

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

JOANNE CHOI, WILLIAM CHOI, KENNETH TAM,
MZ GLOBAL, LLC, 8th AVE ENT LLC, and
COASTLINE HOLDING LLC,

Plaintiffs,

-against-

WELLMAN WU, DANIEL CAI, LOUIS LIN, THE
BOARD OF THE POINT 128, LLC, THE POINT 128,
LLC, and EXECUTIVE OFFICE DE POINT, LLC,

Defendants.

Index No. 651716/2018

FIRST AMENDED SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

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

Plaintiffs designate New York County as the place of trial based on the residence of plaintiffs.

Dated: New York, New York
May 24, 2018

TARTER KRINSKY & DROGIN LLP
Attorneys for Plaintiffs

By: _____


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

JOANNE CHOI, WILLIAM CHOI, KENNETH TAM,
MZ GLOBAL, LLC, 8th AVE ENT LLC, and
COASTLINE HOLDING LLC, each individually and
derivatively on behalf of The Point 128, LLC,

Plaintiffs,

-against-

WELLMAN WU, DANIEL CAI, LOUIS LIN, THE
BOARD OF THE POINT 128, LLC, THE POINT 128,
LLC, and EXECUTIVE OFFICE DE POINT, LLC,

Defendants.

Index No. 651716/2018

**FIRST AMENDED
COMPLAINT**

Plaintiffs Joanne Choi, William Choi, Kenneth Tam, MZ Global, LLC, 8th Ave Ent LLC, and Coastline Holding LLC (collectively, “Plaintiffs”), each suing individually and derivatively on behalf of The Point 128, LLC, by their undersigned attorneys, allege as and for their Complaint against Defendants Wellman Wu (“Wu”), Daniel Cai (“Cai”), Louis Lin (“Lin”), The Point 128, LLC (the “Company”), and Executive Office De Point, LLC (“EODP”) (collectively, “Defendants”):

NATURE OF THE ACTION

1. The Company is a New York limited liability company formed for the purpose of owning, developing, marketing, and leasing a five-story commercial property and parking area located at 20-07 127th Street, College Point, Queens, New York (the “Property”). Plaintiffs are minority members and collectively hold a 21.249% membership interest in the Company.

2. This action arises out of Defendants’ willful misconduct by misappropriating Company funds for their own personal use and wrongfully looting the Company. In addition, Defendants have grossly mismanaged the Property and committed a series of wrongful acts

exposing the Company to significant damages. Defendants also have engaged in obstructionist conduct and failed to provide an adequate accounting of the Company's books and records to minority members despite the Company's contractual and statutory obligation to do so.

3. Wu, Cai, and Lin (the "Defendant Managing Members") own a majority interest in the Company, are managing members of the Company, and control the Company.

4. The Defendant Managing Members also have managed the Property principally for their own personal use and benefit, diverting Company funds to Cai's management company, EODP, which has been the Property's managing agent since January 2014.

5. In violation of their duties to the Company and Plaintiffs, Defendants have engaged in self-dealing in disregard of their obligations to the Company itself and to the Plaintiffs. Over a number of years, Defendants have looted the Company, enriched themselves at the other members' expense, and violated of their contractual and fiduciary obligations as well as their duties of good faith and loyalty to the Company. Among other things, Defendants: (i) misappropriated over \$1.3 Million of the Company's funds in lost rental and common charge income by causing the Company to forgive *without any consideration* the rent and common charge arrears owed and guaranteed by Wu and Cai to the Company for their lease of a commercial space at the Property; (ii) transferred and converted hundreds of thousands of dollars of Company funds through exorbitant "management" fees from EODP, a company owned and/or controlled by Cai; (iii) engaged in self-dealing with Company funds by paying Wu annual "commissions" for allegedly securing a refinancing of the Property three years ago; and (iv) wrongfully received distributions on a \$420,000.00 capital contribution made to the Company as a result of a cash shortfall from their diversion of over \$1.3 Million of the Company's rental income – over the objections of disinterested members of the Board and other members of the

Company.

6. Moreover, in an effort to obstruct Plaintiffs' evaluation of the propriety of the Company's transactions, the Company has refused to comply with its contractual and statutory obligation to permit Plaintiffs access to the Company's books and records. Documents that should have been readily available for production to Plaintiffs either were never produced by Defendants, or the woefully deficient documentation eventually produced only after repeated requests contained evidence of Defendants' misdeeds.

7. This action asserts derivative causes of action against Defendants for breach of fiduciary duty, breaches of contract, corporate waste, unjust enrichment, and conversion/misappropriation to recover no less than \$2.5 Million taken from the Company – funds that should have been available for legitimate business of the Company or for distribution to the Company's members, but instead was wrongfully diverted by Defendants. Plaintiffs also assert individual causes of action for breach of contract and an accounting in connection with the Defendants' continued unauthorized management of the Company.

THE PARTIES

8. Plaintiffs Joanne Choi ("J. Choi") and William Choi reside in the State of New York, have a principal place of business in the County of New York, and collectively hold a 2.916% ownership interest in the Company. J. Choi previously was a member of the Company's Board from November 22, 2015 to November 22, 2016.

9. Plaintiff Kenneth Tam is an individual residing in the State of New York, with a principal place of business located in the County of New York, and holds a 5% ownership interest in the Company.

10. Plaintiff MZ Global, LLC is a limited liability company duly organized under the

laws of the State of Pennsylvania and holds a .833% ownership interest in the Company.

