SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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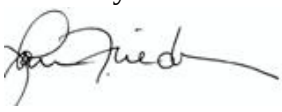
| ALLAN T. BOMBARD,<br><br>Plaintiff,<br><br>- against -<br><br>XITENEL, INC., LEONARD KELLNER and BIO-REFERENCE LABORATORIES, INC.,<br><br>Defendants | **SUMMONS**<br><br>**INDEX NO. _____**<br><br>Date Summons filed: June 28, 2010<br><br>Plaintiff designates Nassau County as the place of trial.<br><br>The basis of venue is Defendants Xitenel's and Kellner's domicile, and Defendant Bio-Reference Laboratories' transaction of business within the State. |

To the above named Defendants:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York. Upon your failure to timely answer, judgment will be taken against you by default for the relief demanded in the complaint. The basis of the venue designated is the domicile of defendants Xitenel and Kellner, and the transaction of business within the State by defendant Bio-Reference Laboratories.

Attorney for Plaintiff:



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Defendants' Addresses:

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174 Mineola Boulevard
Mineola, NY 11501

Leonard Kellner
66 Alhambra Road
Massapequa, NY 11758

Bio-Reference Laboratories, Inc.
481 Edward H. Ross Drive
Elmwood Park, NJ 07407

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| ALLAN T. BOMBARD,<br><br>Plaintiff,<br><br>- against -<br><br>XITENEL, INC., LEONARD KELLNER and BIO-REFERENCE LABORATORIES, INC.,<br>Defendants | **COMPLAINT**<br><br>**INDEX NO. _____** |

Plaintiff, by and through his undersigned attorney, brings this complaint against the aforementioned defendants, their directors, officers, shareholders and successors, and alleges as follows:

PARTIES

1. At all times relevant to this complaint plaintiff was a resident of either the State of New York where he had an abode at 28 Clubway, Hartsdale, NY 10530 or the State of California where he has an abode and currently resides at 2870 Evergreen Street, San Diego, CA 92106.

2. Defendant Xitenel, Inc. is, and at all times relevant to this complaint was, a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 174 Mineola Boulevard, Mineola, NY 11501. The Corporation was formerly and originally known as Lenetix Medical Screening Laboratory, Inc., having changed its corporate name by filing with the New York State Secretary of State on March 12, 2010. For simplicity this defendant shall be referred to as "**Xitenel**" regardless of whether it was known as Lenetix or Xitenel at the time then being discussed.

3. Defendant Leonard Kellner (hereinafter "**Kellner**") is, and at all times relevant to this complaint was, a resident of the State of New York, residing at 66 Alhambra Road, Massapequa, NY 11758. On information and belief, Kellner is and was at all relevant times (except as otherwise set forth below) the sole shareholder and sole member of the board of directors of Xitenel.

4. Defendant Bio-Reference Laboratories, Inc. (hereinafter "**BRL**") is, and at all times relevant to this complaint was, a corporation organized and existing under the laws of the State of New Jersey with foreign corporation status in the State of New York, and has its principal place of business at 481 Edward H. Ross Drive, Elmwood Park, NJ 07407.

FACTS

5. Plaintiff is a medical doctor and has earned and been awarded a Masters of Business Administration. He is board certified in both Clinical Genetics as well as Obstetrics and Gynecology. Currently the Chief Medical Officer of Sequenom, Inc., he is also Clinical Professor of Obstetrics and Gynecology at the Albert Einstein College of Medicine. He is licensed to practice medicine in the states of California and New York, and holds a New York State Certificate of Qualification as a laboratory director.

6. Xitenel (until consummation of the Transaction as defined below in ¶ 20) was a provider of technologies focusing on genetic testing, including prenatal diagnostics, and risk assessment for genetic disease.

7. Kellner founded Xitenel in 2001. As Kellner is neither a medical doctor or Ph.D., (he holds a Bachelor of Science degree), he was not (and on information and belief is still not) qualified under New York State law to be the director of a laboratory and therefore required the assistance of a qualified individual such as plaintiff.

