



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RAJ PETER BHAKTA,)	
)	
Plaintiff,)	
)	
v.)	
)	
WILCO FAESSEN and)	
CHRISTOPHER EVISON,)	C.A. No. <u>12314-VCG</u>
)	
Defendants,)	
)	
WHISTLEPIG, LLC,)	PUBLIC VERSION
)	E-FILED ON MAY 13, 2016
Nominal Defendant.)	

VERIFIED COMPLAINT

Plaintiff Raj Peter Bhakta, by and through his undersigned attorneys, alleges for his Verified Complaint against defendants Wilco Faessen and Christopher Evison (collectively, "Defendants") as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action pursuant to 6 *Del. C.* § 18-110 ("Section 18-110"), seeking expedited relief in the form of an Order: (A) declaring invalid purported Board Resolutions dated May 6, 2016 (the "Board Resolutions"), which purport to remove Plaintiff from his positions as Operating Manager and member of the Board of Managers (the "Board") of WhistlePig, LLC

(“WhistlePig” or the “Company”); and (B) declaring that Plaintiff remains Operating Manager and member of the Board.

2. As set forth in greater detail below, the Board Resolutions are invalid because (1) they fail to comply with the requirements for Board action imposed by the Company’s Operating Agreement, and (2) the Defendants lacked proper grounds to remove Mr. Bhakta from his positions under the Operating Agreement.

THE PARTIES

3. Nominal Defendant WhistlePig, LLC is a Delaware limited liability company headquartered in Shoreham, Vermont. WhistlePig is a young and rapidly growing spirits company that produces, bottles, and sells aged rye whiskey.

4. Plaintiff Raj Peter Bhakta is the sole founder, Operating Manager, and is a member of WhistlePig’s Board. Mr. Bhakta, together with his wife and his trust, owns approximately 50% of the Company’s equity. Mr. Bhakta currently receives an annual salary of \$180,000.

5. Non-party WP Holdings, LLC, an investment arm of the multi-billionaire Santo Domingo family from Barranquilla, Colombia, is a sophisticated investment fund and has been an investor in WhistlePig since November 2012.

FT WP Holdings, LLC (“FT WP”) is represented on WhistlePig’s Board through Defendant Evison. FT WP owns approximately 12% of the Company’s equity.

6. Defendant Wilco Faessen is a member of the Company’s Board of Managers and an investor in WhistlePig. He owns approximately 15% of the equity of WhistlePig, including units held by his trust.

7. Defendant Christopher Evison is a Managing Director at Quadrant Capital Advisors, Inc. (“Quadrant”), which serves as investment advisor to FT WP. Evison is a member of the Company’s Board.

8. Non-party Jose Robledo is a member of the Company’s Board of Managers, and a business associate with affiliates of the Santo Domingo family.

BACKGROUND

I. MR. BHAKTA FORMS WHISTLEPIG.

9. On June 18, 2007, Raj Peter Bhakta purchased a farm located in Shoreham, Vermont. He dubbed it WhistlePig Farm. On July 12, 2007, Mr. Bhakta filed the articles of formation for WhistlePig, LLC with the State of Delaware. In these early days, WhistlePig existed as a name only, with the notion of pursuing farm-related ventures.

10. On July 31, 2008, Mr. Bhakta formed GoAmericaGo Beverages (“GBLLC”) as a vehicle to pursue investment opportunities in the

spirits space. On August 10, 2008, GoAmericaGo Beverages adopted its initial Operating Agreement showing Mr. Bhakta as the sole member.

11. In 2008, GBLLC raised \$412,000 from a number of investors. The funds were spent, in addition to management fee, in exploring investments in Vermont Vodka, Tuthilltown distillery, and a brand concept called “Petro.” None of these ventures materialized and the funds were depleted.

12. In December 2009, as GBLLC ran out of money, Mr. Bhakta developed the idea of “The WhistlePig Farm Project.” The idea was to capitalize on the existing farm that Mr. Bhakta owned to build a farm-based distillery that would produce rye whiskey. On December 16, 2009, Mr. Bhakta sought to register WhistlePig, LLC as an entity in the State of Vermont, describing its business purpose as “farming.” That filing identifies WhistlePig, LLC as a member managed company, with Bhakta as the sole member.