11. Plaintiff 8th Ave Ent LLC is a limited liability company duly organized under the laws of the State of New York, with a principal place of business located in the County of New York, and holds a 4.167% ownership interest in the Company.

12. Plaintiff Coastline Holding LLC is a limited liability company duly organized under the laws of the State of New York and holds an 8.333% ownership interest in the Company.

13. Upon information and belief, Defendant EODP is a New York limited liability company with a principal place of business at 43-18 Main Street, Suite 1F, Flushing, New York 11355, but operates out of an office in the County of New York. Upon further information and belief, Cai owns and/or controls EODP. In or about January 2014, EODP entered into a management agreement with the Company and currently acts as the Company's management company.

14. Upon information and belief, Defendant Company is a domestic limited liability company duly organized under the laws of the State of New York formed in or about August 2010, with a principal place of business located at 20-07 127th Street, College Point, New York 11356.

15. Upon information and belief, Defendant Wu is an individual residing in the State of New York, a member of the Company with an 18.124% ownership interest in the Company due to an improper transfer of Company shares, and a member of the Board at all relevant times.

16. Upon information and belief, Defendant Cai is an individual residing in the State of New York, a member of the Company with a 9.946% ownership interest in the Company, a member of the Board at all relevant times, and owns and/or controls EODP. Upon further

information and belief, Cai is the owner and/or sole shareholder of Broadtrade Group Inc. (“Broadtrade”), where certain full-time employees of the Company perform services.

17. Upon information and belief, Defendant Lin is an individual residing in the State of New York, a member of the Company with an 8.333% ownership interest in the Company, and a member of the Board at all relevant times.

JURISDICTION AND VENUE

18. This Court has jurisdiction over this action pursuant to CPLR §§ 301 and 302(a) in that upon information and belief, all individual are residents of the State of New York, one or more Plaintiffs reside and/or have principal places of business in the County of New York, the Company is a New York corporation, Defendants have transacted business and committed tortious acts within the State and/or County of New York, and the events giving rise to this action arose in the State and/or County of New York.

19. Venue in the County of New York is proper pursuant to CPLR §§ 503(a) and 509.

DEMAND FUTILITY ALLEGATIONS

20. Plaintiffs bring this action derivatively (and, as to the causes of action so designated, individually as set forth herein) on behalf of the Company to recover damages incurred by the Company as a direct result of breaches of contractual, fiduciary, and statutory duties by the Defendants.

21. By the terms of the Limited Liability Company Operating Agreement of The Point 128, LLC, dated August 2010 (the “Operating Agreement”), the Company’s management is controlled by Cai, Wu, and/or Lin, who, at all relevant times, controlled the Company, the Company’s board (the “Board”), and the Company’s management company, EODP. Consequently, Defendants would be charged with determining whether the Company should

bring suit against themselves for the wrongs complained of herein.

22. Because Defendants would be responsible for evaluating a demand to bring the present lawsuit, it would be futile to make such a demand upon them.

23. In light of the foregoing, Plaintiffs are excused from making a demand for action upon the Company prior to commencing this action.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

A. The Company And The Operating Agreement

24. The Company was formed for the purpose of owning, managing, and leasing the Property, which consists of a five-story shopping center and parking area. A copy of the Operating Agreement is attached hereto as Exhibit "A".

25. In November 2013, section 4.1 of the Operating Agreement was amended to provide that the Board replace Global Vision Development, LLC ("Global Vision") as the Company's "managing agent." A copy of the November 2013 amendment to the Operating Agreement is attached as Exhibit "B". Cai, Wu, and/or Lin, on behalf of the Company, subsequently appointed EODP as the Company's management company.

26. From 2013 to the present, the Company has been dominated and controlled by the Defendant Managing Members.

B. Defendants Wrongfully Loot The Assets Of The Company By Paying Themselves Exorbitant Management Fees

27. In January 2014, the Defendant Managing Members engaged in self-dealing by entering into an agreement on behalf of the Company for Cai's other company, EODP, to manage the Company's affairs (the "Management Agreement"). A copy of the Management Agreement is attached as Exhibit "C". EODP never managed and does not manage any other buildings.

28. The Management Agreement provided that the Company is to pay EODP \$5,000 per month or \$60,000 annually for “management services” rendered to the Company. (Ex. C)

29. However, in 2015, Defendants intentionally and willfully caused \$322,000.00 to be transferred to and thereby converted by EODP under the guise of “management services” – over five times the annual fee provided for in the Management Agreement. In 2016, EODP wrongfully received the amount of \$265,569.11 from the Company. In 2017, EODP received approximately \$337,385.57. The Company’s unlawful transfer and EODP’s unlawful receipt of hundreds of thousands of the Company’s cash or capital proceeds amounts to a conversion and/or misappropriation of Company funds, to the detriment of the Company.

30. Further, upon information and belief, Defendants wrongfully have the Company pay EODP employees to work full-time at the Company, yet these employees perform work for Wu’s, Cai’s, and/or Lin’s other businesses (e.g., EODP and Broadtrade) during their working hours for the Company. Upon further information and belief, Defendants’ employment scheme is designed to drive up Company expenses while increasing the income of EODP. For example, in 2017 EODP claimed over \$150,000.00 in expenses alone from the Company.

31. Upon information and belief, the Company was aware that certain of its full-time employees were performing work for other businesses, and took no action whatsoever, much less directed that Company employees should immediately cease performing work for other businesses.

32. Compounding this wrongful conduct, upon information and belief, EODP has been submitting expenses to the Company despite the fact that these expenses have been directly paid for by the Company. Notwithstanding, the Company wrongfully has been and is reimbursing EODP for these expenses.

