ESTTA Tracking number: **ESTTA546416**

Filing date: **07/02/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91210400
Party	Defendant Janis Savitt
Correspondence Address	G. ROXANNE ELINGS DAVIS WRIGHT TREMAINE LLP 1633 BROADWAY FL 27 NEW YORK, NY 10019-6708 UNITED STATES nytmpto@dwt.com;roxannelings@dwt.com;ch
Submission	Opposition/Response to Motion
Filer's Name	Lisa Keith
Filer's e-mail	lisakeith@dwt.com, roxanneelings@dwt.com, charleslegrand@dwt.com, nytmpto@dwt.com
Signature	/Lisa Keith/
Date	07/02/2013
Attachments	Savitt - Opposition to Petition to Disqualify.PDF(322032 bytes) Declaration of Lisa Keith ISO Opposition to Petition to Disqualify.PDF(51337 bytes) Keith Declaration 91210400 - EX 1.PDF(5253773 bytes) Keith Declaration 91210400 EXS 2-3.PDF(3519859 bytes) Keith Declaration 91210400 - EX 4.PDF(4780034 bytes) Keith Declaration 91210400 - EX 5.PDF(2528398 bytes) Keith Declaration 91210400 - EXS 6-9.PDF(5172159 bytes) Declaration of Janis Savitt in Opposition to Petition to Disqualify.PDF(42272 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application Serial No. 85721117
Filed September 5, 2012
For the Mark JANIS BY JANIS SAVITT
Published in the Official Gazette (Trademarks) on February 26, 2013

MICHELLE SAVITT, Opposer, v. JANIS SAVITT, Applicant.	Opposition No. 91210400 **OPPOSITION TO PETITION TO DISQUALIFY**

I. INTRODUCTION

Pursuant to the USPTO Rules of Professional Conduct and 37 C.F.R. § 11.19(c), Applicant Janis Savitt ("JANIS") hereby opposes the Petition to Disqualify (the "Petition") brought by Michelle Savitt ("MICHELLE"). This Petition is not the typical disqualification motion. Typically, a disqualification motion arises where an attorney accepts employment with a *new* client in litigation adverse to a *former* client. This is not what happened in this case. Ms. Elings has consistently represented JANIS and is familiar with the legal issues involved in this proceeding and the history of litigation involving M+J Savitt, Inc. ("M+J"). The only person who has changed sides in this history of litigation is MICHELLE. While JANIS and MICHELLE were once on the same side in a federal action brought by their sister, MICHELLE has changed course in recent years and has filed a number of proceedings against JANIS. Disqualification is a drastic measure that disrupts the litigation process. Disqualification motions are generally disfavored, particularly when the granting of the motion will result in prejudice. This is exactly such a case and accordingly, the Petition should be denied.

II. RELEVANT FACTS

Almost every fact alleged by MICHELLE in the Petition is either blatantly untrue or at best misleading. MICHELLE alleges that Roxanne Elings represented JANIS and MICHELLE in a legal dispute concerning usage of the trademarks involved in the present opposition proceedings. Petition at 1. Yet Ms. Elings did not represent MICHELLE in a trademark infringement claim. MICHELLE also alleges that there is an ongoing litigation between some of the parties in state court concerning the subject trademarks. Petition at 2. Yet the state court action does not include a single claim sounding in trademark. Further, MICHELLE neglects to mention in her Petition that all claims in the state court action against JANIS have been dismissed, even though these claims were dismissed in February 2013, months before the Petition was filed. MICHELLE claims that Ms. Elings attempted to register the trademark "Janis Savitt" in 2006. Petition at 2. In fact, Ms. Elings had no involvement with the attempted registration -- her name is nowhere on the application and the response to the Office Action regarding the application was handled by Dennis Cavanaugh of D H Cavanaugh Associates. Finally, MICHELLE alleges that Ms. Elings was "instrumental" in allowing the registrations of the *Savitt* and *S M + J Savitt* trademarks to expire. Petition at 2. Yet Ms. Elings was not the attorney responsible for these trademarks -- a fact that MICHELLE explicitly acknowledged in her Petition to Revive *M + J Savitt*, in which she stated that the law firm of Stephen E. Feldman, P.C. was retained to file Declarations of Use for all three Savitt trademarks. All of these facts can be confirmed on the USPTO website or on the federal and state court dockets for the relevant actions. For ease of review, these facts are described in more detail below and the relevant documents are attached to the Declaration of Lisa D. Keith, dated July 2, 2013 ("Keith Decl.") and submitted herewith.

A. The Southern District of New York Action (No. 08 Civ. 08535)

On October 7, 2008, Wynne Savitt ("WYNNE"), individually and purportedly on behalf of M+J, sued JANIS, her father Paul Savitt ("PAUL"), and JANIS's company Designs by Janis Savitt, Inc., for a variety of claims including, *inter alia*, trademark infringement, false representation, dilution, copyright infringement, breach of contract, unjust enrichment, conversion, breach of fiduciary duty, defamation, fraud and deceit, negligence, and intentional infliction of emotional distress. *See* Keith Decl. ¶ 2, Ex. 1 (Complaint). Roxanne Elings, and her then law firm Greenberg Traurig, LLP ("GT"), were retained to represent JANIS and PAUL in this action.

On November 3, 2008, GT filed a Motion to Dismiss the Complaint. After the motion to dismiss was fully briefed, but before a decision was made by the court, plaintiffs withdrew their original complaint and pursuant to a December 2008 Pretrial Scheduling Order, were allowed to file an amended complaint. The First Amended Complaint was filed on December 22, 2008. *See* Keith Decl. ¶ 3, Ex. 2 (First Amended Complaint). The First Amended Complaint had a few notable differences from the original Complaint. First, WYNNE made clear for the first time that the action was being brought derivatively on behalf of M+J. Second, and more relevant to the instant action, WYNNE added MICHELLE as a defendant. At this time, WYNNE brought no claims against MICHELLE individually. Rather, MICHELLE was only included in the claims against all defendants. Significantly, these claims did not include trademark infringement or contributory infringement, but instead were for breach of contract, tortious interference with business relations, fraud and deceit, negligence, and copyright infringement. Roxanne Elings and GT agreed to represent MICHELLE in her defense of these claims.

In January 2009, GT filed a second motion to dismiss, arguing that the court should dismiss plaintiffs' derivative claims and all related claims brought on behalf of M+J because

WYNNE failed to adequately plead demand and futility and failed to meet the requirements for bringing a shareholder derivative action. On February 4, 2009, the court addressed defendants' motion to dismiss the First Amended Complaint at a conference with the parties. *See* Keith Decl. ¶ 4, Ex. 3 (March 17, 2009 Opinion & Order) at 3. The court addressed only the part of the motion that pertained to the requirements for derivative claims. *Id.* The court found that the allegations in the First Amended Complaint were "far too conclusory to meet either the demand requirement or the futility requirement, either of which ha[d] to be pleaded with particularity." *Id.* The court therefore granted this part of defendants' motion to dismiss and granted leave to plaintiffs to file an amended complaint to cure the defects the court noted. *Id.* at 4. The court informed plaintiffs that this was their final opportunity to amend and that the sole purpose of this amendment was to address whether the defects the court noted in the pleading as to demand and futility could be cured. *Id.*

Pursuant to the court's direction, plaintiffs filed their Second Amended Complaint on February 9, 2009. *See* Keith Decl. ¶ 5, Ex. 4. Instead of simply addressing the defects that the court noted at the February hearing, as the Honorable Judge Denise Cote noted, the Second Amended Complaint contained "many entirely new allegations." *Id.* ¶ 4, Ex. 3 at 4. Most of these allegations pertained to alleged misconduct on the part of MICHELLE and her husband Sepp Donahower. *Id.* Amongst a bevy of claims added against MICHELLE (nine in total), including negligence, conversion, dilution and injury to business, breach of contract, unjust enrichment and similar claims, WYNNE also included claims for trademark infringement and contributory trademark infringement. *See id.* Ex. 4.

On February 14, 2009, GT filed a motion to dismiss the Second Amended Complaint, arguing, in part, that these new claims against MICHELLE were improperly added in

contravention of the court's explicit direction, and should be dismissed. On March 17, 2009, the court granted defendants' motion to dismiss all claims in the Second Amended Complaint with prejudice except for WYNNE's defamation claim against JANIS. *See* Keith Decl. ¶ 3, Ex. 4. In granting the motion to dismiss, the court noted that the new allegations in the Second Amended Complaint were "outside the scope of the permitted amendment." *Id.* at 4. With respect to the nine causes of action against MICHELLE, the court held that these new allegations would "be considered only insofar as the facts relating to these new allegations bear upon the issues of demand and demand futility." *Id.* at 5. The court never addressed the trademark infringement claims against MICHELLE and these claims were summarily dismissed. *Id.* In April 2009, WYNNE dropped her defamation claim against JANIS and the remaining counterclaims were settled on July 16, 2009.

B. The New York State Supreme Court Action (New York County, 101200/2012)

Although JANIS and MICHELLE were once co-defendants against their sister WYNNE, in January 2012, MICHELLE switched sides and sued JANIS, along with Ms. Elings and GT, in New York State Supreme Court (the "State Court Action"). *See* Keith Decl. ¶ 6, Ex. 5 (Verified Complaint). The State Court Action was brought by MICHELLE individually and on behalf of M+J as a derivative action. *Id.* MICHELLE claims in her Petition no less than three times that the State Court Action concerns the same trademarks as are at issue in the instant proceeding. *See* Petition at 2-3. This is blatantly untrue, as the State Court Action does not include any claims for trademark infringement; rather, the action stems from the Southern District of New York litigation, where trademark infringement was not a claim that was litigated with respect to MICHELLE.

In the State Court Action, the claims against JANIS are for, *inter alia*, breach of fiduciary duty and ouster, tortious misappropriation of design credit, conversion, embezzlement, unjust

enrichment, and unfair competition. *See* Keith Decl. ¶ 6, Ex. 5. The claims against Ms. Elings and GT include breach of fiduciary duties, fraud, and legal malpractice. *Id.* In July 2012, MICHELLE filed an Amended Verified Complaint. *See id.* ¶ 7, Ex. 6. The key changes in the Verified Amended Complaint were the removal of a claim for Prima Facie Tort and the addition of claims against Ms. Elings and GT for violations of Judiciary Law § 487. *Id.*

Motions to dismiss were filed on behalf of GT, Ms. Elings, and a former colleague of Ms. Elings, as well as on behalf of JANIS and her company Designs by Janis Savitt, Inc. These motions were granted at an oral argument held on February 21, 2013 and by a written decision entered on June 28, 2013. *See* Keith Decl. ¶¶ 8-9, Exs. 7, 8. Currently, all claims against JANIS have been dismissed and all claims against Ms. Elings and GT that were included in their motion to dismiss have also been dismissed.[1] *See id.*

At the oral argument in February 2013, Justice Ramos expressed his views regarding the merits of the litigation. For instance, although trademark infringement was not a claim in the State Court Action, counsel for MICHELLE suggested that JANIS had infringed on M+J's trademarks during the oral argument. *See id.* ¶ 8, Ex. 7 at 26. Justice Ramos stated repeatedly that these allegations were "nonsense" and refused to address them. *Id.* at 28. Justice Ramos also implied that the litigation brought by MICHELLE was "frivolous" and expressed his concern that the State Court Action was a vehicle to get an advantage in proceedings pending in Surrogate's Court in which MICHELLE and JANIS were also adverse. *Id.* at 34. Specifically,

---

[1] The motion to dismiss filed on behalf of GT and Ms. Elings only included the nonlegal malpractice claims. *See* Keith Decl. ¶ 8, Ex. 7 at 2. However, in his written decision dismissing the nonlegal malpractice claims and during the oral argument, Justice Ramos made clear his skepticism regarding the malpractice claims. Specifically, Justice Ramos stated that MICHELLE "fail[ed] to show any way in which GT's representation damaged her" and further noted that "Judge Cote dismissed all but one claim against Janis in the prior lawsuit, which was settled without monetary compensation, *belying the assertion that GT intended to deceive in advising Michelle that she had no meritorious claims to assert against Janis.*" *Id.* ¶ 9, Ex. 8 at 9, 10 (emphasis added).

