

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ESSEX

In the Matter of the Application of

DOUGLAS BUTDORF, THOMAS GOSRICH,
and EDUARDO SUAREZ,

Petitioners,

For Judicial Dissolution of

NORTH COUNTRY ROOTS, INC.,

pursuant to Section 1104-a of the Business Corporation Law.

DOUGLAS BUTDORF, THOMAS GOSRICH, and
EDUARDO SUAREZ, individually and derivatively
on behalf of North Country Roots, Inc.,

Plaintiffs,

-against-

ADAM HAINER, ELI EMERY f/k/a ELI EMERY
BOICE, and NORTH COUNTRY ROOTS, INC.,

Defendants.

Petitioners-Plaintiffs Douglas Butdorf, Thomas Gosrich, and Eduardo Suarez (collectively, “Petitioners” or “Plaintiffs”), by and through their attorneys, Whiteman Osterman & Hanna LLP, as and for their Verified Petition and Complaint, state as follows:

PRELIMINARY STATEMENT

1. Petitioners are the founders of North Country Roots, Inc. (“NCR” or the “Corporation”), a New York corporation currently engaged in the business of cannabis retail sales.

2. Petitioners formed NCR in January 2015. NCR was originally involved in the New York State medical cannabis industry, and Petitioners have invested countless hours and substantial resources into the business. From founding until April 2024, Plaintiffs served as the Board of Directors of the Corporation.

3. In 2022, Petitioners were approached by Defendant Adam Hainer, a North Country farmer who was previously convicted of criminal felony charges arising from his involvement in an illegal cannabis distribution enterprise. At that time, the New York Marijuana Regulation and Taxation Act (the “MRTA”), which created the New York Cannabis Law, required that all applicants for a New York State Conditional Adult-Use Retail Dispensary (“CAURD”) License must be majority owned and controlled by a “justice involved” individual, such as Defendant Hainer. Defendant Hainer proposed that Plaintiffs partner with him to pursue a CAURD license for NCR.

4. Despite having no involvement in NCR’s business for the first seven years of its existence, Petitioners made Defendant Hainer a 51% controlling shareholder of NCR and gave him full control of the Corporation and its business. While it was difficult to surrender Plaintiffs’ then-90% holding of the Corporation into which they had invested so much, Plaintiffs did so as a strategy to build early name recognition in an expanding marketplace and guarantee value for Plaintiffs and the other early investors.

5. Through Plaintiffs’ efforts (with little to no help from Defendant Hainer), NCR applied for and obtained a CAURD License. In May 2023, NCR opened the first recreational cannabis dispensary in the North Country, under the name Elevate ADK.

6. From the beginning, Defendant Hainer has exercised full control of all aspects of the store’s operations, to the exclusion of Plaintiffs and all other shareholders. Defendant Hainer’s

unfettered control of the Corporation has proven disastrous, and is creating an untenable level of risk and liability for the Corporation and its shareholders.

7. NCR's CAURD license is conditional, and up for renewal in less than six months (in January 2025).

8. Despite Plaintiffs' best efforts, Defendant Hainer has refused to comply with State regulations governing recreational cannabis sales, posing a significant risk of non-renewal or termination of the Corporation's CAURD license. Simply by way of example:

- a. Defendant Hainer has been using vehicles that he personally owns to conduct delivery services (this is a violation of OCM regulations which Defendant Hainer has refused to correct despite demands from the minority shareholders). Plaintiffs have presented Defendant Hainer with a proposed lease, and pleaded with him to remedy this violation of OCM regulations, but, upon information and belief, Defendant Hainer has not done so.
- b. Plaintiffs, as founders and Board members, created draft standard operating procedures ("SOPs") for the Elevate ADK facilities. Presentation and maintenance of up-to-date SOPs is a requirement of licensure. The draft SOPs created by Plaintiffs were never presented to the Board of Directors for approval, despite Plaintiffs' repeated requests. Upon information and belief, the Corporation still has not adopted SOPs and the draft SOPs created by Plaintiffs have not been utilized or updated.
- c. Despite Plaintiffs' repeated requests, they have yet to receive auditable books, a trusted P&L statement, receipts for alleged expenses, or even contracts or invoices for vendors, let alone evidence of payment to vendors.

- d. Defendant Hainer hired Defendant Eli Emery f/k/a Eli Emery Boice, and registered Defendant Emery with the New York Office of Cannabis Management (“OCM”) as Employee in Charge, a highly regulated role with significant discretion to handle the large amounts of cash coming into the store. Defendant Emery has treated customers and employees poorly, refuses to follow any reasonable accounting standards or security protocols, and fails to account for significant amounts of cash revenue.
 - e. Plaintiffs recently learned that Defendant Emery is a fugitive from justice with open criminal warrants in Utah and Florida, who Defendant Hainer has been harboring at Defendant Hainer’s farm for years. Defendant Emery’s status as a fugitive from justice creates unnecessary liability for NCR and threatens non-renewal or termination of the Corporation’s CAURD license.
 - f. Upon learning that Defendant Emery is a fugitive, the Corporation’s Board of Directors directed Defendant Hainer to suspend Mr. Emery (with pay) and retain independent corporation counsel to investigate and counsel the Corporation. Defendant Hainer has refused to comply with that Board directive, and, upon information and belief, Defendant Emery continues to serve as Employee in Charge to date.
9. Upon learning of Defendant Emery’s status as a fugitive, the Corporation’s long-time corporation counsel resigned due to Defendant Hainer’s refusal to take his counsel.
10. In addition to refusing to comply with State regulations and general corporate governance practices, Defendant Hainer has made it clear that he will never allow the shareholders to recovery any return on their investment.

