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

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ROBERT ROSANIA,

Plaintiff,

- against -

LAURENCE GLUCK,

Defendant,

- against -

STELLAR SUTTON LLC, STELLAR BRUCKNER LLC, STELLAR 117 GARTH, LLC, STELLAR 750 TUCKAHOE, LLC, STELLAR 330 EAST 54, LLC, STELLAR WEST 110 LLC, STELLAR MORRISON LLC, STELLAR KVI LLC, STELLAR STRONG ISLAND MEMBER LLC, STELLAR WEST 28 LLC, STELLAR PWV LLC, STELLAR JANEL MEMBER LLC, STELLAR ARIES INVESTOR LLC, BOULEVARD STORY LLC, STELLAR COURT PLAZA LLC, STELLAR UNDERCLIFF LLC, STELLAR 2020 LLC, and "JOHN DOES" 1-3,

Nominal Defendants.

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Index No.: 655331/2017

Motion Seq. No. 002

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

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Defendant Laurence Gluck ("Gluck") and the nominal defendants ("Nominal Defendants," and together with Gluck, the "Defendants"), by their attorneys, Meister Seelig & Fein LLP, respectfully submit this memorandum of law in support of their motion pursuant to CPLR § 3211(a)(1), (2), (4), (7), and (10) dismissing with prejudice Plaintiff Robert Rosania's ("Rosania" or "Plaintiff") Amended Verified Complaint ("Amended Complaint"), and granting such further relief as this Court deems just and proper.

PRELIMINARY STATEMENT

On August 11, 2017, Rosania filed his original complaint (the "Original Complaint") seeking dissolution of 17 nominal defendants, each of which Rosania correctly asserted are "Delaware limited liability compan[ies]" (Meister Aff., Exh. B at ¶¶ 11-27) "organized under the laws of Delaware." *Id.* at ¶¶ 35-51.[1] Rosania also sought the appointment of "a receiver to oversee the winding down and distribution of assets of the Nominal Defendants." *Id.* at p. 35 ("Prayer for Relief," (b)); *see also id.* at ¶¶ 132, 138.

On December 15, 2017, Defendants moved to dismiss for lack of subject matter jurisdiction, as the LLCs – creatures of Delaware law – cannot be dissolved by judicial decree other than one emanating out of the Delaware Court of Chancery. Controlling authority from the New York Court of Appeals and the First Department – which squarely addressed this issue, as well as relief ancillary to dissolution, in 2016 – compelled this conclusion.

In response to Defendants' motion, Rosania could have discontinued this action and refiled in Delaware. However, in a sign of his continued bad faith efforts to harass Defendants through a multiplicity of litigation before this Court, Rosania stripped the terms "dissolution," "liquidation," and "appoint[ment] [of] a "receiver" from his complaint and now seeks virtually the same relief

[1] The Amended Complaint is Exhibit A to the accompanying Affirmation of Stephen B. Meister ("Meister Aff."). Rosania's Original Complaint is Exhibit B to the Meister Aff. Exhibit C is a redline comparing the complaints.

without using those terms, replacing them with demands for a "FORCED SALE OF ASSETS" belonging to the LLCs and a "FORCED BUY/SELL." Meister Aff., Exh. A (Amended Complaint at pp. 34, 35, Second and Third Causes of Action)(emphasis in original). Indeed, a forced sale of assets from the single-asset LLCs would leave them with no assets, and thus effectively dissolved (*i.e.*, without any purpose for existence). Rosania's attempted end-run around the jurisdictional bar to such relief is at best sheer optics – a disingenuous, dead-end effort – and at worst a thinly veneered attempt for judicial reformation via insertion of the missing buy/sell. Either way, the Amended Complaint fails as a matter of law, and must be dismissed.

Although New York courts have the power to resolve the myriad business disputes that arise *inter sese* among members of Delaware LLCs doing business in New York – *i.e.*, the cases that appear before the Commercial Division every day of the week – New York courts have long recognized they lack the power to dissolve business entities formed under the laws of – and more importantly, *by* – foreign states. Dissolving entities created by other states would, *inter alia*, violate the U.S. Constitution's Full Faith and Credit clause and trample upon the sovereignty of such foreign states.

The Court need not – and may not – delve any further into the latest incarnation of Rosania's tireless campaign to pressure Gluck into buying out his interests in the nominal defendants. Rosania cannot dispute that he has no buy/sell provision to enforce, nor the right to force a sale of the properties, and Gluck has no obligation to buy him out.

Rosania has already brought two actions against Gluck in which Rosania has also named as defendants *all* of the LLCs he seeks to dissolve in the Amended Complaint.[2] As Gluck has been

[2] *See Rosania v. Gluck, et al.*, Index No. 150476/2015 (Sup. Ct., N.Y. Cty)(Scarpulla, J.), Dkt. No. 1 (including, as defendants, all of the LLC nominal defendants named here and all of the "John Doe" nominal defendants identified here, except for Stellar Aries Investor LLC); *see also Rosania v. Gluck, et al.*, Index No. 160289/2013 (Sup. Ct., N.Y.

saying for years, Rosania has never been interested in the relief sought in those cases and is no longer ashamed to come right out and ask the Court for what he really wants – the judicial insertion of the buy/sell clause absent from the governing operating agreements, which he brazenly sought "[i]n addition or the alternative" to dissolution in the Original Complaint (Meister Aff., Exh. B at ¶¶ 6, 133, 139), and which he continues to seek here, in both his Third Cause of Action (for a "FORCED BUY/SELL") and as an alternative remedy for his First Cause of Action (for breach of fiduciary duty). *See* Meister Aff., Exh. A (Amended Complaint at pp. 33-34, 35).[3]

Even if the Court were inclined to do what no court should ever do – rewrite the parties' contract – the Court lacks subject matter over all such relief and in consequence the entire action must be dismissed with prejudice. If Rosania wants dissolution (or relief that is virtually the same thing as dissolution) he must go to the courts of the state that created the companies – Delaware. Of course, the Delaware Chancery Court will likely deny such relief out of hand, since it cannot plausibly be argued that the companies, which have generated millions in profits – as Rosania himself has alleged[4] – in the four-plus years the related actions have been raging, now, for some reason, suddenly cannot carry on. Fortunately, once Rosania's empty threat of dissolution is off the table, either settlement will result, or the parties will swiftly proceed to trial on their other actions.

Cty)(Scarpulla, J.), Dkt. No. 10 (naming Stellar Aries Investor LLC as a nominal defendant and seeking relief on its behalf).