Justice Ramos advised MICHELLE's attorney:

> I hope you have adequately advised your client as to what the sanctions are for bringing frivolous litigation. I am getting a really bad feeling about this case. I know there is a will contest going on and if you think you are going to use litigation in the commercial division to get an advantage in the surrogate's proceeding, you're sadly mistaken. If you don't have meritorious Causes of Action and a good basis for meritorious causes of action, I will entertain a motion for sanctions. This does not sound good at all.

Id. at 34.

Given that the hearing dismissing the claims in the State Court Action took place in February 2013 and MICHELLE's Petition was not filed until May 29, 2013, MICHELLE must have been aware that all claims against JANIS and the majority of claims against Ms. Elings had been dismissed months before she filed the Petition. Thus, MICHELLE's statement that there is "ongoing litigation between some of these parties which concerns the subject trademarks with Janis Savitt and G. Roxanne Elings named personally as defendants" (Petition at 2) is at best misleading.

C. The Trademarks at Issue

MICHELLE contends that three trademarks are relevant to the instant action: *M + J Savitt*, *Savitt*, and *S M + J Savitt*. All of these marks were canceled for failure to file an acceptable declaration demonstrating use under Section 8. In February 2013, MICHELLE filed a petition to reinstate the *M + J Savitt* mark, which was ultimately granted.[2] *See* Keith Decl. ¶ 10, Ex. 9. In the petition to reinstate the *M +J Savitt* mark, MICHELLE stated that the law firm of Stephen E. Feldman, P.C. had been retained to file Declarations of Use for the *M + J Savitt* mark, along with the *Savitt* and *S M + J Savitt* marks. *Id.* ¶ 4. MICHELLE further

[2] The petition to reinstate the *M + J* Savitt mark should never have been granted because M+J is a defunct corporation that has not conducted business since 2009 and has had no sales since June 2010. The history of M+J, and the lack of use of the M+J trademarks, is described more fully in Applicant's Motion to Dismiss the Opposition, which was filed on June 5, 2013. This motion is currently on hold as the proceeding has been suspended pending the Board's decision on the instant petition.

explained that the law firm of Stephen E. Feldman, P.C. failed to duly file the declarations by filing an improper specimen and as a result, the marks were cancelled. *Id.* ¶¶ 5-6. Because of this mistake, the law firm of Stephen E. Feldman, P.C. was "duly discharged for allowing the marks *Savitt* and *S M +J Savitt* to be cancelled." *Id.* ¶ 8. Nowhere in the petition to reinstate the *M + J Savitt* mark was Roxanne Elings, her prior law firm GT, or her current law firm Davis Wright Tremaine LLP mentioned. Nor could Ms. Elings have been mentioned in this petition as she had nothing to do with the cancellation of these marks. Only in the Petition, for the first time, does MICHELLE allege that Ms. Elings was "instrumental" in allowing the registrations of the *Savitt* and *S M + J Savitt* marks to be canceled. Petition at 2.

MICHELLE also briefly mentions the trademark *Janis Savitt* (Serial No. 77033657), which was applied for in 2006. MICHELLE states that JANIS attempted to register this trademark "via her attorney G. Roxanne Elings." Petition at 2. Yet Ms. Elings was not involved in the application for this trademark; the attorney who assisted JANIS was Dennis H. Cavanaugh of D H Cavanaugh Associates. *See* Declaration of Janis Savitt in Opposition to Petition to Disqualify, dated July 2, 2013 ("JANIS Decl.") ¶¶ 2-4. The October 31, 2006 application for the mark was filed in JANIS's own name. *Id.* ¶ 2. After receiving an Office Action in 2007, JANIS retained Dennis H. Cavanaugh of D H Cavanaugh Associates to prepare the response filed in September 2007. *Id.* ¶ 3. Thus, despite MICHELLE's allegations, Ms. Elings was not involved with either the three M+J trademarks or the 2006 application for *Janis Savitt* and was not the attorney of record for any of these marks. The first mention of Ms. Elings' name is on the September 5, 2012 application for the mark currently at issue -- JANIS BY JANIS SAVITT. *See id.* ¶ 5.

III. ARGUMENT

"Because an attempt to disqualify the opposing attorney is often tactically motivated and disruptive to the litigation process, disqualification is a drastic measure that is generally disfavored." *Skyy Spirits, LLC v. Rubyy, LLC*, No. C 09-00646 WHA, 2009 U.S. Dist. LEXIS 109641, at *3-4 (N.D. Ca. Nov. 9, 2009). Motions for disqualification "'should be subjected to particularly strict judicial scrutiny.'" *Id.* at *4 (quoting *Optyl Eyewear Fashion Int'l Corp. v. Style Cos.*, 760 F.2d 1045, 1050 (9th Cir. 1985)). Accordingly, the party seeking disqualification bears a heavy burden. *Skyy Spirits*, 2009 U.S. Dist. LEXIS 109641, at *4. MICHELLE has not met her heavy burden and the Petition should be denied.

A. The Prior Representation is Not Substantially Related to the Instant Action

"[T]he test for disqualification is, *inter alia*, whether the subject matter of the present representation is substantially related to the subject matter of the previous representation." *Finger Furniture Co. v. Finger Interests Number One, Ltd.*, 2004 TTAB LEXIS 349, at *11 (TTAB 2004); *see also* 37 C.F.R § 11.109. Contrary to MICHELLE's assertions, Ms. Elings did not represent MICHELLE with respect to any trademark matters in the prior litigation in the Southern District of New York. MICHELLE was not named as a defendant in the first complaint filed in the action. When MICHELLE was later added as a defendant, the claims against MICHELLE were limited to contract and tort claims. Because the action had not been properly brought by WYNNE, the court did not consider these claims against MICHELLE, but instead ordered WYNNE to amend the complaint. Only in this last amendment did WYNNE assert a trademark infringement claim against MICHELLE. However, because this claim was outside the scope of the permitted amendment, it was not considered by the court and was dismissed.

As MICHELLE acknowledges in the Petition, the primary purpose behind the "substantial relationship test" is to prevent an attorney from disclosing confidences obtained in the previous action to the new client in the present action. *See* Petition at 1. Courts have declined to find a "substantial relationship" in instances where it is unlikely that that any confidential information will be disclosed. For instance, in *Classic Ink, Inc. v. Tampa Bay Rowdies*, the third-party defendant in a trademark infringement action moved to disqualify plaintiffs' counsel on the grounds that he was previously involved in the acquisition and assignment of the mark. No. 3:09-CV-784-L, 2010 U.S. Dist. LEXIS 75220, at *2-3 (N.D. Tex. July 23, 2010). The court held that the matters were not substantially related because it was unlikely that the attorney possessed confidential information relating to the mark's acquisition and assignment. *Id.* at *10. The court noted that the attorney's actions were matters of public record and stated that it did not believe that the attorney could reveal any information that was not already known to the parties. *Id.* Here, information about the M+J trademarks and the prior litigation between JANIS and MICHELLE are all matters of public record. MICHELLE has not pointed to any confidential information that Ms. Elings is privy to, and given that MICHELLE and JANIS were on the same side in the former litigation, it is unlikely that Ms. Elings would have such access.

"To create a conflict requiring disqualification, the information acquired during the first representation must be found to be directly at issue in, or have some critical importance to, the second representation." *Skyy Spirits*, 2009 U.S. Dist. LEXIS 109641, at *8 (internal quotation marks and citation omitted). The current proceeding is about JANIS's ability to *register* her trademark. The prior proceeding concerned JANIS's *use* of her trademark along with a variety of non-trademark related claims. The information that Ms. Elings acquired in the first

representation is not critically important to the current representation merely because both actions concerned trademarks. *See, e.g.*, *Classic Ink,* 2010 U.S. Dist. LEXIS 75220, at *10 (finding that prior representation involving acquisition and eventual assignment of a mark was not substantially related to subsequent action involving ownership); *ebix.com, Inc. v. McCracken*, 312 F. Supp. 2d 82, 94 (D. Mass. 2004) ("Simply put, there is no substantial relationship (factually or legally) between registering copyrights and trademarks for [defendant's company] and then allegedly infringing those copyrights . . . .").

Finally, although MICHELLE mentions the "ongoing litigation" in state court and alleges that the "subject trademark of that legal action is the same one at issue in this proceeding" (Petition at 2), there are no claims in the State Court Action sounding in trademark law. Even if the subject matter of the instant action and the State Court Action were somehow related, this would be irrelevant to Michelle's Petition as Ms. Elings does not represent MICHELLE in the State Court Action and is in fact adverse to MICHELLE. Thus, this argument is simply irrelevant.

B. The Petition is Tactically Motivated and Disqualification Would Prejudice JANIS.

Given MICHELLE's history of bringing litigation against JANIS in both state court and in Surrogate's Court, along with MICHELLE's misrepresentation of the State Court Action, it is likely that this Petition is tactically motivated. It should have come as no surprise to MICHELLE that Ms. Elings would represent JANIS in the instant proceeding, given that she is listed as the Attorney of Record for the mark. Yet MICHELLE waited until May 29, just days before a response to her Opposition of JANIS's trademark registration was due, to file the instant Petition and failed to properly serve the Petition on MICHELLE or Ms. Elings. As a result, valuable resources were expended in preparing a motion to dismiss the Opposition and the

motion to dismiss was filed on June 5 because neither JANIS nor Ms. Elings was aware of the Petition.

"It is well settled that a former client who is entitled to object to an attorney representing an opposing party on the ground of conflict of interest but who knowingly refrains from asserting it promptly is deemed to have waived that right." *Skyy Spirits, LLC*, 2009 U.S. Dist. LEXIS 109641, at *9 (internal quotation marks and citation omitted). The application for JANIS BY JANIS SAVITT was filed on September 5, 2012 with Ms. Elings as the attorney of record. But even if MICHELLE did not know that Ms. Elings was representing JANIS until the Notice of Publication, the mark was published on February 26, 2013 in the *Official Gazette*. Thus, MICHELLE still waited over three months, and until well after JANIS had expended resources in responding to MICHELLE's Opposition, to file the instant Petition. If MICHELLE had filed the Petition right away, the "potential prejudice to [JANIS] would have been significantly reduced." *Skyy Spirits, LLC*, 2009 U.S. Dist. LEXIS 109641, at *10.