11. Defendants have refused to account for the significant cash revenue generated by Elevate ADK (upon information and belief at least \$60,000 per week and closer to \$150,000 per week during holidays and the summer season).

12. Despite this revenue (and what should be at least a 50% profit margin), Defendant Hainer has refused to issue dividends voted upon and authorized by the Board of Directors, essentially taking a blanket position that all revenue will be “invested in the company” for the long-term future (although Plaintiffs have seen no evidence of such investment). Defendant Hainer has made it clear that he will never allow the shareholders to recover any reasonable return on their investment.

13. At the same time, Defendant Hainer unilaterally determined to pay himself a salary. Plaintiffs believe Defendant Hainer may also be paying himself in other ways, as discussed below.

14. Plaintiffs and the other minority shareholders have been desperately trying to persuade Defendant Hainer to follow State regulations, comply with accounting standards, and protect Plaintiffs’ investment in NCR, with no success. Instead, Defendant Hainer has responded to the minority shareholders’ entreaties by escalating his oppression.

15. In March 2024, immediately after causing the abrupt resignation of NCR’s corporate counsel, Defendant Hainer unilaterally shut Plaintiffs out of the Corporation’s accounts, disabling their email domains, shutting them out of Quickbooks, and shutting them out of the Corporation’s point of sale system. Plaintiffs are unaware whether Defendant Hainer has preserved documents and records, including their email inboxes, which included years of corporate correspondence and information. (For this reason, Plaintiffs are currently being deprived of significant evidence that would support the claims herein, and will require expedited discovery in this action).

16. Defendant Hainer then unilaterally removed Plaintiffs from their positions on the Board of Directors, without cause, making himself the sole Director and Officer.

17. Upon information and belief, Defendant Hainer is actively conspiring with corporation counsel to further oppress the minority shareholders, including proposing changes to the Shareholders' Agreement that would further consolidate Defendant Hainer's authority, and potentially dilute Plaintiffs' shares.

18. Absent judicial intervention, Plaintiffs will never recover any reasonable return on their investment, and the continued mismanagement of the Corporation will put the Corporation and its shareholders at untenable risk. Accordingly, as set forth in more detail below, Plaintiffs have no choice but to commence this proceeding, in a last-ditch effort to recover some return on investment through the dissolution process.

19. Plaintiffs thus bring this hybrid proceeding seeking judicial dissolution of NCR pursuant to Section 1104-a of the Business Corporation Law ("BCL") on the ground that Plaintiffs' reasonable expectations as shareholders of NCR have been defeated, because Defendant Hainer has engaged in oppressive actions toward the complaining shareholders and has looted, wasted, or diverted corporate assets for non-corporate purposes (*see* BCL § 1104-a(1)-(2)).

20. Plaintiffs also assert plenary claims for an accounting, breach of the Shareholders' Agreement, direct and derivative claims for breach of fiduciary duties, and direct and derivative claims for unjust enrichment. These claims must be resolved and remedied prior to dissolution.

21. Additionally, Plaintiffs respectfully request that this Court direct Defendant Hainer and Defendant Emery to provide Plaintiffs access to NCR's complete books and records, order Defendant Hainer to account for his conduct, set aside any unlawful conveyances, and issue an order and judgment dissolving the Corporation. Plaintiffs also seek placement of NCR in

receivership pursuant to Section 6401 (a) of the Civil Practice Law and Rules (the “CPLR”) during the pendency of the winding down process, and a permanent injunction against Defendant Hainer and Defendant Emery making any non-routine payments or expenditures, and requiring Defendant Hainer and Defendant Emery to return assets of NCR and refrain from conversion of NCR’s assets.

PARTIES AND VENUE

22. Plaintiff Douglas Butdorf is an individual residing at 64 Trafalgar Dr., Plattsburgh, New York 12901. Mr. Butdorf is a minority shareholder of NCR.

23. Plaintiff Thomas Gosrich is an individual residing at 3 Point View Terrace, Plattsburgh, New York 12901. Mr. Gosrich is a minority shareholder of NCR.

24. Plaintiff Eduardo Suarez is an individual residing at 41 Tremblay Ave., Plattsburgh, New York 12901. Mr. Suarez is a minority shareholder of NCR.