[3] In his First Cause of Action, for breach of fiduciary duty against Gluck, Rosania does not seek monetary damages for relief, but rather a forced buy/sell or forced sale of the properties – making clear that he is really after dissolution-type relief in this action. *See* Meister Aff., Exh. A (Amended Complaint at ¶ 34). This latest fiduciary duty claim has clearly been brought on pretextual ground – to make it appear as if Rosania is really pursuing an intra-member claim, rather than dissolution – and also to further harass Gluck.

[4] For example, Rosania alleges that one group of properties owned by a nominal defendant has produced a $200 million return of equity. *See* Meister Aff., Exh. A (Amended Complaint at ¶¶ 88, 93)(discussing the "PWV Properties" owned by Stellar PWV LLC). Rosania also claims he is "owed" "nearly $25 million in distributions." *Id.* ¶ 77.

Moreover, even if the Court had subject matter jurisdiction over this action, it should still be dismissed in its entirety because the relief Rosania seeks is barred by the governing LLC agreements, failure to name at least *seventeen* necessary parties, and because the claims are duplicative of those set forth in prior pending actions, much less because it would be administratively unmanageable to litigate an action involving 17 separate LLCs with significant variations across the terms of the LLC agreements and among the membership of each LLC.

Accordingly, the Amended Complaint should be dismissed in its entirety.

FACTUAL BACKGROUND

For the purposes of this motion only, Defendants assume the truth of the facts pleaded in the Complaint, without conceding the truth of any such allegation. However, to the extent that Plaintiff's allegations "consist of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, they are not entitled to such consideration." *See Perl v. Smith Barney Inc.*, 230 A.D.2d 664, 665, 646 N.Y.S.2d 678, 679 (1st Dep't 1996).

ARGUMENT

The Amended Complaint seeks *de facto* judicial dissolution of 17 Delaware LLCs. Because this Court lacks subject matter jurisdiction to terminate a Delaware business entity – much less 17 of them – that relief, sought in the guise of claims for "forced sale of assets" and "forced buy/sell" cannot be awarded and therefore the entire Amended Complaint must be dismissed. Moreover, even if the Court had jurisdiction, the governing LLC agreements do not permit the judicial modifications Rosania seeks and do not support the insertion of rights he never negotiated. Finally, parties necessary to this action are not present before the Court, and the claims are duplicative of claims asserted by Rosania in prior pending actions.

I. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER THE QUASI-DISSOLUTION RELIEF SOUGHT IN THE COMPLAINT

A. New York Courts Lack Subject Matter Jurisdiction to Dissolve Delaware LLCs

If granted, the relief Rosania seeks would leave 17 single-asset LLCs without any assets and thus, effectively dissolved. The Amended Complaint seeks nothing more than *de facto* dissolution, and as such, this action falls within the scope of cases in which New York courts lack subject matter jurisdiction to dissolve a foreign entity doing business in New York.

It is undisputed that all of the 17 named LLC nominal defendants were formed in Delaware. Indeed, Plaintiff alleges that each one is a "Delaware limited liability company" (Meister Aff., Exh. A (Amended Complaint at ¶¶ 11-27)) and "organized under the laws of Delaware." *Id.* at ¶¶ 35-51.[5] That the nominal defendants were formed in a foreign state is alone determinative[6] and requires this Court to decline jurisdiction in an action where, as here, Plaintiff seeks *de facto*

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[5] Tellingly, while the complaint specifically asserts bases for *in personam* jurisdiction (Amended Complaint ¶ 7), it does not allege any basis for subject matter jurisdiction – even after Defendants moved to dismiss the Original Complaint for lack of subject matter jurisdiction. Although Plaintiff claims that "[j]urisdiction is proper pursuant to CPLR §§ 301 and 302(a)" (*id.*), CPLR 301's broad statement that "[a] court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore" provides no support for subject matter jurisdiction. CPLR 301 was enacted in 1962 and by then the Court of Appeals had already long held that "a corporate franchise granted by one State, cannot be revoked or annulled by the courts of another." *Merrick v. Van Santvoord*, 34 N.Y. 208 (1866).

[6] *In re Dissolution of Chris Kole Enterprises*, 188 Misc. 2d 207, 209, 725 N.Y.S.2d 838, 839-40 (Sup. Ct., N.Y. Cty 2001)(Figueroa, J.), the court held that it "must decline jurisdiction in a proceeding to dissolve a Delaware corporation."

> The determinative factor in whether a New York court may dissolve a corporation is the corporation's domicile. Domicile is not synonymous with residence. While a corporation may reside in New York, or elsewhere, it can only be domiciled in the state where it is incorporated. If the latter is not New York, a New York court may not dissolve the corporation.

Id. (internal citations omitted); *see also Matter of Raharney Capital, LLC v. Capital Stack LLC*, 138 A.D.3d 83, 88 n.2, 25 N.Y.S.3d 217 (1st Dep't 2016)("Although this proceeding involves a limited liability company, we perceive no reason why the rule should be any different for corporations, partnerships and other business entities.").

Plaintiff's contention that "[j]urisdiction is proper pursuant to CPLR §§ 301 and 302(a) because all defendants are domiciliaries of New York, all defendants conduct business in New York, and all defendants directly or indirectly own, use or possess real property situated within New York" (Amended Complaint at ¶ 7) is incorrect, as it wholly disregards subject matter jurisdiction, for which purpose the nominal defendants are "domiciliaries" of Delaware.

dissolution – a "forced sale of assets" or "forced buy/sell." Indeed, Rosania continues to allege (in conclusory fashion) a prerequisite for dissolution in pleading those causes of action – that "it is ***no longer reasonably practicable to carry on the business*** of the Nominal Defendants." *Id.* at ¶¶ 138, 143 (emphasis added). That is the allegation a litigant *must* make in seeking "Judicial Dissolution" under Delaware LLC law:

> On application by or for a member or manager the Court of Chancery may decree dissolution of a limited liability company whenever it is ***not reasonably practicable to carry on the business*** in conformity with a limited liability company agreement.