Although the length of the delay in bringing a motion to disqualify is important, it is not dispositive. Rather, as the *Skyy* court explained:

> It is also appropriate to consider such factors as when the movant learned of the conflict; whether the movant was represented by counsel during the delay; why the delay occurred, and *in particular whether the motion was delayed for tactical reasons*; and *whether disqualification would result in prejudice to the nonmoving party.*

Id. at *11-12 (emphasis added) (internal quotation marks and citation omitted) (denying the motion as "largely a tactical gimmick"); *see also Universal City Studios, Inc. v. Reimerdes*, 98 F. Supp. 2d 449, 455 (S.D.N.Y. 2000) (noting that "[t]here [was] substantial reason to believe that the motion to disqualify . . . [was] motivated at least partly by tactical considerations" because the moving party waited to raise the issue). Here, it is quite likely that the Petition was delayed for tactical reasons.

Equally as important, the disqualification of Ms. Elings would result in prejudice to JANIS. This is not the typical disqualification motion. "The typical disqualification motion arises where an attorney accepts employment with a *new* client in litigation adverse to a former client." *Skyy Spirits,* 2009 U.S. Dist. LEXIS 109641, at *7 (emphasis in original). The concern is that the professional commitment of a lawyer is endangered if the possibility exists that the lawyer will later change sides in a substantially related matter. *Id.* This concern does not apply in the instant action. Here, the only party who changed sides is MICHELLE. *Id.* ("But in this action, *Attorney Kinnear never changed sides* -- Skyy is not a *new* client. [Movant] is the one who jumped ship.") (emphasis in original).

JANIS should not be prejudiced by MICHELLE's decision to "jump ship." Ms. Elings is familiar with the relevant marks in this dispute as well as the history of litigation in the Savitt family. JANIS has already paid for the work done by Ms. Elings and her firm in connection with the motion to dismiss. Further, Ms. Elings and JANIS have worked together for years and have developed an attorney-client relationship that would be disrupted by Ms. Elings' disqualification. This disruption to the attorney-client relationship is exactly the reason that motions to disqualify are generally disfavored and weighs heavily against granting MICHELLE's Petition.

C. It is Unlikely that Ms. Elings will be Called to Testify and Any Potential Testimony by Ms. Elings is not a Ground for Disqualification.

MICHELLE contends that Ms. Elings will be called to testify in the instant action because she "became instrumental in allowing registrations of the two petitioners' valuable trademarks, namely *Savitt* and *S M + J Savitt*, to expire." Petition at 2. Not only is this statement untrue on its face, but it is directly contradictory to the position that MICHELLE has taken in prior filings with the USPTO. Specifically, in MICHELLE's Petition for Revival of Cancelled Registration for the mark *M + J Savitt*, she took the position that the mark was

canceled as a result of the errors of the law firm of Stephen E. Feldman, P.C. *See* Keith Decl. ¶ 10, Ex. 9 at ¶¶ 4-8. MICHELLE explained that the law firm of Stephen E. Feldman, P.C. was "duly discharged for allowing the marks *Savitt* and *S M + J Savitt* to be cancelled." *Id.* ¶ 8. These are the identical marks that MICHELLE now contends that Ms. Elings was "instrumental" in allowing to be canceled. This is the first time that MICHELLE has made such an allegation and the allegation is without any factual support. Ms. Elings was not the attorney of record for these trademarks and her name does not appear anywhere on any of the relevant filings. In fact, the Office Actions issued before cancellation of the trademarks were addressed to Stephen E. Feldman, P.C.

MICHELLE sets forth no compelling reason why Ms. Elings may be called as a witness in the instant proceeding. While MICHELLE states that it is "necessary" to call Ms. Elings in order to "determine whether or not she devised or helped to devise a strategy of letting the two M+J Savitt's marks 'die' to clear the way for registering the mark at issue," (Petition at 2-3), there is no basis for this accusation. Rather, MICHELLE has devised an issue, with no factual support, and for which Ms. Elings has no knowledge, in order to create a ground for the instant Petition. Such maneuvering should not be tolerated. *See, e.g., Optyl*, 760 F.2d at 1049-50 ("The only reason we can see for [movant's] suggestion that he will call [plaintiff's] counsel is to use it as a predicate for the disqualification motion"); *Waterbury Garment Corp. v. Strata Prods., Inc.*, 554 F. Supp. 63, 68 (S.D.N.Y. 1982) ("Defendants' threat to call plaintiff's counsel as witnesses, without any evidence as to how their testimony is relevant to the instant case, is insufficient to warrant disqualification."). It is particularly telling that MICHELLE did not mention Ms. Elings anywhere in her previous petition to reinstate the canceled trademark. However, even if Ms.

Elings could be considered a necessary witness in the instant proceeding, this alone does not mandate disqualification.

The Petition cites 37 C.F.R § 10.63 in support of the argument that Ms. Elings should withdraw from the proceeding if she will be called to testify. However, 37 C.F.R. § 10.63 was removed from the rules in April 2013 – the current provision is now 37 C.F.R. § 11.307. While this provision provides that a practitioner shall not advocate at a proceeding before a tribunal in which the practitioner is likely to be called as a necessary witness, there is an explicit exception in the rule for instances where "[d]isqualification of the practitioner would work a substantial hardship on the client." 37 C.F.R. § 11.307. In the *Classic Ink* case, the court denied a motion to disqualify even though it was likely that the attorney would be called as a fact witness. 2010 U.S. Dist. LEXIS 75220, at *11. The court explained that plaintiff "could suffer a substantial hardship if the court goes forward with disqualification" and also noted that movant "ha[d] alleged nothing relating to confidential information known by [the attorney] that could be damaging to [movant] if divulged in this action." *Id.* at *13-14. Similarly here, JANIS would suffer a substantial hardship if Ms. Elings were disqualified by being forced to sever her relationship with her attorney who is familiar with the issues in the instant proceeding. *See* JANIS DECL. § 6. Further, despite unsupported allegations, MICHELLE has alleged nothing relating to confidential information that could be damaging to MICHELLE if revealed by Ms. Elings during testimony. Thus, even if Ms. Elings were to testify in the instant action, which is highly unlikely, there would be no damage to MICHELLE. The only potential damage is the damage to JANIS of losing her attorney.[3]

[3] MICHELLE also alleges that Ms. Elings will be called to testify in the State Court Action. Given that the majority of the action has been dismissed, it is unclear at this time whether Ms. Elings will be asked to testify, but even if she does testify in the State Court Action, this has no relevance to the instant petition.

Finally, the three cases cited by MICHELLE in support of her argument that it is "long established" that attorneys who are called as witnesses should be disqualified are not on point. Petition at 3. In the first case, *Focus 21*, the court noted that because it had granted the petitioner's motion to admit deposition testimony, the respondent's motion to disqualify counsel must "be taken under consideration" and referred the issue to the Solicitor's Office. *Focus 21 Int'l, Inc. v. Pola Kasei Kogyo Kabushiki Kaisha*, 22 U.S.P.Q.2d 1316, at *5 (TTAB 1992). The court did not decide the merits of the disqualification. *Id.* The second case does not even concern a motion to disqualify; rather, in a footnote, the Board simply stated that it is generally "not prudent" for attorneys to verify answers to interrogatories since doing so may expose an attorney to additional discovery and disqualification. *See Allstate Ins. Co. v. Allstate Life Ins. Co.*, 9 U.S.P.Q.2d 1663, at *7 n.4 (TTAB 1988). Finally, and most harmful to MICHELLE's argument is the third case cited -- here, the Commissioner *denied* a motion for disqualification because there was "no allegation that, if called, [attorney's] testimony may be prejudicial to his client in any way." *Little Caesar Enters. v. Domino's Pizza, Inc.*, 11 U.S.P.Q.2d 1233, at *5-6 (Comm'r 1989) (citing cases denying disqualification motions and noting that movant had "failed in its burden"). MICHELLE has likewise failed to show prejudice.

IV. CONCLUSION

Because MICHELLE has not met the heavy burden required for a petition to disqualify, Applicant respectfully requests that the Board deny the Petition.

Dated this 2nd day of July, 2013

DAVIS WRIGHT TREMAINE LLP

/Lisa D. Keith/
G. Roxanne Elings
Lisa D. Keith
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSITION TO PETITION TO DISQUALIFY** was duly served upon Opposer at the below address:

Michelle Savitt
12 East 86th Street #429
New York, NY 10028

by mailing a copy thereof via the U.S. Postal Service in a sealed envelope via First Class Mail with postage thereupon fully prepaid on the 5th day of June, 2013.

Date: July 2, 2013 /Lisa D. Keith/

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application Serial No. 85721117
Filed September 5, 2012
For the Mark JANIS BY JANIS SAVITT
Published in the Official Gazette (Trademarks) on February 26, 2013

MICHELLE SAVITT, Opposer, v. JANIS SAVITT, Applicant.	**Opposition No. 91210400**

DECLARATION OF LISA D. KEITH IN OPPOSITION TO PETITION TO DISQUALIFY

I, LISA D. KEITH, declare as follows:

1. I am an attorney licensed to practice law in the State of New York. I am an associate in the law firm of Davis Wright Tremaine LLP, counsel to the Applicant Janis Savitt.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Complaint in *M+J Savitt, Inc. and Wynne Savitt Weiner v. Janis Savitt, Designs by Janis Savitt, Inc. and Paul Savitt*, Civil Action No. 08-cv-08535 (the "SDNY Litigation"), filed on October 7, 2008.

3. Attached hereto as Exhibit 2 is a true and correct copy of the First Amended Complaint in the SDNY Litigation, filed on December 22, 2008.

4. Attached hereto as Exhibit 3 is a true and correct copy of an Opinion & Order by Honorable Judge Denis Cote in the SDNY Litigation, filed on March 17, 2009.

5. Attached hereto as Exhibit 4 is a true and correct copy of the Second Amended Complaint in the SDNY Litigation, filed on February 9, 2009.

6. Attached hereto as Exhibit 5 is a true and correct copy of the Verified Complaint in *Michelle Savitt and M+J Savitt, Inc. v. Greenberg Traurig, LLP, Paul D. Schindler, G. Roxanne Elings, Janis Savitt, and Designs by Janis Savitt, Inc.*, Index No. 101200/12 (the "State Court Action"), filed on February 2, 2012.

7. Attached hereto as Exhibit 6 is a true and correct copy of the Amended Verified Complaint in the State Court Action, filed on July 10, 2012.

8. Attached hereto as Exhibit 7 is a true and correct copy of the transcript of the February 21, 2013 hearing before the Honorable Justice Charles E. Ramos.

9. Attached hereto as Exhibit 8 is a true and correct copy of a decision by Honorable Justice Charles E. Ramos in the State Court Action, entered on June 28, 2013.

10. Attached hereto as Exhibit 9 is a true and correct copy of the Petition for Revival of Cancelled Registration, submitted on February 13, 2013 with respect to Registration No. 3022631.