13. Around this time, Mr. Bhakta met Dave Pickerell, who identified the stock of high quality aged rye that would become the basis of WP’s ten year old rye.

14. On February 19, 2010, Mr. Bhakta personally borrowed \$375,000 to purchase inventory and finance the operations of the Company,

pledging the farm as collateral. On March 10, 2010, WhistlePig signed its original supply agreement with [REDACTED] to purchase 19,900 liters of alcohol.

15. In June 2010, the first release of WhistlePig rye whiskey hit the market to terrific accolades. The Company generated \$350,000 in revenue between June and December 2010. By the end of 2011, sales had reached \$1.3 million.

II. THE COMPANY SEEKS INVESTORS TO FUEL ITS RAPID GROWTH.

16. In 2011, because of the Company's quick growth, the Company needed to raise capital. Mr. Bhakta engaged Wilco Faessen, by then a full-time managing director at Barclays, who believed that his work for GBLLC entitled him to a stake in the Company, to assist the Company with its fundraising efforts.

17. Despite the fact that Mr. Faessen was engaged for the purpose of soliciting investors, Mr. Faessen actively discouraged at least one key investment at a time when fundraising was crucial. Mr. Faessen actively discouraged Sachin Patel from investing in WhistlePig by disparaging Mr. Bhakta. Consequently, Mr. Faessen was able to negotiate a larger equity stake in WhistlePig for himself by performing fundraising services for WhistlePig that were only needed because Mr. Faessen himself prevented Mr. Patel's investment.

18. In 2011 and 2012, the Company, through Faessen, solicited many potential investors. In connection with the solicitation, potential investors were provided with an investment summary and private placement memoranda, which described the Company, its goals, valuations and future prospects.

19. In connection with the Company's fundraising efforts, Mr. Bhakta consistently represented that he was not anticipating or planning a sale of the Company to a strategic acquirer. Rather, although Mr. Bhakta recognized that a sale of the Company was possible if the right opportunity arose, his primary vision was for the Company to remain a long-term family business. The December 2011 Investment Summary, for example, expressly provided that "Management is building a profitable company; returns not predicated on the sale of the Company."

20. In early 2012, certain investors purchased equity in the Company pursuant to a Subscription Agreement (the "February 2012 Subscription Agreement"). From 2011 through March 2012, the company raised \$ [REDACTED] at a valuation of \$ [REDACTED].

21. In connection with this investment round, the Company executed a Second Amended and Restated LLC Agreement reflecting that the company now had outside investors. Around the same time, Mr. Bhakta, the sole member of GBLLC, assigned all of his rights in GBLLC to WhistlePig.

22. In addition, because the Company operates exclusively on the farm property owned by Mr. Bhakta, on January 23, 2012, Bhakta and WhistlePig signed a lease for the farm. Before August 2011, the Company had operated rent-free on Mr. Bhakta's farm, including the use of all buildings, the guest house (where certain early employees lived rent-free), and the land. The lease called for rent of \$12,500 per month, and included use of the following: (1) the storage barn; (2) the office and bottling hall barn; and (3) the fields for growing rye. The lease was later amended to include the farm house when Mr. Bhakta moved to a different house on a neighboring property. The monthly rental rate for the farm was based on a cap rate of 10%, which is within the market range for long-term commercial triple net leases.

III. FT WP HOLDINGS, LLC INVESTS IN THE
COMPANY WITH FULL KNOWLEDGE OF THE
COMPANY'S LEASE ARRANGEMENT AND MR.
BHAKTA'S LONG-TERM GOALS FOR THE
COMPANY.

23. In 2012, Mr. Faessen began negotiations with Defendant Evison regarding a potential investment in the Company by FT WP. Throughout, Mr. Bhakta made it clear to Mr. Faessen that while he would consider a sale at the right price, he believed that the best interests of the Company and its investors would be achieved by building a long-term, family owned business that would not

be subject to the whims of the business cycle or the imperatives of short-term, quarter-to-quarter thinking.

