Section 6.5):

> THE SHARES REPRESENTED BY THIS CERTIFICATE ARE TRANSFERABLE ONLY UPON COMPLIANCE WITH PROVISIONS OF A CERTAIN SHAREHOLDERS AGREEMENT, DATED OCTOBER 1, 2014, BY AND AMONG ROBERT W. BURNS, JASON R. BURNS AND C.R.B. HOLDINGS INC., A COPY OF WHICH IS ON FILE IN THE PRINCIPAL OFFICES OF C.R.B. HOLDINOS INC. NO SHARES REPRESENTED BY THIS CERTIFICATE MAY BE SOLD, DONATED, ASSIGNED, MORTGAGED, PLEDGED, HYPOTHECATED, ENCUMBERED, BEQUEATHED, 23 GIFTED, OR OTHERWISE TRANSFERRED OR DISPOSED OF IN ANY MANNER UNLESS MADE IN ACCORDANCE WITH THE AFORESAID AGREEMENT.

Purported Closing and Actions Taken by Defendants Following the Purported Closing

87. On June 25, 2021, CRB purportedly proceeded with the sale of the purchased shares from Plaintiff under the terms of the Shareholders Agreement. CRB purports to have delivered Plaintiff a certified check for Fifty-Six Thousand Two Hundred Fifty Dollars ($56,250) and a Promissory Note for One Hundred Sixty Eight Thousand Seven Hundred Fifty Dollars ($168,750).

88. On July 8, 2021, Barclay Damon LLP stated that is has held in escrow a certified check for Fifty-Six Thousand Two Hundred Fifty Dollars ($56,250) and a Promissory Note for One Hundred Sixty Eight Thousand Seven Hundred Fifty Dollars ($168,750). A copy of the letter is annexed hereto as **Exhibit N**.

89. According to the letter, Barclay Damon LLP states that CRB will continue to make payments under the Promissory Note by mailing checks directly to Plaintiff at 4641 Creek Road, Lewiston, New York 14092.

90. Barclay Damon LLP was not designated, recognized or authorized to serve as the Escrow Agent in any capacity whatsoever, especially on behalf of or for any purpose to receive any monies or transact any other action on behalf of Plaintiff. Its purported role as Escrow Agent was not and is not with Plaintiff's consent or authorization, and nothing Barclay Damon LLP does or professes to do in some fiduciary capacity was or is accepted by Plaintiff.

91. Barclay Damon LLP cannot be employed to act in any capacity on behalf of any of the parties in light of its prior attorney-client representation of Plaintiff in the past, including its involvement in the Shareholders Agreement and overseeing its purported execution by Plaintiff without any opportunity for him to seek and obtain independent legal counsel.

92. Plaintiff's counsel has previously demanded that Barclay Damon LLP immediately remove itself from said conflicting representation. Indeed, attorneys at Barclay Damon LLP will be examined as a witness to the events surrounding the purported execution of the Shareholders Agreement, and other facts and documents.

Defendant Burns' Self-Dealing And Use Of Corporate Assets For His Own Personal Use

93. Since formation, Defendant Burns has exercised complete dominion and control of CRB, which was used to deprive Plaintiff of corporate profits and dividends, and ultimately his Fifteen (15) shares in CRB, without just compensation.

94. Defendant Burns has knowingly engaged in activities which have been detrimental to the welfare and business of CRB. Defendant Burns' activities have been perpetrated to disrupt the business of the CRB for his own benefit. Defendant Burns has used

his complete control over the corporation to attempt to conceal the below acts from Plaintiff.

The acts include, but are not limited to:

a. acting in his own best interest rather than in the best interest of CRB and Plaintiff.

b. beginning in 2017 when Plaintiff became a minority shareholder and continuing to this day, Defendant used CRB to funnel money for his own personal gain, by paying himself dividends, and not paying dividends to Plaintiff for his Fifteen (15%) Percent ownership.

c. in 2016, Defendant Burns' increased his salary from approximately $2,000.00 per week to approximately $7,000.00 per week.

d. using CRB funds to purchase personal items such as vehicles and real property, without compensating Plaintiff for his Fifteen (15%) Percent ownership.

e. on or around December 21, 2018, he purchased a house in Fort Myers, Florida, for approximately $605,000, with CRB funds.

f. on or around January 19, 2022, he purchased 4501 Hyde Park Blvd., in Niagara Falls, New York, with CRB funds.

g. in 2021 he purchased an Escalade with CRB funds.

h. in 2022 he purchased a pickup truck with CRB funds.

i. beginning in 2017 when Plaintiff became a minority shareholder and continuing to this day, Defendant Burns underpaid Plaintiff, while indicating on Plaintiff's W-2 that he earned approximately $150,000.00 per year. Plaintiff never received the full amount that was indicated on his W-2.

j. fraudulently inducing Plaintiff to enter into a Shareholders Agreement and Amendment to Buy-Sell Agreement, terminating Plaintiff from employment while on Paid Family Leave, and then using the Shareholders Agreement to buy-back Plaintiff's Fifteen (15) shares in CRB.

k. not closing a deal with Kelton Enterprises, LLC (pursuant to a January 3, 2020 Letter of Intent) to sell the assets of CRB for a purchase price believed to be approximately $5,000,000, when Defendants now claim CRB is valued at $1,500,000.

l. not compensating Plaintiff for approximately $18,000 for funds received from Artpark for concession sales from 2008-2020.

The Corporation Has Not Provided A Formal Accounting

95. Since becoming 15% owner of the corporation, Plaintiff was never adequately compensated for business income and dividends. The business income that it says Plaintiff was paid on his tax returns was not actually paid to him. In addition, he was not provided dividends consistent with those of Defendant Burns, who used corporate assets to make purchases for his own personal use.

96. Counsel for the parties have engaged in prior negotiations regarding a fair market value of the shares, which would be applied based on a future consensual separation of Plaintiff's ownership of the corporation. In doing so, counsel for Plaintiff has requested a full set of accounting documents and materials relied on by the accountants to prepare the balance sheets sent with counsel for Defendants' December 7, 2020 letter.

97. Despite demands for a formal accounting of the corporation's books and records, the corporation has failed to fully respond and comply with Plaintiff's demands for a formal accounting.