8. Plaintiff and Kellner have a long-standing professional and personal association since they first met professionally in or about 1988. Thereafter, in approximately 1994, plaintiff hired Kellner to assist in plaintiff's management of the genetic testing laboratory plaintiff ran as the Director of Reproductive Genetics in the Department of Ob/Gyn and Women's Health at the Montefiore Medial Center and the Albert Einstein College of Medicine (hereinafter "**Montefiore**"). Plaintiff was, therefore, Kellner's boss and direct supervisor during the period of their mutual employment by Montefiore which ended in 1997 when plaintiff resigned to accept a senior-level position directing women's health issues with Aetna, Inc. Thereafter, plaintiff and Kellner maintained their personal relationship.

9. In approximately 1999 plaintiff learned from Kellner that Kellner too planned to resign from Montefiore to found a genetic testing company. Between that time and Kellner's incorporation of Xitenel and thereafter, plaintiff and Kellner had numerous face-to-face, telephonic and e-mail conversations concerning the founding, management and standard practices of Xitenel. Specifically, plaintiff advised Kellner on various aspects of laboratory administration (New York State regulations require clinical laboratories to be managed by either a board certified physician pathologist, a dentist board certified as an oral pathologist or a board certified physician or relevant Ph.D.; see 10 NYS CCR&R 19.2); insurance contract negotiations; relationships with his client/customer physicians; advances in related reproductive genetic science; input into scientific and client presentations among other issues/practices) – issues and practices that plaintiff, due to his relatively unique combination of education, experience and licensure, was and is an acknowledged expert in.

10. Xitenel was formed by filing with the New York State Secretary of State on December 30, 2001. Thereafter, Kellner called on plaintiff to inspect those aspects of Xitenel's

activities as are regulated by relevant law and to provide verification that such aspects of Xitenel's operations were in compliance with those laws as, pursuant to relevant New York State and federal law, such verifications require the oversight of a doctor with specific certifications which plaintiff held (and continues to hold) and which Kellner lacked (and, on information and belief, continues to lack). On at least 5 occasions, plaintiff, in response to Kellner's request, traveled to Xitenel's laboratories on Long Island, NY from plaintiff's home in San Diego to perform such tasks and provide such certifications without remuneration except for reimbursement of his out-of-pocket expenses incurred in performing those tasks and certifications.

11. On information and belief, sometime in 2008 Xitenel secured funding from a private investor in the amount of $10 million to finance, among other things, Xitenel's product development and sales efforts and strengthen its corporate and scientific leadership. As part of this effort, Xitenel, through Kellner, recruited plaintiff to assume the role of Chief Executive Officer of Xitenel. This recruitment took the form of telephonic, e-mail and face-to-face communications commencing in July or August 2008. On information and belief, defendants Xitenel and Kellner desired to retain plaintiff in this role as he possesses a relatively unique skill-set combining medical (specifically genetics) board certifications and multi-state physician licensure as well as an MBA, and would, therefore, be ideally suited to assist Xitenel in formalizing its internal business structures and controls and strengthening its scientific, management and sales teams with the aim of making the company "sellable" as up to that point Xitenel lacked both trained medical and corporate leadership as well as such structures and controls. Additionally, plaintiff would have an easier learning curve adjusting to the role as a result of his nearly 2-decades-long association with Kellner and given plaintiff's assistance in

Xitenel's formation and operations.

12. At the time Xitenel's recruitment of plaintiff began, plaintiff was employed as Chief Medical Officer of Sharp Mary Birch Hospital in San Diego, CA (hereinafter "**Sharp**") and also operated his own consulting firm. In such positions, he earned a base salary of approximately $290,000 from Sharp along with other perquisites commensurate with a professional of his caliber and experience, and an additional approximately $200,000 from his consulting practice. In addition to being recruited by the defendants, plaintiff was also being recruited by other medical corporations, all of which were larger and better financed than Xitenel. Plaintiff, therefore, was understandably reluctant to join Xitenel in any formal capacity unless he would earn at least the salary he then earned at Sharp and from his consulting practice as plaintiff would have to cease consulting due to potential conflicts of interest between his consulting clients and Xitenel.