25. Defendant North Country Roots, Inc. is a corporation organized and existing under the laws of the State of New York and listed with the Department of State with a corporate address in Clinton County, New York and with a principal place of business in Essex County, New York.

26. No shares of NCR are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association.

27. Upon information and belief, Defendant Adam Hainer is an individual residing in Westport, Essex County, New York. Defendant Hainer is a majority shareholder, director, and President of NCR.

28. Upon information and belief, Defendant Eli Emery is an individual residing in Westport, Essex County, New York. Defendant Emery is an employee of NCR.

29. This Court has personal jurisdiction over Defendants pursuant to CPLR §§ 302 (a) (1), (2), and (4).

30. Venue is proper in this Court pursuant to CPLR § 503, because one or more Defendants reside in Essex County, and pursuant to BCL § 1112, because NCR's principal place of business is located in Essex County.

STANDING

31. Upon information and belief, NCR has 231,285 shares outstanding.

32. Plaintiffs own 100,000 shares, or 43.24% percent, of the outstanding NCR shares.

33. Upon information and belief, Defendant Hainer holds 117,950 shares.

34. All of the non-party minority shareholders are aware of this litigation and support Plaintiffs' claims.

35. Plaintiffs have been shareholders of NCR at all times relevant to the allegations in this Petition and Complaint.

FACTUAL ALLEGATIONS

The Corporation

36. NCR was formed in January 2015.

37. The original shareholders of NCR are Plaintiffs – Mr. Butdorf, Mr. Gosrich, and Mr. Suarez.

38. From founding until April 2024, Mr. Butdorf served as Chairperson of the Board of Directors of the Corporation.

39. From founding until April 2024, Mr. Gosrich served as Secretary of the Board of Directors of the Corporation.

40. From founding until April 2024, Mr. Suarez was a member of the Board of Directors of the Corporation, and served as Treasurer of the Board from founding until February 2024.

41. The Corporation is governed by a Shareholders' Agreement dated January 16, 2015 (the "Shareholders Agreement"). A true and accurate copy of the Shareholders' Agreement is attached hereto as **Exhibit A**.

42. A true and accurate copy of the Corporation's duly-adopted Bylaws is attached hereto as **Exhibit B**.

Plaintiffs partner with Defendant Hainer

43. In September 2022, Plaintiffs authorized NCR to apply for a CAURD License.

44. To obtain a CAURD License, OCM set forth several mandatory eligibility requirements that an applicant must meet.

45. One of the mandatory requirements is that each applicant and licensee must be majority owned and controlled by a "justice involved" individual, which the OCM defines as an individual who was previously convicted for marihuana-related offense in New York State before March 31, 2021.

46. To that end, in September 2022, after being approached by Defendant Hainer, Plaintiffs adopted a Resolution by Written Action, pursuant to Section 615 of the BCL.

47. The Written Action provides that "the Corporation is authorized to issue a sufficient number of shares to Adam Hainer, who has a marijuana felony conviction to make him a shareholder and that this number has been calculated by management to be 129848, but that management shall be authorized to issue more or less shares if required to meet the 51% number".

48. Thereafter, on or about September 22, 2022, the Board of Directors executed a Unanimous Written Resolution authorizing the Corporation “to issue 117,950 shares of stock to Adam Hainer”; “appoint[ing] Adam Hainer as a director until the next annual meeting of the shareholders”; and “appoint[ing] Adam Hainer as Chief Executive Officer of the Corporation.” A true and accurate copy of this resolution is attached hereto as **Exhibit C**.

49. Accordingly, as of September 2022, the shareholders of NCR were as follows:

a. Defendant Adam Hainer	51.00%
b. Plaintiff Doug Butdorf	15.57%
c. Plaintiff Thomas Gosrich	13.84%
d. Plaintiff Eduardo Suarez	13.84%
e. Minority Shareholder Andrew Lomanto	0.86%
f. Minority Shareholder Roy Lomanto	0.86%
g. Minority Shareholder E. Michael Relation	1.15%
h. Minority Shareholder Shawn Rascoe	1.44%
i. Minority Shareholder Tuson Investment Company, LP	1.44%

50. All non-party minority shareholders are aware of and support Plaintiffs’ claims in this action.

Elevate ADK Opens

51. Through Plaintiffs’ efforts, NCR applied for and obtained a CAURD License.

52. In May 2023, NCR opened the first recreational cannabis dispensary in the North Country, in Plattsburgh, under the name Elevate ADK.

53. Mr. Butdorf found the first location for operation in the City of Plattsburgh, negotiated the Lease and paid the first month’s rent and security deposit on behalf of the Corporation.

54. Shortly thereafter, Defendant Hainer unilaterally decided to move locations to Saranac Lake, where Elevate ADK is currently operating.

Defendant Hainer and Defendant Emery's Mismanagement

55. Defendant Hainer is unwilling to properly manage the business, refusing to comply with State regulations and/or basic accounting standards, and creating unnecessary and untenable liabilities for the Corporation and its shareholders.