CAUSES OF ACTION

AS AND FOR THE FIRST CAUSE OF ACTION AGAINST DEFENDANTS: DECLARATORY JUDGMENT DECLARING THE CLOSING DATE FOR THE SHARES NULL AND VOID

98. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Verified Complaint.

99. Defendant Burns contends that the Shareholders Agreement governs, among other things, the ownership of Plaintiff's Fifteen (15) shares in CRB, and that the transfer and sale is complete.

100. The Shareholders Agreement was unconscionable and a result of the fraud, duress, undue influence, lack of independent counsel and lack of meeting of the minds. As a result, the Plaintiff entered into the Shareholders Agreement without the benefit of his own free will and independent judgment.

101. Defendant Burns fraudulently induced Plaintiff to enter into a Shareholders Agreement, terminated Plaintiff from employment while on Paid Family Leave, and then used the Shareholders Agreement to purportedly buy-back Plaintiff's Fifteen (15) shares in CRB.

102. Based on the foregoing, the purported closing for the transfer of shares should be declared null and void, because it was the result of the Shareholders Agreement.

103. In addition to the above, the purported closing for the transfer of shares should be declared null and void, because its provisions were not followed by Defendants. Notwithstanding, to the extent that the Shareholders Agreement was to have any legal viability and enforceability (which it does not), Section 3.4 states:

> 3.4 Optional Purchase of Shares Upon Termination of Employment of Jason. In the event that Jason shall cease to be an employee of the Corporation for any reason, the Corporation shall have the option to purchase from Jason any or all of the Shares which Jason owned at the time of his termination as an employee of the Corporation, for the purchase price and upon the other terms specified in Section 3.5 below. The right of the Corporation to purchase all or any portion of the Shares then owned by Jason shall be exercisable by giving written notice to Jason within thirty (30) days following the effective date of the termination of his employment. In the event that the Corporation shall exercise such option, the Corporation shall be required to purchase, and Jason shall be required to sell, such Shares owned by Jason. The consummation of any purchase of Jason's Shares by the Corporation shall take place on a date not more than sixty (60) days following the effective date of termination of the employment of Jason. (Emphasis added by Plaintiff).

104. Section 3.5 provides for the purchase price as closing as follows:

> 3.5 Purchase Price: Closing.
>
> (a)Purchase Price
>
> (i) The purchase price of any Shares purchased pursuant to Sections 3.1, 3.2, 3.3 and 3.4 above shall be the Purchase Price.
>
> (ii) The Corporation shall pay the Purchase Price in cash or by wire transfer of immediately available funds. Notwithstanding the foregoing, the Corporation shall have the option, in its sole discretion, to pay a maximum of seventy-five percent (75%) of the Purchase Price by promissory note, which promissory note shall be upon the following terms: (A) seven (7) equal annual installments of principal and interest, the first such installment to be paid not more than sixty (60) days from the date of closing; (B) interest to accrue at a per annum rate equal to the Wall Street Journal Prime Rate as reported on the date of the closing or, if not reported on such date, on the prior date nearest thereto; and (C) no prepayment penalty.
>
> (b) Closing The closing of any sale and purchase of Shares pursuant to Sections 3.1, 3.2, 3.3 and 3.4 above shall take place at the then principal office of the Corporation. (Emphasis Added by Plaintiff)

105. None of the dates have been invoked or complied with and though Plaintiff dismisses the Shareholders Agreement as a whole, the dates serve to extinguish any option to purchase Defendant Burns or the corporation may have ever had even if the Shareholders Agreement were to somehow be considered valid and enforceable. In addition, the location of the closing, as set forth in Mr. Greene's June 17, 2021 letter, in contrary to what the Shareholders Agreement requires, i.e., that the closing take place "at the then principal office of the Corporation." This is also contrary to the Shareholders Agreement. The Shareholders Agreement states that the shares shall be endorsed with a legend in substantially the following form (Section 6.5):

> THE SHARES REPRESENTED BY THIS CERTIFICATE ARE TRANSFERABLE ONLY UPON COMPLIANCE WITH PROVISIONS OF A CERTAIN SHAREHOLDERS AGREEMENT, DATED OCTOBER 1, 2014, BY AND AMONG ROBERT W. BURNS, JASON R. BURNS AND C.R.B. HOLDINGS INC., A COPY OF WHICH IS ON FILE IN THE PRINCIPAL OFFICES OF C.R.B. HOLDINOS INC. NO SHARES REPRESENTED BY THIS CERTIFICATE MAY BE SOLD, DONATED, ASSIGNED, MORTGAGED, PLEDGED, HYPOTHECATED, ENCUMBERED, BEQUEATHED, 29 GIFTED, OR OTHERWISE TRANSFERRED OR DISPOSED OF IN ANY MANNER UNLESS MADE IN ACCORDANCE WITH THE AFORESAID AGREEMENT.

106. Based on the foregoing, there exists an actual and justiciable controversy between the parties with respect to the validity of the Shareholders Agreement, and the purported transfer and sale of the shares.

107. As a result, Plaintiff seeks a declaratory judgment, declaring that the Shareholders Agreement and purported transfer and sale of shares are void and rescinded.

108. As a result of Defendants' actions, Plaintiff has been damaged in an amount no less than $5,000,000.00.

109. Plaintiff brings this cause of action against both Defendants. Defendant Burns is individually liable to Plaintiff under the doctrine of piercing the corporate veil. He has exercised complete dominion and control over CRB, which was used to deprive Plaintiff of corporate profits and dividends, and ultimately his Fifteen (15) shares in CRB, without just compensation.

110. By engaging in the foregoing conduct, the Defendants acted willfully, wantonly, knowingly, in bad faith, maliciously, and with reckless disregard for Plaintiff's rights and interests otherwise so as to give rise to and justify an award of punitive damages. Plaintiff is therefore entitled to punitive damages in the amount of $10,000,000.00.

AS AND FOR THE SECOND CAUSE OF ACTION AGAINST DEFENDANTS: RESCISSION OF THE AMENDMENT TO BUY-SELL AGREEMENT

111. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Verified Complaint.