6 Del. § 18-802 (titled "Judicial Dissolution")(emphasis added).[7]

In *Matter of Raharney Capital, LLC v. Capital Stack LLC*, 138 A.D.3d 83, 84-85, 25 N.Y.S.3d 217 (1st Dep't 2016), the petitioner sought judicial dissolution of a Delaware LLC and also, as ancillary relief, an order "compelling its members to wind up the company's affairs and to execute the necessary documents to effect the dissolution of the company." The petitioner argued that "the members of [the Delaware LLC] were unable to agree upon their respective roles and duties, the terms of an operating agreement, … the terms for withdrawal of either member," "that the parties were hopelessly deadlocked, and that it was not reasonably practicable for the company to continue operating." *Id.* at 85. After the motion court granted defendant's motion to dismiss for lack of subject matter jurisdiction, the petitioner asked the First Department "to determine whether a New York court has the power to order the dissolution of a limited liability company that operates in this state, but was formed under the laws of another state." *Id.* The court held:

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[7] It bears noting that Rosania does not assert the "in conformity with a limited liability company agreement" component of the statute, likely because he is seeking broad equitable relief directly from the Court, rather than even attempting to pursue relief under the LLC agreements.

Moreover, there is no basis for Rosania to seek relief that is only appropriately granted by Delaware's Chancery Court, and then assert that "equitable relief from this Court is appropriate" and that "the Court should exercise its inherent authority" to order either a forced sale or buy/sell. Meister Aff., Exh. A (Amended Complaint at ¶¶ 134, 139, 144). Although Rosania studiously avoids using the D-word, he knows the judicial power he seeks to invoke is "dissolution" (as well as appointment of a receiver and liquidation).

> We conclude, consistent with decisions from the Court of Appeals, this Court, and our sister departments of the Appellate Division, that ***the courts of this state do not have subject matter jurisdiction to judicially dissolve a foreign business entity.*** Instead, the decision as to whether dissolution is appropriate lies with the courts of the state in which the entity was created.

Id. (affirming order by Justice Schlesinger of this Court, which had granted a motion to dismiss the petition for lack of subject matter jurisdiction)(emphasis added).

In addition to reviewing New York authority on this topic,[8] *Raharney* noted that "[t]he overwhelming majority of courts outside New York have come to the same conclusion." *See id.* at 86.[9] The First Department "agree[d] with the near-universal view that the courts of one state do not have the power to dissolve a business entity formed under another state's laws" and that "[b]ecause a business entity is a creature of state law, ***the state under whose law the entity was created should be the place that determines whether its existence should be terminated***." *Id.* at

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[8] *Raharney's* review of Court of Appeals cases included the 150-year old *Merrick v. Van Santvoord*, 34 N.Y. 208 (1866), which held that "a corporate franchise granted by one State, cannot be revoked or annulled by the courts of another." *Raharney* also examined and cited recent appellate decisions by other departments and by this Court. *See, e.g., MHS Venture Mgmt. Corp. v. Utilisave, LLC*, 63 A.D.3d 840, 841, 881 N.Y.S.2d 452 (2d Dep't 2009)(dismissing proceeding that sought dissolution of a Delaware LLC due to lack of subject matter jurisdiction and voiding earlier order "which denied the petition on the merits"); *Rimawi v. Atkins*, 42 A.D.3d 799, 801, 840 N.Y.S.2d 217 (3d Dep't 2007)(reversing motion court and dismissing claim seeking dissolution of Delaware LLC as "unlike the derivative claim involving the internal affairs of a foreign corporation, plaintiffs' claim for dissolution and an ancillary accounting is one over which the New York courts lack subject matter jurisdiction"); *Appell v. Lag Corp.*, 2006 WL 6468394, Index No. 602846/2005 (Sup. Ct., N.Y. Cty, Dec. 20, 2006)(Moskowitz, J.), *aff'd*, 41 A.D.3d 277, 278, 838 N.Y.S.2d 541, 542 (1st Dep't 2007)(determining, *sua sponte*, that this Court lacked subject matter jurisdiction to hear a proposed cause of action to dissolve a Delaware limited partnership that had owned property in Manhattan and denying leave to add the claim as "futile"; "only the Court of Chancery may decree the dissolution of [the Delaware limited partnership].").

[9] *Raharney* noted:

> For example, in *Young v JCR Petroleum, Inc.* (188 W Va 280, 283-284, 423 SE2d 889, 892-893 [1992]), the court, interpreting certain state statutes, held that West Virginia courts have no jurisdiction to dissolve foreign corporations. ***To conclude otherwise***, the court reasoned, ***would run afoul of the Full Faith and Credit Clause of the United States Constitution, which "requires each state to respect the sovereign acts of the other states[,]" including "[t]he creation and dissolution of a corporation"*** (188 W Va at 283, 423 SE2d at 892[)].

Raharney, at 86 (emphasis added).

87 (emphasis added).[10] "An order of dissolution from a New York court would infringe on the sovereign authority of another state by, in effect, forcing that state to extinguish an entity formed under its own laws." *Id.* As the Appellate Division has recognized "***Delaware has a strong interest in determining whether business entities formed under its own laws continue to exist at all***, and we should refrain from telling Delaware whether or not it should dissolve business entities formed in that state." *Id.* at 88 (emphasis added).[11] Given the foregoing, only the Delaware Chancery Court, and not this Court, can adjudicate the termination of the Nominal Defendants.

B. The Court Lacks Jurisdiction to Award Relief Ancillary to Dissolution

Although this Court is clearly able to exercise jurisdiction over a plenary action seeking other relief among the parties – as it is doing in the pending action captioned *Rosania v. Gluck, et al.*, Index No. 150476/2015 – it lacks jurisdiction to grant judicial dissolution of any of the nominal defendant LLCs, wind them down and distribute their assets, or alter the membership interests in the nominal defendants by ordering a buyout.[12] New York courts have rejected efforts by plaintiffs

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[10] The *Raharney* court cited 17A Fletcher Cyc. Corp. § 8579 (2015) for the proposition that "the state or country that grants the corporation its franchise has exclusive and supreme power to withdraw it and to forfeit the corporate charter or dissolve the corporation." It also cited 19 Am. Jur. 2d Corporations § 2335 for the proposition that "[t]he existence of a corporation cannot be terminated except by some act of the sovereign power by which it was created." *Raharney*, at 87.

[11] Within Delaware, that power is reserved by the Delaware Chancery Court, which has explained that "jurisdiction rests solely with the Court of Chancery where a party moves for dissolution of a company." *In re TGM Enterprises, L.L.C.*, No. CIV.A. 3565-CC, 2008 WL 4261035, at *2 (Del. Ch. Sept. 12, 2008)(citing 6 Del. C. § 18-802 and ordering parties to return to Chancery Court to adjudicate application to dissolve a Delaware LLC after parties adjudicate legal claims for damages in Delaware Superior Court).