11. I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 2, 2013 at New York, New York

/Lisa D. Keith/

Lisa D. Keith

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **DECLARATION OF LISA D. KEITH IN OPPOSITION TO PETITION TO DISQUALIFY** was duly served upon Opposer at the below address:

Michelle Savitt
12 East 86th Street #429
New York, NY 10028

by mailing a copy thereof via the U.S. Postal Service in a sealed envelope via First Class Mail with postage thereupon fully prepaid on the 2nd day of July, 2013.

Date: July 2, 2013 /Lisa D. Keith/

Exhibit 1

JUDGE COTE

'08 CIV 8535

ROBERT E. SEAMAN III (RS-2734)
PETER J. GLANTZ (PG-1063)
ATTORNEYS FOR PLAINTIFFS
475 PARK AVENUE SOUTH, 26TH FLOOR
NEW YORK, NEW YORK 10016
(212) 213-0202

RECEIVED
OCT 7 2008
U.S.D.C. S.D. N.Y.
CASHIERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M+J SAVITT, INC. and WYNNE SAVITT WEINER, Plaintiffs, v. JANIS SAVITT, DESIGNS BY JANIS SAVITT, INC. and PAUL SAVITT, Defendants.	CASE NO.: COMPLAINT & DEMAND FOR JURY TRIAL ECF CASE

COMPLAINT

Plaintiffs, M+J Savitt, Inc. ("M+J Savitt") and Wynne Savitt Weiner ("Wynne Savitt"), in her individual capacity, by and through their counsel, as and for their Complaint hereby allege, upon information and belief, as follows:

PARTIES

1. Plaintiff, M+J Savitt, is a corporation organized under the laws of the State of New York, with its principal place of business located at 500 Seventh Avenue, Floor 10B, New York, New York 10018.

2. Plaintiff, Wynne Savitt, is an individual residing at One Kensington Court, Tenafly, New Jersey 07670 (M+J Savitt and Wynne Savitt are hereinafter collectively referred to as "Plaintiffs").

3. Defendant, Janis Savitt, is an individual residing at 200 West 58th Street, Apt. 12B, New York, New York 10019.

4. Defendant, Designs by Janis Savitt, Inc. ("Designs by Janis Savitt"), is a corporation organized under the laws of the State of New York, with its principal place of business located at 200 West 58th Street, New York, New York 10019.

5. Defendant, Paul Savitt, is an individual residing at 429 West Broadway New York, New York 10012. (Janis Savitt, Designs by Janis Savitt and Paul Savitt are hereinafter collectively referred to as "Defendants").

6. Defendant, Janis Savitt, incorporated Designs by Janis Savitt on or about December 31, 2007, while simultaneously owing a fiduciary duty to M+J Savitt.

NATURE OF ACTION

7. This lawsuit primarily relates to the unauthorized use of M+J Savitt's famous trademarks and copyrights. The fundamental purpose of intellectual property law is to protect consumers from being confused as to the source or affiliation of the products or services that they seek to buy. In order to assist consumers in making informed purchasing decisions, intellectual property law encourages companies to differentiate their products and services within the marketplace. This is accomplished by legally limiting the use of a brand or copyright to the owner of the applicable brand or copyright.

8. Some individuals and entities attempt to take advantage of consumers by marketing their products or services using the brands and copyrights of others. In effect, they seek a free ride on the reputation and goodwill of another's brand and/or copyrighted material. This lawsuit, *inter alia*, involves exactly such a situation – efforts by individuals and a corporation to "free ride" on the brands and copyrighted materials of another company.

9. Additionally, this lawsuit relates to, *inter alia*, mismanagement, corporate waste, theft

and misuse of corporate assets, intentional infliction of emotional distress, negligence and gross negligence, breach of contract and fiduciary duties, as well as fraud and other self dealings in the context of a famous family-owned jewelry business.

JURISDICTION AND VENUE

10. This action arises in part under the Lanham Act, 15 U.S.C. §§ 1114 and 1125. This Court has federal question jurisdiction over the claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and 1338(b). This Court has supplemental jurisdiction over the New York State law claims pursuant to 28 U.S.C. § 1367(a) because those claims are so closely related to the federal claims brought herein as to form part of the same case or controversy.

11. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims herein occurred in this District.

ALLEGATIONS COMMON TO ALL CLAIMS

HISTORY OF M+J SAVITT, INC.

12. M+J Savitt, a privately held company, has an illustrious history. M+J Savitt was incorporated in 1972, more than thirty-five (35) years ago.

13. M+J Savitt is engaged in designing, manufacturing and wholesaling fine and semi-precious designer jewelry. The company is a pioneer in combining high fashion design and jewelry.

14. For over thirty-five (35) years, M+J Savitt has developed global name-recognition and goodwill and has become a household name in the jewelry and fashion industries.

15. The M+J Savitt brand is synonymous with unique jewelry products, including a definitive design aesthetic, which designs are clean, modern, bold and innovative, yet classical, interesting and provocative.

16. Throughout its history, M+J Savitt has sold to and continues to sell to, among other retail outlets, Neiman Marcus, Saks Fifth Avenue, Barney's New York, Henri Bendel's,

Bloomingdales, Bergdorf Goodman, as well as other specialty retailers and high-end jewelers.

17. Among many other accolades, M+J Savitt has won the coveted "COTY" award, been nominated for two (2) CFDA Accessory Designer of the Year awards, twenty-seven (27) DeBeers "Diamond Today" awards, and is a member of the Diamond International Hall of Fame.

18. M+J Savitt has collaborated with famous designers such as Vera Wang, Ralph Lauren and Michael Kors, to name a few.

19. Janis, Wynne and Michelle Savitt are siblings. They each own twenty-seven percent (27%) of M+J Savitt.

20. Mildred Savitt, Wynne, Janis and Michelle Savitt's mother, owns the remaining nineteen percent (19%) of M+J Savitt.

21. M+J Savitt was originally funded by defendant, Paul Savitt who is Janis, Michelle and Wynne Savitt's father and Mildred Savitt's husband. Paul Savitt, both an artist and businessman by trade, was the original inspiration for many of M+J Savitt's jewelry designs.

22. At all times relevant to the allegations made herein, defendant, Paul Savitt, is President of M+J Savitt and Mildred Savitt is Vice President but Mildred and Paul Savitt have no operational duties on behalf of M+J Savitt.

23. At all times relevant to the allegations contained herein, Wynne Savitt is Executive Vice President of M+J Savitt and Janis Savitt is Secretary and Treasurer of M+J Savitt.

24. Among other duties, Janis Savitt is primarily responsible for designing jewelry for M+J Savitt.

25. Among other duties, Wynne Savitt, also a jewelry designer, is primarily responsible for the sales and merchandising aspects of M+J Savitt.

26. On or about December 31, 2007, Defendant, Janis Savitt, informed M+J Savitt that she was leaving the company. However, Janis Savitt never executed the necessary legal

documentation to transfer her ownership interest in M+J Savitt pursuant to the terms of the M+J Savitt By Laws and Articles of Incorporation.

M+J SAVITT'S TRADEMARKS

27. M+J Savitt has had a longstanding usage of the trademark **SAVITT** both as a trademark for jewelry, as part of its trade name and corporate identifier, as well as within magazine editorial credits, paid for advertising and promotional materials (magazine editorial credits and paid for advertising and promotional materials are hereinafter collectively referred to as "Advertisements").

28. M+J Savitt has also conducted business as **JANIS SAVITT FOR M+J SAVITT** for approximately sixteen (16) years. See Exhibit 1 annexed hereto for copies of M+J Savitt Advertisements utilizing the **JANIS SAVITT FOR M+J SAVITT** mark.

29. As requested by Janis Savitt, M+J Savitt has approved the use of **JANIS SAVITT FOR M+J SAVITT** for branding purposes on only one segment of the company's jewelry collection; namely the Gold and Diamond Precious Metal Collection (the "Collection").

30. M+J Savitt has also conducted business as **JANIS SAVITT** for approximately sixteen (16) years. Various retail outlets such as Bergdorf Goodman utilized the mark **JANIS SAVITT** in Advertisements instead of the longer version **JANIS SAVITT FOR M+J SAVITT**. See Exhibit 2 annexed hereto for copies of M+J Savitt Advertisements utilizing the **JANIS SAVITT** mark.

31. To preserve and enhance its trademark rights, M+J Savitt has obtained several federal trademark registrations for its trademarks, all of which have been in continuous use for more than five (5) years and are therefore considered "incontestable" pursuant to 15 U.S.C. § 1115(b), including: (a) **SAVITT,** U.S. Registration No. 2,941,210, registered on September 15, 2003 for "jewelry" based on first use in commerce in 1984; (b) **S M+J SAVITT & DESIGN,** (all in stylized

form), U.S. Registration No. 2,116,162, registered on November 25, 1996 for "jewelry made of precious metals, and jewelry with precious stones" based on first use in commerce in 1984; and (c) **M+J SAVITT**, U.S. Registration No. 3,022,631, registered on September 15, 2003 for "jewelry" based on first use in commerce in 1984 ("Janis Savitt for M+J Savitt", "Savitt," "S M+J Savitt & Design" (all in stylized form) and "M+J Savitt" are collectively referred to herein as the "Marks").

32. M+J Savitt has common law rights to the Marks in New York by virtue of the Marks' eligibility for protection and M+J Savitt's status as the senior user of the Marks.

33. The Marks are unique and famous distinctive designations of the source of M+J Savitt's jewelry and precious metal goods and services.

34. M+J Savitt has invested approximately two million dollars ($2,000,000.00) in retailer coop advertising programs and marketing in order to build the fame, reputation and goodwill of the Marks.

35. M+J Savitt is promoted and editorialized through a variety of media, including the Internet, magazines and newspapers across the country and the world. Specifically, M+J Savitt promotes its products in some of the most well-known worldwide publications including, but not limited to, Harper's Bazaar, Vogue, In Style, Elle, Vanity Fair, Women's Wear Daily, Town & Country, Glamour, Cosmopolitan and Allure. See Exhibit 3 for just a small sampling of Advertisements in such publications.

36. Through M+J Savitt's action, and because of widespread and favorable public acceptance and recognition, the Marks have become distinctive designations of the source of origin of M+J Savitt's goods and services.

37. The Marks have become uniquely associated with, and hence identify M+J Savitt. The Marks are assets of incalculable value as symbols of M+J Savitt, its original designs, quality goods and services, and its goodwill. Accordingly, the Marks have developed secondary meaning.

38. The Marks have become "famous" within the meaning of the dilution provisions of the Lanham Act, 15 U.S.C. § 1125(c). For example, as a result of M+J Savitt's extensive editorial credits, advertising and promotional efforts and its continuous use of the Marks, M+J Savitt has attained a high level of brand recognition among consumers.

UNAUTHORIZED USE OF THE M+J SAVITT MARKS

39. At all times relevant to the allegations contained herein, Janis Savitt, without M+J Savitt's consent or authorization, used and is currently using the Marks in her individual capacity and for her own personal interest to compete with M+J Savitt.

40. M+J Savitt has never granted Janis Savitt or Designs by Janis Savitt any permission, authority, or license to use the Marks for the promotion of jewelry or precious metals goods or services, either directly or indirectly.