56. Upon information and belief, Defendant Hainer has been using vehicles that he personally owns (or that his federally-funded farm operations own) to conduct delivery services.

57. This is a violation of OCM regulations which Defendant Hainer has refused to correct despite demands from the minority shareholders.

58. Plaintiffs have presented Defendant Hainer with a proposed lease, and pleaded with him to remedy this violation of OCM regulations, but, upon information and belief, Defendant Hainer has not done so (he has refused to communicate about the issue at all).

59. Despite Plaintiffs' repeated requests, the Board of Directors has yet to receive auditable books, a trusted P&L statement, receipts for alleged expenses, or even contracts or invoices for vendors, let alone evidence of payment to vendors.

60. Defendant Hainer has also blatantly refused to adhere to GAAP accounting standards. Plaintiffs have repeatedly asked that the bookkeeping process include a two-step procedure for creating new vendors and for authorizing payments to vendors, but Defendant Hainer has refused. As such, the minority shareholders do not know who is responsible for vendor creation, negotiation, or payment.

61. Defendant Hainer has also yet to complete accounting for certain loans he made to NCR, which require execution of a promissory note with concrete terms including interest obligations. Defendant Hainer is nonetheless paying himself from NCR funds, purportedly in repayment of the loans but without any oversight or accountability regarding repayment terms.

62. During this time period, a promissory note was executed by Plaintiff Butdorf. This note was repaid by NCR. When Defendant Hainer was told that NCR could afford to pay off his loan, Defendant Hainer refused, stating in effect that he wanted to make money on the loan.

63. Upon information and belief, in violation of federal labor laws, Defendants directed H-2A employees of Defendant Hainer's personal farming business to complete projects and tasks for the State-licensed cannabis business, including designing and constructing cannabis storage equipment, construction projects, and vehicle maintenance.

64. Defendant Hainer hired Defendant Eli Emery f/k/a Eli Emery Boice, and registered Defendant Emery with OCM as Employee in Charge, a highly regulated role with significant discretion to handle the large amounts of cash coming into the store.

65. Defendant Emery has proven a disaster for the business.

66. Defendant Emery routinely treats customers and employees poorly.

67. Defendant Emery has refused to follow any reasonable accounting standards or security protocols.

68. Plaintiffs have repeatedly pleaded with Defendants Hainer and Emery to meet minimum standards, to no avail.

69. Plaintiffs devised a compensation package for Mr. Emery based on meeting specific recordkeeping standards. When Defendant Hainer was presented with this proposal, he agreed to present it to Defendant Emery. Upon information and belief, Defendant Hainer never attempted to convince Mr. Emery to consider this compensation package because it would create more transparency into the finances of NCR.

70. Plaintiffs retained an accountant to train Defendant Emery on basic accounting standards and procedures, but the accountant quickly resigned, citing Defendant Emery's utter lack of interest or cooperation.

71. Early in the business and continuing through to today, Defendant Emery has traveled to numerous events, conventions, and trade shows to sample cannabis products. Despite inquiries, Plaintiffs have never seen records or reporting showing how Defendant Emery's travels have been funded.

72. Plaintiffs, as founders and Board members, created an employee handbook, adhering to New York State employment laws. Defendants Hainer and Emery have refused to utilize the handbook.

73. Upon information and belief, the handbook is not provided to employees, and has not been updated to meet State laws.

74. Plaintiffs, as founders and Board members, requested that Defendant Emery create secured and locked files for employee-related information to ensure that hiring and employment practices were in adherence with employment laws, including by ensuring that tips given by customers electronically were accounted for and made available to the proper employees.

75. Defendants, however, have repeatedly claimed that tips belong to the Corporation and not the employee. Additionally, Plaintiffs believe that Defendant Emery, as a manager, improperly shares in pooled tips, taking some share of cash tips given by customers in the store.

76. Plaintiffs, as founders and Board members, created draft SOPs for operations of the facilities. Presentation and maintenance of up-to-date SOPs is a requirement of licensure. The draft SOPs created by Plaintiffs were never presented to the Board of Directors for approval,

despite Plaintiffs' repeated requests. Upon information and belief, the Corporation has not adopted SOPs and the draft SOPs created by Plaintiffs have not been utilized or updated.

77. NCR's CAURD license is conditional, and up for renewal in January 2025.

78. The foregoing corporate governance and regulatory failures, together with Defendant Emery's status as a fugitive from justice, creates unnecessary liability for NCR and its shareholders.

79. In addition, Defendant Emery's history of moving when problems arise is an even more troubling concern in a cash heavy business.

80. In or around October 2023, Plaintiffs renewed an active request that the Corporation purchase Directors & Officers' Liability insurance, given the high level of risky activity that Defendants Hainer and Emery were pursuing. Defendant Hainer refused, stating that such insurance coverage was not "necessary."

Defendant Hainer's Oppression

81. Defendant Hainer has now made it clear that he will never allow the shareholders to recovery any return on their investment.

