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

VISION BIOBANC HOLDINGS LLC, Plaintiff, v. DEREK R. TALLER, Defendant.	Index No. 651706/2024 Motion Sequence: #002

MEMORANDUM OF LAW IN SUPPORT OF ORDER TO SHOW CAUSE

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PRELIMINARY STATEMENT

This is the second action filed this year in this Court regarding a purported dispute over management control of Plaintiff Vision BioBanc Holdings, LLC ("Vision" or the "Company"). This action was authorized by the Company's current Board of Managers (the "Current Board"), which was duly elected by resolution of a supermajority of Vision's members (*i.e.*, its investors), effective January 1, 2024. Vision's members elected the Current Board to replace Defendant Derek R. Taller ("Defendant" or "Taller"), who previously had been the Company's Chief Executive Officer and Chairperson, but was removed from those positions after engaging in egregious self-dealing, dishonesty, and other misconduct.

Unhappy with his removal, Taller retaliated. First, in January of this year, he caused counsel representing him in other matters (including an SEC investigation into Taller's conduct regarding undisclosed funds he personally extracted from Vision, an SEC licensed business development company, and other regulated entities) to file an action in the Company's name seeking to remove the Current Board and reinstall Taller, against the will of Vision's members. *See Vision BioBanc Holdings, LLC v. Barry Saxe, et al.*, Index No. 650288/2024 (filed Jan. 19, 2024) (the "Prior Injunction Action"). That action was dismissed a month later because the attorneys Taller had caused to file it concluded that "a supermajority of the shareholders [*i.e.*, Vision's members] had supported the [Current Board]," and the attorneys therefore determined they "could no longer continue the case on behalf of [Vision]." Prior Injunction Action, NYSCEF Doc. No. 23. Although counsel discontinued the action without prejudice and expressly invited Taller to pursue the action in his own name through separate counsel, Taller has not done so. *See id.*; *see also id.*, NYSCEF Doc. No. 24 (order dismissing action without prejudice).

Instead of seeking judicial resolution of his claim to managerial authority over the Company, Taller has resorted to a campaign of quasi-legal and illegal guerilla warfare waged from his hideout at the Radisson Hotel in Dubai. Taller has contacted key service providers and counterparties of the Company—including a financial institution holding millions of dollars of the Company's assets and the Company's transfer agent—and falsely represented that the Current Board was not validly elected and that he (Taller) retains management authority over the Company. As a result, the Company has been unable to access critical funds or work with key counterparties and service providers necessary for its day-to-day business. In addition, Taller has attempted to sabotage the Company by hijacking its servers, email accounts, and domain name (including a successful hijacking of the Company's core Microsoft data account), and continued attempts to siphon funds from the Company's accounts. Taller's self-interested actions have disrupted the Company's operations and threaten its viability as a going concern, reflecting his utter disregard for the best interests of the Company and its members (the very reason members removed him).

The Company filed a declaratory judgment action on April 2, 2024 to resolve, once and for all, any dispute over the Current Board's managerial authority. *See* NYSCEF Doc. No. 1. Through this Order to Show Cause, the Company seeks interim relief to ensure it can be operated for the benefit of all of its members, to protect its assets from the ongoing harm caused by Taller's current course of conduct, and to prevent further disruption and interference by Taller until the declaratory judgment action is resolved.

FACTUAL BACKGROUND

A. The Company And Its Governance Structure

Plaintiff Vision is a limited liability company organized under Puerto Rico law, with its headquarters located in New York City. Vision was formed to serve as a holding company for a

to-be-formed international bank that would make traditional loans and various equity-linked loans to a portfolio of healthcare industry companies.

Vision is owned by its members and operated by a Board of Managers elected by the members. Pursuant to Vision's Operating Agreement, all management powers over the business and affairs of the Company are vested in the Board. *See* Affidavit of Barry Saxe, dated April 12, 2024 ("Saxe Aff.") ¶¶ 2-3; *see also* Operating Agreement (Ex. A[1]) § 5.1. The Board shall designate one Manager to serve as Chair of the Board. *See* Saxe Aff. ¶ 4; *see also* Operating Agreement (Ex. A) § 5.3.