24. In connection with the potential investment, Mr. Evison was provided a Confidential Private Placement Memorandum, dated May 16, 2012 (the “PPM”). [REDACTED]

[REDACTED]

25. [REDACTED]

[REDACTED]

26. [REDACTED]

[REDACTED]

[REDACTED]

27. [REDACTED]

[REDACTED]

[REDACTED]

28. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

29. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. With full knowledge of Bhakta's intentions regarding the Company, and the terms and issues associated with the Company's lease agreement, FT WP invested [REDACTED] in the Company, [REDACTED]

[REDACTED]

IV. THE COMPANY AMENDS ITS OPERATING
AGREEMENT.

31. In connection with FT WP's investment, the Company amended its operating agreement. The Fourth Amended and Restated Limited Liability Company Agreement (the "Operating Agreement," attached hereto as Ex. A) was executed on August 22, 2013.

32. Section 4.3(a) of the Operating Agreement governs the makeup of the Board. That section provides that the Board of Managers shall consist of Bhakta, a representative of FT WP, Faessen, and Robledo. Faessen, Robledo, and FT WP's designee each have one vote. *Id.* With respect to Mr. Bhakta, Section 4.3(a) further provides:

Raj Peter Bhakta shall have the right to cast one vote in his capacity as, and for so long as he remains, the Operating Manager, which right Raj Peter Bhakta shall cease to have in the case of his removal for fraud or criminal activity, death or incapacity. Raj Peter Bhakta

(or his successors) shall have the right to cast two additional votes for so long as he shall own Common Units equal to at least twenty (20) percent of the Total Common Units

Id.

33. Section 4.3(a) provides that “[a]ny member of the Board of Managers may be removed by unanimous consent of the other members of the Board of Managers for fraud or criminal activity.” *Id.*

34. Section 4.4 of the Operating Agreement governs meetings of the Company’s Board of Managers. Section 4.4(a) provides:

The Company shall provide written notice to all members of the Board of Managers of any meeting at which a vote will be held at least five (5) business days prior thereto, which notice shall describe the business to be considered, the actions to be taken and the matters to be voted on at the meeting in reasonable detail. At any meeting of the Board of Managers, the presence, in person or by proxy, of members of the Board of Managers holding votes sufficient in number to approve the relevant matters shall constitute a quorum. For the avoidance of doubt, if Raj Peter Bhakta shall abstain from voting pursuant to Section 4.2 or 4.3, then the presence, in person or by proxy, of members of the Board of Managers holding two (2) votes shall constitute a quorum.

35. Under Section 4.4(a), an act of the Board of Managers requires a vote of 60% of the Managers present at a meeting: “When a quorum is present, subject to the provisions of Section 4.5, the affirmative vote of at least 60% of votes cast shall be the act of the Board of Managers.”

36. The Operating Agreement provides that the Operating Manager shall manage “[t]he business, property and affairs of the Company.” *Id.* § 4.1. Section 4.7 of the Operating Agreement governs the removal of the Operating Manager. Section 4.7(c) provides, in relevant part, that “[t]he Operating Manager may be removed at any time for fraudulent act or criminal activity by the Board of Members.” *Id.* § 4.7(c). Section 4.7(d) provides that if the Operating Manager is removed, “a replacement Operating Manager shall be designated by the Board of Managers.” *Id.* § 4.7(d).

37. The Operating Agreement also contains a provision regarding interested transactions. Section 4.9 provides that “[n]otwithstanding the fact that it may constitute a conflict of interest, the Operating Manager, the Members and/or their respective Affiliates may engage in any transaction with the Company so long as such transaction is approved by the Board of Managers (excluding any member of the Board of Managers affiliated with or designated by such Operating Manager or Member or its respective Affiliates.)”

V. THE COMPANY EXCELS UNDER MR. BHAKTA’S LEADERSHIP.

38. The Company has thrived under Bhakta’s leadership. Its revenues have consistently been high and have grown substantially in recent years,

topping [REDACTED] in 2013, [REDACTED] in 2014, and [REDACTED] in 2015. Gross profit margins have ranged from [REDACTED]

39. [REDACTED]

[REDACTED]
[REDACTED] 2014 sales totaled over [REDACTED], with a gross profit of [REDACTED]. [REDACTED]

[REDACTED]
WhistlePig generated sales for 2015 of [REDACTED], and a gross profit of [REDACTED]

[REDACTED] In addition, expenses have been closely managed and successfully constrained, resulting in [REDACTED] margins.