41. On or about October 31, 2006, Janis Savitt, individually and while simultaneously owing a fiduciary duty to M+J Savitt, applied for the trademark **JANIS SAVITT** for use with "jewelry" without the consent or authorization of M+J Savitt (the "Trademark Application").

42. The Trademark Application was abandoned on or about April 15, 2008 subsequent to the USPTO Examining Attorney's refusal of the Trademark Application on the basis that the mark sought (**JANIS SAVITT**) was likely to be confused with the Marks. The United States Patent and Trademark Office Examining Attorney concluded that the commercial impressions conveyed by both the mark **JANIS SAVITT** and the M+J Savitt Marks were identical as to **SAVITT**, and the designations identified the same type of products, i.e. jewelry. See Exhibit 4 annexed hereto for a copy of the Trademark Application file with refusal.

43. From December 2006 to February 2007, Janis Savitt, individually, and while simultaneously owing a fiduciary duty to M+J Savitt, entered into business discussions with QVC, a cable television retailer, for the sale of jewelry items using the **SAVITT** trademark without M+J

Savitt's consent or authorization.

44. Janis Savitt, individually, and while simultaneously owing a fiduciary duty to M+J Savitt, has entered into and continues to enter into business discussions with various other retailers, freelance fashion stylists, vendors and media outlets to promote and sell jewelry items using the **SAVITT** trademark without M+J Savitt's consent or authorization.

45. On or about December 31, 2007, the same day she purportedly resigned from M+J Savitt, Janis Savitt, individually, and while simultaneously owing a fiduciary duty to M+J Savitt, formed the company "Designs by Janis Savitt, Inc." using the word mark **SAVITT** within its trade name, title, theme, brand and promotional name. Such usage relates to jewelry and precious metal goods or services and was performed without M+J Savitt's consent or authorization. See Exhibit 5 annexed hereto for a copy of documents reflecting the formation of "Designs by Janis Savitt, Inc." and obvious usage of the **SAVITT** mark within said trade name.

46. At all times relevant to the allegations contained herein, Janis Savitt, without M+J Savitt's consent or authorization, has used and is currently using the Marks in her individual capacity and for her own personal interest to compete with M+J Savitt though "Janis Savitt d/b/a Janis by Janis Savitt, Inc.

47. At all times relevant to the allegations contained herein, Janis Savitt has created and continues to create jewelry designs using the Marks without M+J Savitt's consent or authorization. Such designs are "works for hire" under the federal copyright laws, and are therefore the exclusive property of M+J Savitt.

48. As evidence of Janis Savitt's specific intent to use the Marks in commerce and form her own corporate entity for personal gain, on or about October 31, 2006, the same day she applied for the **JANIS SAVITT** mark, and while simultaneously owing a fiduciary duty to M+J Savitt, Janis Savitt registered the domain name located at www.Janis-Savitt.com (the "Domain Name").

Consistent with Defendant Janis Savitt's pattern of wrongful, deceitful and fraudulent conduct, Defendant, Janis Savitt secreted her public identity as owner/registrant of the Domain Name through a "Domain Discreet" product/service offered by the Register.com registrars. See Exhibit 6 annexed hereto for a copy of the WHOIS records reflecting "Janis Savitt" as registrant of the Domain Name on December 12, 2007 and "Domain Discreet" as registrant of the Domain Name as of October 2, 2008.

49. After learning that Janis Savitt and Designs by Janis Savitt were using the Marks to promote their own products and services, Plaintiffs and their counsel demanded that Janis Savitt and Designs by Janis Savitt cease and desist from their infringing conduct (the "Cease and Desist Letters"). See Exhibit 7 annexed hereto for true and accurate copies of Plaintiffs' Cease and Desist letters.

50. Rather than adhering to the demands contained in the Cease and Desist Letters, Janis Savitt and Designs by Janis Savitt sought continued press coverage of their jewelry products, improperly using the Marks to promote such products, causing confusion in the marketplace and further damage to Plaintiffs.

51. At all times relevant to the allegations contained herein, Paul Savitt has had actual knowledge of Janis Savitt's usage of the Marks and self-dealing, yet failed to act both on behalf of M+J Savitt as President of the company and in his individual capacity. See Exhibit 8 annexed hereto for correspondence placing Paul Savitt on notice of Janis Savitt's infringement on the M+J Savitt Marks, together with proof of receipt of said correspondence and handwritten notes of Paul Savitt.

52. At all times relevant to the allegations contained herein, Paul Savitt has induced and encouraged Janis Savitt to personally use the Marks in her own endeavors without M+J Savitt's consent or approval.

CONSUMER CONFUSION AND HARM TO M+J SAVITT

53. Many consumers, media outlets, retailers and vendors are unaware that Designs by Janis Savitt has no affiliation with M+J Savitt.

54. Janis Savitt's use of the Designs by Janis Savitt tradename is confusingly similar to the M+J Savitt Marks and is causing confusion in the marketplace for jewelry goods and services.

55. As a result of Designs by Janis Savitt's usage of the Marks, consumers, media outlets, retailers, freelance fashion stylists and vendors have been associating the quality of the goods and services offered by M+J Savitt with those offered by Designs By Janis Savitt and/or Janis Savitt, individually, and if dissatisfied with such goods and services, may decide to avoid M+J Savitt's goods and services in the future.

56. As a result of Designs by Janis Savitt's usage of the Marks, M+J Savitt's core jewelry designs are being misrepresented.

57. Among other things, the following facts and circumstances support the conclusion that the use of the Marks in commerce by Janis Savitt, in her individual capacity, and Designs by Janis Savitt is likely to cause confusion in the marketplace: (a) the Marks have acquired exceptionally strong secondary meaning over the course of the last thirty-five (35) years; (b) Designs by Janis Savitt and Janis Savitt, individually, use the Marks or terms confusingly similar thereto in Advertisement text and within a tradename; (c) goods and services offered by Designs by Janis Savitt and Janis Savitt, individually, directly compete with the goods or services offered by M+J Savitt; (d) Designs by Janis Savitt and Janis Savitt, individually, use the same marketing channels as M+J Savitt; (e) consumers, media outlets, freelance fashion stylists, vendors and retailers have actually been confused as a result of the conduct of Designs by Janis Savitt and Janis Savitt, individually; and (f) Designs by Janis Savitt and Janis Savitt, individually, began using the Marks or terms very similar to the Marks after the Marks were registered and after the Marks became famous and distinctive.

58. Designs by Janis Savitt and Janis Savitt in her personal capacity did so with full knowledge of M+J Savitt's rights in the Marks. In fact, it is the specific intent of Designs by Janis Savitt and Janis Savitt to use the Marks as set forth in this Complaint in order to profit from consumer association of the Marks with Designs by Janis Savitt and Janis Savitt, individually.

59. In an April 2008 article published by the trade magazine Women's Wear Daily, Janis Savitt admits that Designs by Janis Savitt will "bring in approximately $5 million in its first year at retail." See Exhibit 9 annexed hereto for said article.

JANIS SAVITT'S FAILURE TO EXECUTE CORPORATE AGREEMENTS

60. In or about February 2003, M+J Savitt secured a Small Business Association loan in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) (the "SBA Loan").

61. The promissory note for the SBA Loan is collateralized by Janis, Michelle and Wynne's personal assets.

62. The first security interest on the SBA Loan was Wynne Savitt's primary residence.

63. Upon receipt of the SBA Loan, M+J Savitt initiated the process of using these funds to generate working capital for the business and build its jewelry line so that M+J Savitt could earn additional income/revenue.

64. Notwithstanding the SBA Loan, M+J Savitt needed additional funding agreements with third party lending institutions and/or factors to continue to expand its business (the "Factoring Agreements").

65. However, Janis Savitt repeatedly refused to sign such Factoring Agreements, effectively blocking M+J Savitt's ability to generate additional working capital to expand and grow its business.

66. In 2001, payment of M+J Savitt's Federal and New York State tax obligations became in arrears. In connection with the past due state tax obligations, M+J Savitt's corporate

accountant negotiated a settlement with the State of New York (the "Settlement Agreement"). One condition of the Settlement Agreement was that Janis, Michelle and Wynne Savitt had to each execute the Settlement Agreement.

67. Similar to Janis Savitt's refusal to sign the Factoring Agreements, after M+J Savitt's many verbal and written requests to obtain Janis Savitt's signature on the Settlement Agreement, Janis Savitt refused to execute it. In fact, Janis Savitt never signed the Settlement Agreement.

68. As a result of Janis Savitt's refusal to execute the Settlement Agreement and Factoring Agreements, M+J Savitt was unable to generate additional working capital and grow its business.

69. Additionally, based upon Janis Savitt's failure to execute the Settlement Agreement, the State of New York filed a lien against M+J Savitt's corporate bank account in the amount of One Hundred Twenty-Four Thousand One Hundred Eighty-Eight Dollars and Thirty-Two cents ($124,188.32) (the "New York State Lien").

70. Based upon Janis Savitt's failure to sign the Settlement Agreement and Factoring Agreements, together with the resulting New York State Lien, M+J Savitt had very little working capital to continue growing its business in a reasonable manner causing M+J Savitt's gross sales revenue to significantly decrease.

71. Based upon Janis Savitt's failure to sign the Settlement Agreement and Factoring Agreements, the resulting New York State Lien and M+J Savitt's inability to generate working capital to continue doing business in a reasonable manner, Wynne Savitt personally suffered damages in lost wages between 2005 and 2008 and accumulated personal credit card debt, plus interest in order to cover business costs associated with various industry trade shows.

72. *At all times relevant to the allegations contained herein, Paul Savitt had actual* knowledge of the forgoing conduct by Janis Savitt, and induced and even encouraged Janis Savitt to

cause harm to Plaintiffs.

73. Based upon Janis Savitt's failure and refusal to sign the Settlement Agreement and Factoring Agreements, her filing of the Trademark Application in October 2006, the formation of Designs by Janis Savitt in December 2007, the registration of the Domain Name in October 2006 and repeated self dealing and improper usage of the Marks for her own personal gain and outside the scope of her fiduciary duties to M+J Savitt, Janis Savitt, together with Paul Savitt's encouragement and inducement, has intentionally engaged in an intentional and premeditated scheme to cause harm to Plaintiffs.

M+J SAVITT EMPLOYMENT ISSUES

74. At all times relevant to the allegations contained herein, Janis Savitt verbally abused and defamed Wynne Savitt and other M+J Savitt employees, creating a hostile working environment within the M+J Savitt office and damaging M+J Savitt's ability to maintain quality employees or even hire new ones, thus severely damaging M+J Savitt's ability to generate revenue and income.

75. At all times relevant to the allegations contained herein, Janis Savitt used foul language and profanity towards Wynne Savitt and M+J Savitt employees, creating a hostile working environment within the M+J Savitt office and damaging M+J Savitt's ability to maintain quality employees or even hire new ones.

76. For example, on or about February 24, 2004, an M+J Savitt employee resigned because she was "verbally abused" by Janis Savitt. As a result of Janis Savitt's conduct, the employee filed a complaint with the New York State Department of Labor against M+J Savitt. See Exhibit 10 annexed hereto for a copy of said complaint.