112. The Amendment to Buy-Sell Agreement is unconscionable and was a result of the fraud, duress, undue influence, no benefit of independent counsel, lack of meeting of the minds, fraud and extortion. inflicted on the Plaintiff by his father, Defendant Burns. As a result, the Plaintiff entered into the Amendment to Buy-Sell Agreement without the benefit of his own free will and independent judgment.

113. On October 14, 2009, there was a physical altercation between Plaintiff and Defendant Burns that was initiated by Defendant Burns. Despite starting the altercation, Defendant Burns filed a Domestic Incident Report.

114. In an attempt to compound a crime and extort Plaintiff, on January 28, 2010, Defendant Burns presented Plaintiff with an Amendment to the Buy-Sell Agreement, and represented to him that if he signed it he would agree to reduce criminal charges. Without the benefit of independent counsel, Plaintiff signed the Amendment and Defendant Burns agreed to reduce criminal charges, which resulted in an Adjournment in Contemplation of Dismissal.

115. Plaintiff entered into the Amendment to Buy-Sell Agreement without the benefit of independent advice of counsel and was at a distinct disadvantage in dealing with his father, Defendant Burns.

116. Prior to presenting Plaintiff with the Amendment to Buy-Sell Agreement, Defendant Burns devised a fraudulent scheme to deprive Plaintiff of his shares in the corporation.

117. This fraudulent scheme was to, using a fraudulent document and fraudulent misrepresentations, defraud Plaintiff to enter into the Amendment to Buy-Sell Agreement, and then terminate him.

118. The Amendment to Buy-Sell Agreement was drafted at the direction of Defendant Burns by Barclay Damon LLP.

119. Because of his lack of legal representation and Defendant Burns' duress and undue influence, the Plaintiff entered the Amendment to Buy-Sell Agreement that was patently unfair, unjust and one-sided. The Plaintiff did not receive anywhere near adequate consideration.

120. A plain reading of the Amendment to Buy-Sell Agreement makes it clear that it is unconscionable by its very terms, and the facts and circumstances of how the agreement was caused to be executed by Plaintiff demonstrates that it is not legally enforceable.

121. The Amendment to Buy-Sell Agreement is unconscionable because it is so grossly unreasonable as to be unenforceable because of an absence of meaningful choice on the part of Plaintiff, and its terms are unreasonably favorable to Defendant Burns.

122. The Amendment to Buy-Sell Agreement is of dubious legal validity on unconscionability grounds. Among other things, Defendant Burns has no corresponding obligations to protect or preserve his shares for the benefit of the other shareholder and the Amendment to Buy-Sell Agreement is silent on extending any reciprocal rights of acquisition of his shares to Plaintiff.

123. Because of Defendant Burns' duress and undue influence, the Plaintiff entered into the Amendment to Buy-Sell Agreement that was patently unfair, unjust and one-sided.

124. Defendant Burns fraudulently induced Plaintiff to enter into the Amendment to Buy-Sell Agreement, terminated Plaintiff from employment while on Paid Family Leave, and then used a Shareholders Agreement to purportedly buy-back Plaintiff's Fifteen (15) shares in CRB.

125. Plaintiff has notified Defendant Burns of his desire to rescind the Amendment to Buy-Sell Agreement and Shareholders Agreement due to Defendant Burns' fraud, duress and undue influence and Defendant Burns has refused to comply.

126. Based on the foregoing, there exists an actual and justiciable controversy between the parties with respect to the validity of the Amendment to Buy-Sell Agreement.

127. As a result, Plaintiff seeks a declaratory judgment, declaring that the Amendment to the Buy-Sell Agreement is void and rescinding it.

128. As a result of Defendants' actions, the Amendment to Buy-Sell Agreement must be rescinded.

129. As a result of Defendants' actions, Plaintiff has been damaged in an amount no less than $5,000,000.00.

130. Plaintiff brings this cause of action against both Defendants. Defendant Burns is individually liable to Plaintiff under the doctrine of piercing the corporate veil. He has exercised complete dominion and control over CRB, which was used to deprive Plaintiff of corporate profits and dividends, and ultimately his Fifteen (15) shares in CRB, without just compensation.

131. By engaging in the foregoing conduct, the Defendants acted willfully, wantonly, knowingly, in bad faith, maliciously, and with reckless disregard for Plaintiff's rights and

interests otherwise so as to give rise to and justify an award of punitive damages. Plaintiff is therefore entitled to punitive damages in the amount of $10,000,000.00.

AS AND FOR THE THIRD CAUSE OF ACTION AGAINST DEFENDANTS: FRAUDULENT TRANSFER OF SHARES, ASSETS, AND PROFITS OF CRB FOR OWN PERSONAL USE

132. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Verified Complaint.

133. Defendant Burns has exercised complete dominion and control of CRB, which was used to deprive Plaintiff of corporate profits and dividends, and ultimately his Fifteen (15) shares in CRB, without just compensation.

134. Defendant Burns has knowingly engaged in activities which have been detrimental to the welfare and business of CRB. Defendant Burns' activities have been perpetrated to disrupt the business of the CRB for his own benefit. Defendant Burns has used his complete control over the corporation to attempt to conceal the below acts from Plaintiff. The acts include, but are not limited to:

a. acting in his own best interest rather than in the best interest of CRB and Plaintiff.

b. beginning in 2017 when Plaintiff became a minority shareholder and continuing to this day, Defendant used CRB to funnel money for his own personal gain, by paying himself dividends, and not paying dividends to Plaintiff for his Fifteen (15%) Percent ownership.

c. in 2016, Defendant Burns' increased his salary from approximately $2,000.00 per week to approximately $7,000.00 per week.

d. using CRB funds to purchase personal items such as vehicles and real property, without compensating Plaintiff for his Fifteen (15%) Percent ownership.

e. on or around December 21, 2018, he purchased a house in Fort Myers, Florida, for approximately $605,000, with CRB funds.

f. on or around January 19, 2022, he purchased 4501 Hyde Park Blvd., in Niagara Falls, New York, with CRB funds.

g. in 2021 he purchased an Escalade with CRB funds.

h. in 2022 he purchased a pickup truck with CRB funds.

i. beginning in 2017 when Plaintiff became a minority shareholder and continuing to this day, Defendant Burns underpaid Plaintiff, while indicating on Plaintiff's W-2 that he earned approximately $150,000.00 per year. Plaintiff never received the full amount that was indicated on his W-2.

j. exercising control over Plaintiff's shares without a closing taking place.

k. not closing a deal with Kelton Enterprises, LLC (pursuant to a January 3, 2020 Letter of Intent) to sell the assets of CRB for a purchase price believed to be approximately $5,000,000, when Defendants now claim CRB is valued at $1,500,000.

l. not compensating Plaintiff for approximately $18,000 for funds received from Artpark for concession sales from 2008-2020.