13. In response to plaintiff's concern Xitenel agreed, via Kellner, to meet plaintiff's salary requirements and, further that he is "giving you [plaintiff] 10% of Xitenel in writing." (See the first e-mail in the thread between plaintiff and Kellner beginning 8/30/2008, a copy of which is appended hereto as Exhibit 1 (hereinafter "**Thread 1**")).

14. On the basis of this offer plaintiff, at a face-to-face meeting that took place in a lounge at Washington's Reagan National Airport in early or mid September 2008, agreed to assume the role of Xitenel's CEO commencing in October 2008 after giving adequate notice to Sharp. Thereafter, plaintiff, prior to that commencement date, began to draft and delivered to Xitenel certain employee agreements that Kellner informed plaintiff Xitenel lacked. (See the e-mail thread between plaintiff and Kellner beginning 9/10/2008, a copy of which is appended hereto as Exhibit 2 (hereinafter "**Thread 2**")).

15. Thereafter, on September 17, 2008, plaintiff gave his then-current employer notice that he was resigning his position with that hospital to accept the CEO's position with Xitenel, and communicated this fact to the defendants. (See the e-mail thread between plaintiff and Kellner beginning 9/17/2008, a copy of which is appended hereto as Exhibit 3 (hereinafter the "**Thread 3**")). In response, Kellner replied "we're going to make this a block buster." *Id.*

16. Plaintiff assumed the role of Xitenel's CEO in October 2008. From that date until January 18, 2009, plaintiff devoted 100% of his professional executive time and energy to Xitenel and its needs, deferring all other professional activities to devote full attention to his duties with Xitenel.

17. In the aftermath of the revelation of the Madoff Securities Ponzi scheme which broke on December 11, 2008, Xitenel was informed by its private investor that, due to the investor's losses resulting from the Madoff swindle, the $10 million investment previously committed to would not be forthcoming. This created an immediate and acute cashflow shortage for Xitenel. As its CEO, plaintiff was intimately familiar with Xitenel's cash position and ability to meet its current obligations, as well as the fact that he was its highest paid employee. Accordingly, plaintiff voluntarily deferred his salary commencing December 4, 2008 with the provision that it be paid as soon as possible by Xitenel, accepting thereafter only a single $10,000 payment at the beginning of January 2009 to cover his bills.

18. As the economic situation deteriorated throughout the months of December 2008 and January 2009 plaintiff conferred with both Kellner and Xitenel's counsel, discussing alternative funding and cost reduction options. In the event, Xitenel was unable to secure additional financing and there were no prospects on the horizon, all the while its cash position weakened. Since Xitenel could not afford to pay plaintiff's salary for over a month at that point,

and given that there was no reasonable likelihood that this situation would change in the foreseeable future, and the fact that continued accrual of plaintiff's deferred salary was a drag on Xitenel's balance sheet thus making alternative financing increasingly less likely as its cash position continued to deteriorate, on Saturday, January 17, 2009, plaintiff and Kellner had a telephonic conversation wherein it was agreed that if Xitenel could avoid plaintiff's future salary its core business would still be able to thrive until such time as the economic situation stabilized and new investors could be found. Accordingly, it was agreed by Xitenel and plaintiff that plaintiff would resign as CEO of Xitenel effective the end of business the previous day (the last business day of the week) though remain as an non-salaried advisor based on his ownership interest in Xitenel, and that sums owed plaintiff by Xitenel would be repaid as soon commercially possible. (See e-mail from plaintiff to Kellner dated 01/18/2009, a copy of which is appended hereto as Exhibit 4 (hereinafter the "**Resignation e-mail**")). Plaintiff then returned to San Diego to pursue other employment.