33. For example, the Company's office is located in one room in the commercial building on the Property, and yet EODP has been claiming and taking reimbursement for six telephone lines and one high-speed internet connection for this office *at the same time* the Company directly pays for two telephone lines and its own high-speed internet connection.

34. Further, the Company makes questionable cash payments to EODP, but instead of these cash payments reducing the amounts allegedly owed by the Company to EODP for "management services," the Company lists these cash payments on its financial records as additional accounts payable to EODP. For example, from November through December 2017, EODP billed the Company the amount of \$52,000.00, the Company wrongfully transferred \$12,969.60 in cash to EODP, and yet the Company's accounts payable to EODP for this period was \$64,929.60 ($\$52,000.00 + \$12,969.60 = \$64,969.60$).

35. These facts demonstrate that Defendants routinely and regularly have misappropriated Company assets for use at their other companies (i.e., EODP) and/or to increase their own and their other companies' incomes.

36. Upon information and belief, improper and/or lax record-keeping and Company procedures is intentionally designed to obscure the amounts of monies Defendants are misappropriating from the Company, for themselves and/or their other companies (e.g., EODP).

C. The Company, Cai, And Wu Misappropriated And Mishandled Rental Income

37. The Company engaged in wrongful conduct, not only by approving Cai's and Wu's systematic misappropriation of over \$1.3 Million from the Company in lost rental income, but by the disparate way the Company treated rental income provided from tenants owned and/or controlled by Wu and Cai.

38. On or about December 29, 2011, the Company entered into three leases (the

“Supermarket Leases”) with three tenant entities for the use of the ground floor and basement of the Property: (i) Bistro At The Point LLC; (ii) Farm Market at the Point LLC; and (iii) Kam Man Café LLC (collectively, the “Tenants”). Upon information and belief, Wu owns and/or controls each of the Tenants. Wu also personally guaranteed each of the Supermarket Leases.

39. On or about March 8, 2013, the Tenants entered into three subleases (the “Supermarket Subleases”) with Fresh Market De Point LLC (the “Subtenant”). Upon information and belief, Cai owns and/or controls the Subtenant. Cai also personally guaranteed each of the Supermarket Subleases.

40. From December 2011 through November 2015, the Tenants and Subtenant failed to pay the rent required under the Supermarket Leases and Subleases and have since vacated the ground floor and basement of the Property. As of December 2016, the total rent and common charge arrears accrued by Tenants and/or the Subtenant amounted to at least \$1,300,000.00.

41. Both Wu (who personally guaranteed the Supermarket Leases) and Cai (who personally guaranteed the Supermarket Subleases) failed to pay the \$1,300,000 rent and common charge arrears that they personally owed to the Company, and diverted these monies for their own personal benefit.

42. Instead of remitting rental payments to the Company, as they are required to do, Cai and Wu, on behalf of the Company, illicitly agreed that they did not have to return the Company’s rental income, which had the effect of decreasing the Company's net income for the these leases to zero.

43. Indeed, Wu and Cai, in their capacity as members of the Board, purportedly voted on November 22, 2015 to forgive the \$1,300,000 rent and common charge arrears that they and their companies owed and guaranteed to the Company without any consideration whatsoever (the

“Vote”).

44. Despite the clear and obvious conflicts of interest, Wu and Cai did not recuse themselves from the Vote.

45. J. Choi (a member of the Board at the time the Vote purportedly occurred) neither was notified of the Vote nor provided the opportunity to vote, thereby invalidating the Vote. By e-mail dated April 1, 2016 to Lin, J. Choi stated “I have no knowledge of the ‘board decision’ on this matter. If there was a Board meeting where this matter was voted on, I was not there.” In a responsive e-mail later that day, Lin conceded to J. Choi “your vote was not needed and made no difference.”

46. Wu and Cai unilaterally had voted to rubber-stamp their own diversion and misappropriation of Company proceeds for their own personal benefit in total disregard of the necessary corporate procedures and the best interests of the Company.

47. Further, by permitting Cai’s and Wu’s entities to occupy space in the Company’s building without having to pay rent, the Defendant Managing Members breached their fiduciary duties to the Company’s members, including Plaintiffs.

D. Cai, Wu, And Lin Financially Benefit From Wu’s And Cai’s Inequitable Conduct

48. As a direct result of Cai’s and Wu’s systematic misappropriation of over \$1.3 Million of the Company’s net income from the entire ground floor and basement of the Property for over four years, the Company, among other things:

- was in severe financial distress;
- had a cash-flow shortfall;
- failed to timely make its required mortgage payments to the Bank of China (which held the Company’s mortgage for the Property as of July 28, 2014); and
- was not in compliance with its loan agreement with the Bank of China.

49. Upon information and belief, in the summer of 2016, the Bank of China demanded a meeting with the Board to address the Company's failure to comply with its loan agreement (which was a direct result of the Board wrongfully agreeing that its own Board members (Wu and Cai) could misappropriate over \$1.3 Million in rent and common charges due and owing the Company.