[12] Although Rosania does not specify the mechanism of the buy/sell he demands, it appears he contemplates either Rosania or Gluck buying the other out. It is unclear as to how that process would involve or affect the other members and who would administer the process. This uncertainty underscores that "[t]he court's role is limited to interpretation and enforcement of the terms agreed to by the parties; it does not include the rewriting of their contract and the imposition of additional terms." *See Brady v. Williams Capital Grp., L.P.*, 64 A.D.3d 127, 132, 878 N.Y.S.2d 693 (1st Dep't 2009), *aff'd as modified*, 14 N.Y.3d 459, 928 N.E.2d 383 (2010)(quoting *Salvano v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 85 N.Y.2d 173, 182, 647 N.E.2d 1298 (1995)); *Cambridge Petroleum Holdings, Inc. v. Lukoil Americas Corp.*, 129 A.D.3d 501, 502, 11 N.Y.S.3d 58, 59 (1st Dep't 2015)(that restrictions in a stock purchase agreement "le[ft] plaintiff without a remedy is of no moment, as a party may not rewrite the terms of an agreement because, in hindsight, it dislikes its terms"); *see also LNYC Loft, LLC v. Hudson Opportunity Fund I, LLC*, 154 A.D.3d 109, 116, 57 N.Y.S.3d 479, 484 (1st Dep't 2017)("The operating agreements do not provide for the delegation of

to seek relief that is related to dissolution of entities formed by other states. The operative petition in *Raharney*, the dismissal of which was affirmed by the First Department, sought dissolution of a Delaware LLC, and also, as ancillary relief, a judgment "[o]rdering and compelling [the LLC's] members to wind up [the LLC's] affairs, distribute its assets, and satisfy any outstanding liabilities," and "[o]rdering and compelling [the LLC's] members and managers to execute any documents any take any steps necessary to effect the dissolution of [the LLC]." *See Matter of Raharney Capital, LLC v. Capital Stack LLC*, Index No. 160175/2014 (Sup. Ct., N.Y. Cty), Dkt. No. 1 at p. 20 ("Wherefore" clause, ¶¶ 2, 3). This is effectively the relief sought by Rosania in the Amended Complaint. In *Rimawi*, the Third Department held that New York courts lacked subject matter jurisdiction over "plaintiffs' claim for dissolution *and an ancillary accounting*." 42 A.D.2d at 801 (emphasis added).

Additionally, relief in the nature of "Winding up" (6 Del. § 18-803) and "Distribution of assets" (6 Del. § 18-804) are also the province of Delaware law for entities formed in Delaware. What Rosania is seeking here is in the form of a forced buy/sell is really a sale of the assets so that his share of the proceeds can be used to buy out his interests. That is the same ultimate relief he sought in his Original Complaint without a judicial determination of dissolution. *See* Meister Aff., Exh. B (Original Complaint at ¶ 6)("[T]hrough this action, Rosania seeks a judicial dissolution and ***liquidation*** of the Nominal Defendants. In addition or the alternative, Rosania requests that the Court exercise its inherent authority ***to liquidate the Nominal Defendants through a buyout of Rosania's interests in the Nominal Defendants***.")(emphasis added).

The lack of subject matter jurisdiction here emphasizes that the claims brought by Rosania should not be before *any* court that is not hearing a dissolution action. Indeed, New York courts

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authority to a nonmember or nonmanager, or for the appointment of a nonmember or nonmanager SLC [special litigation committee], and we will not rewrite the parties' agreements to so provide.").

have been hostile to parties seeking to shoehorn in ancillary claims where they are unable to maintain dissolution actions.

In *Kassab v. Kasab*, 2015 WL 11090346 (Sup. Ct., N.Y. Cty Feb. 20, 2015), *aff'd*, *Kassab v. Kasab*, 137 A.D.3d 1138, 27 N.Y.S.3d 680 (2d Dep't 2016), the Commercial Division, Queens County, examined new claims filed by a party whose petition to dissolve a New York LLC had already been dismissed by the court. The new causes of action included "an appraisal and buyout of [petitioner's] membership interest in [the LLC]," rescission of the LLC's operating agreement, breach of fiduciary duty, and "the appraisal and sale of … [the LLC's] assets." *Id.* at *2. The court found the absence of a pending dissolution proceeding and the operating agreement's lack of a buyout provision to be dispositive in dismissing the new claims. The court held that "[a]lthough, in certain circumstances, a buyout may be an appropriate equitable remedy upon the dissolution of an LLC, ***there is no common law right to an appraisal and buyout of a minority member's interest in a limited liability company***." *Id.* (emphasis added; internal citations omitted). The court distinguished the case before it from one cited by the petitioner in which the "operating agreement at issue which contained a buyout provision. Here, as [petitioner's] claim for dissolution have been dismissed, and as the parties' operating agreement does not contain a buyout provision, no independent right to an appraisal and buyout exists." *Id.* Moreover, the court held that the petitioner, whose "claim for judicial dissolution was inadequate, … may not seek the remedy of rescission in order to effectively obtain a dissolution of [the LLC]" (*id.* at *3), and the court rejected petitioner's breach of fiduciary duty claim as a "***thinly disguised attempt to obtain judicial dissolution of [the LLC]***" – precisely the sort of relief Rosania seeks here. *Id.* (finding, *inter alia*, that the fiduciary duty claim was "not adequately pleaded" because it lacked allegations made "in the context of the terms of the operating agreement)(emphasis added).

The Second Department affirmed, holding that "accepting as true the facts alleged in the petition/complaint and according the petitioner the benefit of every favorable inference, the petitioner failed to state a cause of action for an 'equitable buyout' of his interest in the LLC." 137 A.D.3d at 1140 (internal citation omitted). "[S]ince this Court has determined, in a companion appeal, that the petitioner failed to state a cause of action for the judicial dissolution of the LLC pursuant to [New York] Limited Liability Company Law § 702, there is no basis to invoke the equitable remedy of a buyout." *Id.* Additionally, the Second Department held that "in the absence of the dissolution" of the LLC, petitioner "failed to allege any basis … to compel the sale of property owned by" it. *Id.* at 1140-1141.

C. The Cases Rosania Cites Do Not Support a Finding of Subject Matter Jurisdiction

The three cases Rosania cites in his Amended Verified Complaint are inapposite and do not confer subject matter jurisdiction on this Court. *See* Meister Aff., Exh. A (Amended Verified Complaint at ¶¶ 6, 139, 144).

