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

JACOB KASHER HINDLIN,

Plaintiff,

-against-

LUCASZ GOTTWALD, LAWRENCE J. SPIELMAN and RENEE KARALIAN,

Defendants.

Index No.:

SUMMONS

Plaintiff designates New York County as the place of trial.

The basis of the venue is a defendant's place of business

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
January 23, 2019

GARVEY SCHUBERT BARER, P.C.

By: _____

Andrew J. Goodman, Esq.
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COMPLAINT

Plaintiff, by his attorneys Garvey Schubert Barer P.C., complains of the Defendants and alleges:

INTRODUCTION

1. This is an action arising out of the abuse of their position by the members of the Board of Managers of Core Nutrition LLC ("Core"), a Delaware limited liability company, to divert to themselves at the expense of Plaintiff (and Core's other minority equity holders) a grossly unfair and unreasonable allocation of the consideration obtained in the acquisition of Core by a publicly traded company Keurig Dr. Pepper In. ("KDP") to which they were not entitled, in violation of their fiduciary duties to Plaintiff (and Core's other minority equity holders) and in breach of their contractual obligations of good faith and fair dealing.

PARTIES

2. At all times hereinafter mentioned, Plaintiff was, and is, a highly successful writer and producer of contemporary popular music for many major and well-known recording artists.

3. At all relevant times, Defendant Lucasz Gottwald ("Gottwald") was, and is, a highly successful music industry publisher and producer, controlling companies that enter into long-term agreements with writers and producers, including Plaintiff. Each of these agreements

requires the writer or producer signing with Gottwald to irrevocably submit to the jurisdiction of the courts in the City, County and State of New York as the sole venue for resolving disputes, as a result of which Gottwald has a substantial and continuous contact with this State. Gottwald, although upon information and belief, not a registered or licensed broker/dealer and not affiliated with one, promotes various securities investments to his stable of writers and producers. Core was one such investment.

4. At all relevant times, Defendant Lawrence Spielman ("Spielman") was, and is, a certified public accountant with his principal place of business within the City, County and State of New York. Spielman was, and is, Gottwald's business manager, and at Gottwald's urging also serves as business manager for a number of songwriters and producers signed to Gottwald's companies. At Gottwald's urging, Spielman also became Plaintiff's business manager, and served as Plaintiff's business manager from in or about November, 2010 to in or about July, 2018.

5. While Spielman was business manager for both Plaintiff and Gottwald, he brought to Plaintiff's attention various investments being promoted by Gottwald, and although Spielman is not registered or licensed as an investment advisor or broker/dealer, he repeatedly advised Plaintiff as to the investments being promoted by Gottwald, including Core.

6. At all relevant times, Defendant Renee Karalian was and is a partner in a law firm with offices in both New York and Los Angeles that provides ongoing and regular corporate and related commercial law services to Gottwald and his entities both in New York and elsewhere. Karalian is one of the attorneys at the firm responsible for providing such legal services to Gottwald and his entities.

7. Upon information and belief, at all relevant times Gottwald, Spielman and Karalian were members of Core's Board of Managers, and Gottwald was a co-founder and Chief Cultural

Officer of Core. The basis of Plaintiff's information and belief is a private placement memorandum issued by Core in or about October, 2015.

PLAINTIFF'S CORE INVESTMENT

8. In or about June, 2015, Plaintiff learned from Gottwald and/or Spielman that Gottwald was promoting an investment in Core, then a developmental project.

9. In or about February, 2015, on Spielman's advice, Plaintiff agreed to invest $12,000 in Core and received 2,000 units for his investment.

10. In connection with his initial investment, Plaintiff was directed by Spielman to sign a document entitled "Joinder Agreement and Signature Page to Limited Liability Company Agreement of Core Nutrition, LLC" (the "Joinder Agreement").