B. The Members Remove Taller From The Board Because of His Misconduct

Defendant Taller previously was a member of the Board and served as its Chair. However, a supermajority of Vision's members stripped Taller of those positions after becoming aware that he had engaged in self-dealing, dishonesty, and other misconduct. *See* Saxe Aff. ¶¶ 5-10

Pursuant to a Member Resolution dated December 20, 2023 (the "Resolution"; Ex. B), approximately 75% of the Company's members voted to remove the members of the Company's Board, including Taller, and replace them with Current Board, comprised of five new Managers: (1) Barry Saxe, who would serve as Chair; (2) Donald Garlikov; (3) Stormy Adams; (4) Joseph Taussig; and (5) Ruben Neftali Gety Rodriguez. *See* Saxe Aff. ¶¶ 12-14.

C. Taller Brings Litigation To Overturn His Removal, But His Attorneys Dismiss The Action In Deference To The Members' Clearly Expressed Preference For The Current Board

Despite the members' decisive action, Taller refused to acknowledge the December Resolution and relinquish his positions. Instead, he unsuccessfully tried to convince this Court to

[1] Citations in the form "Ex. __" are to the exhibits attached to the Saxe Aff.

overturn the will of the Company's members. On January 19, 2024, he caused attorneys representing him in an on-going SEC investigation into his misappropriation of investor funds to file the Prior Injunction Action purportedly on behalf of the Company, but actually advancing Taller's personal interests. Taller argued, among other things, that his removal was ineffective and the Current Board was not validly elected because, according to his erroneous interpretation of the Operating Agreement and in direct contravention of its express terms, the members of the Company could not act in writing as if it a meeting and to waive notice and consent of such a meeting, and that a resolution to remove members of the Board of Managers was valid only if it was joined by *all* members.

On January 24, 2024, after a hearing, this Court denied Taller's request for a temporary restraining order and set a schedule for briefing regarding his request for a preliminary injunction. *See* Prior Injunction Action, NYSCEF Doc. No. 19.

On January 26, 2024, to eliminate any doubt as to the validity of the Current Board's election, the Company held a special meeting of the members (the "Special Meeting") to affirm the prior vote. At the Special Meeting, Vision's members again voted overwhelmingly to remove Taller and elect the Current Board. Holders of over 70% of the Company's membership interests voted, either directly or by proxy, to affirm the removal of Taller and the election of the Current Board, and to ratify all actions taken by the Current Board since it was elected. *See* Saxe Aff. ¶ 15.

Thereafter, the counsel Taller had caused to bring the Prior Injunction Action filed a Notice of Discontinuance (the "Discontinuance"). *See* Prior Injunction Action, NYSCEF Doc. No. 21. Another attorney then submitted a letter on behalf of Taller objecting to the Discontinuance based on "Taller's considered view that he is still Chairperson of [Vision]" and that "the filing of the Discontinuance was without [his] authority." *Id.*, NYSCEF Doc. No. 22. The Company's

purported counsel submitted a letter in response explaining that they had determined to file the Discontinuance based on, among other things, the Special Meeting, where "a supermajority of unitholders [*i.e.*, members] had voted in favor of removing the existing Board of Managers [including Taller] and replacing it with [the Current Board]" and their review of "documentation regarding [the Special Meeting, which] appeared to confirm that approximately 70% of the unitholders expressed support for the [Current Board]." *Id.*, NYSCEF Doc. No. 23. Counsel further noted that they had advised Taller of their intention to file the Discontinuance and offered him an opportunity to pursue the action through separate counsel, which remained open to him. *See id.* This Court then dismissed the action without prejudice. *See id.*, NYSCEF Doc. No. 24.

D. Taller Mounts Destructive, Retaliatory Attacks On The Company And Interferes With Its Operations

Both before and after his failed attempt to take back managerial authority through litigation, Taller has mounted attacks on the Company and the Current Board, causing damage to the Company he claims to want to manage.

Immediately upon learning of his termination on or around January 10, 2024, Taller attempted to transfer $550,000 from the Company's primary custody account at Millennium Trust Company (the "Millenium Account") to accounts controlled by him. *See* Saxe Aff. ¶ 16. While that attempt was unsuccessful, Taller has continued to mispresent to Millenium Trust that he still has managerial authority over the Company and that the Current Board's election is invalid, and he has threatened Millenium Trust with liability if they follow the instructions of the Current Board or fail to follow his directives. *See id.* ¶ 18. As a result, the Millenium Account has essentially been frozen, with Millenium Trust refusing even to release account statements until Taller's purported dispute over control of the Company is resolved. *See id.* ¶ 23.