Rosania relies on the same case he cited in his Original Complaint when he urged the Court to "exercise its inherent authority to liquidate the Nominal Defendants through a buyout of Rosania's interests in the Nominal Defendants." *See* Meister Aff., Exh. B (Original Complaint at ¶ 6)(citing *In re Superior Vending, LLC*, 71 A.D.3d 1153 (2d Dep't 2010)); *see also id.* at ¶¶ 133, 139. He now cites the same case when asking the Court to force a sale or a buy/sell. *See* Meister Aff., Exh. A (Amended Complaint at ¶¶ 6, 139, 144).

In re Superior Vending is inapposite not only because it concerned a *New York* LLC[13] – *i.e.*, a domestic LLC with no subject matter jurisdiction concerns – but also circumstances where

[13] *See* 2007 WL 7211147, at ¶ 2, the Verified Petition dated June 28, 2007 in *In re Superior Vending, LLC*, Index No. 11709-2007 (Sup. Ct., Westchester Cty).

the parties "*consented to* the dissolution" of the LLC but "disagreed about the distribution of the assets." 71 A.D.3d at 1153. In that context – very different from the one here – the court entertained "a buyout in a dissolution proceeding" based on a finding that it was "the most equitable method of liquidation." *Id.* at 1154. Here, as there is no consent to dissolution (or jurisdiction to even consider dissolution), dissolution can only be accomplished in the first place by an order of the Delaware Chancery Court. Moreover, Rosania's continued citation of *In re Superior Vending* shows that he still views the relief he has demanded as the subject of a jurisdictionally impermissible dissolution proceeding.

Rosania's addition of two case cites to his Amended Complaint – *Sokol v. Ventures Educ. Sys. Corp.*, 10 Misc. 3d 1055(A), 809 N.Y.S.2d 484 (Sup. Ct., N.Y. Cty 2005)(Lowe, J.) and *Tosi v. Pastene & Co.*, 34 A.D.2d 520, 308 N.Y.S.2d 472 (1st Dep't 1970) – similarly do not support the extra-jurisdictional relief he seeks.

In *Sokol*, the plaintiff asserted that he was an oppressed minority shareholder of a Delaware corporation based on, *inter alia*, defendants' mismanagement, waste, diversion of corporate assets, and "refus[al] to buy back his shares of stock." 10 Misc. 3d 1055(A) at *6. In his first two causes of action, he sought, "dissolution of [the Delaware corporation] or a fair-market value buyout of his shares" and "appointment of a receiver over [the corporation]."[14] *Id.* at *2. Defendants moved for partial summary judgment and dismissal of the causes of action for dissolution and appointment of a receiver. Plaintiff cross-moved, seeking, *inter alia*, "summary judgment in his favor on the dissolution claims or, in the alternative, compelling defendants to buy out Sokol" (at "fair market value") as well as "appointment of a receiver." *Id.* at *3.

[14] The plaintiff in *Sokol* sought "a fair market buyout of his shares" as alternative relief for both of his dissolution causes of action. *See* Complaint in *Sokol*, 2002 WL 34722113 (Sup. Ct., N.Y. Cty) at ¶¶ 32, 48 ("By reason of the foregoing, Sokol is entitled to common-law dissolution of the Corporation; or a fair market buyout of his shares; or such other relief as the Court may deem appropriate.").

The court denied "the branches of [plaintiff]'s cross motion for dissolution … and appointment of a liquidating receiver," finding that the corporation "is incorporated under the laws of Delaware and, therefore, may be dissolved only by order of a Delaware court." *Id.* The court granted defendants' motion for summary judgment as to plaintiff's first and second causes of action – for dissolution, or alternatively, a buyout – "in their respective entireties." *Id.* at *11. The court reasoned:

> Significantly, the evidentiary record is devoid of any express agreement, written or oral, to provide [plaintiff] with the rights and privileges that he claims defendants have denied him. [Plaintiff] can cite to no Delaware statute guarantying him the rights he seeks.

Id. at *6.

Here, Rosania faces roadblocks similar to those in *Sokol* – the Court lacks subject matter jurisdiction to award the relief he seeks and, as discussed *infra*, there is no basis for him to seek a buyout or liquidation because he has identified no right in the relevant agreements or Delaware law to do so. Rosania's frustration that he failed to insist on a buyout provision in the LLC agreements[15] does not equate to an equitable remedy.

Tosi did not address a motion to dismiss for lack of subject matter jurisdiction, but rather a "challenge against the sufficiency of the complaint to state a cause of action." *Tosi*, 34 A.D.2d at 520. It stands for the unremarkable proposition that even though a New York court cannot "direct a dissolution of the foreign corporation involved," it can award (unspecified) "other relief" to parties "where the court has acquired jurisdiction of the parties and there is appropriate basis for

[15] Tellingly, Rosania insisted upon and successfully negotiated buy/sell clauses and forced sale rights when negotiating deals with institutional equity capital (*see* Meister Aff. Exh. W at § 7.7, LLC agreement of non-party Stellar Deep Ocean Member LLC dated August 9, 2007), yet went into deals with Gluck, whom he knew to be a long-term holder of rental real property, without such clauses because he knew Gluck would never agree to them. The Court has no authority or business altering that fundamental aspect of the parties' private contracts. *See Brady*, 64 A.D.3d at 132.

the granting of some relief to the plaintiffs in New York …" *Id.*; *see Raharney* at 218-219 (summarizing *Tosi* as holding that "although allegations of mismanagement of a foreign corporation would allow the plaintiff to obtain some unspecified relief, they 'may not entitle the court to direct a dissolution of the foreign [entity].'"). This holding only allows for a damages claim by Rosania for mismanagement – a claim which he has already asserted in his two existing actions against Gluck. Accordingly, *Tosi* does not support a finding of subject matter jurisdiction here, where Rosania seeks a *de facto* dissolution of 17 LLCs and the "other relief" is the subject of existing claims in other pending actions.

II. EVEN IF THE COURT HAS JURISDICTION OVER THE RELIEF SOUGHT BY ROSANIA, THE AMENDED COMPLAINT SHOULD STILL BE DISMISSED

A. The Terms of the Operative LLC Agreements Preclude the Forced Sale and Buyout Requests Rosania Seeks

Assuming *arguendo* that this Court has subject matter jurisdiction over the quasi-dissolution relief Rosania seeks, the terms of the governing limited liability company agreements preclude a forced sale or buyout.

