

Cook County Attorney No. 43985

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION

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OASIS SHAREHOLDER RECOVERY, LLC
(f/k/a Oasis Legal Finance Holding Group, LLC);
and GARY D. CHODES,

Plaintiffs,

vs.

2019L009954

ZACH SADEK; ANTHONY ORAZIO; ANDREW DODSON;
JACK LAVIN; WALTER HOLZER; KIRKLAND & ELLIS, LLP,
LITTLER MENDELSON, P.C.; and JAMES M. WITZ,

Jury Demand

Defendants,

and

THE HUNTINGTON NATIONAL BANK (F/K/A AS FIRSTMERIT);
FOLEY & LARDNER, LLP; JACKSON JENKINS;
CIBC BANK USA (F/K/A THE PRIVATEBANK & TRUST COMPANY);
GARY ANETSBERGER; PCP, L.P.; H.I.G. CAPITAL;
WHITEHORSE CAPITAL; WHITEHORSE FINANCE, INC.

Respondents in Discovery.

COMPLAINT

1. Plaintiffs live and operate in Illinois. Plaintiffs founded and were minority co-owners of a successful nationwide business headquartered in Cook County that goes by the trade name ‘Oasis Financial.’

2. On September 9, 2016, the Oasis Financial companies were merged and sold by a New York hedge fund majority co-owner to a Boston private equity firm. But nobody bothered to give (the contractually required) notice to the Illinois minority co-owner-Plaintiffs – even

though the Transaction purported to ‘cancel’ and extinguish Plaintiffs’ equity. In fact, the sale process, transaction, and several gluttonous side-deals that comprised this transaction all were actively concealed from Plaintiffs. Evidence discovered to date reveals that the defendants in this case all knew that the transaction was being carried out:

- a. in secret, i.e., concealed from Plaintiffs;
- b. in breach of the governing contracts;
- c. in breach of the fiduciary duties and other legal obligations of the officers, managers, and controlling owners of Oasis Financial; and
- d. using transaction contracts that themselves were demonstrably false and fraudulent.
- e. and made false statements in filings regarding the Merger to the State of Delaware

3. The defendants in this case and in the prior related litigation all agreed on a coordinated plan: Conceal the transaction from Illinois-based minority owners; notify them afterward; lie and conceal material information regarding the transaction and use of proceeds; and push Plaintiffs to take some settlement money and sign a comprehensive release absolving all the bad actors who are now named defendants.

4. Undersigned counsel takes seriously the gravity of the allegations herein as well as the ethical and professional duty of an attorney to conduct sufficient diligence before signing his name to complaint with very serious charges. Counsel below has personally reviewed the relevant contracts, transaction documents, and tens of thousands of pages of related communications and documents as well as conducted several depositions in the prior litigation. The claims asserted herein are well-founded and substantiated.

5. What makes this case at once galling and baffling is that each of these defendants had: (i) credentials and professional experience such that they knew better; and (ii) access to counsel who could have or should have advised them that no deal, profit or professional fee is worth engaging in illicit acts, deceit with respect to fellow members, misconduct and fraud. And yet they did, as the documents show.

PLAINTIFFS

6. Plaintiff Gary D. Chodes (“Chodes”) is a resident of Highland Park, Illinois.

7. Plaintiff Oasis Shareholder Recovery, LLC (f/k/a Oasis Legal Finance Holding Group, LLC) (“Group”) is a limited liability company organized under Delaware law with its principal place of business in Illinois.

DEFENDANTS

8. Defendant Zach Sadek (“Sadek”) lives in or around Boston, Massachusetts. Sadek is a Partner in the Boston office of Parthenon. Sadek traveled into, did business in, negotiated with persons located in, and purposefully availed himself of the rights and benefits of the laws in the State of Illinois including specifically as to the Oasis companies and transaction at issue. See <http://www.parthenoncapitalpartners.com/team/zachary-f-sadek/> (visited on September 8, 2019). Sadek has served as a manager or director of the board that directs, manages and/or controls HoldCo, OpCo, and/or additional companies that have their principal place of business in Illinois.

9. Defendant Anthony Orazio (“Orazio”) lives in or around Boston, Massachusetts. Orazio is a Principal in the Boston office of Parthenon See: <http://www.parthenoncapitalpartners.com/team/anthony-j-orazio/> . (visited on Sept 9, 2019) Orazio traveled into, did business in, negotiated with persons located in, and purposefully availed

himself of the rights and benefits of the laws in the State of Illinois including specifically as to the Oasis companies and transaction at issue. Orazio has served as a manager or director of the board that directs, manages and/or controls HoldCo, OpCo, and/or additional companies that have their principal place of business in Illinois.

10. Andrew Dodson (“Dodson”) is Managing Partner in the San Francisco office of Parthenon. Dodson traveled into, did business in, negotiated with persons located in, and purposefully availed himself of the rights and benefits of the laws in the State of Illinois and served as a manager or director of the board that directs, manages and/or controls companies that have their principal place of business in Illinois. Dodson is a member of the board of directors (or managers) that directs, manages or controls Millennium Trust Company, LLC, which has its principal place of business in Illinois. See <https://www.mtrustcompany.com/about/board-directors/andrew-dodson> (visited on September 8, 2019).

11. Jack Lavin (“Lavin”) is a resident of Illinois. On information and belief, Lavin resides in Cook County. Lavin is or was a director, manager, officer and or executive of several companies owned by or affiliated with Parthenon.

12. Walter Holzer (“Holzer”) is a resident of Illinois. On information and belief, Holzer resides in Lake County. Holzer is a partner at Kirkland.

13. Kirkland & Ellis, LLP (“Kirkland”) is a limited liability partnership and law firm doing business in and with an office located in Chicago, Cook County, Illinois.

14. Littler Mendelson, P.C. (“Littler”) is a professional corporation and law firm doing business in and with an office located in Chicago, Cook County, Illinois.

15. James M. Witz (“Witz”) is a resident of Illinois. On information and belief, Witz resides in Cook County. Witz is a partner at Littler.

RESPONDENTS IN DISCOVERY

16. The Respondents in Discovery each were involved in the sale process, transaction, and/or financing of the transaction at issue. They each possess information directly relevant to Plaintiffs' claims and critical to discovery of the truth regarding, *inter alia*:

- a. the sale process,
- b. due diligence,
- c. negotiations,
- d. transaction,
- e. contracts negotiated, prepared and executed in connection with the transaction.
- f. financing of the transaction,
- g. the use of proceeds from the transaction,
- h. agreements and side deals -- both oral and written -- that (supposedly) induced the approval of the transaction,
- i. indemnity agreements and side deals -- both oral and written -- related to the transaction and parties named in this case and/or cases covering related subject matter, and/or
- j. conflicts and/or waiver of conflicts for the attorneys and law firms involved.

17. The Huntington National Bank (f/k/a as FirstMerit) ("Huntington") was a lender that financed the transaction at issue. Huntington is doing business in and with an office located in Chicago, Cook County, Illinois.

18. Foley & Lardner, LLP ("Foley") is a limited liability partnership and law firm doing business in and with an office located in Chicago, Cook County, Illinois. Foley was counsel representing Huntington in connection with the transaction and related financing.

19. CIBC Bank USA (f/k/a The PrivateBank & Trust Company) (“CIBC USA”) is a bank doing business in and with an office located in Chicago, Cook County, Illinois. CIBC USA is a participant in a syndicated loan arranged by Huntington that was used in part to finance the transaction and is presently used by the Oasis companies for working capital. CIBC USA also was and is the escrow agent for an escrow account used to hold certain proceeds from the Transaction, including (purported) property of Plaintiffs.

20. Jackson Jenkins (“Jenkins”) lives and works in or around Chicago, Cook County, Illinois. Jenkins is a former employee of Raymond James & Associates who worked closely with Oasis Financial personnel as well as with Sadek during the sale process for Oasis Financial and during due diligence and negotiations that culminated in the Transaction.

21. PCP, L.P. (“PCP LP”) is a limited partnership organized under Delaware law. PCP is or was party to a Management Agreement dated September 9, 2016 (and/or to related or successor contracts) by which management services were provided to Oasis Financial and/or other companies operating in Illinois.

22. H.I.G. Capital, Whitehorse Capital, and Whitehorse Finance, Inc. are affiliates who provided second-tier secured loan to Oasis Financial, which was used in part to finance the Transaction.

23. Gary Anetsberger was and/or is an officer and board member for Millennium Trust. Millennium Trust at the times relevant to this case was controlled and owned (partially or wholly) by affiliates of Parthenon. Anetsberger and Millennium Trust arranged for and/or assisted Dodson and Parthenon in funneling valuable business and equity to companies known as ‘Stellus’ that were run by 3 managers of Oasis Financial who together comprised the controlling block of that board of managers.

VENUE

24. Venue is proper in this Court under 735 ILCS 5/2-101 subsections (1) and (2), 735 ILCS 5/2-104(b), and/or 735 ILCS 5/2-102(a).

25. The causes of action arose in part from actions, transactions, communications, and contracts that took place (at least in part) in Lake County.

JURISDICTION

26. This Court has jurisdiction over this case pursuant to, inter alia: 735 ILCS 5/2-209(a) subsections (1), (2), (3), (4), (7), (10), (11), (12) and (14); 735 ILCS 5/2-209(b) subsections (1), (2), and (4); and/or 735 ILCS 5/2-209(c).

27. Each defendant is subject to the personal jurisdiction of Illinois courts because these causes of action arise out of acts described in 735 ILCS 5/2-209. Each defendant:

- a. has done and is doing business in or connected to Illinois;
- b. made and/or performed contracts substantially connected with Illinois;
- c. regularly or systematically has and had contacts with the State of Illinois; and
- d. purposefully availed himself or itself of the privilege of conducting business or benefitting from actions and activities in Illinois,

GENERAL ALLEGATIONS

28. The subject matter of this litigation has been pled in considerable and lengthy detail in other litigation. For the convenience of the Court and the parties named herein, Plaintiffs attach hereto as Exhibit 1 a complaint on file in the Circuit Court of Lake County, Illinois, which sets forth in detail the events that gave rise to this litigation including the operative LLC agreement of HoldCo.