Because the Company cannot access the Millenium Account, it has been unable to pay vendors and service providers, and its unpaid bills are mounting. *See id.* The Company is facing demands for payment, collection proceedings, and threats of litigation from unpaid service providers, and if it cannot rectify the situation soon, it may be forced into bankruptcy. *See id.* ¶ 26.

Taller similarly has sewn confusion among others of the Company's counterparties and service providers by contesting the authority of the Current Board and the validity of his termination. Taller's interference, combined with the Company's inability to pay its bills, recently lead the Company's transfer agent to quit. *See id.* ¶ 24. As a result, members currently are unable to transfer their interests. *See id.*

In addition, Taller and others working at his direction have engaged in cyberattacks on the Company's servers and information technology, seeking to take control of Vision's domain name and email accounts. *See id.* ¶ 20. The Company already has been required to establish a new domain name after Taller transferred the prior domain name to a server in Switzerland. *See id.* Even worse, on March 1, 2024, Taller successfully hijacked the Company's core Microsoft server account, and the Company lost access to its main file and email systems, which has yet to be fully restored. *See id.*

Taller also has harassed the Company's members and is pursuing a deceptive campaign, including impersonating major financial institutions, in an effort to convince the members to revoke their support for the Current Board and support Taller's return, which they have refused to do.

ARGUMENT

I. THE COURT SHOLD ENTER A PRELIMINARY INJUNCTION TO PREVENT FURTHER DISRUPTION OF VISION'S BUSINESS BY DEFENDANT

Under N.Y. C.P.L.R. § 6301, a preliminary injunction may be granted where the defendant's actions would produce injury to the plaintiff if permitted to continue during the pendency of the action or threaten to render the requested judgment ineffectual. Courts award preliminary injunctions where the plaintiff has shown: (1) a likelihood of success on the merits; (2) that it will suffer irreparable injury if the relief is not granted; and (3) that a balancing of the equities weighs in its favor. *See Vanderminden v. Vanderminden*, 226 A.D.2d 1037, 1040 (3d Dept. 1996) ("three-pronged test" for issuance of preliminary injunction is "well settled"); *see also Liberty Mut. Ins. Co. v. Raia Med. Health, P.C.*, 140 A.D.3d 1029, 1031 (2d Dept. 2016). These criteria are satisfied here.

A. Likelihood of Success on the Merits

A plaintiff establishes a likelihood of success on the merits where it makes "a prima facie showing of reasonable probability of success." *Barbes Rest. Inc. v. ASRR Suzer 218, LLC*, 140 A.D.3d 430, 431 (1st Dept. 2016) (quotations omitted). The plaintiff need not provide "conclusive proof," and factual disputes do not preclude a finding that plaintiff is likely to succeed on the merits. *Ruiz v. Meloney*, 26 A.D.3d 485, 486-87 (2d Dept. 2006); *see also Barbes Rest.*, 140 A.D.3d at 431 ("[A]ctual proof of the petitioners' claims should be left to a full hearing on the merits.") (quotations omitted); *Four Times Sq. Assocs., LLC, v. Cigna Inv., Inc.*, 306 A.D.2d 4, 5 (1st Dept. 2003) ("It is well settled that a likelihood of success on the merits may be sufficiently established even where the facts are in dispute and the evidence is inconclusive.").

Plaintiff's evidence is more than sufficient to establish a likelihood of success on its claim for declaratory judgment that the Current Board was validly elected and is vested with

management authority over the Company, and that Taller no longer has any such authority. Plaintiff has demonstrated that more than 70% of Vision's members have *twice* acted to remove Taller and replace him with the Current Board. The initial action by Resolution was valid under the Operating Agreement, which nowhere contains the unanimity requirement Taller argued should be applied in the Prior Injunction Action. In any event, Taller conceded in the Prior Injunction Action that a vote by the members at a special meeting would be valid and effective, and that now has been done: At the Special Meeting in January, a supermajority of the members voted (again) to remove Taller and elect the Current Board. Following the Special Meeting, the counsel Taller caused to bring the Prior Injunction Acton acknowledged that Taller no longer has authority to speak for the Company and voluntarily dismissed the action over his objections—underscoring the validity of the members' actions and the likelihood that Plaintiff will prevail on the merits.