19. Thereafter, and continuing until February 2010, plaintiff sent Xitenel monthly invoices for $45,397.67 (comprising his deferred salary for the period 12/4/2008 through 01/16/2009, and a $1,004.67 out-of-pocket expense he had incurred on Xitenel's behalf). In response and to-date plaintiff has received only silence, and has not been compensated as he'd been promised he would be.

20. On March 2, 2010 Xitenel consummated the sale of all or substantially all of its assets to BRL for total consideration of $5.49 million in cash (hereinafter the "**Transaction**"), receiving $4.74 million of the total purchase price at the closing while BRL retained $750,000 against undisclosed claims based on Xitenel's operations prior to the Transaction's closing (hereinafter the "**Claim Fund**"). U.S. Securities and Exchange Commission Form 10-Q filed by

BRL dated March 5, 2010 at 8, a copy of which is appended hereto as Exhibit 5 (hereinafter the "**10-Q**").

21. In late March 2010 plaintiff was shocked to learn of the Transaction as he never received notice of its pendency and, therefore, had been deprived of his statutory and other rights as a minority shareholder in this regard. Plaintiff's continued attempts thereafter to learn more about what had transpired and what his rights might be from Xitenel bore no fruit, eliciting from both Kellner and Xitenel the same silence plaintiff's invoices had. In late April 2009 plaintiff retained counsel to attempt to negotiate a settlement of plaintiff's claims with Xitenel's attorney. When these negotiations proved unsuccessful plaintiff brought this action.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract – Against Defendant Xitenel)

22. Plaintiff repeats and reasserts each and every allegation contained in ¶¶ 1 through 21 as if set forth herein.

23. Plaintiff and Xitenel entered into a contract for plaintiff's employment wherein plaintiff agreed to assume the role of Xitenel's CEO for, among other consideration, a base annual salary of $450,000. The contract became effective at the September 2008 meeting at Reagan National Airport. Pursuant to the contract, plaintiff assumed the role of Xitenel's CEO in October 2008. Thereafter, until his voluntary resignation from Xitenel on January 16, 2009, plaintiff performed his duties with professionalism and diligence. Commencing on December 4, 2008 and continuing until his resignation, plaintiff voluntarily agreed to defer his salary (except for the single payment of $10,000 he received to cover personal bills) until the first opportunity for Xitenel to pay it. The net principal amount of these unpaid wages totals $44,393.

24. In addition to the unpaid wages, Xitenel owes plaintiff $1,004.69 in unreimbursed out-of-pocket expenses plaintiff incurred on Xitenel's behalf and receipts for which plaintiff

provided in accordance with Xitenel's standard operating procedure for reimbursable out-of-pocket expenses.

25. As part of the Transaction, Xitenel received $4.74 million in cash from BRL on March 2, 2010.

26. To date, Xitenel has refused to pay both the deferred wages and the reimbursable expense despite plaintiff's repeated requests that it do so and Xitenel's promise that it would.

27. As a result of Xitenel's breach of the employment agreement with plaintiff in its refusal to pay the sums rightly owed plaintiff thereunder, plaintiff was harmed by suffering the loss of the value of his bargain having performed the services he agreed to in exchange for his wages and having expended his own money on Xitenel's behalf while being paid for neither, and Xitenel has been unjustly enriched thereby.

AS AND FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty – Against Defendants Kellner and Xitenel)

28. Plaintiff repeats and reasserts each and every allegation contained in ¶¶ 1 through 27 as if set forth herein.

29. Pursuant to the employment agreement between Xitenel and plaintiff, plaintiff received 10% of the Xitenel stock when plaintiff accepted Xitenel's offer of employment which, among other things, contained the grant to plaintiff of 10% of Xitenel's stock. On information and belief, at that time and at all times relevant to this action, Kellner was the only other shareholder of Xitenel, owning 100% of its stock prior to plaintiff's acquisition of the 10% grant under his employment agreement and 90% thereafter. Clearly, therefore, Kellner was in a position, and as the facts demonstrate did, exercise total control and dominion over the actions of Xitenel at all times relevant to this action.