82. Under Defendant Hainer's control, Elevate ADK has effectively operated as a majority cash business from the start.

83. Upon opening, Elevate ADK began to generate significant cash revenue.

84. Upon information and belief, based on cannabis sales alone, Elevate ADK generates cash revenue of at least \$60,000 per week and closer to \$150,000 per week during holidays and the summer season.

85. The industry standard for recreational cannabis retail is to realize at least a 50% profit margin.

86. Accordingly, upon information and belief, the Corporation is (or at least should be) sitting on a very large cash reserve, for which Plaintiffs have been refused any accounting or information.

87. Plaintiffs have repeatedly and often requested information about this cash surplus, and have proposed that the Corporation issue dividends to shareholders.

88. In response, Defendant Hainer has always said that dividends are not warranted, and that any cash surplus needs to be reinvested in the business for the medium-to-long term future. Plaintiffs have seen no evidence of any such reinvestment.

89. Defendants have also refused to account for other income, outside of cannabis sales.

90. The store has one ATM machine.

91. Plaintiffs have never seen reporting of the revenue generated by the ATM machine, and, upon information and belief, that revenue is not being returned to the Corporation but rather funneled somewhere else.

92. Elevate ADK also sells merchandise, online and in the store.

93. Plaintiffs have never seen clear reporting of the revenue generated by merchandise, and, upon information and belief, that revenue is not being returned to the Corporation but rather funneled somewhere else.

94. In or around November 2023, Defendant Hainer unilaterally determined to pay himself a salary, without advising the Board of Directors or reporting the salary. At the time, Defendant Hainer was performing virtually no work for the Corporation, while Plaintiffs (particularly Plaintiff Butdorf) were performing significant weekly work, with no compensation.

95. The Board of Directors retroactively approved Defendant Hainer's salary in or around February 2024, as part of an agreement between Plaintiffs and Defendant Hainer wherein

Defendant Hainer promised to begin to perform actual work for the Corporation and to bring the Elevate ADK operations into compliance with State regulations. Defendant Hainer never fulfilled his side of this agreement.

96. Plaintiffs believe Defendant Hainer may also be paying himself in other ways.

97. Upon information and belief, Defendant Hainer purported to loan the Corporation money and then have the Corporation pay interest (at an unknown rate chosen by Hainer) to him on a regular basis.

98. Defendant Hainer has also refused to engage NCR's accountants to produce the requisite annual valuation of NCR called for in the Shareholders' Agreement.

99. Defendant Hainer has made it clear that he will never allow the shareholders to recover any return on their investment.

100. At a Board of Directors meeting on or about February 7, 2024, Plaintiffs and Defendant Hainer discussed the large cash reserves held by the Corporation and the need for dividends. A true and accurate copy of the minutes of the February 7, 2024 meeting is attached as **Exhibit D**.

101. Defendant Hainer stated opposition to the issuance of any dividends during that meeting, saying at one point that the shareholders' desire to get value out of the Corporation is "not [his] fucking problem."

102. Plaintiffs initially proposed a one-time dividend of \$0.50 per share to be paid March 1, 2024, followed by quarterly dividends of \$0.35 per share (leaving the Corporation with a significant remaining cash surplus).

103. Defendant Hainer insisted that the initial dividend rate be less than \$0.50 per share, and the Directors (including Defendant Hainer) ultimately agreed unanimously to issue a one-time

payment of \$0.35 per share and to review quarterly dividends on a defined schedule and to make final commitments to pay quarterly dividends at \$0.35 per share at quarterly board meetings.

104. Also at the February 7, 2024 meeting, Plaintiff Mr. Suarez resigned from his long-time position as Secretary “because he has no access to any information or systems and Eli is not willing to work with any of us.”

105. After the meeting, Defendant Hainer refused to issue the agreed-upon dividend.

Defendant Hainer Escalates his Oppression

106. While still on the Board of Directors, Plaintiffs attempted to address and remedy the minority shareholders’ concerns about return on their investments and Defendant Emery’s status as a fugitive from justice.

107. Defendant Hainer responded to the minority shareholders’ entreaties by escalating his oppression.

108. On or about February 18, 2024, Plaintiffs learned of Defendant Emery’s status as fugitive from justice, and confronted Defendant Hainer about it.

109. On or about February 25, Defendant Hainer suddenly and unexpectedly shut Plaintiffs out of the Corporation’s accounts, disabling their email domains, shutting them out of Quickbooks, and shutting them out of the Corporation’s point of sale system.

110. Plaintiffs are unaware whether Defendant Hainer has preserved documents and records, including their email inboxes, which included years of corporate correspondence and information.

111. There is a significant amount of electronically-stored information and material in the Corporation’s electronic systems and database to which Plaintiffs now have no access, including the Corporation’s emails and communications between the parties concerning the issues

and events set forth herein (and for which Plaintiffs will require discovery to support the dissolution and other claims herein).