B. Irreparable Harm

Absent an injunction, Plaintiff and its members will suffer irreparable harm in at least two ways. First, Vision's members will effectively be stripped of their right under the Operating Agreement to choose the Board of Managers responsible for managing the Company. A supermajority of the members has affirmatively voted to install the Current Board and vest the Managers with managerial authority over the Company, but Defendant's continued interference has rendered the Managers powerless to conduct the Company's day-to-day operations because they cannot access the Company's assets, provide direction to service providers, or engage with counterparties. Moreover, allowing Defendant's interference to continue effectively gives Taller veto power over the Company's operations, contrary to the members' clearly expressed will that he should no longer have any role in managing the Company. Numerous courts have recognized

that similar elimination or undermining of shareholder rights and shift in the balance of corporate control constitute irreparable harm. *See, e.g.*, *Cooperstown Capital, LLC v. Patton*, 60 A.D.3d 1251, 1253 (3d Dept. 2009) ("An opportunity for defendants to shift the balance of power and wrest complete control over the company can constitute irreparable injury."); *Vanderminden*, 226 A.D.2d at 1041 (preliminary injunction warranted where stock transfer would undermine prior agreement to preserve equal voting and control among two ownership groups because "an opportunity for defendants to shift the balance [of] power and assume management and control of the company may properly be viewed as irreparable injury"); *Casita, LP v. Maplewood Equity Partners (Offshore) Ltd.*, 17 Misc.3d 1137(A), at *8 (Sup. Ct. N.Y. Cnty. 2007) ("Casita's loss of the voting and decision-making rights appurtenant to its Class A Shares would be irreparable, inter alia, because Casita would thereby lose majority voting control with respect to such matters.").

Second, Taller's interference threatens the viability of the Company because it cannot perform the functions necessary to sustain its operations. The Company's access to its information technology systems is compromised; its transfer agent has resigned; it cannot access the funds necessary to pay its outstanding bills; collection proceedings are underway, and it faces the risk of insolvency if access is not restored in short order. The Company's failure would result in the loss of goodwill it has developed as a viable, operating business, causing irreparable injury to Company and its members. *See, e.g.*, *Second on Second Café, Inc. v. Hing Sing Trading, Inc.*, 66 A.D.3d 255, 272-73 (1st Dept. 2009) (recognizing that "the loss of the goodwill of a viable, ongoing business . . . constitute[s] irreparable harm"); *Four Times Sq.*, 306 A.D.2d at 6 ("[T]he threat to Four Times Square's good will and creditworthiness is sufficient to establish irreparable injury.").

C. Balancing of the Equities

"The balancing of the equities requires the court to determine the relative prejudice to each party accruing from a grant or denial of the requested relief." *Barbes Rest.*, 140 A.D.3d at 432. Here, the equities clearly favor enjoining Taller's interference with the Current Board's management of the Company. Doing so respects the will of Vision's members, who have made clear that they want the Company to be managed by the Current Board, and not by Taller, and it will enable the Company to be operated productively for the benefit of its members, rather than the languish in a state of paralysis. On the other hand, there is no apparent harm to Taller. He will have the opportunity to litigate his claims to continued managerial authority, and in the meantime, he can continue to live in Dubai, albeit without misusing Company funds to subsidize his lifestyle.

II. A TEMPORARY RESTRAINING ORDER IS NECESSARY TO PREVENT IMMEDIATE AND IRREPARABLE INJURY

A temporary restraining order may be granted to prevent "immediate and irreparable injury, loss or damages" that could result from defendants' conduct prior to the hearing on plaintiff's request for a preliminary injunction. *See* N.Y. C.P.L.R. § 6301. Taller's retaliation and interference against the Company, its Current Board, and its members is persistent and ongoing. With each day that it continues, the damage to the Company increases. Accordingly, it is critical that the Court immediately restrain Taller from further interference so the Company does not suffer further waste of assets and damage before the Court rules on Plaintiff's request for an injunction.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court enter the proposed Order to Show Cause scheduling a hearing on Plaintiff's request for a preliminary injunction, and temporarily restraining Defendant Taller from disputing the Board's managerial authority and interfering with the Company's operations until the preliminary injunction hearing.

Dated: April 12, 2024

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to Rule 17 of 22 NYCRR § 202.70, Rules of the Commercial Division of the Supreme Court, I, Andrew W. Robertson, certify that the accompanying Memorandum of Law contains 3,050 words, excluding the parts of the document that are exempted by Rule 17. This complies with the word count limit. This certification was prepared in reliance on the word-count function of the word processing system (Microsoft Word) used to prepare the document.

Dated: April 12, 2024

Andrew W. Robertson