77. In yet another display of such defamatory and abusive conduct, Janis Savitt falsely accused Wynne Savitt of "fucking the bookkeeper" in front of M+J Savitt employees and during normal business hours.

FORGED CORPORATE CHECKS

78. M+J Savitt required two (2) signatures on each and every corporate check in order to prevent individual self-dealing, corporate waste and/or fraud by its shareholders.

79. On or about August 3, 2004 and August 10, 2004, respectively, Janis Savitt forged Michelle Savitt's signature on M+J Savitt corporate checks. See Exhibit 11 annexed hereto for copies of the forged and fraudulent checks.

80. Additionally, on or about October 24, 2005, Janis Savitt improperly signed two (2) M+J Savitt corporate checks made payable to Wynne Savitt as "Fuck you Savitt." See Exhibit 11.

MISREPRESENTATIONS

81. In 2006, Janis Savitt falsely misrepresented herself as Vice President of M+J Savitt on U.S. Income Tax Form 1120. See Exhibit 12 annexed hereto for a copy of said tax form.

82. At all times relevant to the allegations contained herein, Janis Savitt misrepresented her title while transacting business on behalf of M+J Savitt, including calling herself "President" of M+J Savitt on credit applications. See Exhibit 12 annexed hereto for a copy of said credit application.

83. At all times relevant to the allegations contained herein, Janis Savitt, in her personal capacity, *and while simultaneously owing a fiduciary duty to M+J Savitt and unbeknownst to* Plaintiffs, misrepresented M+J Savitt jewelry products in Advertisements as being her own personal products rather than belonging to M+J Savitt. For example, Defendant, Janis Savitt: (a) credited herself instead of M+J Savitt in many Advertisements for a variety of products in many publications, including the March 2007 issue of Town & Country Magazine; (b) incorrectly credited products as "Janis Savitt for Ralph Lauren" instead of "M+J Savitt for Ralph Lauren"; (c) misused the **JANIS SAVITT FOR M+J SAVITT** mark for brass products outside of the Collection; (d) misrepresented the cost of M+J Savitt jewelry products in various Advertisements including, but not

limited to, in a Vogue Magazine 2007 issue for a "Big Time Necklace". See Exhibit 13 annexed hereto for copies of said misrepresentations.

USAGE OF M+J SAVITT PROPERTY

84. Designs by Janis Savitt sells and continues to use sell some of M+J Savitt's inventory for profit without M+J Savitt's permission.

85. Janis Savitt, in her personal capacity, abused M+J Savitt's policy concerning personal usage of M+J Savitt inventory to such a degree that M+J Savitt has been significantly damaged by such conduct.

86. Neither Janis Savitt, nor Designs by Janis Savitt, has ever compensated M+J Savitt for such items.

MISAPPROPRIATION OF WYNNE SAVITT'S PERSONAL IDENTITY

87. On or about March 8, 2007, Janis Savitt compromised Wynne Savitt's e-mail address/account located at wsavitt@yahoo.com in an effort to disrupt M+J Savitt's business relationships and otherwise divert business from M+J Savitt to herself.

88. Specifically, Janis Savitt: (a) logged into Wynne Savitt's e-mail account without permission; (b) changed the welcoming greeting within Wynne Savitt's e-mail account from "Welcome Wynne" to "Welcome Janis"; and (c) modified Wynne Savitt's personal information, including Wynne Savitt's mailing address and telephone number to reflect Janis Savitt's own personal contact information.

89. On or about April 22, 2007, Ms. Jennifer Rachels, a compliance case assistant for Yahoo!, Inc. ("Yahoo"), concluded that based upon the response to a certain subpoena served on Verizon Communications ("Verizon") (the applicable Internet Service Provider) to obtain information and documentation concerning Wynne Savitt's compromised personal e-mail account, Janis Savitt's home personal computer terminal was used to access and compromise Wynne Savitt's

e-mail account. See Exhibit 14 for a copy of the Tenafly Police Department Incident Data Sheet.

90. As a result of the foregoing, M+J Savitt and Wynne Savitt, individually, have suffered damages in an amount to be determined at trial.

91. Based on the conduct described in paragraphs 38 to 91 herein, Plaintiff, Wynne Savitt, has been the only M+J Savitt officer trying to carry out the daily responsibilities of M+J Savitt. Defendants, Janis and Paul Savitt, have repeatedly refused to address any and all business issues relating to M+J Savitt despite Plaintiff, Wynne Savitt's, continuing attempts to notify them of same. Plaintiff, Wynne Savitt, has been running the daily affairs of M+J Savitt without receiving compensation and while all along placing her personal assets at risk and using personal funds to pay necessary corporate expenses.

FIRST CLAIM FOR RELIEF
FOR FEDERAL TRADEMARK INFRINGEMENT

92. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

93. The Marks (as defined hereinabove) are valid, federally registered trademarks entitled to protection under the Lanham Act.

94. The unauthorized, intentional and personal usage of the Marks by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity in commerce has caused and is likely to continue to cause consumer confusion as to the origin of sponsorship of Janis Savitt's products and services and the association of Janis Savitt's designs, products and services with M+J Savitt's products or services. See Exhibit 15 annexed hereto for just a few examples of the unauthorized, intentional and personal usage of the Marks.

95. The conduct of Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity constitutes a false designation of origin and a false description and representation, in violation of Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114(1), 1125(a).

96. The infringement by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity upon the Marks is willful and reflects their intent to exploit the goodwill and strong brand recognition associated with the Marks. See Exhibit 15.

97. Such infringement by Janis Savitt, individually and through the Designs by Janis Savitt corporate entity, has damaged M+J Savitt in an amount to be determined at trial. For example and without limitation, Janis Savitt, individually, has been unjustly enriched through her unlawful and unauthorized sales of jewelry products while using the Marks.

98. Janis Savitt's personal infringement together with the infringement being performed through the Designs by Janis Savitt corporate entity has caused and, unless restrained by this Court, will continue to cause irreparable injury to M+J Savitt.

99. M+J Savitt has no adequate remedy at law for the infringement conducted by Janis Savitt, individually, and Designs by Janis Savitt.

SECOND CLAIM FOR RELIEF FOR CONTRIBUTORY TRADEMARK INFRINGEMENT

100. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

101. With full knowledge of M+J Savitt's rights in and to the Marks, Defendant, Paul Savitt, has provided both Janis Savitt and Designs by Janis Savitt with aid and has materially contributed to the trademark infringement by Janis Savitt and Designs by Janis Savitt.

102. Paul Savitt induced and encouraged Janis Savitt and Designs by Janis Savitt to infringe upon the Marks with actual and/or constructive notice of the trademark infringement by Janis Savitt and Designs by Janis Savitt.

103. Paul Savitt encouraged and induced Janis Savitt to form the Designs by Janis Savitt entity with actual and/or constructive knowledge that the products being sold by Janis

Savitt and Designs by Janis Savitt were being used to infringe upon the Marks.

104. Paul Savitt's contributory infringement, and while simultaneously owing a fiduciary duty to M+J Savitt, is willful and reflects Paul Savitt's intent to exploit the good will and strong brand recognition associated with the Marks.

105. M+J Savitt has been damaged by Paul Savitt's contributory infringement in an amount to be determined at trial.

106. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by Paul Savitt's actions.

107. M+J Savitt has no adequate remedy at law for the foregoing conduct.

THIRD CLAIM FOR RELIEF
FOR FALSE REPRESENTATION

108. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

109. The use of the Marks or terms confusingly similar thereto in editorial and advertising promotions for both Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity conveys the misleading commercial impression to the public that the products, goods and services offered by Janis Savitt and Designs by Janis Savitt, are approved, endorsed or sponsored by M+J Savitt, or are otherwise affiliated with or supported by M+J Savitt. See Exhibit 15.

110. Each of these misleading uses of the Marks constitutes a false designation of origin and false description and representation, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

111. The false representations made by both Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity are willful and reflect Janis Savitt's and Designs by Janis Savitt's intent to exploit the goodwill and strong brand recognition associated with the Marks.

112. The false representations made by Janis Savitt and Designs by Janis Savitt have damaged M+J Savitt in an amount to be determined at trial.

113. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of both Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity.

114. M+J Savitt has no adequate remedy at law for the foregoing conduct.

FOURTH CLAIM FOR RELIEF
FOR DILUTION UNDER THE LANHAM ACT

115. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

116. The Marks are famous within the meaning of the Trademark Dilution Revision Act of 2006. In particular, the following facts support the conclusion that the Marks are famous: (a) as alleged above, M+J Savitt has advertised the Marks on a nationwide basis in a broad cross-section of prominent media for several decades; (b) the Marks have received massive publicity by both M+J Savitt and third parties; (c) M+J Savitt has earned millions of dollars in gross profits on a nationwide basis in connection with the jewelry products and services offered under the Marks; (d) the Marks have achieved a high level of actual recognition among the consuming public; and (e) as alleged above, M+J Savitt has obtained numerous federal trademark registrations for its Marks. See Exhibit 15.

117. The use of the Marks or terms confusingly similar thereto by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity in advertising promotions has lessened and will continue to lessen the capacity of M+J Savitt's famous and distinctive Marks to distinguish M+J Savitt's jewelry products and services from those of others, and has diluted the distinctive quality of the famous and nationally recognized Marks. See Exhibit 15.

118. The conduct complained of by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity is likely to cause blurring to and of the Marks and impair the distinctiveness of the Marks. Consumers are likely to associate Janis Savitt's and Designs by Janis Savitt's usage of the Marks or terms confusingly similar thereto with the Marks themselves because of the similarity between Janis Savitt's and Designs by Janis Savitt's use of the Marks or terms confusingly similar thereto and the Marks themselves.

119. In particular, the following factors make dilution by blurring more likely: (a) Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity are making use of the Marks themselves; (b) the Marks have acquired tremendous distinctiveness through M+J Savitt's promotion and use of the Marks since 1972; (c) the Marks have become famous and have achieved a high level of recognition among the consuming public; (d) the use of the Marks by Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity is substantially exclusive to M+J Savitt, its agents and licensees; (e) Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity intend to create an association between their uses of the Marks or terms confusingly similar thereto and the Marks themselves; and (f) many consumers, retailers, media outlets and vendors actually associate the use of the Marks by Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity with the Marks themselves.

120. The conduct by Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity is also likely to cause tarnishment among the Marks that harms the reputation of the Marks because of the similarity between the uses of the Marks by Janis Savitt, in her individual capacity, and through Designs by Janis Savitt and the Marks themselves. In particular, many of the Advertisements that Janis Savitt and Designs by Janis Savitt use to promote their products, use the Marks, or terms confusingly similar thereto in the title or text of the

Advertisements.

121. Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity has derived and continues to derive substantial revenue and profits from the past and ongoing dilution of the Marks as a result of their unauthorized uses of the Marks or terms confusingly similar thereto.

122. Such usage of the Marks by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity has caused damage to M+J Savitt in an amount to be determined at trial. For example, and without limitation, Janis Savitt and Designs by Janis Savitt have been unjustly enriched by their unlawful and unauthorized sales of goods and services while using the Marks.

123. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of both Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity.