40. In fact, as reflected in Board minutes as recent as August 2015, Mr. Evison offered congratulations for Mr. Bhakta's and the management team's great work in outperforming WhistlePig's budget and projections.

41. The Company has also been the subject of much praise in the spirits industry. The Company's 10 year old product received a 96-point rating from Wine Enthusiast magazine, the highest rating the magazine had ever awarded to a rye whiskey. In addition, WhistlePig's Triple One was named "Best of the Best for 2013" by Robb Report in the spirits category. In the week during which Faessen and Evison purported to remove Mr. Bhakta, the newly-released 15 year

old product received an avalanche of accolades, including a 97-point rating from Wine Enthusiast.

42. The Company's success is attributable in large part to Mr. Bhakta's management. Mr. Bhakta also maintains a terrific relationship with the Company's distributors. In fact, three of WhistlePig's largest distributors have provided working capital through creative [REDACTED], dedicated WhistlePig specialists, shared marketing spend banks, and other methods.

VI. RELATIONS BETWEEN BHAKTA AND
DEFENDANTS DETERIORATE AS DEFENDANTS
ATTEMPT TO STRONG-ARM BHAKTA INTO
SELLING HIS FARM.

43. When FT WP invested, it had full knowledge of the terms of the lease between Bhakta and the Company, and did not object to it or seek to alter those terms. Nevertheless, FT WP, within a few months of investing, began to pressure Mr. Bhakta into selling his farm to the Company.

44. In February 2013, the Board formed a Management Remuneration Council (the "Council"), headed by Mr. Evison, who had veto rights due to a unanimity requirement, to evaluate Mr. Bhakta's compensation.

45. The Council issued a proposal which linked Mr. Bhakta's compensation to the transfer of property. The proposal called for Mr. Bhakta to

transfer certain buildings on the farm property which were used by (and improved by) the Company, with the Company to execute a long-term lease for the 50 acres surrounding the buildings.

46. Mr. Evison, as head of the Council, improperly sought to link the transfer of property to Mr. Bhakta's compensation. In May 2013, Mr. Evison, who wielded effective control over the Council, authorized a compensation increase for Mr. Bhakta, subject to "an open and good faith discussion on the restructuring of the lease and separation of the farm and whiskey business." Mr. Bhakta's salary has not been moved since.

47. Despite the tremendous success of the Company by all objective measures, Mr. Bhakta has received for the past three years an annual salary of only \$180,000, with no bonus and no raise. Mr. Bhakta's compensation is less than that of the Company's COO/ CFO, less than the Company's Sales and Marketing Director, and well below market rates for CEOs of comparable companies.

48. In April 2014, Mr. Bhakta and the Company received a permit to construct a distillery on the farm. However, Evison and Faessen held the Company and Mr. Bhakta hostage by refusing to fund the construction of the

distillery unless Mr. Bhakta committed to transferring those parts of the farm used by the Company.

49. Defendants' stalwart opposition to the continued development of a distillery until the properties were transferred was entirely unjustified, as Defendants were well aware of the lease arrangement and had previously agreed to fund developments on the property. In addition, Defendants' supposed concerns about using Company funds for developments on the property owned by Mr. Bhakta are unfounded. Company funds are used only for improvements for Company purposes, and not for Mr. Bhakta's personal use. For example, though Company funds have been used for improvements to a Guest House on the property, that house is used almost exclusively for Company business. Mr. Bhakta has provided warehousing space and employee housing at a separate farm that he wholly owns to WhistlePig at no cost, and continues to do so. The Company operated on the farm for a year and a half without paying any rent to Mr. Bhakta.

50. By the beginning of 2015, the Company had no approved budget, and no approval for distillery construction. Failure to commence construction on the distillery would destroy value in the Company. To allow the Company to move forward on the essential distillery construction, and despite his belief that \$12,500 per month was a fair and reasonable lease payment, particularly

in light of his unfairly low compensation, Mr. Bhakta indicated his willingness to transfer the operational buildings to the Company together with a long term lease on the underlying land, on terms to be determined.