- a. If Plaintiffs set forth those details here or if Defendants demand that Plaintiffs do so, we will oblige but note that it would require every defendant who ultimately answers to answer nearly twice the number of paragraphs.
 - b. So as a courtesy, Plaintiffs are pleading in this complaint the torts of each individual defendant. But where those torts relate to breaches of contract or breach of legal duties by other who are defendants in the Lake County litigation, Plaintiffs do not plead here the complex history and contractual provisions underlying breaches of contract and breaches of fiduciary or other legal duties
 - c. If any defendant takes this professional courtesy – which has been given to reduce the pleading requirements for defendants for when they eventually have to answer – and files a specious motion to dismiss on the grounds that Plaintiffs by using an attachment failed to plead with requisite detail or tried to evade the rule of procedure, etc., then Plaintiffs intend to incorporate nearly all of the allegations reflected in Exhibit 1 and many more gleaned from documents discovered to date in an amended complaint that will be lengthy as a result. In such case, Plaintiffs will not consent to relieving any defendants of their obligation to answer all of the individual paragraphs.
29. The Oasis Financial companies include, *inter alia*:
- a. Oasis Legal Finance Holding Company, LLC (“HoldCo”) a Delaware limited liability company with its principal place of business located in Illinois.
 - b. Oasis Legal Finance Operating Company, LLC (“OpCo”) a Delaware limited liability company its principal place of business located in Illinois.
 - c. OpCo was and is a wholly owned subsidiary of HoldCo.

- d. OpCo itself wholly owns certain subsidiaries.
 - e. At the time of the events at issue, the culpable officers of Oasis Financial included, *inter alia*:
 - i. CEO Ralph Shayne (“Shayne”); and
 - ii. CFO Richard Smolen (“Smolen”).
 - f. At the time of the events at issue, the managers on the board governing Oasis Financial included:
 - i. Shayne;
 - ii. Robert Ladd (“Ladd:”)
 - iii. Dean D’Angelo (“D’Angelo”); and
 - iv. Adam Pollock (“Pollock”).
 - v. Shayne, Ladd, D’Angelo, and Pollock are referred to herein collectively as the “ Board”).
30. Ladd, D’Angelo and Pollock are founders of and do work for Stellus Capital Management, LLC and Stellus Capital Investment Corporation (all referred to herein collectively as “Stellus”).
31. Stellus was created as a result of a spin off from New York hedge fund D.E. Shaw.
32. D.E. Shaw entities held the majority share of the equity in HoldCo and elected Ladd, D’Angelo and Pollock to the Board.
33. Plaintiffs each held a minority share of the equity in HoldCo.
34. In late 2014 or early 2015, the controlling owners, managers, and officers of HoldCo began reaching out to potential investment bankers.

35. In or around May 2015, HoldCo's controlling owners and Board hired Raymond James & Associates as investment bankers to market the Oasis Financial companies for sale.

36. The defendants named here all actively concealed aspects of that sale process from Plaintiffs. All defendants named here knew that Plaintiffs were being excluded from the sale process.

37. Parthenon Capital is a trade name of a private equity firm comprised of affiliated entities with common employees, shared offices, integrated management, and ultimately under common ownership, management and control. According to their shared website: "Parthenon, Parthenon Capital and Parthenon Capital Partners are registered service marks of PCP Managers, L.P. and its affiliates."

38. This Complaint uses "Parthenon" collectively to refer to the following:

- a. PCP Managers, L.P. ("PCP") is a Delaware limited partnership.
- b. PCP Managers GP, LLC ("PCP GP") is a Delaware limited liability company.
PCP GP is the general partner of PCP.
- c. Parthenon Capital Partners Fund II, L.P. ("Parthenon II") is a limited partnership organized under the laws of Delaware. Parthenon II is a limited partner in the Partnership, which acquired ultimate ownership and control of the Oasis companies on or around September 9, 2016.
- d. Parthenon Investors IV, L.P. ("Parthenon IV") is a limited partnership organized under the laws of Delaware. Parthenon IV is a limited partner in the Partnership, which acquired ultimate ownership and control of the Oasis companies on or around September 9, 2016.

e. The personnel who worked on due diligence of and negotiations for an acquisition of the Oasis Financial companies, the transaction, and financing for the Transaction, included ,but are not limited to:

- i. Sadek,
- ii. Orazio,
- iii. Dodson,
- iv. William Winterer, and
- v. Brian Golson.

39. In June and July 2016, Parthenon collaborated with Shayne, Smolen, HoldCo, OpCo, Holzer and Kirkland to create entities that would buy and own the Oasis companies going forward.

40. Oasis Intermediate HoldCo, LLC (“Intermediate”) is a Delaware limited liability company formed on July 25, 2016. Intermediate was defined as the “Buyer” in documents related to the Transaction.

41. Intermediate was and is wholly owned by Oasis Parent, L.P. (the “Partnership”), which was also organized under Delaware law on or around July 25, 2016. The Partnership is (and always has been) the sole member/manager of Intermediate. As a consequence, Intermediate is and was wholly owned by as well as solely controlled by the Partnership.

42. The Partnership is a limited partnership organized under Delaware law. Oasis Parent GP, LLC (“General Partner”) is its general partner. The Partnership was comprised of PCP GP, Parthenon II, Parthenon IV, several Oasis officers who lived and worked in Illinois, and one other Illinois resident who had prior business relationships with Parthenon and a company

called Key Health. Specifically, the Partnership was comprised of PCP GP as general partner and the following limited partners:

- a. Parthenon II;
- b. Parthenon IV;
- c. Smolen, an Oasis officer who lives and works in Illinois;
- d. Shayne, an Oasis officer who lives and works in Illinois;
- e. The Ralph Shayne 2006 Irrevocable Stock Trust (the trustee of which is Shayne's wife), for which a beneficiary was an Oasis officer who lives and works in Illinois;
- f. Colin Lawler, an Oasis officer who lives and works in Illinois;
- g. The Debbie Weinstein McKean Revocable Trust (the trustee of which was the former Chief Marketing Officer of HoldCo and OpCo), for which a trustee and/or a beneficiary is Debbie Weinstein McKean, an Oasis officer who lives and works in Illinois; and
- h. Lavin, who lives and works in Illinois.

43. Lavin had ties to Parthenon as well as to a company called Key Health; both relationships predated the transaction.

44. Not long after Parthenon and the Partnership acquired control and ownership of the Oasis Financial companies, in the Spring of 2017, the Oasis companies were merged or combined with Key Health.

45. A few months later, Parthenon and the Partnership named Lavin as CEO of the combined Oasis-Key Health companies.

46. Kirkland and Holzer worked on these mergers and acquisitions and related transactions.

47. Kirkland and Holzer frequently worked on both sides of these transactions.

48. Kirkland and Holzer obtained conflict waivers and rights to indemnification all of which are, from what Plaintiffs have gleaned to date, atypical and dubious.

49. The acquisition of the Oasis Financial companies was consummated through a number of related contracts and transactions that ultimately closed on September 9, 2016 which are referred to collectively as the “Transaction.”

50. Before and after the Transaction, HoldCo continued to own OpCo, which in turn continued to own its subsidiaries.

51. A primary purpose and ultimate end-result of the Transaction (which was comprised of a series of integrated steps, contracts and transactions) was for Intermediate to acquire direct ownership and control of HoldCo.

52. Days before the Transaction closed, the HoldCo LLC Agreement apparently was amended. No notice of the amendment was provided to Plaintiffs either before or after such amendment. And such amendment was not included in any version of Transaction documents provided to Plaintiffs.

53. On or around September 9, 2016 (the “Closing Date”), the HoldCo LLC Agreement was again amended and this time was also restated in its entirety. No notice of this amendment/restatement was provided to Plaintiffs before or after such amended and restated agreement was proposed and approved.

54. Documents since discovered reveal that on the Closing Date, each of the following occurred:

- a. The Merger Plan purported to ‘cancel’ all HoldCo members’ membership interests, units and equity only for the membership interest, unit(s) and equity in HoldCo purportedly owned and/or controlled by Intermediate.
- b. Intermediate immediately wielded this purported status as the only member of HoldCo to:
 - i. amend and replace the HoldCo LLC Agreement with the *Third Amended and Restated Limited Liability Company Agreement of Oasis Legal Finance Holding Company, LLC* (hereinafter referred to as the “Intermediate-Amended HoldCo LLC Agreement”),
 - ii. eliminate the board for and previous manager-managed structure of HoldCo; and
 - iii. convert HoldCo into a single-member/member-managed LLC.

55. The Defendants collectively planned, and on the Closing Date Intermediate effectuated, the conversion of HoldCo:

- a. from a multi-member LLC to a single-member LLC; and
- b. from a manager-managed LLC to a member-managed LLC.

56. The Defendants collectively planned, and effectuated the conversion of OpCo from a manager-managed LLC to a member-managed LLC. HoldCo was the sole member of OpCo

57. Intermediate acquired direct and total ownership of, as well as direct and complete control over, HoldCo. Put another way, as of the Closing Date, Intermediate became the sole member and sole manager of HoldCo.

58. The Intermediate-Amended HoldCo LLC Agreement reveals and confirms that Intermediate did not merely acquire some abstract personal property right in Delaware as a result of the Transaction. Instead, the Transaction and the Intermediate-Amended HoldCo LLC Agreement granted Intermediate immediate and total dominion and control over HoldCo's operations and assets:

- a. "The management, operation and policy of the Company [HoldCo] shall be vested exclusively in the Member [Intermediate] (the "Managing Member"). ... The Managing Member [Intermediate] is an agent of the Company [HoldCo] and the actions of the Managing Member [Intermediate] in such capacity shall be binding on the Company [HoldCo] without liability to the Managing Member [Intermediate]." Intermediate-Amended HoldCo LLC Agreement § 3.1.
- b. "The Managing Member [Intermediate] shall have the authority to appoint and terminate officers of the Company [HoldCo] and retain and terminate employees, agents and consultants of the Company [HoldCo] and to delegate such duties to any such officers, employees, agents and consultants as the Managing Member [Intermediate] deems appropriate...." *Id.* § 3.2.
- c. The Member [Intermediate] shall own 100% of the membership interests of the Company [HoldCo] (the "Membership Interests"). *Id.* § 4.1.
- d. "For financial accounting and tax purposes, the [HoldCo] Company's net profits or net losses shall be determined on an annual basis in accordance with the manner determined by the Managing Member [Intermediate]. In each year, profits and losses shall be allocated entirely to the Member [Intermediate]." *Id.* § 5.1.

- e. “The Managing Member [Intermediate] shall determine profits available for distribution and the amount, if any, to be distributed to the Member [Intermediate], and shall authorize and distribute on the Membership Interests, the determined amount when, as and if declared by the Managing Member [Intermediate]. The distributions of the Company shall be distributed entirely to the Member [Intermediate].” *Id.* § 5.2.

59. The Intermediate-Amended HoldCo LLC Agreement shows that Intermediate acquired the contractual right to exercise unfettered control over HoldCo’s assets and things of value.

60. Intermediate not only became HoldCo’s sole manager, but also gained the unfettered contractual right to act in place of HoldCo and also to bind HoldCo by any such acts that Intermediate might take in HoldCo’s stead. (*See* Third Amended and Restated Limited Liability Company Agreement of Oasis Legal Finance Operating Company, LLC at §§ 4.1, 5.1—5.3.)