112. On or about February 26, 2024, the Board of Directors voted to retain an independent corporation counsel to conduct an independent investigation into whether NCR employee Defendant Emery is a fugitive with open warrants, deceived or defrauded NCR regarding his criminal history and record, has violated OCM regulations, and/or whether termination of his employment is warranted.

113. The Board of Directors further voted to suspend Defendant Emery, with pay, pending the results of this investigation, and directed Defendant Hainer to promptly inform OCM that Defendant Emery is no longer the Employee-in-Charge and that Defendant Hainer would be filling that role pending an investigation.

114. Following the Board's vote, Defendant Hainer confirmed with Plaintiffs that he was aware of Defendant Emery's open warrants when he hired Defendant Emery and registered him with OCM.

115. Nonetheless, Defendant Hainer has brazenly refused to execute the Board's vote.

116. Upon information and belief, Defendant Hainer has since allowed Defendant Emery to continue working at NCR, and has not taken any action to change Defendant Emery's designation with OCM.

117. Also at the Board meeting on February 26, 2024, the Board voted unanimously to engage NCR's accountants to conduct a comprehensive valuation of NCR, including a net worth valuation and, separately, a fair market valuation.

118. Defendant Hainer has refused to effectuate the valuation.

119. Following the Board meeting on February 26, Defendant Hainer purported to retain The Wagoner Firm, PLLC as “corporation counsel”.

120. Upon information and belief, that firm has instead served as Defendant Hainer’s personal attorney, refusing to share any information with Plaintiffs (even when Plaintiffs were members of the Board of Directors).

121. Through counsel, Defendant Hainer has taken further steps to oppress the minority shareholders.

122. Defendant Hainer purported to call a shareholders’ special meeting on March 25, 2024.

123. During this meeting, Defendant Hainer intended to take votes that would centralize his authority, including attempting to remove Plaintiffs from the Board of Directors. This was only weeks after a unanimous vote at a shareholders’ meeting keeping Plaintiffs on the Board of Directors.

124. By letter dated March 21, 2024, Plaintiffs demanded that Defendant Hainer adjourn the March 25 meeting in light of the severe corporate governance issues and liabilities caused by Defendant Hainer’s misconduct and self-dealing, to allow the parties to discuss a potential amicable settlement. Plaintiffs’ counsel specifically requested, among other things, certain records from Defendants in order to determine compliance with appropriate accounting standards. A true and accurate copy of the March 21, 2024 Demand Letter is attached hereto as **Exhibit E**.

125. On the morning of April 4, 2024, Defendant Hainer circulated a notice of Special Shareholders Meeting for that afternoon, April 4, 2024.

126. A true and accurate copy of the April 4, 2024 meeting agenda is attached hereto as **Exhibit F**.

127. As set forth in the agenda, at the special meeting held on April 4, 2024, Defendant Hainer purported to propose revisions to the Shareholders' Agreement, including: (a) the "[r]emoval of the language requiring certain individuals to be voted in as directors of the Corporation"; (b) "[a]dded additional criteria for transferring shares to ensure compliance with Cannabis Laws"; and (c) to "[a]dd Corporation's ability to redeem shares of shareholder breaching the Shareholder Agreement to ensure compliance with the Cannabis Laws and protect the Corporation's business interest."

128. At the meeting, Defendant Hainer unilaterally passed a resolution removing Plaintiffs from the Board of Directors without cause.

129. Following the April 4, 2024, meeting, the parties have worked through counsel to attempt to negotiate a resolution and avoid litigation.

130. In the course of those discussions, Defendant Hainer reluctantly issued a one-time dividend of \$0.35 per share.

131. Upon information and belief, the one-time modest dividend was issued solely to forestall the filing of this action.

132. Upon information and belief, Defendant Hainer will never authorize issuance of another dividend to shareholders.

133. To date, Defendant Hainer has blatantly refused to provide Plaintiffs access to the requested books and records, in flagrant breach of the Shareholders' Agreement and his obligations to Plaintiffs as a shareholder, director, and President of the Corporation.

134. Absent judicial intervention, Plaintiffs will never recover any reasonable return on their investment, and the continued mismanagement of the Corporation will put the Corporation and its shareholders at untenable risk.

AS AND FOR A FIRST CAUSE OF ACTION
(Dissolution of NCR – BCL § 1104-a)

135. Plaintiffs repeat and reallege each of the individual paragraphs above as if fully set forth herein.

136. As shareholders of NCR, Plaintiffs are entitled to bring this petition for dissolution pursuant to section 1104-a of the Business Corporation Law, on the grounds that Defendant Hainer has been guilty of illegal, fraudulent, or oppressive actions toward Plaintiffs, including conduct that substantially defeats Plaintiffs' decision to invest in the Corporation by depriving them of meaningful returns on their investments and entirely excluding them from the business.

137. Defendant Hainer's consistent pattern of corporate mismanagement and exclusion of Plaintiffs from the Corporation has defeated Plaintiffs' reasonable expectations in investing in NCR to such an extent as to constitute oppression.

