

At an IA Part 53 of the Supreme Court of the State of New York held in and for the County of New York at the courthouse thereof, 60 Centre Street, New York, NY on the 27<sup>th</sup> day of May, 2011.

PRESENT: HON. CHARLES EDWARD RAMOS

Justice

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JOSEPH LEHEY, individually and as a Member of FSJ, LLC, a Delaware Limited Liability Company, on behalf of himself and all other members of FSJ, LLC similarly situated and in the right of FSJ, LLC,

Index No. 112623/10

**ORDER**

Plaintiff,

-against-

TIM GOLDBURT, MATT SANDY, DAVID PERILLO, FSJ IMPORTS, LLC, RAM PHOSPHORIX, LLC, GENERAL PHOSPHORIX, LLC, JOSEPH RUBIN, KEVIN MULLINS, AMJG, LLC, and FRANCIS MASSIE,

Defendants.

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**UPON READING AND FILING** Plaintiff's motion brought on by order to show cause dated March 10, 2011 for an order (i) installing Plaintiff Joseph Lehey ("Plaintiff") as manager of FSJ, LLC (the "Company") removing Defendant Tim Goldburt ("Goldburt") as manager of the Company; (ii) alternatively, granting Plaintiff leave to renew his motion for a temporary receiver of the Company and to appoint a temporary receiver of the Company; and (iii) for such other relief as set forth in the order to show cause; the affirmation of Jules A. Epstein, dated February 25, 2011, the affidavit of Sareena M. Sawhney sworn to February 25, 2011, the affidavit of Plaintiff sworn to February 27, 2011 and the

supplemental affirmation of Jules A. Epstein, Esq. dated March 4, 2011 and the exhibits annexed thereto in support of Plaintiff's motion; the affirmation in opposition of Roman Popik, Esq., attorney for Defendants Goldburt, Matt Sandy, FSJ Imports, LLC, RAM Phosphorix, LLC, General Phosphorix, LLC, Joseph Rubin and Kevin Mullins, (collectively "Defendants") dated March 23, 2011 and the exhibits annexed thereto; and the motion having come on to be heard before the Court on May 2, 2011; and the Court having heard argument in support of the motion by Plaintiff's counsel, Jules A. Epstein, Esq., and in opposition to the motion by Defendants' counsel, Roman Popik, Esq. and after due deliberation having been had herein and upon the decision of the Court placed on the record on May 2, 2011 that it is in the best interests of the Company:

**NOW**, on motion of JULES A. EPSTEIN, P.C., attorney for Plaintiff, it is

**ORDERED**, Plaintiff's motion to be installed as manager of the Company and to remove Goldburt as manager of the Company is granted to the extent set forth below in this order; and it is further

**ORDERED**, Plaintiff is hereby designated and installed as manager of the Company effective May 2, 2011; and it is further

**ORDERED**, that Plaintiff shall have all duties, responsibilities and obligations of manager of the Company in accordance with the Company's Operating Agreement effective as of June 15, 2007 and applicable law; and it is further

**ORDERED**, that Goldburt is removed as manager of the Company and shall not act or hold himself out as manager of the Company; and it is further

**ORDERED**, that Defendants shall immediately deliver to Plaintiff as manager of the Company (i) all of the Company's books and records without limitation; (ii) all of the Company's bank accounts and bank records; (iii) all of the Company's inventory of finished and unfinished products; and (iv) all other tangible and intangible property owned by the Company; and it is further

**ORDERED**, that Defendants shall immediately execute any and all instruments required to transfer check-signing authority on the Company's bank accounts to Plaintiff as Company manager; and it is further

**ORDERED**, that Defendants shall immediately provide Plaintiff access to the Company's inventory located at Gateway Warehouses, Inc., 78 John Miller Way, Kearney, New Jersey 07032; and it is further

**ORDERED**, that Defendants shall execute all documents and provide all required notices informing Gateway Warehouses, Inc. that Plaintiff is the Company's manager authorized to access the Company's inventory of products located at Gateway Warehouses, Inc., and to instruct Gateway Warehouses, Inc. to package and ship inventory from Gateway Warehouses, Inc.; and it is further

**ORDERED**, that Defendants Matt Sandy and FSJ Imports, LLC shall notify Gateway Warehouses, Inc. to package and ship inventory

pursuant to Plaintiff's instructions as manager of the Company; and it is further

**ORDERED**, that Defendants Matt Sandy and FSJ Imports, LLC shall forthwith deliver to Plaintiff all inventory, inventory records, and all proceeds from the sale of the Company's finished products; and it is further