124. M+J Savitt has no adequate remedy at law for the foregoing conduct.

FIFTH CLAIM FOR RELIEF
FOR TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION PURSUANT TO N.Y. GEN. BUS. LAW § 360-O AND COMMON LAW

125. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

126. The aforesaid acts and conduct of Janis Savitt and Designs by Janis Savitt are, and unless enjoined, will continue to constitute trademark infringement and unfair competition in violation of the common law of the State of New York and N.Y. Gen. Bus. Law § 360-O.

127. The aforesaid acts and conduct of Janis Savitt and Designs by Janis Savitt have been willful and knowing.

128. Such usage of the Marks by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity has caused damage to M+J Savitt in an amount to be determined at trial. For example, and without limitation, Janis Savitt and Designs by Janis Savitt have been unjustly

enriched by the unlawful and unauthorized sale of goods and services while using the Marks.

129. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of both Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity.

130. M+J Savitt has no adequate remedy at law for the foregoing conduct.

SIXTH CLAIM FOR RELIEF
FOR COPYRIGHT INFRINGEMENT

131. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

132. M+J Savitt owns valid copyrights for its jewelry designs. At all times relevant to the allegations contained herein, Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity have used and continue to use jewelry designs that are "works for hire" under the federal copyright laws, and are therefore the exclusive property of M+J Savitt without M+J Savitt's consent or authorization (the "Copyrights"). See Exhibit 16 annexed hereto for copies of just a few instances of copyright infringement.

133. For example, as set forth in Exhibit 16, M+J Savitt used and designed an oval-shaped earring beginning in the 1980's, which earring was unique to M+J Savitt and its protected Copyright. To illustrate this point, Exhibit 16 demonstrates that the earring was featured on the cover of Cosmopolitan Magazine in June 1990. Moreover, the M+J price sheet, annexed to Exhibit 16, demonstrates that M+J Savitt continues to use, sell and price this copyrighted jewelry today. Notwithstanding the Copyright protection, Defendants have been using, selling and advertising the Copyrighted material for their own benefit. See Exhibit 16 for a copy of the September 2008 issue of Elle Magazine displaying Defendants' impermissible and unauthorized usage of the Copyrighted material. See Exhibit 16.

134. The aforesaid acts and conduct of Janis Savitt and Designs by Janis Savitt, including their use of the Copyrights for their own benefit violates M+J Savitt's exclusive rights in its Copyrights and the Federal Copyright Act, 17 U.S.C. §§ 101, *et. seq.*

135. Such usage of the Copyrights by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity has caused damage to M+J Savitt in an amount to be determined at trial. For example, and without limitation, Janis Savitt and Designs by Janis Savitt have been unjustly enriched by the unlawful and unauthorized sales of goods and services while using the Copyrights.

136. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of both Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity.

137. M+J Savitt has no adequate remedy at law for the foregoing conduct.

SEVENTH CLAIM FOR RELIEF
FOR CONTRIBUTORY COPYRIGHT INFRINGEMENT

138. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

139. M+J Savitt owns valid Copyrights for various jewelry designs.

140. All Defendants have knowingly (or with reckless disregard for M+J Savitt's rights) induced, caused, encouraged, or materially contributed to conduct by third parties, including Advertisements in several magazine publications, which violates M+J Savitt's exclusive rights in its Copyrights.

141. The aforesaid acts and conduct of all Defendants, including their use of M+J Savitt Copyright for their own benefit violates M+J Savitt's exclusive rights in its Copyrights and the Federal Copyright Act, 17 U.S.C. §§ 101, *et. seq.*

142. All Defendants have caused damage to M+J Savitt in an amount to be determined at trial. For example, and without limitation, Defendants have been unjustly enriched by the unlawful and unauthorized sales of goods and services while using the Copyrights.

143. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by Defendants' actions.

144. M+J Savitt has no adequate remedy at law for the foregoing conduct.

EIGHTH CLAIM FOR RELIEF FOR DILUTION AND INJURY TO BUSINESS REPUTATION PURSUANT TO N.Y. GEN. BUS. LAW § 360-L

145. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

146. The aforesaid acts and conduct of Janis Savitt, in her individual capacity and through the Designs by Janis Savitt corporate entity are, unless enjoined, will continue to cause injury to M+J Savitt's business reputation and dilute the distinctive quality of the Marks in violation of N.Y. Gen. Bus. Law § 360-L.

147. The aforesaid acts and conduct of Janis Savitt and Designs by Janis Savitt have been willful and knowing.

148. Such usage of the Marks by Janis Savitt, individually, and through Designs by Janis Savitt has caused damage to M+J Savitt in an amount to be determined at trial. For example, and without limitation, Janis Savitt and Designs by Janis Savitt have been unjustly enriched by their unlawful and unauthorized sale of goods and services.

149. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of both Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity.

150. M+J Savitt has no adequate remedy at law for the foregoing conduct.

NINTH CLAIM FOR RELIEF FOR DECEPTIVE ACTS AND PRACTICES PURSUANT TO N.Y. GEN. BUS. LAW §§ 349 AND 350-A

151. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

152. The aforesaid acts and conduct of Janis Savitt and Designs by Janis Savitt are, and unless enjoined, will continue to constitute deceptive acts and practices in violation of N.Y. Gen. Bus. Law §§ 349 and 350-a.

153. The aforesaid acts and conduct of Janis Savitt and Designs by Janis Savitt have been willful and knowing.

154. Such usage of the Marks and Copyrights by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity, has caused damage to M+J Savitt in an amount to be determined at trial. For example, and without limitation, Janis Savitt and Designs by Janis Savitt have been unjustly enriched by their unlawful and unauthorized sales of goods and services generated from their use of the Marks and Copyrights in Advertisements.

155. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of both Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity.

156. M+J Savitt has no adequate remedy at law for the foregoing conduct.

TENTH CLAIM FOR RELIEF FOR BREACH OF CONTRACT

157. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

158. M+J Savitt's Certificate of Incorporation and company by-laws constitute contracts between M+J Savitt shareholders.

159. Plaintiffs performed all required obligations in connection with such contracts.

160. By the acts described hereinabove, Defendants, Janis and Paul Savitt, breached such contracts.

161. As a proximate result of Janis and Paul Savitt's breach of such contracts, Plaintiffs have suffered damages.

162. Accordingly, Plaintiffs are entitled to damages in an amount to be determined at trial.

ELEVENTH CLAIM FOR RELIEF FOR COMMON LAW UNJUST ENRICHMENT

163. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

164. Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity has been unjustly enriched as result of her improper and unauthorized usage of the Marks.

165. By the acts described hereinabove, Janis Savitt has personally, and through the Designs by Janis Savitt corporate entity, retained revenues along with M+J Savitt inventory/property to which they were not equitably or legally entitled, and were unjustly enriched at Plaintiffs' expense, in violation of the common law of the State of New York.

166. As a result of the foregoing, Plaintiffs have suffered damages in an amount to be determined at trial.

TWELFTH CLAIM FOR RELIEF FOR CONVERSION

167. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

168. From its inception, through the present, all right, title and interest in M+J Savitt's inventory (the "Inventory"), trade secrets and/or confidential and proprietary information and

documents, including M+J Savitt customer and vendor lists resided with M+J Savitt (collectively, the "Confidential Information").

169. At all times relevant to the allegations contained herein, Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity, has wrongfully and without authorization, assumed and exercised dominion and control over the Inventory and Confidential Information such that their use of the Inventory and Confidential Information is inconsistent with and in defiance of, and has seriously interfered with, M+J Savitt's ownership and right to control such Inventory and Confidential Information.

170. Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity, have thereby jointly and/or independently converted the Inventory and Confidential Information by their misappropriation of the Confidential Information and Inventory and by the fact that they have used and continue to use such Inventory and Confidential Information to unfairly compete with M+J Savitt.

171. Janis Savitt, personally and through the Designs by Janis Savitt corporate entity have knowingly, dishonestly, and intentionally procured, retained, used, and attempted to market and otherwise capitalize on the value of M+J Savitt's Inventory and Confidential Information without M+J Savitt's authorization and without first giving value to M+J Savitt for such use.

172. M+J Savitt has demanded that Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity, stop using the Inventory and Confidential Information and return such Inventory and Confidential Information to M+J Savitt.

173. To date, neither Janis Savitt nor Designs by Janis Savitt have complied with M+J Savitt's demand to return and cease using M+J Savitt's Inventory and Confidential Information.

174. M+J Savitt continues to be irreparably harmed by the conversion of M+J Savitt's Inventory and Confidential Information by Janis Savitt, personally and through the Designs by Janis

Savitt corporate entity.

175. By reason of the acts alleged herein, M+J Savitt has been damaged in an amount to be determined at trial.

THIRTEENTH CLAIM FOR RELIEF FOR DIRECT AND VICARIOUS LIABILITY

176. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

177. Defendant, Janis Savitt, through her actions as owner of Designs by Janis Savitt is vicariously liable for all acts of infringement and other violations of law alleged in this Complaint.

178. Defendant, Janis Savitt, is jointly and severally liable with Designs by Janis Savitt under all counts of this Complaint.

FOURTEENTH CLAIM FOR RELIEF FOR TORTIOUS INTEREFERENCE WITH PROSPECTIVE BUSINESS RELATIONS

179. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

180. M+J Savitt has valid contractual and business relationships with its independent/freelance fashion stylists, magazine editorial departments, vendors, retailers, customers and media partners. These contractual relationships are highly valuable to M+J Savitt.

181. As officers of M+J Savitt, Janis Savitt and Paul Savitt have knowledge of these prospective business relationships. Additionally, Wynne Savitt has placed Janis and Paul Savitt on actual notice that some of these business relationships have been interrupted due to their conduct and actions.

182. At all times relevant to the allegations contained herein, Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity, has offered and offers competing products to potential customers, retailers, vendors and media outlets in interference with these prospective

business relations.

183. At all times relevant to the allegations contained herein, Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity, has contacted and continues to contact M+J Savitt's freelance fashion stylists, magazine editorial departments, retailers, vendors, customers and media partners and has made and continues to make false representations concerning M+J Savitt and then, for no valid business reason other than to injure M+J Savitt, has sold and marketed and continues to sell and market competing jewelry products to and using such freelance fashion stylists, magazine editorial departments, retailers, vendors and customers.

184. At all times relevant to the allegations contained herein, Paul Savitt has induced and encouraged Janis Savitt to interrupt these business relationships and form her own corporate entity (Designs by Janis Savitt) with actual knowledge that Janis Savitt would interrupt or interfere with such business relationships.

185. At all times relevant to the allegations contained herein, all Defendants used dishonest, unfair and/or improper means to interfere with M+J Savitt's business relationships.

186. As a result of the tortious interference of all Defendants, M+J Savitt was prevented from entering into business relationships with these consumers, vendors, retailers and media outlets.

187. Some consumers, vendors, retailers and media outlets did in fact stop doing business with M+J Savitt, thereby causing M+J Savitt to lose these business relationships and economic advantages. This caused M+J Savitt to suffer damages in an amount yet to be quantified but to be determined and proved at trial.

FIFTEENTH CLAIM FOR RELIEF
FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349

188. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

189. At all times relevant to the allegations contained herein, Janis Savitt, in her personal

capacity and through the Designs by Janis Savitt corporate entity, has misrepresented and continues to misrepresent M+J Savitt jewelry products in Advertisements as being her own personal products, rather than crediting M+J Savitt. See Exhibit 13.