135. As a result of Defendants' actions, Plaintiff has been damaged in an amount no less than $5,000,000.00.

136. Plaintiff brings this cause of action against both Defendants. Defendant Burns is individually liable to Plaintiff under the doctrine of piercing the corporate veil. He has exercised complete dominion and control over CRB, which was used to deprive Plaintiff of corporate profits and dividends, and ultimately his Fifteen (15) shares in CRB, without just compensation.

137. By engaging in the foregoing conduct, the Defendants acted willfully, wantonly, knowingly, in bad faith, maliciously, and with reckless disregard for Plaintiff's rights and interests otherwise so as to give rise to and justify an award of punitive damages. Plaintiff is therefore entitled to punitive damages in the amount of $10,000,000.00.

AS AND FOR THE FOURTH CAUSE OF ACTION AGAINST DEFENDANTS: BREACH OF CONTRACT

138. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Verified Complaint.

139. Defendant Burns' activities, as aforesaid, have been perpetrated to disrupt the business of the CRB for his own benefit. While Plaintiff disputes the validity of the Shareholders Agreement, Defendant Burns is nonetheless, in breach of its provisions.

140. The Shareholders Agreement sets forth certain rights with respect to conduct and the transfer of shares. Specifically, the introduction section provides:

> WHEREAS, the Shareholders and the Corporation are desirous of entering into an agreement (i) creating certain rights and imposing certain restrictions with respect to their ownership of such stock in the Corporation and (ii) providing for the purchase of the capital stock owned by Jason under certain circumstances.

141. Sections 3.4 and 3.5 address the optional purchase of Plaintiff's shares upon termination of employment, and the deadline for a closing in the event of one.

142. None of the dates have been invoked or complied with and though Plaintiff dismisses the Shareholders Agreement as a whole, the dates serve to extinguish any option to purchase Defendant Burns or the corporation may have ever had even if the Shareholders Agreement were to somehow be considered valid and enforceable. In addition, the location of the closing, as set forth in Mr. Greene's June 17, 2021 letter, in contrary to what the Shareholders Agreement requires, i.e., that the closing take place "at the then principal office of the Corporation." This is also contrary to the Shareholders Agreement. The Shareholders Agreement states that the shares shall be endorsed with a legend in substantially the following form (Section 6.5):

> THE SHARES REPRESENTED BY THIS CERTIFICATE ARE TRANSFERABLE ONLY UPON COMPLIANCE WITH PROVISIONS OF A CERTAIN SHAREHOLDERS AGREEMENT, DATED OCTOBER 1, 2014, BY AND AMONG ROBERT W. BURNS, JASON R. BURNS AND C.R.B. HOLDINGS INC., A COPY OF WHICH IS ON FILE IN THE PRINCIPAL OFFICES OF C.R.B. HOLDINOS INC. NO SHARES REPRESENTED BY THIS CERTIFICATE MAY BE SOLD, DONATED, ASSIGNED, MORTGAGED, PLEDGED, HYPOTHECATED, ENCUMBERED, BEQUEATHED, GIFTED, OR OTHERWISE TRANSFERRED OR DISPOSED OF IN ANY MANNER UNLESS MADE IN ACCORDANCE WITH THE AFORESAID AGREEMENT.

143. Each contract has an implied covenant of good faith and fair dealing, whereby neither party shall do anything which has the effect of destroying or injuring the right of the other party to receive the benefits of the contract.

144. Defendants owed a duty to Plaintiff to Plaintiff to act in good faith with respect to the execution of the Shareholders Agreement and thereafter.

145. Defendant Burns breached that duty by his acts of inducing Plaintiff to enter into the Shareholders Agreement and his acts of self-dealing as aforementioned.

146. As a result of Defendants' actions, Plaintiff has been damaged in an amount no less than $5,000,000.00.

147. Plaintiff brings this cause of action against both Defendants. Defendant Burns is individually liable to Plaintiff under the doctrine of piercing the corporate veil. He has exercised complete dominion and control over CRB, which was used to deprive Plaintiff of corporate profits and dividends, and ultimately his Fifteen (15) shares in CRB, without just compensation.

148. By engaging in the foregoing conduct, the Defendants acted willfully, wantonly, knowingly, in bad faith, maliciously, and with reckless disregard for Plaintiff's rights and

interests otherwise so as to give rise to and justify an award of punitive damages. Plaintiff is therefore entitled to punitive damages in the amount of $10,000,000.00.

AS AND FOR THE FIFTH CAUSE OF ACTION AGAINST DEFENDANTS: BREACH OF FIDUCIARY DUTY

149. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Verified Complaint.

150. Defendant Burns owes Plaintiff, as a minority shareholder of CRB, and the corporation, certain fiduciary duties, i.e. the duty of care, loyalty and honesty. The fiduciary relationship involves a relationship of trust and confidence, whereby Defendant Burns was bound to exercise good faith and loyalty to the corporation and Plaintiff.

151. Defendant Burns has a duty under New York Business Corporation Law § 717 to act fairly, properly and ethically in the interest of minority shareholder, Plaintiff. In addition, Defendant Burns has a duty under New York Business Corporation Law § 720 to not engage in self-dealing, waste, and other conduct detrimental to the corporation and the minority shareholder.