61. Because HoldCo was contractually entitled to control OpCo; and because Intermediate gained on the Closing Date an unfettered right to stand in for and act in HoldCo’s stead and thereby bind HoldCo,

- a. It follows that Intermediate was itself contractually entitled to itself manage or control OpCo simply by acting in place of HoldCo and to manage/direct/control OpCo.
- b. It follows that on and after the Closing Date, Intermediate was contractually entitled to exercise as much control over OpCo as was permitted by or granted to HoldCo itself and acting on behalf would be contractually entitled to do. (*See id.*)

62. HoldCo had since 2011 the right to control OpCo and its assets. Intermediate simply gained the right to substitute itself for HoldCo and exercise the latter's control or other contract rights.

One Unitary Board Was Created Atop the Partnership to Direct,
Manage and Control All the Oasis Companies and Buyers' Side Entities.

63. Intermediate disbanded the HoldCo board in favor of itself as sole member/manager of HoldCo and was itself was entitled to sit in place of HoldCo and direct the affairs and use of assets and things of value in and/or owned by OpCo.

64. The Partnership was the sole member and sole manager of Intermediate.

65. On the same Closing Date of the Transaction, the Partnership's governing agreement was amended and restated. (*See Amended and Restated Agreement of Limited Partnership Oasis* ("Restated Partnership Agreement" at § 4.1.)

66. The Restated Partnership Agreement established a 4-person board to control and exercise the powers and authorities of the Partnership ("Partnership Board"). (*Id.* at § 4.2.) Parthenon was entitled to select 3 members of the Partnership Board: Zach Sadek, Anthony Orazio, and Jack Lavin. The fourth member of the Board was designated by name in the Partnership: Ralph Shayne.

67. All powers that otherwise would be in the hands of the general partner (i.e., PCP Managers GP, LLC) to run the Partnership were ceded to the Partnership Board.

68. Moreover, the Partnership Board was granted sole discretion and total control to make binding decisions for every single-member LLC subsidiary below it, which included all of the Oasis Companies. (Restated Partnership Agreement at § 4.1.)

69. By the Closing Date, Intermediate, HoldCo, OpCo and OpCo's subsidiaries had all authorized the Partnership Board to dictate or supplant all managerial decisions that the

Partnership, the general partner of the Partnership, Intermediate, HoldCo, and OpCo would otherwise be empowered to make on behalf of the single-member LLC subsidiaries beneath them in the chain of ownership.

70. Put another way, the Partnership Board gained control of the Partnership, Intermediate, HoldCo, OpCo, and the employees, assets and things of value of any and all of those companies.

71. The LLC agreements of HoldCo and OpCo enable the manager of HoldCo and of OpCo to control their respective assets.

72. Intermediate was the sole member/manager of HoldCo.

73. Intermediate had the right to stand in the shoes of and to bind HoldCo – including in HoldCo’s capacity as sole manager of OpCo.

74. This leaves only a simple factual question of whether HoldCo and/or OpCo had assets or things of value located in Illinois. If so, then personal jurisdiction over Intermediate would be proper under subsection (a)(10) of the Long-Arm Statute because on the Closing Date Intermediate acquired control over any such assets or things of value owned in the name of or held or possessed by either HoldCo or OpCo.

75. The Partnership, the Partnership Board, and the general partner of the Partnership, Ralph Shayne, Jack Lavin, Zach Sadek and Anthony Orazio are subject to the personal jurisdiction of Illinois state courts pursuant to sections 2-209(10) and 2-209(12) of the Illinois Long-Arm Statute.

76. Prior to the Transaction, HoldCo and OpCo held and possessed a thing of value that was of considerable interest and value to the buyers: net operating loss carry-forwards (hereinafter “NOLs”) for federal and for state tax purposes.

77. “NOLs are tax losses, realized and accumulated by a [company], that can be used to shelter future (or immediate past) income from taxation. If taxable profit has been realized, the NOLs operate either to provide a refund of prior taxes paid or to reduce the amount of future income tax owed. Thus, NOLs can be a valuable asset, as a means of lowering tax payments and producing positive cash flow.” *Versata Enterprises, Inc. v. Selectica, Inc.*, 5 A.3d 586, 589 (Del. 2010). NOLs are typically treated as assets or contingent assets on a balance sheet.

78. The NOLs arising from HoldCo and OpCo and their operations in Illinois were not only applicable to or usable for federal tax purposes but also for Illinois state tax purposes.

79. Illinois permits a tax deduction for certain NOLs. 35 ILCS 5/207.

80. From November 2015 through the Closing Date in Fall 2016, Parthenon personnel communicated regularly with and negotiated through the investment banker defendants located in Chicago (i.e., Raymond James and Michael Jones).

81. Between December 2015 and February 2016, Parthenon communicated and negotiated through Raymond James specifically to ensure that the D.E. Shaw sellers would maintain federal and Illinois state law NOLs of HoldCo and OpCo for the benefit of the buyer.

82. Ultimately, those negotiations (led by Zach Sadek from Parthenon) were successful, and the Buyer’s right to ownership and use of NOLs post-Transaction was agreed upon by Spring 2016. At that time, personnel from D.E. Shaw and Stellus reached an agreement in principle with Parthenon for the latter’s acquisition of the Oasis companies.

83. Mr. Sadek was the lead person from Parthenon from the initial bidding phase through the final details of closing. Sadek and other Parthenon colleagues traveled to Illinois on more than one occasion for due diligence and/or negotiations. It appears that Sadek met with, *inter alia*, defendants Raymond James and Michael Jones in Chicago as well as Shayne and

Smolen in Chicago and/or Rosemont, Illinois. Further, it appears that Sadek and/or other Parthenon personnel met with lenders for OpCo and/or HoldCo during their trips to Illinois. Documents confirm that, at a minimum, Sadek and other Parthenon personnel regularly communicated with and negotiated with OpCo's existing lenders as well as lenders that agreed to finance the Transaction – including a lender located in Illinois that served and still serves as escrow agent for certain proceeds from the Transaction.

84. A company not physically present in a state may invoke or trigger personal jurisdiction by making a single contact or completing a single transaction when the defendants in question purposely availed themselves of the privileges, benefits or protection of Illinois state law. *Hanson v. Denckla*, 357 U.S. 235 (1958). The buyers' successful negotiation for NOLs that was spearheaded by Zach Sadek suffices for the exercise of personal jurisdiction over Intermediate.

- a. "[T]he allowance of a deduction for net losses is a privilege created by statute as a matter of legislative benevolence." *Consolidated Rail Corp. v. Department of Revenue*, 293 Ill.App.3d 555, 688 N.E.2d 806 (1997) (citing *Bodine Electric Co. v. Allphin*, 81 Ill.2d 502, 512-13, 43 Ill. Dec. 695 (1980)).
- b. Not only did the Partnership, Intermediate, and Parthenon negotiate to acquire the HoldCo and OpCo NOLs as part of the Transaction, those defendants afterward used and realized the value of those NOLs for their own financial advantage.
- c. Defendants – in concerted action during Parthenon's exclusive negotiations but before the Transaction – obtained extensions of time from the IRS to file HoldCo's and OpCo's tax returns for tax year 2015. The 2015 tax returns for HoldCo and OpCo were eventually completed and filed with the IRS and state

taxing bodies after the Transaction closed – i.e., under the control, ownership and auspices of Intermediate and the Partnership.

- d. According to subsequent audited financial statements, Intermediate filed a consolidated tax return along with HoldCo, OpCo, and OpCo's subsidiaries – allowing Intermediate directly (and the Partnership ultimately) to benefit from the HoldCo and OpCo NOLs, including those in Illinois governed and made permissible by Illinois state tax laws. (*Consolidated Financial Statements for Oasis Intermediate Holdco, LLC and Subsidiaries* (December 31, 2017 and 2016), audited by RSM US, LLP, at pp. 12 (Note 1), 23—24 (Note 11).)

85. The purposeful availment by the buyers of the advantages of Illinois state tax law (set forth above) confirms that personal jurisdiction may, indeed, be exercised against those buyers consistent with Due Process.

86. Not only did Intermediate acquire control over assets and things of value in Illinois, Intermediate realized such value almost immediately after the acquisition.

87. As part of the Transaction:

- a. \$7,200,000 was deposited into an escrow account located in Illinois at a bank called The PrivateBank and Trust Company n/k/a CIBC Bank USA.
- b. Intermediate acquired a right to control certain escrowed funds and withhold payment of such funds to the sellers. *See, e.g.*, Merger Plan p. 4 § 4.2 (granting Intermediate a right to withhold escrowed funds).
- c. Intermediate also acquired a form of control over the entire escrowed amount that was located in Illinois – i.e., the legal right to be a necessary signatory to an

instruction to the escrow agent (which was located in Chicago, Illinois) to release escrowed funds.

- d. Intermediate therefore acquired control of asset(s) or thing(s) of value located in Illinois – i.e., escrowed funds located in Illinois.

88. Documents recently produced by the escrow agent bank in Illinois indicate that Intermediate used some of those escrowed funds to pay for the legal expenses of HoldCo and OpCo. Given the terms of the Merger Agreement and Indemnification Agreement, it is fair to infer that HoldCo's and OpCo's legal expenses litigating against Chodes within Illinois in the courthouses of this State are the among the bases upon which Intermediate is drawing those funds out of the Illinois escrow account.

89. The Partnership and Intermediate have availed themselves of the Illinois court system as a publicly subsidized forum to bring affirmative claims against an Illinois resident – with such litigation paid for using funds held in an Illinois bank – funds which came from, *inter alia*, Transaction financing debt provided by at least three banks located in this State (CIBC Bank USA, the Huntington Bank and First Bank of Highland Park).

90. The allegations above – which draw upon Defendants' own contracts, admissions, verified pleadings, and affidavit – constitute a prima facie case for jurisdiction. The Parthenon-related entity Defendants and individual Defendants did business in Illinois and continue to do so. They control assets and things of value located in Illinois. And they direct Illinois companies from their place in the Partnership and the Partnership Board.

91. The Partnership and Partnership Board acquired control over HoldCo and OpCo as well as unfettered discretion to use, direct and control those companies' officers, business activities, assets, cash and things of value. That suffices for personal jurisdiction.

92. Moreover: When a buyer, acquirer or parent acquires 100% of the membership interest in a single-member LLC or chain of single-member LLCs, that new owner is or ought to be deemed for tax purposes to have acquired the assets of the wholly owned subsidiary LLCs that were wholly acquired by the new owner. *See generally* I.R.S. Rev. Rulings 70-140, 99-5 and 99-6; *McNamee v. Dept. of the Treasury*, 488 F.3d 100, 107–108 (2d Cir. 2007) (“if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship * * * of the owner.”); Exhibit 4 (attached hereto).