50. On July 5, 2016, a representative of the Bank of China met with the Defendant Managing Members to address the Company's cash flow shortfall and non-compliance with its mortgage. Upon information and belief, during this meeting the bank's representative questioned the Board about the rent arrears owed by Tenants and Subtenants, and, as a result, required the Company to, among other things: (i) have a cash reserve of \$420,000.00 to make up for the shortage, and that the \$420,000.00 deposit be made within three days, or by July 8, 2016; (ii) not default or be late on its payments in the future; and (iii) inform the bank of any changes in tenancy, especially for the now vacant space on the ground floor and basement of the Property

51. Taking advantage of their own inequitable conduct (i.e., the misappropriation of over \$1.3 Million of the Company's rental and common charge income), the Defendant Managing Members agreed – without notice of Board vote or a vote of the entire Board – that they would each infuse \$140,000.00 in capital contributions to the Company ($\$140,000.00 \times 3 = \$420,000.00$). However, the Defendant Managing Members unilaterally and improperly decided to treat their capital contribution as a “loan,” and unilaterally agreed that they would wrongfully take yearly dividends or improperly charge the Company interest on their collective \$420,000.00 capital contribution.

52. By e-mail dated July 5, 2016, Lin conceded to the Board's members that “we don't think we can raise the needed cash by making capital calls to all members” and that the

Defendant Managing Members unilaterally and improperly had decided without a Board vote to “raise the \$420,000 by the form of loans from the guarantors” and that these purported “loans” will “carry an annual interest rate of 6.00% and the interest payments along with the loan principal payments will be made by the [Company] to the guarantors.”

53. J. Choi, who was at the time a member of the Board, wrote a responsive e-mail to all Board members on July 6, 2016 stating: “As a member of the Board, I disapprove of the Company borrowing money from the three guarantors/prospective lenders. The three guarantors/prospective lenders are all members of the Board and being both borrowers and lenders are conflicted such that they cannot vote on this issue as Board members. That leaves only two members of the Board who are entitled to vote. Since I am voting against the borrowing, the Company cannot take this loan....They are the guarantors of the leases and subleases. Forgiving their guarantees was never freely approved by the Board and I never voted for any such resolution. It would be outrageous to have to borrow money from Mr. Wellman Wu and Daniel Cai after forgiving them from the rental guarantees.”

54. By e-mail dated July 6, 2016, Lin advised J. Choi that her only recourse was to “call for an in-member meeting,” and implied that she would not be able to get a quorum for such meeting since the Defendant Managing Members were in total control of the Company.

55. Upon information and belief, no documentation ever was requested by or provided to the Company – either contemporaneously or belatedly – as to how, when, and why the Company wrongfully had decided to treat the Wu/Cai/Lin \$420,000.00 capital contribution as a “loan,” much less any notification of a vote or a Board resolution that the Defendant Managing Members – and not any other members – were making the infusions of capital and improperly taking yearly dividends or charging the Company interest in connection with this

capital infusion.

56. Upon information and belief, the Company had placed the Wu/Cai/Lin \$420,000.00 capital contribution in a residential escrow account, despite the fact that there are no residential units at the Property.

57. Upon information and belief, Company expense reports from 2017 show the improper transfer interest payments to the Defendant Managing Members' company Kam Man Food in the amount of \$2,100.00 each, despite the fact that the amount of \$6,160.00 duplicitously had been distributed to Wu in 2017.

E. Wu's Unscrupulous Use Of Authority For His Own Personal Gain

58. During the time Cai and Wu were misappropriating over \$1.3 Million in rental income due and owing the Company, Wu and the Defendant Managing Members engaged in another scheme to loot the Company of its revenues and assets.

59. Upon information and belief, Wu knew that he could use his connections at the Bank of China to refinance the Company's mortgage with East West Bank. Upon information and belief, in 2014 Wu had informed the Board that the Bank of China already had agreed to or would refinance the Company's mortgage.

60. With this information in hand, the Defendant Managing Members participated in Wu's self-dealing by voting on and passing a Board resolution in mid-2014 that any member of the Company who obtained a refinancing of the Company's mortgage shall receive a yearly "commission." Wu and other Board members who had knowledge of the impending refinancing transaction with the Bank of China refused and/or failed to recuse themselves from any discussions or the vote concerning the payment of "commissions" for the Company's refinance of its mortgage.

61. On or about July 28, 2014, the Company and the Bank of China entered into a mortgage modification, consolidation and extension agreement in the aggregate principal sum of \$16 Million.

62. Upon information and belief, the Company has paid Wu “commissions” amounting to over \$160,000.00 from 2015 through 2017.

63. At the November 22, 2017 annual member meeting, a representative of the Company advised the members that these “commissions” purportedly resulted from Wu’s “help to secure the refinance loan that could realize savings to the LLC” in 2014.

64. Defendants have failed and/or refused to explain to Plaintiffs why, three years after purportedly securing a refinance loan, the Company is still paying Wu annual “commission fees” – fees which are without adequate consideration, wholly improper, and not in the best interest of the Company.

F. Defendants Mismanage And Caused Damage To Plaintiffs And The Company

65. Further examples demonstrating how Defendants’ mismanagement has caused damage to the Company include, but are not limited to, numerous improprieties and irregularities concerning the Company’s invoices, employees, as well as its preparation and maintenance of books and records. Among other things:

- invoices for services performed for the Company are sent to Broadtrade (Cai’s other company) at Broadtrade’s New York city office location;
- Broadtrade employs the Company’s building manager, Shu Page (“Page”), who is paid full-time by the Company despite working for Broadtrade;
- the Company’s financial records have been altered to, among other things, inflate the Company’s debts, deflate the Company receivables, and change the amount of cash on hand at the Company after the conclusion of a fiscal year;
- the Company’s books and records improperly and wrongfully have been maintained and stored in New York, New York, and therefore are neither

accessible nor located at the Property; and

- the Company has mismanaged its professionals, paying a legal and professional fee amounting to \$82,683.00 in 2017 alone.