51. The Company has funded construction of the distillery, which was substantially completed in October 2015.

52. Throughout 2015, Mr. Bhakta been negotiating in earnest with Defendants regarding the terms of the sale of the farm, including valuation and the most efficient structure.

53. Instead of accepting Mr. Bhakta's reasonable proposals or negotiating in good faith to reach fair terms, Defendants have bullied Mr. Bhakta, trying to extract as much value as possible from Mr. Bhakta by continuing to tie any sale of the farm to Mr. Bhakta's compensation as Operating Manager.¹ In December 2015, Defendants proposed a draft Omnibus Resolution, which provided that if the property transfers were not complete by a date certain, Mr. Bhakta's salary would be reduced to \$90,000. Defendants' attempts to use Mr. Bhakta's

¹ In addition, in late 2015, WhistlePig began using and occupying a barn owned by WhistlePig Farms, LLC, which is wholly owned by Mr. Bhakta. The barn is 17,982 square feet. WhistlePig uses the barn to store aging whiskey, empty barrels, equipment and grain. WhistlePig currently pays no rent for the use of this structure.

compensation as leverage to extract the properties on unfair terms reflect bullying tactics, were not undertaken in good faith, and were not consistent with the best interests of the Company or its investors. Because of Defendants' attempts to strong-arm Mr. Bhakta into selling the properties at an unfairly low price, no agreement for the sale of the properties has been reached.

54. As a result of the mounting tensions on the transfer issue, after a December 2015 Board meeting, Mr. Evison threatened to reach out to the Company's unitholders to attempt to remove Mr. Bhakta. Following that meeting, Mr. Bhakta began to solicit proxies from the Company's unitholders to protect himself from the strong arm tactics that FT WP and Faessen have now undertaken.

55. In February 2016, in an effort to alleviate tensions and resolve the outstanding issues in good faith, Mr. Bhakta delivered a memorandum (the "February 2016 Memo") to the Board in response to the December 2015 Omnibus Resolution. In it, Mr. Bhakta expressed the need for the Company to make changes to the Operating Agreement to avoid future problems, and expressed his desire for more harmonious Board relations.

56. Defendants now assert that they were previously "unaware" of Mr. Bhakta's long-term goals for the Company, despite the fact that such goals were clearly expressed at the time of FT WP's investment. Furious that they have

not been able to bully Mr. Bhakta into selling his property at an unfair price and that the Company has not been “flipped” to a strategic acquiror, the Defendants have declared war on Mr. Bhakta.

**THE DEFENDANTS PURPORT TO REMOVE BHAKTA
FROM HIS POSITIONS AT THE COMPANY**

57. On April 28, 2016, during a meeting at Mr. Evison’s Manhattan office, Mr. Evison handed a letter to Mr. Bhakta and Leo Gibson, general counsel of WhistlePig, indicating that Defendants intended to file suit against Plaintiff, and enclosing a draft complaint. The draft complaint purported claims for, *inter alia*, breach of fiduciary duty and breach of the Operating Agreement. The claims in the draft complaint were unsupported – other than by misstatements and mischaracterizations of facts – and were a transparent attempt to intimidate Mr. Bhakta into stepping down as Operating Manager, or agreeing to an immediate sale of the Company, which would not maximize unitholder value.

58. On Friday, April 29, 2016, at 10:38 p.m., Defendant Evison sent an email to Board members Bhakta, Faessen, and Jose Robledo, and copying certain officers of the Company, enclosing a purported notice of extraordinary board meeting (the “Notice,” attached hereto as Exhibit B). The Notice indicated that the meeting would be held at 8:00 a.m. on Friday, May 6, 2016, to “discuss

and vote upon removal of Raj P. Bhakta from his positions at the Company pursuant to Sections 4.3(a) and 4.7(c) of the Operating Agreement.” Ex. B.