11. Although the Joinder Agreement states that "the undersigned" certifies that he "has had the opportunity to review a copy of [Core's] Limited Liability Company Agreement," in fact Plaintiff was never afforded such an opportunity and to this day has never seen that Limited Liability Company Agreement, despite his demand that he be provided a copy.

12. Upon information and belief, in or about January, 2017, Gottwald directed Core's president, Paul Nadel, to send Plaintiff a link to a Private Placement Memorandum for Core's then ongoing fundraising.

13. Again relying on Spielman's recommendation, Plaintiff agreed to purchase another 2,000 Core units, this time for $120,000.

14. Gottwald sent Spielman an email dated February 16, 2017 with instructions to tell Plaintiff that he must fund his investment immediately. Upon information and belief, this email was intended to spur Plaintiff's investment of $120,000 in Core.

THE KDP ACQUISITION

15. On or about October 1, 2018, Plaintiff received notice from Core that it had entered into an Agreement with KDP for the latter to acquire Core (the "KDP Acquisition") for an enterprise value of $525,000,000 payable with a combination of cash and KDP shares (to be registered at time of closing to permit public sale), subject to adjustments.

16. The KDP Acquisition closed on or about November 30, 2018 for an adjusted aggregate transaction value of $449,462,907.

17. Plaintiff's Core K-1 for 2017 showed that Plaintiff owned approximately .613% of Core's capital at year end 2017. Applying that percentage to the aggregate transaction value, Plaintiff should have received $2,755,207 in cash and stock on the closing of the KDP Acquisition.

18. On the actual closing, however, Plaintiff was advised that he was entitled to closing consideration of only $393,582.89, leaving an unaccounted balance of $2,361,624.73.

19. Even to obtain this reduced amount, Plaintiff was required to sign a general release, which he declines to do.

CORE'S VARIOUS EXPLANATIONS FAIL

20. Of course, Plaintiff sought an explanation from Core for this gross disparity.

21. One reason provided by Core seems actually to be an admission of improper dilution of minority equity holders by excessive and wholly unparticularized so-called "Incentive Units," constituting approximately 18% of the Core units exchanged for KDP shares, or in excess of $80,000,000. Yet, and despite Plaintiff's request for this information, Core has refused to identify the recipients of "Incentive Units", the date that the Units were issued, the documents and corporate actions authorizing the issuance of the "Incentive Units" or the basis on which Core determined how many "Incentive Units" to issue to each recipient.

22. A similarly large allocation of acquisition consideration – 2,926,755 KDP shares – went to Spielman individually and to entities which he controlled. The amendment to the registration statement filed with the United States Securities and Exchange Commission ("SEC") reflect a maximum contemplated per share transaction value of $26.43; and dividing the transaction consideration Core allocated to Plaintiff by the number of shares he received results in a $26.36 per share transaction value. Even at a flat $26 per share, the transaction consideration to Spielman was over $76,095,630.

23. Plaintiff has repeatedly asked Spielman and his firm to account to him for, *inter alia*, the Core transactions. Spielman has repeatedly failed and refused to do so, and a special proceeding to compel his accounting is presently *sub judice* in this court *sub nom Jacob Kasher Hindlin v. Lawrence J. Spielman et ano.*, index no. 158642-2018.

24. Thus, just Incentive Units and Spielman soaked up well more than a third of the acquisition consideration.

25. Financial information received from Core further demonstrates the existence of other improperly dilutive units.

A. Plaintiff invested $12,000 in 2014 for 2,000 units, and $120,000 for an additional 2,000 units in 2017. Accordingly, the cost per unit to Plaintiff in 2017 was $60. As reflected in the information Core provided, excluding Incentive Units, 3,428,777 total units were issued and outstanding at the end of 2016; 3,700,606 at the end of 2017; meaning that 271,829 units (excluding Incentive Units) were issued in 2017. At $60/unit, that should have resulted in $16,309,740 in new capital to supplement the $8,363,316 year end 2016 capital, which means total 2017 capital availability of

$24,673,056. There was $1,441,971 of capital at year end 2017, so that at $60/unit, Core would have had to have burned through $23,231,085 of capital in 2017.