G. Defendants Fail To Turn Over The Books And Records Of The Company

66. Article X, Section 10.2 of the Operating Agreement provides that the Company must keep sufficient books and records and make them available for inspection by the Members:

Supervision; Inspection of Books. Proper and complete books of account of the affairs of the Company shall be kept under the supervision of the Managing Agent at the principal office of the Company. Such books shall be open to inspection by a Member, at any reasonable time; upon reasonable notice; during normal business hours.

(Ex. A)

67. These obligations and inspection rights under the Operating Agreement mirror the statutory duties and rights set forth under Section 1102 of the New York LLC Law.

68. As set forth above, Defendants control the management and books and records of the Company. However, the Company improperly did not and does not keep its books and records at the principal office of the Company, and instead maintains its books and records at Broadtrade's offices.

69. Despite numerous demands by Plaintiffs – and numerous representations, promises, and assurances by Defendants' representatives, agents, and/or counsel – Plaintiffs have yet to receive, inspect, and/or copy the “proper and complete books of account of the affairs of the Company.”

70. Indeed, documents that should have been readily available for production to Plaintiffs either were never produced to Plaintiffs – despite two inspections of self-selected books and records of the Company – or when documents eventually were produced only after

repeated requests, the documents were woefully inadequate as well as contained evidence of accounting errors and other misdeeds of Defendants.

71. In particular, Plaintiffs requested that the Board provide financial information concerning the Company arising from statements by the Board at the Company's November 22, 2017 annual member meeting (the "2017 Annual Meeting").

72. Because Defendants failed to adequately respond to Plaintiffs requests at the 2017 Annual Meeting, Plaintiffs sent Defendants multiple follow-up e-mails requesting the same information. Defendants failed to sufficiently respond to these requests.

73. Ultimately, Defendants' failure to answer simple financial questions regarding the Company's financial well-being constrained Plaintiffs to send Defendants a notice of their intent to conduct a formal inspection of the Company's books and records.

74. In an effort to obstruct Plaintiffs' ability to exercise their right to an inspection of the Company's books and records, Page advised Plaintiffs that the only documents that the Board intended to make available to Plaintiffs at the inspection would be the 2017 summary reports that Plaintiffs had already received at the 2017 Annual Meeting.

75. By e-mail dated January 29, 2018, the Company's counsel, Hazel Chin ("Chin") asserted:

As to the demand to copy the documents, the LLC Operating Agreement permits an inspection, NOT copying. Further, I am advised that your clients deem the summaries Shu Page will have available for inspection on the scheduled January 31 inspection date is not sufficient. It is my understanding that Ms. Page will only have the summaries available on January 31.

76. By e-mail dated February 1, 2018, Plaintiffs' counsel responded to Chin, pointing out, among other things:

in contravention of Section 10.2 of the Operating Agreement, since early December 2017 – for approximately two months – the Minority Members have

been attempting to review the Company's books and records (see Joanne Choi's e-mail to the Company's Managing Board, dated December 7, 2017), however the Managing Board refused to even respond to any of the Minority Members' requests to review Company books and records until January 15, 2018, when Louis Lin asserted in an e-mail that "the Board is NOT obliged (and NOT paid) to answer any questions on demand."

Further, despite the Company's contractual obligation under Section 10.2 of the Agreement to maintain "[p]roper and complete books of account of the affairs of the Company...at the principal office of the Company," your January 29 e-mail concedes that the Company failed to meet its obligation where you requested a further extension of time to obtain proper and/or complete books of account, and acknowledged that the Company's office manager "needs sufficient time to gather the appropriate documents, other than the summaries, to be ready for inspection." I note that information concerning the affairs of the Company, such as the Company's financial documentation Joanne Choi requested to review in her December 7 and 21, 2017 e-mails, as well as in her January 14, January 23, and January 25, 2018 e-mails to the Managing Board, are well within the standard of information permitted to review under LLCL Section 1102(b) ("information regarding the affairs of the limited liability as is just and reasonable").

I also note that your assertion in your e-mail that the Minority Members are not permitted to copy the Company's books and records is without merit. LLCL Section 1102(b) clearly provides that members of a LLC have the right to "copy at his or her own expense, for any purpose" the books and records of the Company.

77. Plaintiffs ultimately conducted an "inspection" on February 14, 2018. However, at this inspection it became readily apparent that the Company had failed to turn over "proper and complete" books and records as required by the Operating Agreement. Instead, the Board merely provided Plaintiffs' counsel with copies of the incomplete and misleading summary reports that Plaintiffs already received at the 2017 Annual Meeting, a copy of the Management Agreement, various tax forms, and copies of Plaintiffs' e-mails regarding the inspection.

78. However, at the inspection, Page represented that she would electronically provide Plaintiffs with the missing information on or before February 19, 2018.

79. Despite this promise, the Company did not e-mail Plaintiffs the missing documents, despite four e-mails from Plaintiffs' counsel reminding Page to do so.

80. On February 23, 2018, Chin advised Plaintiffs' counsel for the first time that Defendants objected to Plaintiff's request that the Defendants supplement the minimal documents provided in the inspection – the very documents that Ms. Page, *the Board's representative*, had promised to provide to Plaintiffs – and that she would “review each of [Plaintiffs'] requests and respond accordingly early next week.”

81. By e-mail dated March 16, 2018, Plaintiffs' counsel again advised Chin that “[w]e have yet to receive any response to our March 14, 2018 e-mail, nor have we received any of the documents that you said were available.”