59. The Notice was deficient in multiple respects. First, though the Operating Agreement requires notice of at least five business days prior to a meeting where a vote will be held, Ex. A § 4.4(a), Evison short-circuited this requirement. Mr. Evison sent the purported notice for the May 6 meeting at 10:30 p.m. on Friday evening – after business hours, and noticed the meeting for May 6 at 8:00 a.m. – before business hours, effectively denying the Board members a full business day to make arrangements to attend and prepare for the meeting. Second, the Operating Agreement requires that the notice be provided by the Company. *Id.* The Notice was provided by Evison, who is neither an employee nor officer of the Company. Third, although the Operating Agreement requires that “a replacement Operating Manager shall be designated by the Board of Managers” if the Operating Manager is removed, *see* Ex. A § 4.7(d), the Notice fails to mention anything about the appointment of a replacement Operating Manager. The Notice failed to provide “reasonable detail” about the matters to be addressed at the meeting, as required by Section 4.4(a) of the Operating Agreement. The Notice was deficient on its face and therefore any actions purportedly taken at the May 6 meeting were invalid.

60. Despite the fact that the meeting was not validly called, Defendants Evison and Faessen apparently met for a purported board meeting on the morning of May 6, 2016. Bhakta and Robledo did not attend the meeting.

61. Because only two of four members of the Board were present at the May 6 meeting, the action taken at that meeting was ineffective. To remove a member from the Board of Managers, unanimous consent of the other members is required. Operating Agreement § 4.3(a). Because Mr. Robledo did not consent to Mr. Bhakta's removal as member of the Board, his removal was ineffective. In addition, Mr. Bhakta's removal as Operating Manager was not effective. The Operating Agreement provides that "if Raj Peter Bhakta shall abstain from voting pursuant to Section 4.2 or 4.3, then the presence, in person or by proxy, of members of the Board of Managers holding two (2) votes shall constitute a quorum." Mr. Bhakta did not abstain pursuant to Section 4.2 or 4.3, and therefore two members was insufficient to constitute a quorum.

62. At 9:19 a.m. on May 6, 2016, Evison sent an email to Bhakta, Robledo, and Faessen, transmitting two documents entitled "Resolution of the Board of Managers." *See* Exhibit C hereto. One purported to remove Mr. Bhakta from his position as member of the Board pursuant to Section 4.3(a) of the Operating Agreement. The other purported to remove Mr. Bhakta from his

position as Operating Manager, pursuant to Section 4.7(c) of the Operating Agreement. Those Resolutions were invalid.

DEFENDANTS LACK PROPER GROUNDS TO REMOVE MR. BHAKTA

63. In addition to being procedurally deficient, the Resolutions were invalid, ineffective, and unenforceable because they do not provide truthful and sufficient grounds for removal under the Company's Operating Agreement.

64. Section 4.3(a) of the Operating Agreement governs removal of a Board member. It provides: "[a]ny member of the Board of Managers may be removed by unanimous consent of the other members of the Board of Managers for fraud or criminal activity."

65. Section 4.7(c) of the Operating Agreement governs removal of the Operating Manager. It provides: "[t]he Operating Manager may be removed at any time for fraudulent act or criminal activity by the Board of Members."

66. The Board Resolutions cite six reasons for removal of Mr. Bhakta. None meet the criteria for removal set forth in Sections 4.3(a) or 4.7(c) of the Operating Agreement.

67. First, the Board Resolutions state that "Mr. Bhakta drove while intoxicated on April 26, 2015, and pled guilty to the criminal offense of negligent operation of a motor vehicle."

68. Defendants blatantly mischaracterize Mr. Bhakta's offense. On the evening of April 26, 2015, Mr. Bhakta was tired from travelling and was on medication for back pain. Mr. Bhakta was pulled over by police in front of a home that he owned. Mr. Bhakta ultimately pled guilty to the offense of negligent operation of a motor vehicle. Mr. Bhakta promptly advised the Board of the arrest. Such an offense is hardly the type of "criminal activity" contemplated by the Operating Agreement. WhistlePig did not have a policy on consumption of alcohol on April 26, 2015. Thereafter, WhistlePig researched policies of other alcoholic beverage companies and adopted a policy. Although the Board considered a policy that would have made a first DUI conviction a "sackable" defense, the Board did not adopt it.