**ORDERED**, that Defendants Matt Sandy and FSJ Imports, LLC shall forthwith deliver to Plaintiff as Company manager all proceeds from the sale of the Company's products whether in the Company's account or accounts of FSJ Imports, LLC; and it is further

**ORDERED**, that Defendants shall forthwith take all steps and execute all writings required to make Plaintiff the signature on all FSJ Imports, LLC's bank accounts; and it is further

**ORDERED**, that Defendants shall make no transfer of the Company's property, assets, inventory or funds except in the ordinary course of business; and it is further

**ORDERED**, that Defendants shall forthwith deliver to Plaintiff all leases and contracts relating to the Company's offices, warehouse facilities, distribution of finished products, marketing of finished products, marketing, licensing of intellectual property, raw materials and components, and all other agreements, contracts or leases to which the Company, FSJ Imports, LLC, General Phosphorix, LLC or RAM Phosphorix, LLC are parties to relating to the Company's business and affairs; and it is further

**ORDERED**, that Defendants shall forthwith deliver to Plaintiff all keys and security codes to gain entry to the Company's leased offices or other facilities; and it is further

**ORDERED**, that Plaintiff shall provide copies of all correspondence issued or received by him as Company manager to Defendants; and it is further

**ORDERED**, that Plaintiff as manager of the Company shall make reasonable efforts to cooperate with Defendants in efforts to market, distribute and sell the Company's products; and it is further

**ORDERED**, that Plaintiff as manager of the Company shall provide written reports of the Company's income and expenses to Defendants no less frequently than every thirty (30) days; and it is further

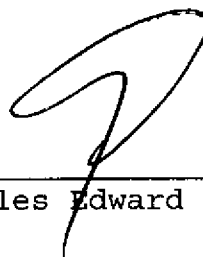
**ORDERED**, that Plaintiff is authorized to act as the Company's manager and execute any and all leases, contracts, instruments, agreements, tax returns or other documents as manager in accordance with the Company's Operating Agreement; and it is further

**ORDERED**, that except as set forth in this Order, the Company's Operating Agreement remains in full force and effect; and it is further

**ORDERED**, this Order is without prejudice to the rights of all parties including, without limitation, the right of any party to seek dissolution of the Company in accordance with the Company's Operating Agreement and/or applicable law; and it is further

ORDERED, that this Order shall be deemed effective May 2,  
2011.

E N T E R :

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a vertical line and a small flourish at the bottom.

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Hon. Charles Edward Ramos, J.S.C.

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

Motion #003  
Index No: 112623/10

JOSEPH LEHEY, individually and as a Member of FSJ, LLC, a Delaware Limited Liability Company, on behalf of himself and all other members of FSJ, LLC similarly situated and in the right of FSJ, LLC,

Plaintiff,

-against-

TIM GOLDBURT, MATT SANDY, DAVID PERILLO, FSJ IMPORTS, LLC, RAM PHOSPHORIX, LLC, GENERAL PHOSPHORIX, LLC, JOSEPH RUBIN, KEVIN MULLINS, AMJG, LLC, and FRANCIS MASSIE,

Defendants.

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ORDER

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JULES A. EPSTEIN, P.C.  
Attorney for Plaintiff  
600 Old Country Road, Suite 505  
Garden City, NY 11530  
(516) 745-1325  
(516) 222-1499 (Fax)

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Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: \_\_\_\_\_

Signature \_\_\_\_\_

Print Signer's Name JULES A. EPSTEIN

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Service of a copy of the within \_\_\_\_\_ is hereby admitted

Dated, \_\_\_\_\_

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Attorney(s) for Defendants

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SIR: PLEASE TAKE NOTICE

NOTICE OF ENTRY that the within is a (certified) true copy of a \_\_\_\_\_ entered in the office of the clerk of the within named Court on \_\_\_\_\_ 2010

NOTICE OF SETTLEMENT that an Order of which the within is a true copy will be presented for settlement to the \_\_\_\_\_ one of the judges of the within named Court, at 100 Supreme Court Drive, Mineola, NY on \_\_\_\_\_, at 9:30 A. M.

Dated: \_\_\_\_\_

Yours, etc.,  
Jules A. Epstein, P.C.  
Attorney for Plaintiff  
600 Old Country Road, Suite 505  
Garden City, NY 11530  
(516) 745-1325  
(516) 222-1499 (Fax)