B. However, it appears that Core's capital losses were far less. Plaintiff's allocated GAAP Book Loss was $112,644. Applying Plaintiff's .613% capital share, it appears that the total capital loss was $18,375,856, leaving an unaccounted balance of $4,855,228. The difference must be even greater given non-cash GAAP items such as depreciation and amortization.

It is thus apparent that Core issued a number of dilutive units, exclusive of Incentive Units, at much less than $60/unit.

26. Core also argued in pre-litigation correspondence that Plaintiff's percentage of unit ownership rather than capital percentage governs. But that begs the question as to why Plaintiff's percentage of membership ownership is so far diluted below his capital percentage.

27. As to be expected, when Plaintiff first invested, his capital and unit ownership percentage were about equal. In each subsequent year through 2016, his percentage membership interest was 3 to 4 times greater than his percentage capital interest. By the end of 2017 – and despite having invested another $120,000 – for the first time his percentage membership interest was less, indeed far less, than – only about 15% of – his percentage capital interest. This hardly seems coincidental given the timing of the KDP transaction.

28. The analysis in paragraphs 25 through 27 above was brought to the attention of Core's counsel by letter dated December 18, 2018, which asked for further information. Rather than providing any further information, counsel responded by letter dated December 20, 2018 accusing Plaintiff's counsel of harassment and rattling the sanctions saber.

29. This action, of necessity, follows.

FIRST CAUSE OF ACTION
(Breach of Covenant of Good Faith and Fair Dealing)

30. Plaintiff repeats and realleges paragraphs 1 through 29 above as if fully set forth at length herein.

30. Core's Board of Managers, including but not limited to Defendants, had an obligation to perform their duties and responsibilities under the Limited Liability Company Agreement in good faith towards, and fair dealing with, all Core members, including Plaintiff (and all minority members).

31. Core's Board of Managers, including but not limited to Defendants, failed to discharge their responsibilities in good faith and dealt unfairly with Plaintiff (and all minority members) by acting in such a way as to grossly dilute minority membership in favor of Core insiders including specifically Spielman and, on information and belief, Gottwald as a co-founder of Core.

31. By reason of the foregoing, Plaintiff has been damaged in the sum of $2,755,207.

SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

32. Plaintiff repeats and realleges paragraphs 1 through 29 above as if fully set forth at length herein.

33. The members of Core's Board of Managers, including but not limited to Defendants, had a fiduciary duty to all of Core's members, including minority members, to not act to favor themselves at the expense of the best interest of all members.

34. By acting in such a way as to grossly dilute minority membership in favor of Core insiders including specifically Spielman and, on information and belief, Gottwald as a co-founder of Core, the members of the Core Board of Managers, including Defendants, breached that fiduciary duty.

35. Upon information and belief, Defendants acted intentionally, willfully and maliciously to enrich themselves at the expense of Core's other members.

36. By reason of the foregoing, Plaintiff has been damaged in the sum of $2,755,207 and is entitled to punitive damages.

WHEREFORE Plaintiff Jacob Kasher Hindlin respectfully requests that judgment be entered jointly and severally against Defendants Lucasz Gottwald, Lawrence Spielman and Renee Karalian:

A. On the first cause of action, for actual damages in the sum of $2,755,207 with interest thereon from November 30, 2018;

B. On the second cause of action, for actual damages in the sum of $2,755,207 with interest thereon from November 30, 2018 and punitive damages of $5,000,000;

C. For the costs and disbursements of this action, including reasonable attorneys' fees; and

D. For such other, further and different relief as the Court deems just and proper.

Dated: New York, New York
January 23, 2019

GARVEY SCHUBERT BARER, P.C.

By: _____

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