69. Second, the Board Resolutions state that Mr. Bhakta "lied" to the police officer who arrested him on April 26, 2015 when he told the officer that he lived at the location where he had pulled over and that he was not intoxicated. Ex. C. Again, Defendants distort the truth. Mr. Bhakta was not intoxicated that night, and he owned the house where he had pulled over. In any event, such actions do not rise to the level of "fraud" or "criminal activity" contemplated by the Operating Agreement.

70. Third, Defendants contend that Mr. Bhakta “smoked marijuana on Company premises while conducting Company business.” *Id.* Mr. Bhakta owns and lives on the property where WhistlePig operates. Assuming *arguendo* that this allegation is true, in Vermont, possession of small amounts of marijuana is not a crime, and the Vermont Senate recently voted to legalize recreational marijuana use, and in any event, these allegations cannot constitute the type of “criminal activity” to justify the removal of a highly successful Operating Manager.

71. Fourth, the Board Resolutions state that “Bhakta falsely represented in the Subscription Agreement dated November 27, 2012, that the Agreement included a complete list of investors who held or had been promised equity in WhistlePig, and concealed his secret promise of equity to Danhee Kim.” Defendants’ contention that this amounts to “fraud” is without merit.

72. Ms. Kim, who is now married to Mr. Bhakta, was hired by the Company in 2011 as Marketing Director at a salary of \$4,500 per month. At the time of Ms. Kim’s hiring, and before any romantic involvement with Mr. Bhakta, she was offered \$50,000 shares in the Company with a vesting schedule tied to sales performance targets, as well as a four-year vesting schedule of \$250,000 worth of shares vesting annually based upon performance and achievement of

annual sales targets. Mr. Bhakta later realized that the offer made to Ms. Kim in the rush and pressure of the Company's early days had not been fully documented. Mr. Bhakta voluntarily disclosed the situation to the Board and worked to resolve it. The Board, including Mr. Evison and Mr. Faessen, approved an equity award to Ms. Kim. This award, which the Board recognized as earned for her "extraordinary performance," was ratified at the August 15, 2015 Board meeting.

73. The omission of Ms. Kim's equity award from the November 2012 Subscription Agreement was a good faith oversight, not fraud. Upon discovering the mistake, Mr. Bhakta promptly alerted the Board, who approved and ratified the equity award to Ms. Kim. Defendants' effort to ascribe ill-intent to Mr. Bhakta is unfounded and disingenuous. In any event, the equity award to Ms. Kim of about 1% of WhistlePig could not have been material to Defendants' decisions to invest.

74. Fifth, the Board Resolutions state that Bhakta "fraudulently" represented that he intended to convey operational buildings on the farm to the Company to convince the Board to expend Company funds on the construction of a distillery. Ex. C. As explained above, *see supra* at ¶¶ 25-28, the Board, including Defendants, were well aware of the lease and its terms, and agreed to spend Company funds on the distillery while the lease was still in place. Certainly

sophisticated investors like FT WP would not have agreed to expenditure of funds on the distillery unless any material terms – such as those governing transfer of the buildings to Company – that had been agreed upon were in a written agreement signed by the parties. The terms of the transfer of the buildings or property to the Company was, and has been, the subject of negotiation. Mr. Bhakta remains willing to sell the properties to the Company on fair terms, and has negotiated in good faith to reach an agreement regarding such a sale. Mr. Bhakta committed no fraud.

75. Sixth, the Board resolutions state:

Bhakta offered on behalf of the Company for the company to repurchase equity units owned by John McDonnell. Bhakta told McDonnell that he would not be able to obtain Board approval for a purchase by the Company at a price that would be attractive to the Board. Bhakta offered that he would present the transaction as a repurchase of McDonnell's equity at \$4.70 per unit. In addition to the price of \$4.70 per unit that would be presented to the Board, Bhakta offered McDonnell \$70,000 in Company funds that could be accounted for as compensation for consulting services, but that Bhakta was in fact offering as inducement for McDonnell to sell his equity.