82. On March 22, 2018, Plaintiffs were finally given access to make a second inspection of certain books and records that the Company decided to make available.

83. However, it again became readily apparent that the Company still had refused to produce proper and complete books of account of the affairs of the Company, constraining Plaintiffs' counsel to e-mail Chin on April 4, 2018 that “[w]e have reviewed the documents you provided at the March 22, 2018 inspection (the “Inspection”) at the [Company] building, which did not represent the complete books and records of the Company.” In fact, the Company failed to turn over an extensive number of documents including, but not limited, to:

- any bank statements for the operating account(s) of the Company;
- complete bank statements for three of the Company's escrow accounts;
- any documentation concerning the Wu/Cai/Lin \$420,000.00 capital contribution that was mischaracterized as a “loan”;
- any invoices sent from EODP to the Company;
- list of EODP's employees and all payroll records relating thereto;
- any documentation of “professional fees” paid by the Company and/or EODP on its behalf;

- all checks paid to Wu for his “commission fees”; and
- documentation concerning Board notifications, votes, and resolutions concerning financial transactions approved by the Company.

84. To date, the Company has refused to provide a date certain by which the Company would provide a complete set of its books and records. As a result of Defendants’ dilatory tactics and failure to comply with their contractual, statutory, and court-ordered obligations, Plaintiffs were constrained to seek judicial intervention.

85. Moreover, as a result of their misconduct, Defendants have prevented Plaintiffs from: (i) evaluating the propriety of Company transactions, including, but not limited to the improper conduct alleged herein; (ii) determining the accuracy of the Company’s books, records, and financial statements; and (iii) determining the amount of corporate monies that were actually diverted by the Defendants and the amount of compensation they received while acting disloyally toward the Company.

AS AND FOR A FIRST CAUSE OF ACTION

**(A Derivative Claim On Behalf Of The Company Against
Defendants Cai, Wu, Lin For Breach of Fiduciary Duty)**

86. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

87. Cai, Wu, and Lin owe fiduciary duties of care, loyalty, and good faith and fair dealing to the Company pursuant to their status as the Defendant Managing Members.

88. Among other things, these duties require the Defendant Managing Members to refrain from self-dealing and to act at all times in the best interests of the Company and not to abuse their position of trust and authority to benefit themselves.

89. As set forth more fully above, in committing multiple acts of misconduct, the

Defendant Managing Members breached their fiduciary duties to the Company and its members by, among other things:

- (i) engaging in self-dealing to benefit themselves;
- (ii) conferring financial benefits on themselves and refraining from taking any action against them and in favor of Plaintiffs due to their positions as managing members of the Company;
- (iii) instead of remitting rental payments to the Company, as they are required to do, the Defendant Managing Members agreed that Cai and Wu shall retain the Company's over \$1.3 Million rental and common charge income for themselves and their entities, which had the effect of decreasing the Company's net income for the these leases to zero;
- (iv) entering into the Management Agreement with EODP, a company owned and/or controlled by the Defendant Managing Members, and paying EODP exorbitant "management fees" in excess of both industry without proper authorization from the disinterested members of the Board and not in the best interests of the Company;
- (v) permitting the Defendant Managing Members to "loan" the Company \$420,000.00 without proper authorization from the disinterested members of the Board and not in the best interests of the Company;
- (vi) paying Wu annual "commissions" without proper authorization from the disinterested members of the Board and not in the best interests of the Company; and
- (vii) refusing to provide the Company's members with access to the

Company's complete and proper books and records.

90. The Defendant Managing Members participated in the acts of mismanagement, or acted in reckless disregard of the facts known to them and failed to exercise due care to prevent the imprudent and unlawful transactions referred to above. Their breaches of fiduciary duty and negligence resulted in the misuse and waste of corporate assets for their own personal benefit.

91. The Company has suffered actual injury as a direct, foreseeable, and proximate result of the Defendant Managing Members' breaches of their fiduciary duties.

92. The Company is entitled to recover compensatory damages for the Defendant Managing Members' breaches of their fiduciary duties in an amount to be determined at trial, but which is believed to be not less than \$2,500,000.00.

93. The above-described actions of the Defendant Managing Members were willful and wanton and entitle the Company to recover punitive damages in an amount to be determined at trial.

AS AND FOR A SECOND CAUSE OF ACTION

(A Derivative Claim On Behalf Of The Company Against Defendants Cai, Wu, Lin For Breach of the Operating Agreement)

94. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

95. The Operating Agreement is a document having the force and effect of a contract as between the Company and its members.

96. As set forth more fully above, the Defendant Managing Members breached the Operating Agreement, including the covenant of good faith and fair dealing implicit in the Operating Agreement, by, among other things:

- (i) not providing notice of Board votes;
- (ii) improper voting practices concerning Company matters;
- (iii) not passing Board resolutions on Company matters;
- (iv) violating the provisions concerning capital contributions;
- (v) listing cash payments to EODP on its financial records as additional accounts payable to EODP;
- (vi) failing to timely make its required mortgage payments to the Bank of China;
- (vii) not complying with the Company's loan agreement with the Bank of China; and
- (viii) failing to maintain and keep proper and complete books of account of the affairs of the Company, and at the principal office of the Company.

97. Plaintiffs are not in breach of the Operating Agreement and have fulfilled their obligations under it.

98. Despite due demand, the above breaches by the Defendant Managing Members of the Operating Agreement have not been cured.