138. In addition to this oppressive conduct, upon information and belief, the assets and income of the Corporation are being looted, wasted, and/or diverted for non-corporate purposes by Defendants through self-dealing transactions.

139. Upon information and belief, Defendant Hainer caused NCR to enter into these transactions in bad faith and/or through his own gross negligence and reckless disregard for the duties attendant to his position as a shareholder, officer, and director of the Corporation.

140. Plaintiffs repeatedly brought these issues to the attention of Defendants, but Defendants refused to act.

141. Because of Defendants' wrongful conduct, Plaintiffs have been denied the full financial benefits owed to them as a result of their shareholdings.

142. Liquidation of the Corporation is the only feasible means whereby Plaintiffs may reasonably expect to obtain a fair return on their investment.

143. Liquidation of the Corporation is reasonably necessary for the protection of the rights and interests of Plaintiffs as shareholders of the Corporation.

144. Upon information and belief, there are no provisions in the articles of incorporation that would preclude the relief requested herein by Plaintiffs.

145. No prior application for the relief demanded herein has been made.

146. Accordingly, Plaintiffs request that this Court issue an order and judgment dissolving the Corporation, and distributing the property of the Corporation to the shareholders according to their respective rights.

AS AND FOR A SECOND CAUSE OF ACTION
(Accounting)

147. Plaintiffs repeat and reallege each of the individual paragraphs above as if fully set forth herein.

148. Defendant Hainer owes Plaintiffs a fiduciary duty by virtue of his status as a shareholder, officer, and director of the Corporation.

149. Plaintiffs, as minority shareholders of the Corporation, are entitled to an accounting of all of NCR's transactions, because they have been wrongfully excluded from NCR's books and records.

150. Plaintiffs have demanded that Defendant Hainer account for the transactions of the Corporation, and in particular, transactions related to Plaintiffs' capital contributions and loans to NCR.

151. Defendants, however, have baselessly refused to provide the accounting requested by Plaintiffs.

152. The Shareholders' Agreement has no provisions relevant to a demand for an accounting.

153. Plaintiffs lack an adequate remedy at law.

154. Accordingly, Plaintiffs are entitled to an order and judgment mandating a full and comprehensive accounting of all NCR books and records.

AS AND FOR A THIRD CAUSE OF ACTION
(Derivative Claim for Breach of Fiduciary Duty Against Defendant Hainer)

155. Plaintiffs repeat and reallege each of the individual paragraphs above as if fully set forth herein.

156. Defendant Hainer, in his capacity as a shareholder, officer, and director of NCR, may be held accountable for neglect or failure to perform his duties in the management and disposition of NCR's assets, and for the loss or waste of corporate assets due to Defendant Hainer's neglect or failure to perform his duties.

157. Defendant Hainer's mismanagement of NCR is far reaching, and includes, without limitation, his failure to maintain accurate and complete books and records, failure to provide financial statements to the other shareholders, unilateral actions in breach of the Shareholders' Agreement, waste of corporate assets, self-dealing, and willful misfeasance, fraud and/or bad faith.

158. Upon information and belief, Defendant Hainer has sought to enrich himself, to the detriment of NCR and its shareholders, by paying himself and/or his employees without full disclosure to the Board of Directors.

159. Upon information and belief, Defendant Hainer's self-dealing has deprived Plaintiffs of reasonable returns on their investments in NCR and allowed Defendant Hainer to siphon profits from the Corporation.

160. Defendant Hainer's self-dealing constitutes a waste of corporate assets due to bad faith conduct, and the gross or reckless disregard of his duties as a shareholder, officer, and director of the Corporation.

161. Upon information and belief, Defendant Hainer has otherwise breached his fiduciary obligations to NCR in manners yet unknown to Plaintiffs but subject to discovery in this action and to be proven at trial.

162. For these same reasons, a demand on NCR, which is controlled by the very individual responsible for the misconduct set forth herein, would undoubtedly be futile, and to the extent required to sustain this claim, should thus be excused.

163. As a result of the foregoing, NCR has suffered significant losses.

164. Accordingly, pursuant to BCL § 720, this Court should compel Defendant Hainer to account for his conduct, set aside the unlawful conveyance and transfer of corporate assets to Defendant Hainer's and persons under his control, and enjoin any future unlawful conveyances and transfers of corporate assets.

AS AND FOR A FOURTH CAUSE OF ACTION
(Direct Claim for Breach of Fiduciary Duty Against Defendant Hainer)

165. Plaintiffs repeat and reallege each of the individual paragraphs above as if fully set forth herein.

166. Defendant Hainer, in his capacity as a shareholder, officer, and director of NCR, owed fiduciary duties of care and loyalty to Plaintiffs, as shareholders, officers, and directors of NCR.

167. Defendant Hainer breached his fiduciary duties to Plaintiffs by, *inter alia*, conducting NCR's business without Plaintiffs' vote, knowledge, consent, input, notification or knowledge; engaging in self-dealing through the misappropriation of NCR's assets in a manner adverse to NCR and Plaintiffs; failing to make dividends owed to Plaintiffs; secretly making distributions to himself and/or Defendant Emery without authority; and unilaterally removing Plaintiffs from their roles as directors of NCR.