76. There was nothing improper about Mr. Bhakta's agreement with Mr. McDonnell. Mr. McDonnell had expressed his desire to cash out of the Company quickly. Accordingly, Mr. Bhakta offered a repurchase of his shares. In

January 2016, the Company repurchased units at \$4.50 per unit, and so the price of \$4.70 per unit was fair and reasonable, particularly given that Mr. McDonnell provided important value to the Company as a consultant. Indeed, as part of this transaction, Mr. Bhakta valued Mr. McDonnell's insight sufficiently that he also proposed naming Mr. McDonnell as an advisor to his trust. There was nothing nefarious about this arrangement, and Defendants' attempt to construe this into "criminal activity" or "fraud" is pure spin.

77. Because none of the six stated reasons for Mr. Bhakta's removal as Operating Manager and member of the Board constitute cause for removal as defined by Sections 4.3(a) and 4.7(c) of the Operating Agreement, Defendants' purported removal was ineffective, and Mr. Bhakta continues to be Operating Manager and a Board member.

78. Since the invalid actions allegedly taken by Mr. Evison and Mr. Faessen on May 6, Defendants have pressured the independent manager, Jose Robledo, to resign.

79. The spurious and frivolous grounds for removal cited in the Board Resolutions are a continuation of the Defendants' course of conduct seeking to intimidate and control Mr. Bhakta. As examples: Mr. Evison has leveled high-pitched accusations that Mr. Bhakta was receiving undisclosed loans from

WhistlePig when they were fully disclosed on multiple occasions, and Mr. Evison and Mr. Faessen accused Mr. Bhakta of violating the Operating Agreement by hiring his sister as a product steward, when the Operating Agreement only required Board approval for transactions with persons or entities Mr. Bhakta “controls” – clearly not including his sister. When confronted with this fact, Faessen and Evison retaliated by attempting to cap Bhakta’s sister at the lowest level of any product steward, in spite of her excellent performance.

80. In addition, Defendants have since continued their illegitimate push for control. On the evening of May 6, 2016, Defendants purported to Notice a Board Meeting, where they apparently intend to attempt to install a new Operating Manager. *See* Ex. D. This maneuver further evidences Defendants’ aggressive tactics.

COUNT I

(DECLARATORY JUDGMENT PURSUANT TO 6 *DEL. C.* § 18-110)

81. Plaintiff repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

82. The Notice of the May 6, 2016 meeting does not comply with the requirements of the Operating Agreement.

83. The Board Resolutions, having only been approved by two of the four members of the Company's Board of Managers, by Board members who wield two of six votes, were ineffective.

84. Because the Notice was deficient and the Board Resolutions were not approved by the requisite number of members, the May 6 Board Resolutions are invalid as a matter of law.

85. The Company's Operating Agreement provides that "[a]ny member of the Board of Managers may be removed by unanimous consent of the other members of the Board of Managers for fraud or criminal activity." *Id.* § 4.3(a). It further provides that "[t]he Operating Manager may be removed at any time for fraudulent act or criminal activity by the Board of Members." *Id.* § 4.7(c).

86. None of the six reasons cited by the Board Resolutions for Mr. Bhakta's removal amounts to "fraud" or "criminal activity" as required by the Operating Agreement.

87. Accordingly, the Board Resolutions were ineffective to remove Mr. Bhakta from his positions at the Company.

WHEREFORE, for the reasons set forth above, Plaintiff respectfully requests an Order:

A. Declaring invalid the Board Resolutions, which purport to
(1) remove Raj Peter Bhakta from the Board of Managers of WhistlePig, and
(2) remove Raj Peter Bhakta as Operating Manager of the Company;

B. Declaring that WhistlePig's validly-elected Board of Managers
continues to consist of Raj Peter Bhakta, Jose Robledo, Wilco Faessen, and
Christopher Evison;

C. Declaring that Mr. Bhakta continues to be Operating Manager
of the Company;

D. Awarding to Plaintiff his costs, including attorneys' fees,
incurred in bringing this action; and

E. Granting such other and further relief as the Court may deem
appropriate.

MORRIS, NICHOLS, ARSHT & TUNNELL

/s/ R. Judson Scaggs, Jr.

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May 10, 2016

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