30. It is well-settled that the relationship between shareholders in a close corporation (which Xitenel clearly is), vis-à-vis each other, is akin to that between partners, and imposes a fiduciary duty as between them; this duty is particularly strong as to a majority shareholder in such a corporation in that the majority shareholder is prohibited from doing anything that might harm a minority shareholder in the same corporation in the latter's position as such. A fiduciary duty is also imposed on corporate directors as to the corporation's shareholders.

31. These fiduciary duties were violated as to plaintiff when Xitenel failed to provide plaintiff notice of the Transaction when the same was pending as it is required to do pursuant to Section 909 of the New York State Business Corporation Law (NYS BCL § 909(a)(2)). As Kellner was owner not only of a controlling interest in Xitenel but of 90% of its equity, and as Kellner was the sole director of Xitenel at all times relevant to this action, Kellner and Xitenel both had a duty to provide plaintiff notice of the Transaction's pendency within the strictures of BCL § 909(a)(2). Despite this, both Xitenel and Kellner willfully failed to provide the statutorily required notice to plaintiff.

32. As a direct result of this willful failure to provide plaintiff his statutorily required notice, plaintiff was damaged in that he was deprived of his rights as a minority shareholder of Xitenel, including his statutory right to receive appraisal and payment for his shares of Xitenel in light of the Transaction pursuant to BCL § 910.

AS AND FOR A THIRD CAUSE OF ACTION
(Willful Violation of NYS BCL Section 909 – Failure to Give Statutorily Required Notice – Against Defendant Xitenel and Kellner)

33. Plaintiff repeats and reasserts each and every allegation contained in ¶¶ 1 through 32 as if set forth herein.

34. Section 909 of the New York State Business Corporation Law requires that the board of directors authorize the sale of all or substantially all of a corporation's assets not made in the ordinary course of business and direct submission of such transaction to a vote of all the corporation's shareholders. NYS BCL § 909(a) and (a)(1).

35. Notice of the shareholders' meeting to vote on such submission is to be given to each shareholder of record whether or not entitled to vote thereon. NYS BCL § 909(a)(2).

36. It is well-settled that the purpose of this notice is to provide, among other things, minority shareholders with the notice necessary for such shareholders to exercise their statutory rights pursuant to NYS BCL § 910, including their right to appraisal and sale pursuant to that Section (NYS BCL § 910(a)).

37. As the recitation of the facts above clearly establish, defendants Xitenel and Kellner clearly knew that plaintiff became a shareholder in when he accepted the offer of employment from Xitenel to become its CEO.

38. This knowledge and NYS BCL § 909's requirements notwithstanding, Xitenel, at Kellner's direction, willfully failed to provide plaintiff with the statutorily required notice of the shareholder vote on the Transaction and, as a direct result plaintiff was damaged in that he could not exercise his rights pursuant to NYS BCL § 910 including his right to seek appraisal and purchase of his shares in Xitenel. Additionally, Kellner, in his position as super-majority shareholder and sole director of Xitenel, was unjustly enriched as a result of the damage to plaintiff, damage it was in Kellner's sole power and obligation to avoid.

AS AND FOR A FOURTH CAUSE OF ACTION
(Imposition of a Constructive Trust on the Transaction Proceeds Received by Defendant Xitenel and the Claim Fund)

39. Plaintiff repeats and reasserts each and every allegation contained in ¶¶ 1 through 38 as if set forth herein.

40. The members of the board of directors of Xitenel have a fiduciary duty towards its shareholders. Plaintiff is one such shareholder and, on information and belief, Kellner is the only other shareholder.

41. Xitenel elicited and received from plaintiff a promise that plaintiff agree to serve as its CEO, employing plaintiff's skills and talents as a New York State licensed medical doctor, certified laboratory director, and business executive on behalf, and for the benefit, of Xitenel.