99. As a direct result of the bad faith and willful breaches of the Operating Agreement, and the covenant of good faith and fair dealing implied therein by the Defendant Managing Members, the Company has suffered actual injury.

100. The Company is entitled to recover compensatory damages for the Defendant Managing Members' breaches of the Operating Agreement in an amount to be determined at trial, but which is believed to be not less than \$1,000,000.00.

AS AND FOR A THIRD CAUSE OF ACTION**(A Derivative Claim On Behalf Of The Company
Against All Defendants For Waste Of Corporate Assets)**

101. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

102. As set forth above, each of the Defendants owed to the Company duties of care, loyalty, and good faith and fair dealing and the obligation to refrain from self-dealing and the waste of the Company's assets.

103. As set forth above, in committing multiple acts of misconduct, Defendants willfully engaged in self-dealing and permitted the waste of corporate assets for their own personal benefit and to the detriment of the Company.

104. As a direct, foreseeable and proximate result of this self-dealing and corporate waste, the Company has suffered actual injury.

105. Plaintiffs, on behalf of the Company, are entitled to compensatory damages for Defendants' self-dealing and waste in an amount to be determined at trial, but which is believed to be not less than \$2,500,000.00.

106. The above-described actions of Defendants were willful and wanton and entitle the Company to recover punitive damages in an amount to be determined at trial.

AS AND FOR A FOURTH CAUSE OF ACTION**(A Derivative Claim On Behalf Of The Company
Against Cai, Wu, Lin, and EODP For Unjust Enrichment)**

107. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

108. The Company has direct relationships with the Defendant Managing Members

and EODP.

109. As set forth more fully above, the unlawful conduct of the Defendant Managing Members and EODP inequitably have conferred a financial benefit upon Wu, Cai, Lin, and EODP to the detriment of the Company.

110. As a direct result of the inequitable conduct of the Defendant Managing Members and EODP – such as the “management fee” wrongfully diverted to EODP, the systematic misappropriation of over \$1.3 Million of the Company's net and common charge income, and the wrongful distributions or “interest” paid to the Defendant Managing Members on their \$420,000.00 capital contribution – Wu, Cai, Lin, and EODP have been unjustly enriched at the expense of the Company.

111. It is against equity and good conscience to permit the Defendant Managing Members and EODP to retain these financial benefits.

112. By reason of all of the foregoing, Wu, Cai, Lin, and EODP have been unjustly enriched and should be ordered to disgorge to Plaintiffs all benefits they have received in connection with the transactions referenced herein or the Property, including but not limited to all fees and other compensation received by them from or on behalf of Company.

AS AND FOR A FIFTH CAUSE OF ACTION

**(A Derivative Claim On Behalf Of The Company
Against Defendant EODP For Conversion or Misappropriation)**

113. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

114. Upon information and belief, EODP intentionally and willfully converted and misappropriated the monies of the Company, and thereby improperly has exercised dominion and control over such monies.

115. As set forth more fully above, EODP wrongfully and unlawfully used the converted cash and illicit payments to line its pockets to the detriment of the Company.

116. As set forth above, in committing multiple acts of corporate misconduct, EODP wrongfully and illicitly received, caused to be transferred, and/or converted for its own personal use and benefit monies and other assets belonging to the Company without fair consideration provided to the Company. Among other things, EODP has been diverting hundreds of thousands of dollars of Company funds from 2015 through 2017, and unlawfully taking over \$150,000.00 in expenses alone from the Company in 2017.

117. Upon information and belief, EODP engaged in a scheme to convert and misappropriate the monies of the Company despite knowing that members of the Company, including Plaintiffs, did not know of and/or never intended to transfer all or any portion of the these monies to EODP, that these members (such as Plaintiffs) never had effected or authorized a transfer of any or all of these monies EODP, and without any accounting to members of the Company (such as Plaintiffs).

118. EODP has failed, despite due demand, to return the Company's monies.

119. These wrongful transfers and conversions by EODP were made from the funds and assets of the Company without any accounting to its members and without authorization.

120. Plaintiffs have not been able to confirm all of the foregoing because, as set forth more fully herein, in contravention of the Operating Agreement and New York law, Plaintiffs have been denied meaningful information concerning the management and operation of the Company and its affairs and access to its proper and complete books and records, notwithstanding their requests for same.

121. The Company is entitled to compensatory damages for EODP's conversion in an

amount to be determined at trial, but which is believed to be not less than \$500,000.00.

122. The above-described actions of EODP were willful and wanton and entitle the Company to recover punitive damages in an amount to be determined at trial.

AS AND FOR A SIXTH CAUSE OF ACTION

**(A Derivative Claim On Behalf Of The Company
Against EODP For Breach Of The Management Agreement)**

123. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

124. As set forth above, EODP breached the Management Agreement, including the covenant of good faith and fair dealing implicit in this agreement, by, among other things, not performing services as forth in the Management Agreement.

125. The Company is not in breach of the Management Agreement and has fulfilled its obligations under it.

126. The Company has suffered actual injury as a direct result of EODP's breaches of the Management Agreement.

127. The Company is entitled to recover compensatory damages for EODP's breaches of the Management Agreement in an amount to be determined at trial, but which is believed to be not less than \$750,000.00.

AS AND FOR A SEVENTH CAUSE OF ACTION

**(A Direct Claim By Plaintiffs Against Defendants
Cai, Wu, Lin, And the Company For Breach of the Operating Agreement)**

128. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

129. As set forth more fully above, Cai, Wu, Lin, and the Company breached the Operating Agreement, including the covenant of good faith and fair dealing implicit in the

Operating Agreement, by, among other things, failing to provide Plaintiffs with access to a “proper and complete” books and records of the Company.