152. Defendant Burns has knowingly engaged in activities which have been detrimental to the welfare and business of Plaintiff and CRB. Defendant Burns' activities have been perpetrated to disrupt the business of the CRB for his own benefit. Defendant Burns has used his complete control over the corporation to attempt to conceal the below acts from Plaintiff. The acts include, but are not limited to:

a. acting in his own best interest rather than in the best interest of CRB and Plaintiff.

b. beginning in 2017 when Plaintiff became a minority shareholder and continuing to this day, Defendant used CRB to funnel money for his own personal gain, by paying himself dividends, and not paying dividends to Plaintiff for his Fifteen (15%) Percent ownership.

c. in 2016, Defendant Burns' increased his salary from approximately $2,000.00 per week to approximately $7,000.00 per week.

d. using CRB funds to purchase personal items such as vehicles and real property, without compensating Plaintiff for his Fifteen (15%) Percent ownership.

e. on or around December 21, 2018, he purchased a house in Fort Myers, Florida, for approximately $605,000, with CRB funds.

f. on or around January 19, 2022, he purchased 4501 Hyde Park Blvd., in Niagara Falls, New York, with CRB funds.

g. in 2021 he purchased an Escalade with CRB funds.

h. in 2022 he purchased a pickup truck with CRB funds.

i. beginning in 2017 when Plaintiff became a minority shareholder and continuing to this day, Defendant Burns underpaid Plaintiff, while indicating on Plaintiff's W-2 that he earned approximately $150,000.00 per year. Plaintiff never received the full amount that was indicated on his W-2.

j. exercising control over Plaintiff's shares without a closing taking place.

k. not closing a deal with Kelton Enterprises, LLC (pursuant to a January 3, 2020 Letter of Intent) to sell the assets of CRB for a purchase price believed to be approximately $5,000,000, when Defendants now claim CRB is valued at $1,500,000.

l. not compensating Plaintiff for approximately $18,000 for funds received from Artpark for concession sales from 2008-2020.

153. In addition, Defendant Burns owed Plaintiff the duty of care, loyalty and honesty in entering into agreements with Plaintiff and representations made with respect to the agreements. As mentioned, Defendant engaged in extortion, and made numerous misrepresentations to Plaintiff to induce him to enter into the Amendment to Buy-Sell Agreement and Shareholders Agreement, which were justifiably relied on by Plaintiff.

154. As a result, Defendant Burns is in breach of his fiduciary duties owed to Plaintiff.

155. As a result of Defendants' actions, Plaintiff has been damaged in an amount no less than $5,000,000.00.

156. Plaintiff brings this cause of action against both Defendants. Defendant Burns is individually liable to Plaintiff under the doctrine of piercing the corporate veil. He has exercised complete dominion and control over CRB, which was used to deprive Plaintiff of corporate profits and dividends, and ultimately his Fifteen (15) shares in CRB, without just compensation.

157. By engaging in the foregoing conduct, the Defendants acted willfully, wantonly, knowingly, in bad faith, maliciously, and with reckless disregard for Plaintiff's rights and interests otherwise so as to give rise to and justify an award of punitive damages. Plaintiff is therefore entitled to punitive damages in the amount of $10,000,000.00.

AS AND FOR THE SIXTH CAUSE OF ACTION AGAINST DEFENDANTS: CONVERSION

158. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Verified Complaint.

159. Defendant Burns wrongfully, and with intent to harm Plaintiff, deprived him of assets, profits and shares of CRB.

160. Defendant Burns converted CRB's assets, profits and shares for his own personal use, without corporate purpose and without approval or authority of Plaintiff.

161. Defendant Burns intended to permanently deprive Plaintiff of the assets, profits and shares of CRB.

162. Defendant Burns has knowingly engaged in activities which have been detrimental to the welfare and business of Plaintiff and CRB. Defendant Burns' activities have been perpetrated to disrupt the business of the CRB for his own benefit. Defendant Burns has used his complete control over the corporation to attempt to conceal the below acts from Plaintiff. The acts include, but are not limited to:

a. acting in his own best interest rather than in the best interest of CRB and Plaintiff.

b. beginning in 2017 when Plaintiff became a minority shareholder and continuing to this day, Defendant used CRB to funnel money for his own personal gain, by paying himself dividends, and not paying dividends to Plaintiff for his Fifteen (15%) Percent ownership.

c. in 2016, Defendant Burns' increased his salary from approximately $2,000.00 per week to approximately $7,000.00 per week.

d. using CRB funds to purchase personal items such as vehicles and real property, without compensating Plaintiff for his Fifteen (15%) Percent ownership.

e. on or around December 21, 2018, he purchased a house in Fort Myers, Florida, for approximately $605,000, with CRB funds.

f. on or around January 19, 2022, he purchased 4501 Hyde Park Blvd., in Niagara Falls, New York, with CRB funds.

g. in 2021 he purchased an Escalade with CRB funds.

h. in 2022 he purchased a pickup truck with CRB funds.

i. beginning in 2017 when Plaintiff became a minority shareholder and continuing to this day, Defendant Burns underpaid Plaintiff, while indicating on Plaintiff's W-2 that he earned approximately $150,000.00 per year. Plaintiff never received the full amount that was indicated on his W-2.

j. exercising control over Plaintiff's shares without a closing taking place.

k. not closing a deal with Kelton Enterprises, LLC (pursuant to a January 3, 2020 Letter of Intent) to sell the assets of CRB for a purchase price

believed to be approximately $5,000,000, when Defendants now claim CRB is valued at $1,500,000.

l. not compensating Plaintiff for approximately $18,000 for funds received from Artpark for concession sales from 2008-2020.

163. With respect to the purported transfer of shares at the purported closing, the Shareholders Agreement sets forth certain rights with respect to conduct and the transfer of shares. Specifically, the introduction section provides:

> WHEREAS, the Shareholders and the Corporation are desirous of entering into an agreement (i) creating certain rights and imposing certain restrictions with respect to their ownership of such stock in the Corporation and (ii) providing for the purchase of the capital stock owned by Jason under certain circumstances.

164. Sections 3.4 and 3.5 address the optional purchase of Plaintiff's shares upon termination of employment, and the deadline for a closing in the event of one.