93. The Transaction therefore should be treated as an asset acquisition even if it was labeled or documented solely as acquisition of equity (i.e, membership interests for an LLC or stock for a corporation). Defendants converted HoldCo to a single-member LLC as part of the integrated steps and contracts that comprised the Transaction. And OpCp already was a single-member LLC – with HoldCo as the sole member and manager of OpCo. Intermediate should be deemed to have acquired ownership of HoldCo’s and/or OpCo’s assets when Intermediate acquired sole ownership of HoldCo, now a single-member LLC. The ‘Buyer’ Intermediate was itself a single-member LLC – before and after the Transaction. The sole member and manager of Intermediate – both before and after the Transaction – was the Partnership.

94. For these reasons, there is no question that the Partnership:

- a. already had total control of Intermediate before the Transaction; and
- b. acquired control of HoldCo, OpCo, and OpCo’s subsidiaries as an immediate result of the Transaction because:
 - i. Intermediate, HoldCo, OpCo, and OpCo’s subsidiaries were a single chain of single-member/member-managed LLCs;

- ii. the governing agreement of the Partnership as of the Closing Date reflects that the Partnership Board was assuming total managerial authority and control over the acquired subsidiaries; and
- iii. on information and belief based on references in documents produced to date: Intermediate, HoldCo, OpCo and/or OpCo's subsidiaries each took action or revised their corporate governance to acknowledge the Partnership Board's authority to manage and/or control.

95. For corporate governance purposes, Intermediate, HoldCo, OpCo, and OpCo's subsidiaries had been contractually disregarded in favor of the Partnership and Partnership Board.

96. The Partnership (and/or, in addition or in the alternative, Intermediate) therefore acquired ownership or beneficial ownership of the assets located in Illinois of HoldCo, OpCo, and OpCo's subsidiaries.

97. "The performance of duties as a director or officer of a corporation ... having its principal place of business within this State" will render such director subject to personal jurisdiction. 735 ILCS 5/2-209(a)(12).

98. The director/corporation clause in subsection (a)(12) of the Illinois Long-Arm Statute should be applied in the manager/LLC or the board/partnership context as well.

99. For tax purposes, Intermediate, HoldCo, and OpCo filed consolidated returns and elected to treat themselves as a corporation.

100. For the reasons set forth in section I *supra.*, Intermediate's managerial role over HoldCo and OpCo provides far greater control of the company located in Illinois than would be

had by, for example, a single director of a corporation or a single manager of an LLC where such entities are governed by a board of several directors/managers.

101. The Partnership Board actually exercised the managerial/directorial role or function of Intermediate as to HoldCo.

102. Here, the Partnership Board, the Partnership, Intermediate became and has since served as the sole manager, with complete control over and total discretion regarding HoldCo and for OpCo.

- a. HoldCo has its principal place of business in Illinois.
- b. As HoldCo's sole manager, Intermediate should be subject to specific personal jurisdiction under 735 ILCS 5/2-209(a)(12). Because the Partnership Board and the Partnership actually exercised the directorial duties over HoldCo and OpCo, the Partnership Board, its members and the Partnership are subject to personal jurisdiction in Illinois – the principle place of business of HoldCo and OpCo.
- c. Plaintiffs' claims arise out of and/or relate to actions taken by the Partnership, the Partnership Board, the Partnership Board members, and Intermediate in exercising the duties of or akin to a director of HoldCo and/or OpCo.

103. The Partnership Board, Partnership, and Intermediate immediately used their director roles to control Holdco and OpCo and cause their officers and attorney/agents in Illinois to commit tortious acts in this State directed toward. Gary Chodes (and/or directed at Group).

104. “Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person... to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any

of such acts: ... The commission of a tortious act within this State.” 735 ILCS 5/2-209(a)(2) (emphasis added).

105. The Partnership Board and/or the Partnership controlled HoldCo and OpCo.

106. The Partnership Board and/or the Partnership used their control over HoldCo, OpCo, and their respective officers and agents – any and/or all of which constituted agents of Intermediate and/or the Partnership – to commit tortious acts in Illinois.

107. The Partnership Board and/or the Partnership acted through its agent Shayne to commit tortious acts in Illinois.

a. Shayne had an additional and distinct agency relationship with the Partnership (i.e., separate from and in addition to his roles as officer of HoldCo and OpCo) because Shayne was a limited partner in the Partnership. Shayne’s actions are described elsewhere in this complaint.

b. Shayne had an additional and distinct agency relationship with the Partnership Board (i.e., separate from and in addition to his roles as officer of HoldCo and OpCo) because Shayne was a member of the Partnership Board.

108. Tortious acts committed in Illinois by Intermediate, the Partnership and the Partnership Board by and through agents include, *inter alia*,

- a. fraud;
- b. aiding and abetting breaches of fiduciary duties;
- c. aiding and abetting breaches of fiduciary duty defined by contract or breaches of contractually prescribed legal duties; and/or
- d. civil conspiracy.

109. The following acts committed in Illinois by Intermediate and the Partnership by and through agents apply to more than one of the torts listed above. Because counsel for Intermediate and for companies under Intermediate's control have argued to the Circuit Court of Lake County (in a motion not yet ruled upon) that Plaintiffs and their counsel should be admonished and/or forced to re-plead with fewer factual allegations and with a shorter complaint, Plaintiffs here limit their discussion of tortious acts in Illinois committed by Intermediate and the Partnership through agents to a few examples, described below.

110. Defendants all were privy to and had agreed upon a pre-Transaction plan of attack: conceal everything from Group and Chodes and give no notice of an impending event until after the Closing Date. At such time, Defendants would reach out to Gary Chodes to reveal the Transaction – albeit with a succinct, incomplete, false, and misleading account that:

- a. the Oasis companies had been acquired;
- b. all proceeds had been paid to satisfy 'debt';
- c. Chodes' and Group's equity had been extinguished, leaving them no property or ownership interest; and
- d. was meant to impress upon Chodes that all such matters were now a *fait accompli*.

111. Defendants carried out this plan to mislead and dissuade Chodes and Group from pushing back with false and tortious communications.

112. Along with the false and misleading account of what had occurred, the Defendants through agents (e.g., HoldCo, OpCo, Shayne and Chodes) dangled money to Chodes purportedly to settle the various legal claims and disputes ... so long as Chodes would sign (both for himself and Group) some sort of release to cover everyone and everything involved in the

Transaction. Once Chodes did not immediately take the bait, (i.e. , he balked at taking the terms of their settlement offer which necessitated signing global releases), the Defendants – i.e., through controlled entities HoldCo and OpCo – embarked on scorched earth litigation against Chodes.

113. To fund an eventual settlement with Chodes following a pre-meditated litigation assault, the Defendants set aside \$7 million in an Illinois bank, which Intermediate (at the direction and control of the Partnership and Partnership Board) has used in furtherance of the conspiracy alleged in this pleading.

114. The escrowed funds were understood by all Defendants to fund a fight against or payoff of Chodes (and/or Group). Those funds were held in a bank in Illinois called The PrivateBank n/k/a CIBC USA Bank.

115. The Defendants helped conceive, controlled, directed, and carried several of these steps in Defendants' conspiracy.

116. The Defendants communicated false and misleading information to Chodes and his counsel to hinder discovery of the truth specifically on points that would expose procedural and substantive breaches of the HoldCo LLC Agreement as well as breaches of duty and fraud.

117. The Defendants lied to Chodes' counsel about the Transaction by repeatedly asserting that all sale proceeds paid off debt and none went to equity.

118. The Defendants committed these acts in furtherance of their concerted plan(s) and agreement(s).

119. The Defendants acted through or by agents including, *inter alia*, HoldCo, OpCo, Shayne, and/or Wiz.

120. The tortious acts and false communications by such agents on behalf of the Defendants all occurred in Illinois.

121. Attorney-agent James Witz from the Littler law firm in Chicago, Illinois made false, misleading, materially incomplete, materially inaccurate, and fraudulent statements orally, in writing, and by electronic mail that were directed toward Chodes and/or Group beginning a few days after the closing date of the Transaction in September 2016.

122. More specifically, on September 13, 2016, Witz who represented HoldCo, OpCo and certain other defendants before and after the Transaction called to inform an attorney for Gary Chodes of the following, stressing that he was “only the messenger.” Witz stated:

- a. On September 9, 2016, a deal closed to sell the Oasis Companies.
- b. The price was \$71 million.
- c. All of that money went to the debt holders because the debt exceeded the price.
- d. Group’s ownership of the Oasis Companies was extinguished without any payment.
- e. According to Witz, the same happened with the majority owner Shaw Side Pocket.

123. Prior to this call, there had been no notice to minority owners Group and Chodes of any: acceptance of a bid; due diligence; negotiation with a buyer; board meeting; member meeting; vote; call for consents; or other official consideration of a proposed deal, sale or merger. So Witz’s communications was obviously carefully planned, intended to contain misinformation and mislead Chodes and became crucial to the Plaintiffs’ initial understanding regarding the Transaction.

124. Witz's statements were materially false. He claimed that no equity owners received any proceeds, including the majority owner Side Pocket. Yet over a year later, on October 10, 2017, Witz sent a letter to Chodes' counsel and changed the defendants' story, writing:

- a. Before the Oasis Companies were sold a side deal (or "inducement") had been struck between Shaw Side Pocket and Shaw SPV.
- b. The purpose of the side deal was to induce the equity owners to approve the Transaction, which otherwise would have paid nothing to equity owners.
- c. A "transfer" of some sale proceeds was made for the benefit of all equity owners.
- d. Out of that transfer, \$7.2 million of sale proceeds was offered to, accepted by, and paid to Shaw Side Pocket (an equity owner).

125. Additional communications were conveyed by Mr. Witz over the ensuing year, most notably in a letter from Mr. Witz to attorney Jeffrey Leon dated October 10, 2017.

126. Witz's October 10, 2017 letter revealed and proved that representations to Chodes and Group from Witz himself on behalf Defendants in and after September 2016 – i.e., that majority owner Shaw Side Pocket received no proceeds from the sale of the Oasis Companies and therefore was treated in the same manner as Chodes and Group with respect to consideration from the Transaction – had been false.

127. Witz indicated that Chodes' or Group's portion of the side deal transfer had "always" been available for equity owners. Yet for over a year, Witz and the defendants had lied, telling Plaintiffs that there were no sale proceeds available for equity owners.

128. Witz had already lied to another minority shareholder of Holdco and member of Group, Michael Pekin, regarding the distribution of proceeds from the Transaction.

129. The 2017 letter from Witz itself contained falsehoods. The Merger Agreement unequivocally provides that:

- a. all seller proceeds were paid to Shaw SPV alone; and
- b. owners of Common Units received no compensation or payment.

130. If the “inducement” side deal payment occurred as Witz described, then that means:

- a. the defendants discriminated among and treated differently owners of the same class of equity, i.e., Common Units in HoldCo., and/or
- b. the Transaction Contracts – explicitly predicated on no payments being made to equity owners – were false.