42. In return for plaintiff's promise to so perform, plaintiff received from Xitenel a promise that he would receive his agreed-upon salary, reimbursement of his out-of-pocket expenses incurred on Xitenel's behalf and 10% of the Xitenel stock.

43. Plaintiff, in reliance on such promise regarding his salary, expense reimbursement and the 10% ownership interest in Xitenel, severed 2 lucrative an existing business relationships (with Sharp and plaintiff's consulting business) and actually delivered to Xitenel his professional services, thereby foregoing alternative professional opportunities.

44. Thereafter, plaintiff received only a fraction of the salary he earned and has not been reimbursed for his out-of-pocket expenses. Moreover, now that the Transaction has been completed, Xitenel has denied plaintiff his status as a shareholder, has failed to provide him the statutorily required notice of the pendency of the Transaction while it was pendant and thereby denied him his statutory right to seek and receive appraisal and payment for his shares as a minority shareholder of Xitenel. In addition, on information and belief, Xitenel has made distributions of the proceeds of the Transaction to defendant Kellner while refusing to acknowledge plaintiff's status as a shareholder.

45. On information and belief, in the disclosures provided by Xitenel to BRL in order to secure BRL's agreement to enter into the Transaction, Xitenel willfully failed to disclose that plaintiff was at all times relevant to the Transaction a Xitenel Shareholder.

46. Permitting Xitenel to use the proceeds of the Transaction as if they were its own without regard for the minority shareholder rights of plaintiff which were willfully and unlawfully ignored by Xitenel would permit that defendant to be unjustly enriched at plaintiff's expense.

47. Accordingly, this Court should properly impose a constructive trust on so much of Xitenel's assets as it received in the Transaction pending the outcome of this action. Additionally, this Court should properly impose a constructive trust on the Claim Fund in that those funds are being held by BRL on behalf of Xitenel against claims exactly like those in this action (see Exhibit 5).

AS AND FOR A FIFTH CAUSE OF ACTION
(Imposition of a Constructive Trust on the Transaction Proceeds Received by Defendant Kellner)

48. Plaintiff repeats and reasserts each and every allegation contained in ¶¶ 1 through 47 as if set forth herein.

49. As the super-majority, and only other save plaintiff, shareholder of closely held Xitenel, Kellner owed plaintiff a fiduciary duty akin to that between partners as plaintiff is a minority shareholder of Xitenel.

50. Kellner elicited and received from plaintiff a promise that plaintiff agree to serve as CEO of Xitenel, employing plaintiff's skills and talents as a New York State licensed medical doctor and certified laboratory director, and business executive on behalf, and for the benefit, of Xitenel and its super-majority shareholder, Kellner.

51. In return for plaintiff's promise to so perform, plaintiff received from Kellner a promise that Kellner, as then sole shareholder of Xitenel, would ensure that plaintiff receive his agreed-upon salary, reimbursement of his out-of-pocket expenses incurred on Xitenel's behalf and 10% of the Xitenel stock. Plaintiff, in reliance on such promise given Kellner's existing and future domination of Xitenel, actually delivered to Xitenel, and therefore primarily to Kellner, his professional services, thereby foregoing alternative professional opportunities.

52. Thereafter, plaintiff received only a fraction of the salary he earned and has not been reimbursed for his out-of-pocket expenses – outcomes contrary to two of the three promises made plaintiff by Kellner and which were in Kellner' sole control. Moreover, now that the Transaction has been completed, Kellner has caused Xitenel to deny plaintiff his status as a shareholder of Xitenel, to willfully fail to provide him the statutorily required notice of the pendency of the Transaction while it was pendant, and thereby willfully denied him his statutory right to seek and receive appraisal and payment for his shares as a minority shareholder of Xitenel. In addition, on information and belief, Kellner has caused Xitenel to make distributions of the proceeds of the Transaction to Kellner while refusing to acknowledge plaintiff's status as a shareholder of Xitenel.