165. None of the dates have been invoked or complied with and though Plaintiff dismisses the Shareholders Agreement as a whole, the dates serve to extinguish any option to purchase Defendant Burns or the corporation may have ever had even if the Shareholders Agreement were to somehow be considered valid and enforceable. In addition, the location of the closing, as set forth in Mr. Greene's June 17, 2021 letter, in contrary to what the Shareholders Agreement requires, i.e., that the closing take place "at the then principal office of the Corporation." This is also contrary to the Shareholders Agreement. The Shareholders Agreement states that the shares shall be endorsed with a legend in substantially the following form (Section 6.5):

> THE SHARES REPRESENTED BY THIS CERTIFICATE ARE TRANSFERABLE ONLY UPON COMPLIANCE WITH PROVISIONS OF A CERTAIN SHAREHOLDERS AGREEMENT, DATED OCTOBER 1, 2014, BY AND AMONG ROBERT W. BURNS, JASON R. BURNS AND C.R.B. HOLDINGS INC., A COPY OF

WHICH IS ON FILE IN THE PRINCIPAL OFFICES OF C.R.B. HOLDINOS INC. NO SHARES REPRESENTED BY THIS CERTIFICATE MAY BE SOLD, DONATED, ASSIGNED, MORTGAGED, PLEDGED, HYPOTHECATED, ENCUMBERED, BEQUEATHED, GIFTED, OR OTHERWISE TRANSFERRED OR DISPOSED OF IN ANY MANNER UNLESS MADE IN ACCORDANCE WITH THE AFORESAID AGREEMENT.

166. As a result of Defendants' actions, Plaintiff has been damaged in an amount no less than $5,000,000.00.

167. Plaintiff brings this cause of action against both Defendants. Defendant Burns is individually liable to Plaintiff under the doctrine of piercing the corporate veil. He has exercised complete dominion and control over CRB, which was used to deprive Plaintiff of corporate profits and dividends, and ultimately his Fifteen (15) shares in CRB, without just compensation.

168. By engaging in the foregoing conduct, the Defendants acted willfully, wantonly, knowingly, in bad faith, maliciously, and with reckless disregard for Plaintiff's rights and interests otherwise so as to give rise to and justify an award of punitive damages. Plaintiff is therefore entitled to punitive damages in the amount of $10,000,000.00.

AS AND FOR THE SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS: UNJUST ENRICHMENT

169. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Verified Complaint.

170. Defendant Burns diverted assets, profits and shares of CRB away from the corporation and Plaintiff and to his own personal use.

171. CRB and Plaintiff were injured by Defendant Burns diverting assets, profits and shares of the corporation away from the corporation and Plaintiff and to his own personal use.

172. Defendant Burns was unjustly enriched by diverting assets and profits of CRB away from the corporation and Plaintiff and to his own personal use, to the detriment of Plaintiff.

173. Defendant Burns has knowingly engaged in activities which have been detrimental to the welfare and business of Plaintiff and CRB. Defendant Burns' activities have been perpetrated to disrupt the business of the CRB for his own benefit. Defendant Burns has used his complete control over the corporation to attempt to conceal the below acts from Plaintiff. The acts include, but are not limited to:

a. acting in his own best interest rather than in the best interest of CRB and Plaintiff.

b. beginning in 2017 when Plaintiff became a minority shareholder and continuing to this day, Defendant used CRB to funnel money for his own personal gain, by paying himself dividends, and not paying dividends to Plaintiff for his Fifteen (15%) Percent ownership.

c. in 2016, Defendant Burns' increased his salary from approximately $2,000.00 per week to approximately $7,000.00 per week.

d. using CRB funds to purchase personal items such as vehicles and real property, without compensating Plaintiff for his Fifteen (15%) Percent ownership.

e. on or around December 21, 2018, he purchased a house in Fort Myers, Florida, for approximately $605,000, with CRB funds.

f. on or around January 19, 2022, he purchased 4501 Hyde Park Blvd., in Niagara Falls, New York, with CRB funds.

g. in 2021 he purchased an Escalade with CRB funds.

h. in 2022 he purchased a pickup truck with CRB funds.

i. beginning in 2017 when Plaintiff became a minority shareholder and continuing to this day, Defendant Burns underpaid Plaintiff, while indicating on Plaintiff's W-2 that he earned approximately $150,000.00 per year. Plaintiff never received the full amount that was indicated on his W-2.

j. exercising control over Plaintiff's shares without a closing taking place.

k. not closing a deal with Kelton Enterprises, LLC (pursuant to a January 3, 2020 Letter of Intent) to sell the assets of CRB for a purchase price believed to be approximately $5,000,000, when Defendants now claim CRB is valued at $1,500,000.

l. not compensating Plaintiff for approximately $18,000 for funds received from Artpark for concession sales from 2008-2020.

174. With respect to the purported transfer of shares at the purported closing, the Shareholders Agreement sets forth certain rights with respect to conduct and the transfer of shares. Specifically, the introduction section provides:

> WHEREAS, the Shareholders and the Corporation are desirous of entering into an agreement (i) creating certain rights and imposing certain restrictions with respect to their ownership of such stock in the Corporation and (ii) providing for the purchase of the capital stock owned by Jason under certain circumstances.

175. Sections 3.4 and 3.5 address the optional purchase of Plaintiff's shares upon termination of employment, and the deadline for a closing in the event of one.

176. None of the dates have been invoked or complied with and though Plaintiff dismisses the Shareholders Agreement as a whole, the dates serve to extinguish any option to purchase Defendant Burns or the corporation may have ever had even if the Shareholders Agreement were to somehow be considered valid and enforceable. In addition, the location of the closing, as set forth in Mr. Greene's June 17, 2021 letter, in contrary to what the Shareholders Agreement requires, i.e., that the closing take place "at the then principal office of the Corporation." This is also contrary to the Shareholders Agreement. The Shareholders Agreement states that the shares shall be endorsed with a legend in substantially the following form (Section 6.5):

> THE SHARES REPRESENTED BY THIS CERTIFICATE ARE TRANSFERABLE ONLY UPON COMPLIANCE WITH PROVISIONS OF A CERTAIN SHAREHOLDERS AGREEMENT, DATED OCTOBER 1, 2014, BY AND AMONG ROBERT W. BURNS, JASON R. BURNS AND C.R.B. HOLDINGS INC., A COPY OF WHICH IS ON FILE IN THE PRINCIPAL OFFICES OF C.R.B. HOLDINOS INC. NO SHARES REPRESENTED BY THIS CERTIFICATE MAY BE SOLD, DONATED, ASSIGNED, MORTGAGED, PLEDGED, HYPOTHECATED, ENCUMBERED, BEQUEATHED, GIFTED, OR OTHERWISE TRANSFERRED OR DISPOSED OF IN ANY MANNER UNLESS MADE IN ACCORDANCE WITH THE AFORESAID AGREEMENT.