Contrary to the statutory corporate and partnership dissolution and exit-right bases enumerated in the New York Business Corporation Law and New York Partnership Law, New York courts have declined to adopt similar rights in the context of limited liability companies, but rather have given extreme deference to limited liability company operating agreements. In the seminal case, *In re 1545 Ocean Ave., LLC*, 72 A.D.3d 121, 126-128, 893 N.Y.S.2d 590, 594-596 (2d Dep't 2010), the Second Department stated (with emphasis added):

> … [New York LLC Law] 702 is clear that unlike the judicial dissolution standards in the Business Corporation Law and the Partnership Law, ***the court must first examine the limited liability company's operating agreement*** (*see Matter of Spires v. Lighthouse Solutions, LLC,* 4 Misc.3d at 432, 778 N.Y.S.2d 259) to determine, in light of the circumstances presented,

> whether it is or is not "reasonably practicable" for the limited liability company to continue to carry on its business in conformity with the operating agreement (*id.* at 433, 778 N.Y.S.2d 259). Thus, the dissolution of a limited liability company under LLCL 702 is initially a ***contract-based analysis***.

Similarly, Delaware also places substantial weight on the freedom to contract and first looks to the operating agreement between the parties to determine withdrawal and dissolution rights. *See* 6 Del. C. § 18-1101(b)("It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements."); *Huatuco v Satellite Healthcare*, 2013 WL 6460898, at *5 (Del Ch Dec. 9, 2013), *aff'd* 93 A.3d 654 (Del. 2014)("Permitting waiver of a contractual right to judicial dissolution, or enabling opting out of the statutory right altogether, is consistent with the broad policy of freedom of contract underlying the LLC Act, and comports with the Act's approach of supplying default provisions around which members may contract if they so choose.").

A review of the 17 separate LLC agreements at issue reveals that there are *no* buyout rights, forced sale rights or other withdrawal rights afforded to any of the members, including Rosania. In fact, the provisions that do exist in the agreements present an insurmountable bar to the relief Rosania now seeks. *See Kassab*, 2015 WL 11090346 at *2 ("as the parties' operating agreement does not contain a buyout provision, no independent right to an appraisal and buyout exists.").

The following provisions appear in 14 of the 17 operating agreements of the Nominal Defendants:

> Assignability of Interests; Additional Members
>
> General Conditions. No Member shall sell, transfer, assign, pledge or otherwise dispose (as the case may be, "Transfer") all or any portion of its Company Interest or any right to receive any Distributions under the Agreement without the written consent of the Manager.[16]
>
> * * *

[16] Gluck is named as manager of every Nominal Defendant.

> Partition. No member or any successor-in-interest to any Member shall have the right while this Agreement remains in effect to have any Company assets partitioned, and each Member, on behalf of itself, its successors, representatives, heirs and assigns, hereby waives such right. It is the intention of the Members that during the term of this Agreement governed by the terms of this Agreement, and that the rights of any Member or successor-in-interest to assign, transfer, sell or otherwise dispose of any interest in the Company shall be subject to the limitations and restrictions of this Agreement.

These two recited provisions and the absence of any buyout or other membership withdrawal mechanism, evince the contracting parties' intent to be limited in their ability to liquidate their interests. Further, every operating agreement at issue contains specific dissolution and wind up provisions that Rosania is ignoring, asking this Court to judicially modify the agreements.

Even as to the three LLCs missing the above language in their operating agreements,[17] there is no dispute that those LLC agreements do not contain any forced sale mechanism, and that each of the 17 LLCs names Gluck as manager and vests him with authority to sell or not sell the assets of the LLCs.

B. The Other LLC Members Are Necessary Parties as Their Interests Will Be Inequitably Affected by Rosania's Forced Sale Request

CPLR Rule 3211(a)(10) states: "the court should not proceed in the absence of a person who should be a party."

CPLR Section 1001(a) defines necessary parties to an action as:

> [p]ersons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action shall be made plaintiffs or defendants.[18]

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[17] *I.e.*, Stellar West 110 LLC, Stellar PWV LLC, and Stellar Undercliff LLC (Meister Aff., Exhs. I, N, and S, respectively).

[18] *See also* Delaware Chancery Court Rule 19(a):

> A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties,

CPLR Section 1003 states:

> Nonjoinder of a party who should be joined under section 1001 is a ground for dismissal of an action without prejudice unless the court allows the action to proceed without that party under the provisions of that section.

Rosania's Amended Complaint names 17 separate limited liability companies, which in turn ultimately have interests in 17 separate properties. In his never-ending quest to have this Court insert buyout and/or sale provisions to the operating agreements of those 17 limited liability companies which are explicitly not there (and as stated above, are explicitly contradicted by the operating agreements' terms that are there), Rosania ignores that the interests in these entities are not just held by Rosania and Gluck. In fact, every named entity with the exception of one, has additional members, a total of (coincidentally) 17 non-party members, that Rosania has not seen fit to include in his pleading.[19]

Rosania's Second Cause of Action and Prayer for Relief seeks to have this Court "order that the properties owned by the Nominal Defendants be sold and the proceeds be distributed to the members of the Nominal Defendants in accordance with their respective interests in the Nominal Defendants." Meister Aff., Exh. A (Amended Complaint at ¶ 139); *see also id.* at p. 36 (Prayer for Relief, (a)). That prayer for relief effectively asks this Court to dissolve the Nominal Defendants, which – even if the Court had jurisdiction – would strip the membership interests of

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> or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

[19] For the Court's convenience, a list of the members in each of the 17 limited liability companies, identifiable by the operating agreements themselves which are attached to the accompanying Meister Affirmation, is annexed hereto as **Appendix A**.

individuals and/or entities[20] who are not party to this action. These 17 other members have nothing to do with the ongoing feud between Gluck and Rosania. They are investors in properties, the interests in which they expect to continue to hold as they have done for years[21] to reap the monetary benefits the properties provide them. Besides forcing the liquidation of their long-term investments, even though they are not parties, the requested relief would cause substantial adverse tax consequences to the missing parties. Because those non-party members' interests and rights are clearly implicated and will be inequitably affected by their non-participation in this action, dismissal of Rosania's Second Cause of Action for a forced sale is warranted. *See Felzen v. For the Dissolution of PEI Mussel Kitchen, LLC*, 2017 WL 3834841 at * 5 (Sup. Ct., N.Y. Cty, Sept. 1, 2017)(recognizing that a dissolution claim "severely impact[s] the interests, rights and duties" of the other limited liability company members not joined as parties and dismissing such dissolution claim as complete relief could not be accorded); *Cloe v Attorney Gen. For State*, 70 A.D.3d 1348, 1348 (4th Dep't 2010)(dismissing judicial dissolution petition of fire corporation for failing to name the village as a necessary party); *see also, Meso Scale Diagnostics, LLC v. Roche Diagnostics GMBH,* 2011 WL 1348438, at *18 n.140 (Del. Ch. Apr. 8, 2011)(finding subsidiaries necessary parties where equitable relief could potentially affect their interests).