131. Discovery is needed to determine the facts regarding the supposed side deal “inducement” and Witz’s description of payments to equity owners.

132. A man named Michael Pekin (“Pekin”) was, like Plaintiffs here, a holder of equity in HoldCo.

133. On or around September 13, 2016, Pekin received from HoldCo a ‘Redemption Notice,’ which was signed by Shayne and appears from its formatting and demarcations to have been drafted by Holzer and Kirkland. The ‘Redemption Notice’ asserted that on September 9, 2016 Pekin’s Special Units in HoldCo purportedly had been redeemed, converted to a right of payment (i.e., of zero), and cancelled.

134. Holzer and Kirkland knew – as anyone reading the governing LLC agreements would – that notice was required to be delivered to Special Unit holders at least 15 days prior to the Transaction.

135. Holzer and Kirkland were fully aware of and invested in and willing participants to the conspiracy to commit:

- a. fraud by omission and concealment; and
- b. fraudulent misrepresentations.

136. The Redemption Notice is just one many examples of instruments and contracts used to effectuate the Transaction in September 2016 that are plainly in breach of the underlying governing contracts, including the Holdco LLC agreement. Holzer and Kirkland knowingly helped the sellers and buyers conceptualize, draft and finalize these instruments and contracts, so as to run roughshod over the contractual and other legal rights of the Plaintiffs and Pekin.

137. In response to the Redemption Notice, on September 13, 2016, Pekin's attorney wrote to the general counsel of OpCo and HoldCo, copying Ralph Shayne, requesting a copy of the executed merger agreement as well as "the waterfall showing the distribution of the merger consideration.

138. A month later, on October 13, 2016, Pekin's attorney received an email from attorney James Witz who wrote that he was writing at the request and on behalf of "Oasis." Attached, Witz wrote, was a redacted version of the merger agreement and "the waterfall showing the distribution of the merger consideration."

139. At this time after the Transaction, it is worthwhile to note who 'Oasis' was:

- a. OpCo was a single-member LLC wholly owned by HoldCo
- b. HoldCo was a single-member LLC wholly owned by Intermediate
- c. Intermediate was a single-member LLC wholly owned by the Partnership

- d. The Partnership was comprised of officers of OpCo and HoldCo (all Illinois residents), as well as Jack Lavin (Illinois resident) and a few Parthenon entities.

140. Contracts signed at the time of the Transaction provided that OpCo, HoldCo, and Intermediate all would be managed directly by the Partnership Board. The Partnership Board was comprised of: Shayne (Illinois resident) and three Parthenon appointees:

- i. Lavin (Illinois resident),
- ii. Sadek, and
- iii. Orazio.

141. Witz's email suggested that if Pekin or his attorney shared any of the information from Witz with anyone else (e.g. Chodes or Group), it would constitute a breach by Pekin of a severance/settlement agreement and/or employment agreement dating from Pekin's departure from OpCo.

142. Pekin had no reason to question or doubt the veracity of the 'Redemption Notice' or the information from attorney Witz regarding the Transaction and use of proceeds. And consistent with the admonition they received, Pekin and his attorney kept these attachments from Witz confidential.

143. In September 2019, Pekin retained Plaintiff's attorney Mr. Madigan to represent him and to file a pleading in Lake County on his behalf regarding Pekin's units and rights in HoldCo.

144. Pekin's attorney provided email records from 2016 related to Pekin and Oasis. Among those was an October 2016 email from Mr. Witz to Pekin's attorney including attachments of a redacted merger agreement and an Excel spreadsheet referred to as a 'waterfall.'

145. Upon review of the email records, Mr. Madigan discovered something that had been concealed and thus was not known to Plaintiffs for nearly three years: In the weeks after the Transaction in 2016, Witz had given Pekin and Chodes materially different ‘waterfall’ documents that each described the Transaction and use of proceeds in different ways. This could not be oversight because the ‘waterfall’ documents sent to the attorneys for Pekin and Chodes from their face appear to have been modified versions of the same document.

146. Not only had Witz deceived each of the Plaintiffs, but also he had delayed (and almost entirely prevented) discovery of differing falsehoods Witz had communicated on behalf of defendants to Pekin and Chodes, i.e., each with false assertion of confidentiality and warning of consequences should the recipients share the materials with anyone.

147. It was fortuitous that plaintiffs made discovery of this aspect of defendants’ (i) fraudulent misrepresentations, (ii) fraud by omission or concealment, and (iii) actions in concert in furtherance of the civil conspiracy. Because Mr. Madigan was already familiar with Witz’s 2016 communications to Chodes’ attorney, he was able to readily identify the differences in the Witz waterfall that had been provided in 2016 to Pekin’s once he had been retained and had access to Pekin’s files.

148. The other defendants in this litigation were and are aware of Witz, his roles and communications in 2016, and the fact that he and others had concealed aspects of fraud in the time since.

149. Notably, Intermediate’s agents Holdco and Opco signed on to the Defendants Omnibus motion to dismiss in the Lake County, Illinois case. One of the primary objectives of Holdco and Opco’s participation in the Omnibus motion to dismiss was to defend or justify tortious acts committed by or at the direction of Intermediate and the Partnership in Illinois or to

further conceal Intermediate's and Partnership's participation in the conspiracy, as further outlined in the the Lake County Amended Complaint.

150. At the time Mr. Witz conveyed the communications and letter described above, (i) Mr. Chodes resided in Illinois and (ii) Group had its headquarters and principal place of business in Illinois.

151. Mr. Witz delivered the fraudulent communications to attorney Jeffrey Leon, who was located in Highland Park, Illinois. Mr. Witz requested and intended that his communications be passed on by Mr. Leon to Mr. Chodes.

152. The Partnership Board, Partnership, Intermediate, HoldCo, OpCo, and Shayne knew of, understood, and authorized or directed the communications and their content.

153. At the time Mr. Witz conveyed the communications described above between mid-September 2016 through at least mid-October 2017, the Partnership Board, Partnership, and/or Intermediate controlled:

- a. HoldCo, OpCo, and their officers;
- b. HoldCo/OpCo's directives to their attorney-agents, including Mr. Witz; and
- c. the content of communications conveyed by Mr. Witz, including those directed toward Plaintiff(s) via Jeffrey Leon.

154. Certain attributes of Witz's statements, writings, and electronic communications inured particularly to the benefit or protection of Intermediate and the Partnership. It is therefore reasonable (if not necessary) to infer that Intermediate and the Partnership (i) at least participated in the crafting of the communications and/or (ii) exercised their control over HoldCo, OpCo, Shayne, and attorney-agents with respect to such communications. For example:

- a. Redacted or omitted from transaction documents sent by Mr. Witz were references and information that would reveal:
- b. Intermediate and the Partnership to have been the buyer and ultimate owner;
- c. the inclusion of HoldCo and OpCo officers – who each owed full fiduciary duties to Plaintiffs – among the new co-owners of the Oasis companies, i.e., through the Partnership.

155. The Merger Plan – i.e., a central contract from the Transaction – was redacted for intentionally tortious, bad faith, and fraudulent objectives.

156. Plaintiffs now have discovered that exhibits to the Merger Plan sent by Witz were manipulated.

157. Exhibits attached to the version of the Merger Plan delivered by Witz had certain segments and pages of exhibits missing and/or re-ordered.

158. Missing entirely from the Merger Plan sent by Witz was (which Plaintiffs have since discovered) was the Intermediate-Amended HoldCo LLC Agreement, i.e., Exhibit B to the genuine/complete Merger Plan.

159. The missing pages, exhibit(s), and schedule(s) as well as the redacted language not only would have identified Intermediate and the Partnership as key participants in the Transaction but also would have revealed several bases upon which several defendants would be subject to Illinois personal jurisdiction.

160. For example: Because HoldCo had secretly been converted into a single-member LLC, the acquisition of HoldCo by Intermediate – even if nominally an acquisition solely of membership interests – was, as a matter of law, tantamount to Intermediate's acquisition of the assets of HoldCo (and OpCo), a great many of which were located in Illinois.

161. The missing Intermediate-Amended HoldCo LLC Agreement exhibit also would have revealed that just days before the Transaction, i.e., when Plaintiffs unquestionably still were Members of HoldCo, the HoldCo LLC Agreement had been amended ...without prior or even subsequent notice to Plaintiffs.

162. The Defendants have taken active measures to cover up or conceal the content and circumstances of such amendment

163. The Defendants worked together to conceive of and carry out torts including fraud, fraud by omission, and/or fraud by concealment. Further, such acts (i) were done in furtherance of the civil conspiracy alleged in this complaint and/or (ii) constituted substantial assistance to and aiding and abetting of (a) breaches of fiduciary duty by Shayne and Smolen and/or (b) the breaches of fiduciary or contractual duties of Ladd, D'Angelo, Pollock and/or (c) the breaches of fiduciary or contractual duties of the controlling owner group, which included Shaw Side Pocket, Shaw SPV, Shaw LP, and Shaw LLC.

164. In addition, the Defendants caused false verified pleading to be filed – again using Witz and Littler as the means of conveying lies.

165. On November 21, 2017, Defendants HoldCo and OpCo filed a verified pleading in the Circuit Court of Cook County, Illinois asserting under oath:

- a. “HoldCo is a Manager-managed limited liability company.”
- b. “Under the HoldCo Agreement, Chodes was a Manager of HoldCo, which is a Manager-managed limited liability company.”

(Defendants’ Second Amended Verified Counterclaim at ¶¶ 9—10 filed in Case No. 2016-CH-09317 (Cook Cty. Nov. 21, 2017) [“HoldCo/OpCo Verified Counterclaim”]).

Littler and Witz served and continue to serve as counsel of record to Holdco and Opco in that case.

166. The CEO of HoldCo and OpCo verified those statements above under penalty of perjury. (*See id.* at p. 38.)

167. Those statements were then and remain today:

- a. intentionally deceptive and misleading;
- b. false;
- c. misleading both by what is stated and what is omitted; and
- d. material.

168. HoldCo, OpCo, Shayne, and attorney James Witz made, communicated, and/or verified the statements above while acting in concert with, under the control of, under the direction of, at the suggestion of, and/or as agents of – and with actual and/or apparent authority for –

- a. (as to agents HoldCo and/or OpCo) principals Intermediate and the Partnership;
- b. (as to agent Shayne and/or Witz) principals HoldCo, OpCo, Intermediate, and the Partnership;

169. The Partnership Board, Partnership, Intermediate, HoldCo, OpCo, Shayne and/or Witz:

- a. knew or should have known that the statements were material, false, misleading, incomplete, and/or deceptive; and
- b. intended that such statements would deceive, mislead, confuse, hinder, delay discovery of the truth, and cause detrimental reliance by Chodes, Group, Group's

constituents (i.e., other than Shayne) and/or attorneys working on behalf of the foregoing.