177. As a result of Defendants' actions, Plaintiff has been damaged in an amount no less than $5,000,000.00.

178. Plaintiff brings this cause of action against both Defendants. Defendant Burns is individually liable to Plaintiff under the doctrine of piercing the corporate veil. He has exercised complete dominion and control over CRB, which was used to deprive Plaintiff of corporate profits and dividends, and ultimately his Fifteen (15) shares in CRB, without just compensation.

179. By engaging in the foregoing conduct, the Defendants acted willfully, wantonly, knowingly, in bad faith, maliciously, and with reckless disregard for Plaintiff's rights and interests otherwise so as to give rise to and justify an award of punitive damages. Plaintiff is therefore entitled to punitive damages in the amount of $10,000,000.00.

AS AND FOR THE EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS: FRAUD

180. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Verified Complaint.

181. Plaintiff alleges that Defendant Burns made misrepresentations and material omissions of fact which were false and which the Defendant Burns knew to be false. Defendant

Burns had a duty to disclose all information to Plaintiff that was accurate, yet failed to do so. The misrepresentations and omissions were done for the purpose of inducing the plaintiff to rely upon them, and there was justifiable reliance by Plaintiff due to the relationship of the parties and Defendant Burns' complete control over the corporation and lawyers that drafted the agreements.

182. Defendant Burns has made misrepresentations to fraudulently induced Plaintiff to enter into the Shareholders Agreement, terminated Plaintiff from employment while on Paid Family Leave, and then used the Shareholders Agreement to steal Plaintiff's Fifteen (15) shares in CRB.

183. Defendant Burns made misrepresentation to Plaintiff that he was and would be compensated a specific salary and provided dividends, when in fact, Plaintiff did not receive what was represented to him by Defendant Burns or reflected in his W-2.

184. Defendant Burns has knowingly engaged in activities which have been detrimental to the welfare and business of Plaintiff and CRB. Defendant Burns' activities have been perpetrated to disrupt the business of the CRB for his own benefit. Defendant Burns has used his complete control over the corporation to attempt to conceal the below acts from Plaintiff and made fraudulent misrepresentations regarding same. The acts include, but are not limited to:

a. acting in his own best interest rather than in the best interest of CRB and Plaintiff.

b. beginning in 2017 when Plaintiff became a minority shareholder and continuing to this day, Defendant used CRB to funnel money for his own personal gain, by paying himself dividends, and not paying dividends to Plaintiff for his Fifteen (15%) Percent ownership.

c. in 2016, Defendant Burns' increased his salary from approximately $2,000.00 per week to approximately $7,000.00 per week.

d. using CRB funds to purchase personal items such as vehicles and real property, without compensating Plaintiff for his Fifteen (15%) Percent ownership.

e. on or around December 21, 2018, he purchased a house in Fort Myers, Florida, for approximately $605,000, with CRB funds.

f. on or around January 19, 2022, he purchased 4501 Hyde Park Blvd., in Niagara Falls, New York, with CRB funds.

g. in 2021 he purchased an Escalade with CRB funds.

h. in 2022 he purchased a pickup truck with CRB funds.

i. beginning in 2017 when Plaintiff became a minority shareholder and continuing to this day, Defendant Burns underpaid Plaintiff, while indicating on Plaintiff's W-2 that he earned approximately $150,000.00 per year. Plaintiff never received the full amount that was indicated on his W-2.

j. exercising control over Plaintiff's shares without a closing taking place.

k. not closing a deal with Kelton Enterprises, LLC (pursuant to a January 3, 2020 Letter of Intent) to sell the assets of CRB for a purchase price believed to be approximately $5,000,000, when Defendants now claim CRB is valued at $1,500,000.

l. not compensating Plaintiff for approximately $18,000 for funds received from Artpark for concession sales from 2008-2020.

185. As a result of Defendants' actions, Plaintiff has been damaged in an amount no less than $5,000,000.00.

186. Plaintiff brings this cause of action against both Defendants. Defendant Burns is individually liable to Plaintiff under the doctrine of piercing the corporate veil. He has exercised complete dominion and control over CRB, which was used to deprive Plaintiff of corporate profits and dividends, and ultimately his Fifteen (15) shares in CRB, without just compensation.

187. By engaging in the foregoing conduct, the Defendants acted willfully, wantonly, knowingly, in bad faith, maliciously, and with reckless disregard for Plaintiff's rights and interests otherwise so as to give rise to and justify an award of punitive damages. Plaintiff is therefore entitled to punitive damages in the amount of $10,000,000.00.

AS AND FOR THE NINTH CAUSE OF ACTION AGAINST DEFENDANTS: EMPLOYMENT DISCRIMINATION

188. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Verified Complaint.

189. CRB is an employer within the meaning of the New York State Human Rights Law (NYSHRL).

190. Plaintiff is a member of a protected class.

191. It is a violation of the law for an employee to be discriminated against based on paid Family Leave in the terms or conditions of his employment, including hiring, firing, promotion, assignment, salary and benefits.

192. On June 1, 2018, Plaintiff's minor son, Gavin Burns, suffered a traumatic lawn mower accident resulting in the eventual amputation of his left foot. Multiple surgeries were performed beginning in 2018 to address the injury and continued into July/August of 2020.

193. Gavin's post-surgical rehabilitative care is continuing to this day. This includes, but is not limited to: physical therapy, prosthetic/orthotic consultations and treatment, and personal and family counseling to help Gavin.

194. The application for Paid Family Leave benefits was timely submitted on August 20, 2020, with the first scheduled day off being August 24, 2020. The effective dates of the medical authorizations from Gavin's doctor in support of the benefits initially ran from August 12, 2020, through December 12, 2020, and then were extended to August 11, 2021.