130. Plaintiffs are not in breach of the Operating Agreement and have fulfilled their obligations under it.

131. Plaintiffs have suffered actual injury as a direct result of the breaches of the Operating Agreement by Cai, Wu, Lin, and the Company.

132. Plaintiffs are entitled to recover equitable and compensatory damages for Cai’s, Wu’s, Lin’s, and the Company’s breaches of the Operating Agreement in an amount to be determined at trial, but which is believed to be not less than \$500,000.00, together with interest at the maximum rate provided by law.

AS AND FOR AN EIGHTH CAUSE OF ACTION

(A Direct Claim Against Defendant the Company For An Accounting)

133. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

134. Pursuant to Article 10, Section 10.2 of the Operating Agreement and N.Y. LLC Law § 1102, the Company is required to keep and maintain proper and complete books of account of the affairs of the Company under the supervision of the managing agent at the principal office of the Company, and that such books shall be open to inspection by a member, at any reasonable time, upon reasonable notice.

135. As set forth herein, the Company has had sole and exclusive possession and control of the books and records of the Company. The Company also has had sole and exclusive possession and control at all relevant times over the Company's funds and assets.

136. As set forth more fully above, the Company has denied Plaintiffs their contractual

and statutory rights to inspect the proper and complete books of account of the affairs of the Company.

137. As a result of such breach, the Company has prevented Plaintiffs from evaluating the propriety of Company transactions, including but not limited to those challenged herein, determining the accuracy of the Company's books, records, and financial statements, and determining the amount of corporate monies that were actually diverted and/or converted by Defendants and the amount of compensation they received while acting disloyally toward the Company.

138. Absent judicial relief, Plaintiffs will be denied the means to fully assess the propriety of numerous transactions or the accuracy of the Company's books, records, and financial statements.

139. Plaintiffs have no adequate remedy at law.

140. Plaintiffs are entitled to a judgment directing the Company to account to Plaintiffs for: (a) all transactions and activities entered into in connection with the Property and business of the Company, including but not limited to loans, commissions, guaranteed payments, capital contributions, collections, and expenditures; (b) all revenues, expenditures, income, expenses, debts, and net profits of the Company; (c) all monies, cash, property and documents transferred from or received on behalf of the Company; and (d) any sums that are or may be available for distribution to the Company's members, such as Plaintiffs, and for a judgment against Defendants for any monies found to be due to the Company.

WHEREFORE, Plaintiffs respectfully request that judgment be entered as follows:

- (i) On the First Cause of Action, a derivative claim against Cai, Wu, and Lin, for compensatory damages in an amount to be determined at trial, but which is

believed to be not less than \$2,500,000.00, together with punitive or exemplary damages, in an amount to be determined at trial;

- (ii) On the Second Cause of Action, a derivative claim against Cai, Wu, and Lin, for compensatory damages in an amount to be determined at trial, but which is believed to be not less than \$1,000,000.00;
- (iii) On the Third Cause of Action, a derivative claim against Defendants, for compensatory damages in an amount to be determined at trial, but which is believed to be not less than \$2,500,000.00, together with punitive or exemplary damages, in an amount to be determined at trial;
- (iv) On the Fourth Cause of Action, a derivative claim against Cai, Wu, Lin, and EODP, for disgorgement to Plaintiffs all benefits they have received in connection with the transactions referenced herein or the Property, including but not limited to all fees and other compensation received by them from or on behalf of Company;
- (v) On the Fifth Cause of Action, a derivative claim against EODP, for compensatory damages in an amount to be determined at trial, but which is believed to be not less than \$500,000.00, together with punitive or exemplary damages, in an amount to be determined at trial;
- (vi) On the Sixth Cause of Action, a derivative claim against EODP, for compensatory damages in an amount to be determined at trial, but which is believed to be not less than \$750,000.00;
- (vii) On the Seventh Cause of Action, a direct claim against Cai, Wu, Lin, and the Company, for compensatory damages in an amount to be determined at trial, but

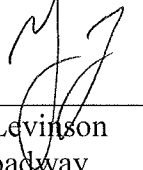
which is believed to be not less than \$500,000.00;

- (viii) On the Eighth Cause of Action, a direct claim against the Company for an accounting, directing the Company to account to Plaintiffs for: (a) all transactions and activities entered into in connection with the Property and business of the Company, including but not limited to loans, commissions, guaranteed payments, capital contributions, collections, and expenditures; (b) all revenues, expenditures, income, expenses, debts, and net profits of the Company; (c) all monies, cash, property and documents transferred from or received on behalf of the Company; and (d) any sums that are or may be available for distribution to the Company's members, such as Plaintiffs, and for a judgment against Defendants for any monies found to be due to the Company;
- (ix) With respect to the claims asserted herein derivatively on behalf of the Company, awarding the Company its attorneys' fees, costs and disbursements incurred in this action, and/or awarding Plaintiffs reimbursement of all said fees expended by them on behalf of the Company;
- (x) With respect to the claims asserted herein directly on behalf of Plaintiffs, awarding Plaintiffs their attorneys' fees, costs and disbursements incurred in this action;
- (xi) Granting pre-judgment interest on all sums awarded at the rate prescribed by law; and
- (xii) Granting such other and further relief as this Court deems just and proper.

Dated: New York, New York
May 23, 2018

TARTER KRINSKY & DROGIN LLP
Attorneys for Plaintiffs

By: _____


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