170. Chodes, Group, Group's constituents (i.e., other than Shayne) and/or attorneys working on behalf of the foregoing relied to their detriment on the statements above and/or were deceived, misled, hindered and/or confused by those statements.

171. The statements above interfered with and delayed discovery of:

- a. relevant information;
- b. evidence; and
- c. the truth.

172. The statements above were designed to (and did) obstruct, hinder, and conceal discoveries not only in (i) the Cook County case(s) in which those statements were introduced, but also (ii) the discovery of the causes of action subsequently pled in Lake County, and (iii) the civil discovery process that has and continues to occur in connection with the claims asserted in this Court.

173. Chodes, Group and/or Group's constituents (other than Shayne) were harmed by and suffered compensable damages from their detrimental reliance upon – and/or their resulting deception, confusion, misunderstanding, and/or delayed actions and reactions resulting from – the statements, omissions, and/or related statements, omissions, and actions by the agents attributable to principals OpCo, HoldCo, Intermediate, Partnership Board and/or the Partnership.

174. The agents and principals referenced above have subsequently made, taken, and/or joined in communications, acts, omissions, and/or efforts to conceal – (i) personally and directly, (ii) through agents, and/or (iii) in concert with and/or through the actions of the co-conspirators – that were designed to (and did) perpetuate, prolong, broaden, worsen, and

reinforce the deception, misunderstandings, and detriment resulting from the false statements in the HoldCo/OpCo Verified Counterclaim.

175. In the Lake County Case No. 2018 L 152, Witz ‘intervened’ on August 24, 2018 on behalf of the Oasis Financial companies, including HoldCo and OpCo. Witz filed on the same date a motion to stay discovery and quash subpoenas that plaintiff Group served on third party lenders who had, *inter alia*, provided financing for the Transaction. (The Court ultimately denied the motion to stay and to quash.). Some of those third party lenders are named as respondents in discovery in this case.

176. Witz filed this obstructionist motion in the name of: HoldCo, OpCo, and Merger Sub (together, “Intervenors”).

177. Littler, Witz and these Intervenors acted in concert with, at the behest of, as agents of, and/or at the direction and control of: Sadek, Orazio, Lavin, Intermediate, the Partnership Board, and the Partnership.

178. The actions and coordinated activities alleged above constitute, *inter alia*, bad faith, fraud, fraud by omission, fraud by concealment, and/or willful misconduct all in furtherance of the civil conspiracy alleged herein and expounded upon in the pleading found at Exhibit 1.

179. Defendants acted in concert to, and did either themselves and/or through agents commit tortious acts in Illinois aimed at harming Plaintiffs in Illinois and/or obstructing Plaintiffs’ discovery of the truth. Defendants are subject to personal jurisdiction pursuant to 735 ILCS 5/2-209(a)(2).

180. Parthenon and its affiliated entities and persons did not just suddenly become bad actors capable of illicit and tortious acts after acquiring the Oasis Financial companies; rather,

Parthenon's mischief and penchant for tortious conduct was part of the reason Parthenon was selected as the 'winning bidder' to acquire Oasis Financial --- even though its bid was around **half** that submitted by other sophisticated commercial actors. Some of the story of how Parthenon managed this feat is set forth in part in Exhibit 1.

181. There is one piece of that chicanery that relates directly to this case.

182. In order to bribe and buy off the Board members Ladd, D'Angelo and Pollock who founded and controlled Stellus, **at the exact same time** that Parthenon's bid for the Oasis Financial companies was selected, Parthenon engineered a wholly unnecessary sweetheart deal in favor of Stellus. It was done using Millennium Trust Company and its parent MTC Parent L.P. (collectively "Millennium").

183. Millennium – which is headquartered in Illinois – was at the time controlled by Parthenon. Dodson sat on the governing board of Millennium. The unnecessary sums borrowed by Millennium from Stellus – and the contemporaneous gift of equity in Millennium granted to Stellus – were orchestrated by Dodson and his colleagues at Parthenon.

184. The loan in question was so unnecessary and such a farce that Millennium paid it off early. But what remained was Stellus owning extraordinarily valuable equity in Millennium.

185. The Stellus-Millennium dealings in late 2015 and since were kickbacks, bribes back channel compensation, side deals, and were concealed entirely from Plaintiffs before the Transaction and after. Not only were Defendants aware of this scheme, which resulted in a windfall and spoils to be split amongst several of the defendants and their employees. Defendants participated in the scheme and then actively concealed it.

186. One common feature running throughout these events from 2015 through the present has been the presence of Kirkland papering the deals – repeatedly on both sides of the buyer/seller or merged/acquiror transactions.

187. Holzer was aware of every aspect of the ways in which the Transaction as structured and as documents was in violation of Plaintiffs and other Oasis minority owners' rights.

188. Holzer and Kirkland were aware of the fact that two D.E. Shaw entities had reached an improper and fraudulent inducement arrangement to secretly exchange funds - Holzer and Kirkland advised parties on both sides of the inducement, knowing all along that it was to be concealed from Plaintiffs and the equity owners of HoldCo at all cost. The inducement deal is described in greater detail in Exhibit 1.

189. Rather than use Kirkland's considerable collective intellect and influence to convince D.E. Shaw that such concealed manipulations and secret payments of sale proceeds were not only wrong but also simply not worth the risk, Kirkland instead actively helped all the Defendants try to pull off the scheme and prevent minority owners from grasping it.

190. Regarding the inducement agreement and secret payment of sale proceeds from one D.E. entity to another, Holzer and Kirkland:

- a. helped conceive of the plan and the agreement with D.E. Shaw;
- b. intentionally omitted (and/or obscured) any reference of these from the Transaction documents;
- c. helped D.E. Shaw and Parthenon come up with a set of indemnity agreements between them should the scheme ever be discovered, and litigation ensue;
- d. concealed all of this from lenders financing the transaction; and

- e. use their roles as attorneys on both the buyers' and sellers' side to keep these and other improper aspects of the Transaction concealed or obscured in the contracts and documents.

191. Holzer and Kirkland have been rewarded for their fealty and willingness to act unethically with additional lucrative engagements with defendants and their affiliates.

- a. That said: Undersigned counsel suspects and would like to believe that many, if not most, of the esteemed professionals at Kirkland were not aware of what Holzer and a few of his colleagues did in connection with the Oasis transaction.
- b. Kirkland, as a means to restore its reputation, should immediately cooperate with plaintiffs by, *inter alia*, providing complete transparency with the production of documents and disgorging any and all amounts earned or paid as a result of directly or indirectly representing any defendants during the time period in question..

192. There are many more facets of bad acts by these defendants and their co-conspirators, but in an effort to contain the length of this pleading, Plaintiffs set forth their causes of action below.

CAUSES OF ACTION

193. All counts are against each and every defendant unless otherwise specified.

Count 1 - Aiding and Abetting Ralph Shayne's Breaches of Fiduciary Duties to Group

194. Plaintiffs incorporate the allegations in Paragraphs 1 through 193 above as if fully set forth herein.

195. Prior to or contemporaneous with the improper acts alleged herein, each of the Defendants knew or became aware that Ralph Shayne was an officer and manager of plaintiff

Group. For each of the defendant entities, this knowledge or awareness was had by one or several of its officers, directors, managers, employees, counsel, and agents.

196. Each defendant knew that a fiduciary relationship existed between Shayne and Group.

197. Shayne breached his fiduciary duties to Group in a myriad of ways of which each defendant was aware, including *inter alia*:

- a. improper conduct with regard to vacancies on and the composition of the HoldCo Board;
- b. withholding and concealing information from Group;
- c. excluding Group from the Oasis Companies sale process from its outset;
- d. never advocating for the fair treatment of Group during the sale process;
- e. assisting Shaw Side Pocket and Shaw SPV in orchestrating their side deal and transfer, all of which was concealed from and detrimental to Group;
- f. assisting the various D.E. Shaw entities to use the Shaw SPV “debt” as a contrived means of extracting all value and sale proceeds from the transaction, to the detriment of Group;
- g. using Shayne’s position with Group to create the false appearance that Group was being kept informed and/or consented to aspects of the sale process, the economics of the deal, the transaction, and/or the allocation and distribution of sale proceeds;
- h. working with Witz and other Defendants to conceal from Group information about the transaction, the side deals, and the proceeds even long after the transaction;

- i. directing James Witz to communicate false and misleading information with material omissions to Group and its CEO in 2016 and 2017;
- j. spearheading the effort and litigation against Group's CEO Gary Chodes in order to pressure him to execute a settlement and release of, *inter alia*, Group's claims with regard to the sale of the Oasis Companies;
- k. working with the Defendants to structure and implement the Transaction in a manner to circumvent, obviate, deny, and/or violate Group's rights under the HoldCo LLC Agreement; and/or
- l. other violations of Shayne's fiduciary duties to Group that occurred during and after the sale process and were known to the Defendants but have been concealed.

198. The breaches described above by Shayne were inherently and obviously wrongful.

199. Each defendant had actual or constructive knowledge that Shayne's conduct was legally improper.

200. Each defendant encouraged and/or assisted Shayne's breaches of duties to Group.

201. Each defendant acted knowingly, intentionally, and/or with reckless indifference.

202. Each defendant was aware of its own role in connection with Shayne's improper conduct and/or breaches.

203. The effect of each defendant's encouragement and/or assistance to Shayne was substantial.

204. Each defendant had actual or constructive knowledge that its or his conduct was legally improper.

205. Shayne's breaches of fiduciary duty to Group actually and proximately harmed and caused damage to Group.

206. Shayne's breaches of fiduciary duty to Group actually and proximately harmed and caused damage to Chodes, who owns a stake in Group.

207. Each aiding and abetting defendant is liable to Plaintiffs for the damages caused by Shayne's breaches of fiduciary duty.

208. All defendants directly benefitted from Shayne's betrayal of Group and Chodes, which allowed the sale process, Transaction, and use of proceeds to unfold as they did and prevented Group or Chodes from discovering the wrongdoing and unfair terms at a time when Plaintiffs could have taken action.

209. Each defendant knew, *inter alia*, that Group and Shayne were in a conflicted and adversarial posture with one another.

210. Each of the Defendants knew that Group was – or would be once it discovered what was happening – in effect, in competition with the majority owners of HoldCo and Shayne for fair treatment in the transaction and/or portions of sale proceeds.

211. Defendants knew and turned a blind eye to kickback payments from Parthenon to Stellus in exchange for the HoldCo Board members' complicity.

212. Defendants knew that Shayne, Smolen, the Board and the controlling member/owners of HoldCo were selling the Oasis Financial companies for far less than their true value and worth.

213. Defendants knew that the Transaction documents were false and misleading because Defendants knew that some equity holders were, indeed, promised compensation and shares of sale proceeds, which they did in fact receive – all of which was concealed from

Plaintiffs and omitted from the Transaction contracts – including those filed with the State of Delaware.