168. Defendant Hainer's conduct has negatively altered Plaintiffs' interests in the Corporation and has caused Plaintiffs to suffer significant financial damages.

169. Accordingly, Defendant Hainer is liable to Plaintiffs for breach of fiduciary duty, in an amount to be determined at trial.

AS AND FOR A FIFTH CAUSE OF ACTION
(Derivative Claim for Unjust Enrichment)

170. Plaintiffs repeat and reallege each of the individual paragraphs above as if fully set forth herein.

171. Upon information and belief, Defendants have wrongfully enriched themselves at the expense of NCR, and are in custody, control, or possession of property and/or funds that, under equity and good conscience, must be returned to NCR.

172. For these same reasons, a demand on NCR, which is controlled by the very individual responsible for the misconduct set forth herein, would undoubtedly be futile, and to the extent required to sustain this claim, should thus be excused.

173. NCR has no adequate remedy at law.

174. Accordingly, Defendants are liable to NCR for unjust enrichment, in an amount to be determined at trial.

AS AND FOR A SIXTH CAUSE OF ACTION
(Direct Claim for Unjust Enrichment)

175. Plaintiffs repeat and reallege each of the individual paragraphs above as if fully set forth herein.

176. Upon information and belief, Defendants have wrongfully enriched themselves at the expense of Plaintiffs, and are in custody, control, or possession of property and/or funds that, under equity and good conscience, must be returned to Plaintiffs.

177. Plaintiffs have no adequate remedy at law.

178. Accordingly, Defendants are liable to Plaintiffs for unjust enrichment, in an amount to be determined at trial.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Permanent Injunction – BCL § 1115)

179. Plaintiffs repeat and reallege each of the individual paragraphs above as if fully set forth herein.

180. Defendants have misappropriated NCR's assets and monies, intentionally refused to pay Plaintiffs the dividends owed to them, and removed Plaintiffs from their roles as directors of NCR, causing Plaintiffs to suffer significant financial damages.

181. In order to protect the corporate assets of NCR pending its dissolution, Plaintiffs respectfully request that the Court issue an injunction pursuant to BCL § 1115, enjoining Defendant Hainer, Defendant Emery, NCR, and its officers and directors, agents, servants, employees, or attorneys from taking any action that would alter the status quo of NCR, including, but not limited to: (a) entering into any loans on behalf of NCR; (b) making any distribution payments to shareholders; (c) removing, conveying, concealing, or otherwise transferring inventory and cash assets of the Corporation, except as necessary in the normal course of business; and (d) taking any actions in violation of the Shareholders' Agreement and/or applicable law.

182. Plaintiffs have demonstrated a likelihood of success on the merits in this proceeding/action.

183. The balance of the equities strongly favors Plaintiffs.

184. Plaintiffs have no adequate remedy at law.

185. Accordingly, Defendants should be enjoined from: (a) entering into any loans on behalf of NCR; (b) making any distribution payments to shareholders; (c) removing, concealing,

or distributing any inventory or cash, except as necessary in the normal course of business; and (d) taking any actions in violation of the Shareholders' Agreement and/or applicable statutory law.

AS AND FOR AN EIGHTH CAUSE OF ACTION
(Appointment of a Receiver for NCR)

186. Plaintiffs repeat and reallege each of the individual paragraphs above as if fully set forth herein.

187. Defendants Hainer and Emery cannot be allowed to exercise control, whether or not utilized in contravention to the Shareholders' Agreement, over NCR to further loot the business and cause it and its shareholders harm.

188. Therefore, pursuant to CPLR § 6401 (a), while the dissolution process proceeds and the Corporation winds down, a temporary receiver should be appointed and empowered to take and hold the funds, assets, and property of NCR, to prevent said funds, assets, and property from being removed from the State, lost, or destroyed by Defendant Hainer or Defendant Emery.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment as follows:

(1) Dissolving NCR pursuant to BCL § 1104-a, after all assets have been returned, damages have been paid by Defendants, and a complete accounting has been made;

(2) Ordering an accounting of NCR;

(3) Ordering Defendants to return all assets of NCR thereto, and enjoining Defendants from selling or otherwise disposing of said assets;

(4) Enjoining Defendants from making any non-routine payments and expenditures on behalf of NCR before its dissolution;

(5) Appointing a temporary receiver to take and hold the assets, property, and funds of NCR until completion of its dissolution;

(6) Awarding Plaintiffs monetary damages, including punitive damages, in an amount to be determined at trial;

(7) Awarding Plaintiffs their reasonable costs, disbursements, and attorney's fees incurred in connection with this action; and

(8) Granting such other and further relief as this Court shall deem just and proper.

Dated: June 17, 2024
Albany, New York

WHITEMAN OSTERMAN & HANNA LLP

s/ Jon E. Crain

By: _____

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