[20] Certain of the Nominal Defendants have limited liability companies as members, thereby further complicating a forced sale.

[21] Each of the Nominal Defendants have existed for over a decade, as they were all created between 2005 and 2007.

III. THE AMENDED COMPLAINT'S FIRST CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY IS DUPLICATIVE OF ROSANIA'S FIDUCIARY DUTY CLAIMS IN HIS PRIOR PENDING ACTIONS AND SHOULD THEREFORE BE DISMISSED PURSUANT TO CPLR RULE 3211(a)(4)

CPLR Rule 3211(a)(4) states that a party may move for judgment dismissing one or more causes of action on the ground that:

> there is another action pending between the same parties for the same cause of action in a court of any state or the United States; the court need not dismiss upon this ground but may make such order as justice requires.

The trial court has broad discretion in determining whether an action should be dismissed on the ground that there is another action pending between the same parties for the same cause of action where the actions arise out of the same subject matter or series of alleged wrongs. *See PK Restaurant, LLC v. Lifshutz*, 138 A.D.3d 434, 436, 30 N.Y.S.3d 13, 16 (1st Dep't 2016); *Syncora Guarantee Inc. v. J.P. Morgan Securities LLC*, 110 A.D.3d 87, 96, 970 N.Y.S.2d 526, 533 (1st Dep't 2013).

In January 2015, Rosania filed an action against Gluck, individually, and 14 limited liability companies in which Rosania and Gluck, as well as other members, have interests. *See* Meister Aff., Exh. U. That case, captioned, *Rosania v. Gluck, et al.*, Index No. 150476/2015, referred to by the parties as the "Bruckner Action," has been pending before this Court for three years. 13 of the 14 limited liability companies[22] in the Bruckner Action are also present in Rosania's Amended Complaint.

[22] The Bruckner Action also names "John Does" 1-7 as defendants and attempts to identify those "John Does" by the properties in which the limited liability companies hold an interest. These "John Does" encompass the remaining limited liability companies at issue in the instant action.

The First Cause of Action in the Bruckner Action is for breach of fiduciary duty. The alleged factual basis for the Bruckner Action's breach of fiduciary duty claim is one and the same as the Amended Complaint's First Cause of Action for breach of fiduciary duty:

- Gluck improperly excluded Rosania from the management of the properties and ousted Rosania from Stellar Management's office; *Compare* Meister Aff., Exh. U (Bruckner Action Complaint at ¶ 32) *with* Meister Aff., Exh. A (Amended Complaint at ¶ 53);

- Gluck abused his position of domination and control by withholding distributions to which Rosania is allegedly owed; *Compare* Meister Aff., Exh. U (Bruckner Action Complaint at ¶ 33) *with* Meister Aff., Exh. A (Amended Complaint at ¶ 54); and

- Gluck refused Rosania access to books and records of the limited liability companies; *Compare* Meister Aff., Exh. U (Bruckner Action Complaint at ¶ 52) *with* Meister Aff., Exh. A (Amended Complaint at ¶ 54).

Additionally, as recited in paragraph 56 of the Amended Complaint, in July 2017, Rosania sought to amend his 2013 action against Gluck and certain limited liability companies – captioned *Rosania v. Gluck, et al*., Index No. 160289/2013 (referred to by the Parties as the "Aries Action") – to include a breach of fiduciary duty claim based the same alleged misconduct that purports to serve as the factual predicate for the Amended Complaint's First Cause of Action for breach of fiduciary duty:

- Fraudulent secret arrangements with contractors doing renovations; *Compare* Meister Aff., Exh. V (Aries Action Complaint at ¶ 3) *with* Meister Aff., Exh. A (Amended Complaint at ¶ 67);

- Fraudulently maintaining two sets of books and records with respect to the properties; *Compare* Meister Aff., Exh. V (Aries Action Complaint at ¶ 4) *with* Meister Aff., Exh. A (Amended Complaint at ¶ 64); and

- A class action filed against Gluck and Stellar Management for illegal and fraudulent practices employed at the properties; *Compare* Meister Aff., Exh. V (Aries Action Complaint at ¶ 47) *with* Meister Aff., Exh. A (Amended Complaint at ¶ 71).

While the Court denied Rosania leave to amend his five-year-old action to include certain specific additional misconduct allegations, the Court did so without prejudice to Rosania moving

to conform the pleadings to the proof at the time of trial. In other words, at the trial of the Aries Action, Rosania will have the opportunity to insert the specific alleged wrongs that are defined in the Amended Complaint in his attempt to prove Gluck breached his fiduciary duties.

The Amended Complaint's First Cause of Action for breach of fiduciary duty, the Bruckner Action's First Cause of Action for breach of fiduciary duty and the Aries Action's Second Cause of Action for breach of fiduciary duty are based on the same alleged misconduct and all state that as manager of the limited liability companies, Gluck owes fiduciary duties to the members, including Rosania, which in the case of Rosania is "based on their long-standing relationship, and the trust and confidence reposed in Gluck by Rosania." *See* Meister Aff., Exh. A (Amended Complaint at ¶¶ 129-130); Exh. V (Aries Action Complaint at ¶¶ 84-86); Exh. U (Bruckner Action Complaint at ¶¶ 145-146). That the Amended Complaint's First Cause of Action for Breach of Fiduciary Duty is duplicative of the same causes of action in the Bruckner and Aries Actions is evident from paragraph 133 of the Amended Complaint:

> Despite a series of lawsuits between Rosania and Gluck, Gluck has continued his pattern and practice of fraudulent behavior and abusing his position of domination and control, and the disputes between the parties have been unresolvable.

Meister Aff., Exh. A at ¶ 133.