195. At the time that Plaintiff submitted his Paid Family Leave application, he had been an employee of CRB for nearly 20 years, had become a part owner, and had a completely unblemished personnel/employment record.

196. Despite having an unblemished personnel/employment record, Defendant Burns terminated Plaintiff's employment on the sole basis that he applied for Paid Family leave, and while he was on Paid Family Leave.

197. On November 7, 2020, Defendant Burns sent Plaintiff a termination email, terminating his employment effective November 6, 2020. Specifically, the email states:

> Jason, as you know we have been going back and forth with our attorneys an cannot resolve the issues we have between us, there fore you leave me no choice but to terminate your employment with CRB Holding Inc. As of November 6 TH 2020 was your last day with the company, you can call me to make arrangements to pick up your personal items that you may have at the office. My lawyer has a letter of termination for you as to which you will be receiving shortly, Robert W. Burns, President of CRB Holding INC.

198. In a letter dated November 5, 2020, Plaintiff was terminated by CRB via letter, effective November 6, 2021. According to the termination letter:

> Termination of Employment
> Your unsatisfactory performance, lack of attention to detail and insubordinate attitude have had a detrimental effect on the Company and have made it impossible for you to continue as an employee in our work environment, and therefore, your employment with the Company is hereby terminated effective as of the end of the day on Friday, November 6, 2020.
>
> Of course, you will be paid all compensation and benefits, including accrued vacation pay, through the date of termination. You will be provided the standard COBRA notice so that your health insurance can continue at your expense. Further, the indebtedness owed to you, as accrued on the books of the Company, will be honored and paid to you.

199. Defendant Burns' motivation was to punish the Plaintiff as an extension of his estrangement from the Plaintiff's son and family. No other independently documented grounds to justify the Plaintiff's discharge for employment-related non-performance of duties exist.

Defendant Burns exercised his dislike of the Plaintiff's entitlement for time off under the Paid Family Leave to attend to the medical needs of the person whom Defendant sought to exact his disdain toward, his grandson Gavin. Having days off for that purpose became unacceptable to Defendant and resulted in the discriminatory discharge of the Plaintiff under these circumstances.

200. As a result of Defendants' actions, Plaintiff has been damaged in an amount no less than $5,000,000.00.

201. Plaintiff brings this cause of action against both Defendants. Defendant Burns is individually liable to Plaintiff under the doctrine of piercing the corporate veil. He has exercised complete dominion and control over CRB, which was used to deprive Plaintiff of corporate profits and dividends, and ultimately his Fifteen (15) shares in CRB, without just compensation.

202. By engaging in the foregoing conduct, the Defendants acted willfully, wantonly, knowingly, in bad faith, maliciously, and with reckless disregard for Plaintiff's rights and interests otherwise so as to give rise to and justify an award of punitive damages. Plaintiff is therefore entitled to punitive damages in the amount of $10,000,000.00.

AS AND FOR THE TENTH CAUSE OF ACTION AGAINST DEFENDANTS: ACCOUNTING

203. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Verified Complaint.

380. CRB is a New York domestic business corporation organized under Section 402 of the Business Corporation law, and is engaged in the business of owning and operating a number of Tim Hortons franchises in or around Niagara County.

204. Defendant Burns has and continues to improperly exercise complete control and possession of the books, records and other documents pertaining to CRB.

205. Defendant Burns has been diverting funds and assets of CRB for his own personal use in an effort to defraud Plaintiff as a minority shareholder and to diminish and deplete CRB's profits.

206. As a result, Plaintiff has been deprived of his Fifteen (15%) Percent ownership of CRB, net profits and has otherwise been irreparably damaged in an amount only capable of being fully determined following an immediate accounting of CRB from the date of formation.

207. Plaintiff has demanded that Defendants account to Plaintiff, and Defendants have refused.

208. Based on the foregoing, Plaintiff requests an accounting of CRB.

AS AND FOR THE ELEVENTH CAUSE OF ACTION AGAINST DEFENDANTS: ATTORNEYS' FEES

209. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Verified Complaint.

210. As a result of Defendant' actions, Plaintiff was forced to commence this action to protect his rights. Therefore, Plaintiff is entitled to recover from Defendants his reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests a judgment against Defendants as follows:

First Cause of Action –
Declaratory Judgment declaring the closing date for the shares null and void

Compensatory damages in an amount no less than $5,000,000.00

Attorneys' fees and costs

Punitive Damages in an amount no less than $10,000,000.00

Second Cause of Action –
Rescission of the Amendment

Compensatory damages in an amount no less than $5,000,000.00

Attorneys' fees and costs

Punitive Damages in an amount no less than $10,000,000.00

Third Cause of Action –
Compensatory damages in an amount no less than $5,000,000.00

Attorneys' fees and costs

Punitive Damages in an amount no less than $10,000,000.00

Fourth Cause of Action –
Compensatory damages in an amount no less than $5,000,000.00

Attorneys' fees and costs

Punitive Damages in an amount no less than $10,000,000.00

Fifth Cause of Action –
Compensatory damages in an amount no less than $5,000,000.00

Attorneys' fees and costs

Punitive Damages in an amount no less than $10,000,000.00

Sixth Cause of Action –
Compensatory damages in an amount no less than $5,000,000.00

Attorneys' fees and costs

Punitive Damages in an amount no less than $10,000,000.00

Seventh Cause of Action –
Compensatory damages in an amount no less than $5,000,000.00

Attorneys' fees and costs

Punitive Damages in an amount no less than $10,000,000.00

Eighth Cause of Action –
Compensatory damages in an amount no less than $5,000,000.00

Attorneys' fees and costs

Punitive Damages in an amount no less than $10,000,000.00

Ninth Cause of Action –
Compensatory damages in an amount no less than $5,000,000.00

Attorneys' fees and costs

Punitive Damages in an amount no less than $10,000,000.00

Tenth Cause of Action –
Accounting

Eleventh Cause of Action –
Attorneys' Fees

Dated: November 18, 2022
Niagara Falls, New York

s/ Matthew J. Bird
MATTHEW J. BIRD, ESQ.
Attorneys for Plaintiff
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