214. Defendants used side deals and back channel forms of delivering compensation and value to other co-conspirators

215. Millennium – at the behest and/or control of Dodson and Parthenon – assisted by providing the improper kickbacks to Stellus Public, the rights to which and/or dividends paid were means by which Millennium's controlling owners at Parthenon could channel compensation to Stellus Public, Stellus, Ladd, D'Angelo, and Pollock.

216. Defendants assisted Shayne in:

- a. concealing the sale process and impending transaction from Plaintiffs;
- b. steering and/or rigging the bidding process in favor of Parthenon;
- c. declining to re-engage or (in the alternative) making only half-hearted efforts not in good faith to re-engage other bidders or potential purchasers;
- d. acquiescing in and helping to propagate the ruse regarding the Revenue Recognition Policy, which these Defendants knew did not affect the value of the Oasis Companies in a manner that warranted any substantial price reduction;
- e. acquiescing in and helping to propagate faux negotiations with Parthenon to rationalize the price reduction;
- f. pushing that the Transaction with Parthenon be completed in lieu of other alternatives that would have created more value.
- g. accounting malfeasance and fraud;
- h. concealing the allocation, distribution, and concealment of sale proceeds; and/or

- i. maintaining adherence among the employees and constituents of HoldCo and OpCo to a policy of concealment and omission toward Plaintiffs.

217. Defendants encouraged and/or insisted that Shayne continue his roles as manager and officer of Group.

218. Defendants agreed to indemnify or reimburse Shayne in the event that Group took action against Shayne.

219. Defendants encouraged and assisted Shayne with regard to the manner of structuring and implementing the Transaction in a way that concealed information and kept value and sale proceeds away from Plaintiffs.

220. Defendants agreed to reward and compensate Shayne for completing the sale of the Oasis Companies with amounts and benefits that far exceeded whatever Shayne would have realized from his small membership interest in Group and/or HoldCo.

221. Defendants knew and allowed Shayne to negotiate with Parthenon for himself personally at the same time Shayne was supposed to be a lead negotiator on behalf of the sellers of the Oasis Companies.

222. Defendants encouraged Shayne to act contrary to the interests of Group because in so doing Shayne facilitated the sale to Parthenon, which acquired the Oasis Companies for an absurdly low price.

223. Defendants promised Shayne future employment, future earnings, and other compensation or benefits – all of which Shayne received.

224. Because Defendants excluded and concealed information from Group and Group's CEO Chodes, Plaintiffs reserve the right to identify additional ways in which (a) Shayne breached his duties and/or (b) each Defendant participated in Shayne's breaches.

225. WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against each and every Defendant and enter orders:

- a. determining that each Defendant aided and abetted one or more breaches of fiduciary duties by Ralph Shayne;
- b. awarding compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;
- c. requiring an accounting and disgorgement of all payments or income received by each Defendant in connection with the acts and events alleged herein; and
- d. directing such further or additional relief as the Court deems just and appropriate.

**Count 2 - Aiding and Abetting Breaches of Legal, Contractual
and/or Fiduciary Duties by Officers, Managers and Controlling Owners of HoldCo**

226. Plaintiffs incorporate the allegations in Paragraphs 1 through 193 above as if fully set forth herein.

227. Plaintiffs incorporate Exhibit 1, which sets forth how CEO Shayne, CFO Smolen, manager Shayne, manager Ladd, manager D'Angelo, and manager Pollock acted in bad faith and breached their contractual and/or fiduciary duties to Plaintiffs.

228. Plaintiffs incorporate Exhibit 1, which sets forth how D.E. Shaw and its affiliated Side Pocket and SPV acted in bad faith, acted as control group, and acted under common ownership and control to breach their contractual and/or fiduciary duties to Plaintiffs.

229. Prior to or contemporaneous with the improper acts alleged herein, each of the defendants named in this count knew or became aware that Shayne, Smolen, Ladd, D'Angelo, Pollock, Shaw Side Pocket, and/or Shaw SPV had a fiduciary relationship with and owed contractual, fiduciary and other legal duties to: HoldCo; Group; Chodes; and/or Pekin.

230. For each of the defendant entities, this knowledge or awareness was had by one or several of its officers, directors, managers, employees, counsel, and agents.

231. Shayne, Smolen, Ladd, D'Angelo, Pollock, Shaw Side Pocket, and/or Shaw SPV each engaged in breaches of their respective contractual, fiduciary and other legal duties.

232. Each named defendant had actual or constructive knowledge that such conduct by the officers, managers and owners of HoldCo was legally improper.

233. Each named defendant encouraged and/or assisted the breaches of duties owed to Plaintiffs.

234. Each named defendant acted knowingly, intentionally, and/or with reckless indifference.

235. Each named defendant was aware of its own role in connection with the improper conduct and/or breaches of duties.

236. The effect of each named defendant's encouragement and/or assistance was substantial.

237. Each named defendant had actual or constructive knowledge that its or his conduct was legally improper.

238. The Respondents in Discovery may be liable under this count if they, too, are shown to have knowingly and substantially assisted the officers, managers, and/or controlling owners of HoldCo in breaches fiduciary, contractual and/or other legal duties such as the implied covenant of good faith and fair dealing.

239. The underlying breaches of fiduciary, contractually defined, or other legal duties actually and proximately harmed and caused damage to Plaintiffs.

240. Each named Defendant is liable to Plaintiffs for the damages caused by the breaches of fiduciary, contractually defined, and or other legal duties they aided and abetted.

241. Plaintiffs were damaged not only by the breaches but also by the aiding and abetting actions and substantial assistance of the defendants.

242. Defendants each were aware of his or its own role in connection with the willful misconduct, fraud, and breaches of fiduciary duty.

243. Defendants each knew or should have known that the actions of Shayne (as CEO and/or as a manager), Ladd, D'Angelo, Pollock, Smolen, Shaw Side Pocket and Shaw SPV constituted breaches of fiduciary duty, contractually defined duties, and/or other legal duties including the implied covenant of good faith and fair dealing.

244. Defendants each knew of the conflicted and adversarial posture inherent in the concealed sale process, Transaction, and resulting distributions.

245. The willful misconduct, fraud, and breaches of contracts and duties that Defendants assisted both harmed and caused (actually and proximately) damages to Plaintiffs.

246. WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against each and every Defendant and enter orders:

- a. determining that each Defendant aided and abetted one or more breaches of fiduciary duties by Ladd, D'Angelo, Pollock, Smolen, Shayne (in his HoldCo capacities as CEO and/or manager) Shaw Side Pocket, and Shaw SPV;
- b. awarding compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;
- c. requiring an accounting and disgorgement; and
- d. directing such further or additional relief as the Court deems just and appropriate.

Count 3 - Fraud

247. Plaintiffs incorporate the allegations in Paragraphs 1 through 193 above as if fully set forth herein.

248. On September 13, 2016, Witz and Littler made oral communications and representations to Chodes and Group (described in the complaint) that were false and which also contained material omissions that further rendered the communications and representations false and misleading.

249. Over the ensuing weeks, Witz and Littler sent email communications with attachments to Chodes' attorney, which were directed at and to Plaintiffs.

250. There can be no question that the written communications and documents – delivered electronically through email – were false and fraudulent. Witz and Littler around the same time sent written communications and documents – delivered electronically through email – to Pekin that were materially different.

251. On October 10, 2017, Witz and Littler made written communications and representations to Chodes and Group (described in the complaint) that were false and which also contained material omissions that further rendered the communications and representations false and misleading.

252. The October 10, 2017 letter is contrary to and belied by the communications and documents Witz and Littler delivered by email to Pekin's attorney in October 2016. One or other might be the truth (thought given what we have seen from Witz, Littler and their fellow tortfeasors, even that seems a stretch), but there is no way that the Witz/Littler communications to Pekin and the Witz/Littler October 10, 2017 letter could both be true.

253. Witz and Littler made these communications, representations and material omissions while acting as agents of or co-conspirators with OpCo, HoldCo, Intermediate, the Partnership, the Partnership Board, Shayne, Sadek, Orazio, and Lavin (together, the “Principals”)

254. The Principals collectively planned and crafted the fraudulent communications, misrepresentations, and/or material omissions to be conveyed by Witz and Littler.

255. At least one of the Principals (Shayne) had fiduciary duties to Group when the fraudulent communications were planned and conveyed.

256. Each of the Principals knew (as did Witz and Littler) that the communications were false, contained misrepresentations, and/or contained material omissions rendering the communications misleading.

257. Defendants intended the communications made through Witz and Littler to induce Plaintiffs to act or to refrain from acting, including, *inter alia*, their intention that Plaintiffs (i) would not demand a portion of sale proceeds, (ii) would accept a settlement based on false premises, (iii) would not pursue the matter further because there were purportedly little or no sale proceeds to pursue, etc., and/or (iv) would not pursue the matter further because doing so would expose Chodes to a lawsuit based on the supposed (false and contrived) revenue problem described in the October 10, 2017 letter (i.e., which itself was false and fraudulent).

258. The Principals knew or believed that the Witz/Littler communications were false or materially misleading.

259. The Principals intended to deceive Plaintiffs.

260. The Principals intended to induce Plaintiffs to act or refrain from acting.

261. Plaintiffs reasonably and justifiably relied on communications delivered by Witz and Littler by acting or by declining to take certain action in several ways including, *inter alia*:

262. Plaintiffs believed and conducted themselves reliant upon the notion that no owners received sale proceeds for their equity (i.e., membership interest).

263. Plaintiffs believed and conducted themselves reliant upon the notion that there were no excess sale proceeds left.

264. Prior to October 10, 2017, Plaintiffs had no knowledge of an inducement agreement between Shaw Side Pocket and Shaw SPV. Plaintiffs did not know of a basis they had to demand, and therefore did not demand, a share of sale proceeds or a payment for themselves for their equity interest resulting from the secret side deal. Plaintiffs did not know to demand to partake or receive comparable benefits to a supposed arrangement between Shaw Side Pocket and Shaw SPV.

265. Plaintiffs had no knowledge that a transfer of sale proceeds had occurred or that an account existed that held sale proceeds that were or could be payable to equity owners (i.e., members). So Plaintiffs did not know to seek a portion of those sale proceeds or payment from an account.

266. Plaintiffs did not know to challenge the side agreement between Shaw Side Pocket and Shaw SPV (which obviously was not an arms' length deal).

267. Plaintiffs relied, in part, because Witz and Littler appeared to be speaking for entities in which Ralph Shayne had a leadership role. Shayne had fiduciary duties of disclosure and candor owed to Group as a manager, officer, and/or agent of Group.

268. Plaintiffs' reliance on the Witz/Littler communications caused Plaintiffs to be harmed, sustain damages, suffer economic loss, and be deprived of rights and benefits afforded by law and/or by contract.