The harassing "series of lawsuits" based on the same alleged fraudulent behavior is precisely what CPLR Rule 3211(a)(4) seeks to curtail. *See Rinzler v. Rinzler*, 97 A.D.3d 215, 217, 947 N.Y.S.2d 844, 845 (3d Dep't 2012), *citing Blank v. Miller*, 122 A.D.2d 356, 358, 504 N.Y.S.2d 580, 582-583 (3d Dep't 1986)("The purpose of the defense of the pendency of another action between the same parties for the same cause is to prevent a party from being harassed or burdened by having to defend a multiplicity of suits."); *Campanella v. Campanella*, 2013 WL 6734519, at

*1 (Sup. Ct., N.Y. Cty 2013)(same); *Carnegie Deli, Inc. v. Levine*, 2015 WL 274631, at *13 (Sup. Ct., N.Y. Cty 2015)(same).

Rosania has been complaining about Gluck's alleged breaches of fiduciary duties since 2013. The Amended Complaint's breach of fiduciary duty claim is nothing new. This entire action admittedly exists only because of the failed resolution attempts of the Bruckner and Aries Actions. The Court should put an end to Rosania's frivolous and harassing conduct of adding an additional case to this Court's docket because the existing "disputes between the parties have been unresolvable." Meister Aff., Exh. A (Amended Complaint at ¶¶ 133, 136, 141).

CONCLUSION

This Court should dismiss the Complaint because it lacks subject matter jurisdiction, is barred by the express terms present in – and the terms not present in – the governing LLC agreements, lacks 17 necessary parties and duplicates prior pending actions between Rosania and Gluck.

Dated: New York, New York
February 2, 2018

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APPENDIX A

	NOMINAL DEFENDANT LLC	OTHER MEMBERS BESIDES GLUCK & ROSANIA
1.	Stellar Sutton LLC	i) Michael Gluck, as Trustee of the Heather Leigh Gluck Irrevocable Trust; ii) Michael Gluck, as Trustee of the Amanda Iris Gluck Irrevocable Trust; iii) Michael Gluck, as Trustee of the Dana Elizabeth Gluck Irrevocable Trust.
2.	Stellar Bruckner LLC	i) Laurence Gluck, as Trustee of the Heather Leigh Gluck Irrevocable Trust; ii) Laurence Gluck, as Trustee of the Amanda Iris Gluck Irrevocable Trust; iii) Laurence Gluck, as Trustee of the Dana Elizabeth Gluck Irrevocable Trust; iv) Smajlje Srdanovic; v) Darlene Porcelli.
3.	Stellar 117 Garth LLC	i) Michael Gluck, as Trustee of the Heather Leigh Gluck Irrevocable Trust; ii) Michael Gluck, as Trustee of the Amanda Iris Gluck Irrevocable Trust; iii) Michael Gluck, as Trustee of the Dana Elizabeth Gluck Irrevocable Trust.
4.	Stellar 750 Tuckahoe LLC	i) Michael Gluck, as Trustee of the Heather Leigh Gluck Irrevocable Trust; ii) Michael Gluck, as Trustee of the Amanda Iris Gluck Irrevocable Trust; iii) Michael Gluck, as Trustee of the Dana Elizabeth Gluck Irrevocable Trust.
5.	Stellar 330 East 54 LLC	i) Michael Gluck, as Trustee of the Heather Leigh Gluck Irrevocable Trust; ii) Michael Gluck, as Trustee of the Amanda Iris Gluck Irrevocable Trust; iii) Michael Gluck, as Trustee of the Dana Elizabeth Gluck Irrevocable Trust.
6.	Stellar West 110 LLC	i) Stellar 85 LLC
7.	Stellar Morrison LLC	i) Stellar 85 LLC
8.	Stellar KVI LLC	i) Laurence Gluck, as Trustee of the Heather Leigh Gluck Irrevocable Trust; ii) Laurence Gluck, as Trustee of the Amanda Iris Gluck Irrevocable Trust; iii) Laurence Gluck, as Trustee of the Dana Elizabeth Gluck Irrevocable Trust; iv) Robert Rosania, as Trustee of the Robert Rosania 2007 Children's Trust
9.	Stellar Strong Island Member LLC	*Only Gluck and Rosania are members*
10.	Stellar West 28 LLC	i) Laurence Gluck, as Trustee of the Heather Leigh Gluck Irrevocable Trust;

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		ii) Laurence Gluck, as Trustee of the Amanda Iris Gluck Irrevocable Trust; iii) Laurence Gluck, as Trustee of the Dana Elizabeth Gluck Irrevocable Trust; iv) Robert Rosania, as Trustee of the Robert Rosania 2007 Children's Trust; v) Kasra Sanandaji; vi) Smajlje Srdanovic; vii) 28th Street Office, LLC; viii) Robert Guttenberg.
11.	Stellar PWV LLC	i) Paula Katz.
12.	Stellar Janel Member LLC	i) Laurence Gluck, as Trustee of the Heather Leigh Gluck Irrevocable Trust; ii) Laurence Gluck, as Trustee of the Amanda Iris Gluck Irrevocable Trust; iii) Laurence Gluck, as Trustee of the Dana Elizabeth Gluck Irrevocable Trust; iv) Smajlje Srdanovic; v) Francine Schiff; vi) Darlene Porcelli.
13.	Stellar Aries Investor LLC	i) Laurence Gluck, as Trustee of the Heather Leigh Gluck Irrevocable Trust; ii) Laurence Gluck, as Trustee of the Amanda Iris Gluck Irrevocable Trust; iii) Laurence Gluck, as Trustee of the Dana Elizabeth Gluck Irrevocable Trust.
14.	Boulevard Story LLC	i) Laurence Gluck, as Trustee of the Heather Leigh Gluck Irrevocable Trust; ii) Laurence Gluck, as Trustee of the Amanda Iris Gluck Irrevocable Trust; iii) Laurence Gluck, as Trustee of the Dana Elizabeth Gluck Irrevocable Trust.
15.	Stellar Court Plaza LLC	i) Darlene Porcelli; ii) Francine Schiff; iii) Smajlje Srdanovic.
16.	Stellar Undercliff LLC	i) Francine Schiff; ii) Darlene Porcelli; iii) Barbara Elbaz; iv) Eric Odergaard.
17.	Stellar 2020 LLC	i) Laurence Gluck, as Trustee of the Heather Leigh Gluck Irrevocable Trust; ii) Laurence Gluck, as Trustee of the Amanda Iris Gluck Irrevocable Trust; iii) Laurence Gluck, as Trustee of the Dana Elizabeth Gluck Irrevocable Trust; iv) Smajlje Srdanovic; v) Darlene Porcelli.