53. Permitting Kellner to retain any of the proceeds of the Transaction without regard for the minority shareholder rights of plaintiff, which Kellner unlawfully and willfully caused to be denied, would permit Kellner to be unjustly enriched at plaintiff's expense.

54. Accordingly, this Court should properly impose a constructive trust on so much of Kellner's assets as that defendant caused himself to receive from Xitenel in the wake of the Transaction pending the outcome of this action.

AS AND FOR A SIXTH CAUSE OF ACTION
(Rescission of the Transaction Due to Failure to Provide Shareholder Notice - Against All Defendants)

55. Plaintiff repeats and reasserts each and every allegation contained in ¶¶ 1 through 54 as if set forth herein.

56. Prior to consummation of the Transaction, Xitenel was in the business of developing and providing technologies focusing on genetic testing. Clearly, therefore, the sale of substantially all its assets to BRL was outside Xitenel's regular course of business. The Transaction thus came within the strictures of Section 909 of the New York State Business Corporation Law (BCL § 909), which directs the board of the seller to seek shareholder approval prior to consummating such a deal. BCL § 909(a)(1). To accomplish this, the board is instructed to provide all the shareholders notice of a meeting to vote on the proposal. BCL § 909(a)(2). Among the purposes to be served by such notice is to provide dissenting shareholders the opportunity to exercise their statutory right to seek appraisal and payment for their shares if they wish. BCL § 910(a)(1)(B). Absent the notice required by BCL § 909(a)(2), minority shareholders such as plaintiff have no effective alternative means of getting notice of pending transactions that directly effect their interests in the seller and, therefore, are damaged in that they cannot exercise their statutory rights in this regard.

57. The board of directors of Xitenel willfully failed to provide plaintiff with notice of the vote of the shareholders for approval of the Transaction as required by statute. As a direct result, plaintiff was denied his statutory rights as a minority shareholder to elect and receive appraisal and payment for his shares of Xitenel and plaintiff was damaged thereby. BCL § 910(a)(1)(B).

58. As Kellner was the sole director of Xitenel at all relevant times, and as he was the corporate officer of Xitenel who negotiated plaintiff's employment agreement with that company, which included the grant of 10% of the Xitenel shares to plaintiff, Kellner – both in his individual capacity and as a director of Xitenel – was aware that plaintiff was a minority shareholder of Xitenel. Thus, Xitenel was aware that it had a fiduciary and statutory duty to provide plaintiff with notice of the shareholders meeting and vote on the Transaction and that, as a result, consummation of the Transaction absent such notice was unlawful.

59. Pursuant to BCL § 720, an action may be sustained to set aside an unlawful conveyance or transfer of corporate assets where the transferee knew of its unlawfulness. BCL § 720(a)(2).

60. Accordingly, both equity and the relevant statute dictate that this Court rescind the Transaction and order the parties thereto to unwind it. Alternatively, plaintiff should be awarded so much of the Transaction proceeds received by Xitenel as equals his 10% holding of the Xitenel shares.

**WHEREFOR**, plaintiff respectfully requests this Court award to plaintiff the following against the defendants:

a) Payment of the past-due wages and reimbursable out-of-pocket expenses plus pre- and post-judgment statutory interest, as against defendants Xitenel and Kellner jointly and severally;

b) Creation of the various constructive trusts herein petitioned for pending a final, unappealable judgment hereon;

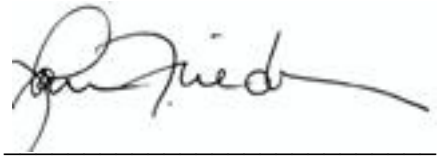
c) Awarding plaintiff compensatory damages as against defendants Xitenel and Kellner jointly and severally;

d) Awarding plaintiff punitive damages as against defendants Xitenel and Kellner jointly and severally;

e) Awarding plaintiff costs of this action, including reasonable attorneys' fees and expenses as against defendants Xitenel and Kellner jointly and severally;

f) Awarding plaintiff such other and further relief as the Court may deem just and proper.

Dated: Hudson, New York
June 28, 2010



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