269. Plaintiffs were deprived of and were never paid their share of sale proceeds resulting from a transfer apparently in favor of equity owners.

270. The sale proceeds to which Plaintiffs were entitled may have been dissipated and/or converted.

271. Indeed, it is likely that a good share of those proceeds have been paid out of or have been dissipated funds by paying Witz, Littler, and other attorneys who churned spurious litigation against Chodes wear him down to force a settlement and release.

272. The Principals (and Witz and Littler) tried to trick Chodes and Group into signing a release of claims in exchange for what apparently should have been their rightful share of sale proceeds for equity owners resulting from the Shaw SPV/Shaw Side Pocket side deal. Although Defendants did not succeed in that particular fraudulent aim, it does not absolve Defendants of the other facet of their scheme: they successfully and fraudulently denied Plaintiffs the knowledge of, access to, and right to claim a share of sale proceeds for over a year.

273. WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against Defendants and enter orders:

- a. determining that each Defendant committed fraud and/or fraudulent misrepresentation through the communications of an agent or co-conspirator – i.e., Witz and/or Littler -- during September 2016 and/or on October 10, 2017 and any communications related thereto;
- b. awarding award of compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;
- c. requiring an accounting and disgorgement; and
- d. directing such further or additional relief as the Court deems just and appropriate.

Count 4 – Fraud by Omission or Concealment (against Holzer and Kirkland)

274. Plaintiffs incorporate the allegations in Paragraphs 1 through 193 above as if fully set forth herein.

275. The defendants named in this count had a special and/or a fiduciary relationship with Group and Chodes, who were minority owners of HoldCo.

276. Group and Chodes were (albeit unknowing and involuntarily) sellers in the Transaction.

277. Holzer and Kirkland represented, *inter alia*:

- a. the members/owners of HoldCo;
- b. any and all sellers of HoldCo;
- c. HoldCo; and/or
- d. the board of managers of HoldCo, on which Plaintiffs should have been seated or represented;

278. In addition to their special relationship, certain circumstances required these defendants to make full and frank disclosures – e.g., these defendants knew that their clients were committing breaches of contract, breaches of contractually defined duties, breaches of the implied covenant of good faith and fair dealline, fraud, fraud by omission, and/or fraud by concealment.

279. Each defendant named in this count concealed or failed to disclose one or more material facts within its or his knowledge to Plaintiffs.

280. Concealed material facts are pled throughout this complaint and in Exhibit 1 and are fully incorporated by reference herein. Such concealed material facts were those related to, *inter alia*:

- a. the improper and incomplete composition of the HoldCo board of managers;
- b. actions or proceedings by that board;
- c. communications among or information provided to HoldCo managers;
- d. the expected price range to be suggested or urged by investment bankers;
- e. the solicitation and receipt of bids and offers in Project Kodiak;
- f. the analysis regarding and evaluation of the bids or offers;
- g. the selection of Parthenon's bid;
- h. issues raised or discovered during due diligence;
- i. issues raised or discovered during negotiation with Parthenon;
- j. supposed problem(s) with the accounting for revenue;
- k. supposed change(s) to accounting methods;
- l. re-trading or acceptance of a reduced price;
- m. reduction in the bid or offer of Parthenon during the exclusive negotiating period;
- n. the agreement in principle with Parthenon;
- o. the anticipated structure of the transaction;
- p. the terms and conditions of the proposed deal or proposed transaction documents;
- q. the anticipated economic consequences or impact of the transaction upon owners of Common Units;
- r. the anticipated economic consequences or impact of the transaction upon owners of Special Units;
- s. the treatment of minority equity owners' interest under an impending transaction;
- t. the contents of and revisions to the transaction documents;
- u. alternatives considered by the investment bankers;

- v. alternatives considered by the managers;
- w. the lack of notices;
- x. the lack of compliance with Article IV of the HoldCo LLC agreement;
- y. the information learned by officers of HoldCo and OpCo during the sale process and concealed from Plaintiffs;
- z. a settlement of claims with the Attorney General of Colorado (which affected Group);
- aa. efforts by Shayne or other officers to negotiate on their own behalf during the sellers' negotiations with Parthenon;
- bb. dealings with regard to competitive businesses run by D.E. Shaw;
- cc. the relationship(s) between the Stellus members of the Board and Parthenon and resulting conflicts;
- dd. the relationships between (a) Stellus, Stellus Public, Ladd, D'Angelo, and Pollock and (b) Raymond James and resulting conflicts;
- ee. the relationships between (a) Stellus, Stellus Public, the D.E. Shaw group, Ladd, D'Angelo, and Pollock and (b) Millennium Trust or MTC Parent Company, L.P. and resulting conflicts;
- ff. side deals between Shaw Side Pocket, Shaw SPV, and/or other equity holders;
- gg. transfers or payments purportedly for the benefit of to be paid to equity holders; and
- hh. side deals between D.E. Shaw and Parthenon.

281. Holzer and Kirkland knew that all of these and more were concealed from Plaintiffs, yet they helped continue and ensure the continued concealment of these and other material facts from Plaintiffs.

282. Each named defendant possessed information regarding the matters listed above and knew that Plaintiffs were ignorant of those matters.

283. Each named defendant knew that Plaintiffs did not have an equal opportunity to discover the truth.

284. Each named defendant actually did conceal and fail to disclose material facts.

285. Each Defendant intended to induce Plaintiffs to take some action(s) and/or to refrain from taking action(s);

286. Plaintiffs relied on the named Defendants' nondisclosure.

287. Plaintiffs would not have acted as they did had they been aware of the undisclosed, concealed, or suppressed material fact(s).

288. Plaintiffs were actually and proximately harmed and damaged as a result of (a) acting without the undisclosed knowledge and/or (b) refraining from action without the undisclosed knowledge.

289. Plaintiffs sustained damages as an actual and proximate result of the omission, concealment, and/or suppression by each named Defendant.

290. WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against Holzer and Kirkland and enter orders:

- a. determining that each named Defendant committed – itself or through its agent(s) – fraud by omission and/or concealment;

- b. awarding compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;
- c. requiring an accounting and disgorgement; and
- d. directing such further or additional relief as the Court deems just and appropriate.

Count 5– Tortious Interference with Contract

291. Plaintiffs incorporate the allegations in Paragraphs 1 through 193 above as if fully set forth herein.

292. Plaintiffs were parties to the HoldCo LLC Agreement.

293. The defendants:

- a. were not parties to the HoldCo LLC Agreement;
- b. were aware of the HoldCo LLC Agreement;
- c. committed intentional and improper acts that were significant factors in causing breaches of the HoldCo LLC Agreement; and
- d. interfered with the HoldCo LLC Agreement.

294. Each defendant's actions were not justified and caused (or were significant factors resulting in) breaches of the HoldCo LLC Agreement.

295. Each defendant used wrongful means, which brought about breaches of the HoldCo LLC Agreement.

296. No defendant may escape liability for tortious acts simply because certain Defendants had a right to sell the Oasis Companies.

297. Plaintiffs were harmed, sustained damages, suffered economic loss and were deprived of rights and benefits afforded by law and/or by contract as a result of the defendant's actions.

298. WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against each defendant and enter orders:

- a. determining that Defendant committed – itself or through its agent(s) – tortious interference with contract;
- b. awarding compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;
- c. an accounting and disgorgement; and
- d. such further or additional relief as the Court deems just and appropriate.

Count 6 - Civil Conspiracy

299. Plaintiffs incorporate the allegations in all numbered paragraphs above as if fully set forth herein.

300. The defendants combined with one another for an unlawful purpose or for the accomplishment of a lawful purpose by unlawful means.

301. The purposes of defendants' agreement here include, *inter alia*, to: assist agents and fiduciaries to conceal information from Plaintiffs; to exclude Plaintiffs from learning of the Transaction; allow Parthenon to acquire the Oasis Financial companies below their rightful value; enable Parthenon to compensate decision-makers on the sellers' side; to enable Shaw SPV to collect interest on capital contributions; to allow D.E. Shaw to take all sale proceeds in a manner where no other equity owners receive payment and then secretly have D.E. Shaw dole out portions of the Transaction proceeds to its favored parties and affiliates.

302. The defendants committed unlawful acts in furtherance of the conspiracy, as described in this complaint.

303. The Defendants reached a meeting of the minds and/or knowingly participated in the combination and conspiracy described herein.

304. Actions prior to and also those following the Closing Date reveal Defendants' scienter.

305. The defendants knew of and facilitated a sale of defendant David E. Shaw's entire stake in Stellus Public in May of 2015 likely as a means to insulate him from personal liability related to the bad acts that Raymond James, Stellus and the owners, Board of managers and officers of the Oasis Financial companies were plotting.

306. Nearly all of the defendants were represented at some point by Kirkland (and/or Holzer), which was part of the scheme.

307. Among the objects of the agreement among defendants was to commit the fraud and fraud by omission or concealment described herein and in Exhibit 1.

308. Plaintiffs suffered damages actually and proximately caused by the conspiracy and the acts committed pursuant to that conspiracy.

309. Plaintiffs request that this Court enter judgment in their favor and against all defendants, jointly and severally, and enter orders holding that defendants engaged in a civil conspiracy and are therefore each liable for the tortious acts of the others.

310. WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against each and every Defendant and award, *inter alia*, the following forms of relief against the Defendants, jointly and several, in amounts to be proved at trial, together with pre- and post-judgment interest:

- a. determining that the defendants engaged in a civil conspiracy and committed unlawful acts in furtherance thereof;

- b. awarding compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;
- 311. requiring an accounting and disgorgement; and
- 312. directing such further or additional relief as the Court deems just and appropriate.

WHEREFORE, Oasis Shareholder Recovery, LLC and Gary D. Chodes respectfully request judgment in their favor and against each and every defendant. For each count and cause of action above, the Plaintiffs respectfully request that this Court:

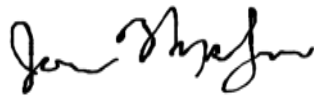
- a. award Plaintiffs compensatory damages in amounts to be proved at trial, together with pre- and post-judgment interest;
- b. order each named Defendant to pay an amount that equals the amount he or it would have to disgorge in fees, salaries, profits, compensation, bonuses, benefits, profits, equity interests, stock, LLC membership interests, options, financial incentives or other value he or it received in connection with or resulting from the matters raised in this action;
- c. award Plaintiffs punitive or exemplary damages against each named Defendant (unless otherwise barred by law) in amounts to be proved at trial;
- d. award Plaintiffs the costs and disbursements of this action, including fees for attorneys, accountants, court reporters, transcripts, and experts; and

e. such further or additional relief as the Court deems just and appropriate.

Dated: September 9, 2019

OASIS SHAREHOLDER RECOVERY, LLC
and GARY D. CHODES

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By One of Plaintiffs' Attorneys

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