190. At all times relevant to the allegations contained herein, Janis Savitt, in her personal capacity and through the Designs by Janis Savitt corporate entity, intentionally misrepresented and continues to intentionally misrepresent the price of M+J Savitt jewelry products in select Advertisements. See Exhibit 13.

191. At all times relevant to the allegations contained herein, Janis Savitt, in her personal capacity and through the Designs by Janis Savitt corporate entity, intentionally misrepresented the Collection by using the **JANIS SAVITT FOR M+J SAVITT** mark for jewelry items outside the scope of the Collection (as defined hereinabove). See Exhibit 13.

192. At all times relevant to the allegations contained herein, such misrepresentations made by Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity, are materially misleading.

193. The aforementioned conduct and actions by Janis Savitt occurred while she was an M+J Savitt shareholder and acting and serving as a corporate officer of M+J Savitt.

194. At all times relevant to the allegations contained herein, M+J Savitt has been directly and proximately damaged as a result of Janis Savitt's misleading representations directed at consumers in an amount to be determined at trial.

195. At all times relevant to the allegations contained herein, the acts and misrepresentations made by Janis Savitt were committed willfully, knowingly and with a high degree of moral turpitude.

196. M+J Savitt therefore should be awarded treble damages, punitive damages and reasonable attorney's fees.

SIXTEENTH CLAIM FOR RELIEF
BREACH OF FIDUCIARY DUTY, GOOD FAITH AND FAIR DEALING

197. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

198. By reason of their positions as officers of M+J Savitt and because of their ability to control the business and corporate affairs of M+J Savitt, Janis and Paul Savitt owe M+J Savitt and its shareholders fiduciary obligations of trust, loyalty, good faith and due care, and were and are required to use their utmost ability to control and manage M+J Savitt in a fair, just, honest and equitable manner.

199. At all times relevant to the allegations contained herein, Janis and Paul Savitt were and are required to act in furtherance of the best interests of M+J Savitt and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit.

200. At all times relevant to the allegations contained herein, Janis and Paul Savitt owe M+J Savitt and its shareholders a fiduciary duty to exercise good faith and diligence in the administration of M+J Savitt's affairs and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

201. To discharge their duties, Janis and Paul Savitt are required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the financial affairs of M+J Savitt.

202. By virtue of such duties, Janis and Paul Savitt are required to, among other things: (a) conduct the affairs of M+J Savitt in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business; (b) to avoid wasting M+J Savitt assets; (c) to maximize the value of M+J Savitt's stock; and (d) to make proper and accurate representations and statements about M+J Savitt.

203. At all times relevant to the allegations contained herein, Janis and Paul Savitt's

conduct and actions alleged herein involves a knowing and culpable violation of their obligations as officers of M+J Savitt, the absence of good faith on their part, and a reckless disregard for their duties to M+J Savitt and its shareholders that Janis and Paul Savitt were aware or should have been aware posed a risk of serious injury to M+J Savitt.

204. At all times relevant to the allegations contained herein, Janis and Paul Savitt breached their duties of loyalty and good faith by the aforementioned conduct and actions, as detailed herein *infra*, and by failing to prevent each other from taking such illegal actions.

205. As a direct and proximate result of Janis and Paul Savitt's improper and deceptive conduct and actions, as detailed herein *infra*, and their failure to perform their fiduciary obligations, M+J Savitt has sustained significant damages to be determined at trial. As a result of such misconduct alleged herein, Janis and Paul Savitt are liable to M+J Savitt.

206. Plaintiff, M+J Savitt has no adequate remedy at law.

SEVENTEENTH CLAIM FOR RELIEF FOR DEFAMATION PER SE OF BUSINESS REPUTATION

207. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

208. Defendant, Janis Savitt, has made false and defamatory written and verbal statements of and concerning Plaintiffs' professional character and reputation and has repeatedly published and/or broadcasted these statements in the State of New York, in this District, and throughout the United States to numerous third parties through false Advertisements and media stories.

209. For example, Janis Savitt falsely accused and defamed Plaintiff, Wynne Savitt, of "fucking the bookkeeper" in front of M+J Savitt employees.

210. Additionally, Defendant, Janis Savitt, has created and continues to create false and defamatory Advertisements and stories for commercial and economic gain, which representations and statements were and are thus designed to entice M+J Savitt customers to purchase products and

services from Janis Savitt, personally, or through the Designs by Janis Savitt corporate entity.

211. Such stories, Advertisements and headlines published by Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity were published with malice and reckless disregard for the truth or falsity of such publications, with the intent to injure Plaintiffs, their business reputation and to illegally divert customers away from M+J Savitt.

212. The false statements of fact published on Advertisements together with the defamatory nature of such representations become clear when the public searches for M+J Savitt's products and reads and construes such statements and representations.

213. Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity, knew that the written and verbal statements about Plaintiffs were false and had actual knowledge of their falsity at the time these statements were repeatedly published without privilege, authorization or consent.

214. Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity made these false and defamatory statements for the sole purpose of ruining Plaintiffs' personal and professional reputation and character, to cause injury to Plaintiffs within the jewelry and precious metal industry.

215. Defendant, Janis Savitt's, false and defamatory statements have cause significant and irreparable harm to Plaintiffs' reputation and character, especially within the jewelry and precious metals industry.

216. As a direct and proximate result of these false statements and representations, Plaintiff, M+J Savitt has suffered damages in an amount to be determined at trial and Wynne Savitt has personally suffered, and continues to suffer, considerable stress, emotional distress, mental anguish and intense anxiety, including special damages in that she has suffered impairment to her ability to maintain her career within the jewelry, precious metals and fashion industries.

EIGHTEENTH CLAIM FOR RELIEF FOR FRAUD AND DECEIT

217. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

218. At all times relevant to the allegations contained herein, Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity, had no intention of acting and serving as a corporate officer and shareholder of M+J Savitt, and instead had planned to and did utilize the Marks, Inventory and Confidential Information for their own benefit and remuneration.

219. Defendants, in concert and cooperation with one another, made misrepresentations and omissions to Plaintiffs with respect to their abilities and intentions on acting and serving as shareholders and corporate officers of M+J Savitt, which misrepresentations and omissions were relied upon by Plaintiffs.

220. As detailed herein *infra*, such misrepresentations and omissions include, but are not limited to: (a) misappropriating corporate funds for personal usage; (b) using the Marks for personal interest and self gain; (c) forging signatures on corporate checks in order to intentionally loot money from M+J Savitt; See Exhibit 11; (d) fraudulently and deceitfully wasting corporate assets; (e) fraudulently and deceitfully misrepresenting titles on government income tax forms; (f) fraudulently and deceitfully misrepresenting corporate titles while transacting business on behalf of M+J Savitt; (g) fraudulently and deceitfully misrepresenting jewelry products in Advertisements in a variety of ways See Exhibit 13; (h) using corporate inventory for personal use and failing to pay for such items; (i) compromising a personal e-mail an account; and (j) failing to notify Plaintiffs that Defendants were engaged in a scheme to form a business that directly competes with M+J Savitt while simultaneously owing a fiduciary duty to M+J Savitt.

221. At the time such conduct occurred, Janis Savitt knew that her conduct, actions and omissions, as detailed herein *infra*, were fraudulent and deceitful.

222. As part of her scheme to form her own entity and while simultaneously owing a fiduciary duty to M+J Savitt, Janis Savitt intended to engage in the conduct, actions and omissions, as detailed herein *infra*, for her own benefit and to Plaintiffs' detriment.

223. As part of their scheme, Defendants' actions, conduct and omissions were taken for the specific purpose of, and resulted in, inducing Plaintiffs to rely to their detriment in incurring excessive business operational costs, and associated personal expenditures and having to infuse time, effort and money into operating M+J Savitt. Had the true facts not been concealed to Plaintiffs, Plaintiffs would not have relied to their detriment in such a way.

224. The foregoing representations, acts and omissions were made intentionally and for the express purposes of inducing Plaintiffs to rely on their truth to Plaintiffs' detriment. Defendants conduct, acts and omissions was taken with the primary purpose and intention of defrauding and causing harm to Plaintiffs, and which did, in fact, cause harm to Plaintiffs and to receive illegal and ill gotten gains.

225. As a result of the foregoing, Plaintiffs have been damaged in an amount to be determined at trial.

NINETEENTH CLAIM FOR RELIEF FOR NEGLIGENCE

226. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

227. Defendants, Janis and Paul Savitt owe a fiduciary duty to Plaintiff, M+J Savitt.

228. Based upon Defendants' conduct, actions and omissions, as detailed herein *infra*, Defendants have breached their fiduciary duty, recklessly causing injury to Plaintiff, M+J Savitt.

229. As a direct and proximate cause of Defendants' negligent conduct, actions and omissions, as detailed herein *infra*, Plaintiff, M+J Savitt, has suffered significant damages to be determined at trial.

TWENTIETH CLAIM FOR RELIEF FOR GROSS NEGLIGENCE

230. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

231. Defendants' conduct and actions, as detailed herein *infra*, are wanton, reckless, malicious and grossly negligent.

232. As a direct and proximate cause of Defendants' grossly negligent, wanton, reckless and malicious conduct and actions, as detailed herein *infra*, Plaintiff, Wynne Savitt, has suffered extreme emotional distress, physical illness, loss of sleep and elevated anxiety.

233. As a direct and proximate cause of Defendants' grossly negligent, wanton, reckless and malicious conduct and actions, as detailed herein *infra*, Plaintiff, Wynne Savitt, has suffered significant damages to be determined at trial.

TWENTY-FIRST CLAIM FOR RELIEF FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

234. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

235. Defendants have engaged in a vindictive campaign to not only ruin Plaintiffs' personal and professional reputation and character, but to harass Plaintiffs in order to cause Plaintiffs severe emotional distress and mental anguish.

236. Janis and Paul Savitt have made the most vile, offensive, defamatory, lewd and morally reprehensible statements and representations about Plaintiff, Wynne Savitt. Such statements and representations are so outrageous in character and extreme in degree as to go beyond all possible bounds of decency and are utterly intolerable in a civilized society.

237. By their conduct and actions, Janis and Paul Savitt are intentionally, and with malice, inflicting emotional as well as mental distress on Plaintiff, Wynne Savitt.

238. As a direct and proximate result of Janis and Paul Savitt's extreme and outrageous statements, representations and conduct, Plaintiff, Wynne Savitt, has suffered and continues to suffer severe emotional distress, mental anguish, anxiety, daily stress, sleep disruptions, constant fear and worry.

239. As a direct and proximate result of Janis and Paul Savitt's extreme and outrageous statements, representations and conduct, Plaintiff, Wynne Savitt, is experiencing intense physical and emotional pain and perilous effects of worry that is damaging to normal activities, concentration, self-care, carrying out of business, and general enjoyment of life and life functions.

240. As a direct and proximate result of Janis and Paul Savitt's extreme and outrageous statements and conduct, Plaintiff, Wynne Savitt, is entitled to an award of compensatory damages in an amount to be determined at trial.

TWENTY-SECOND CLAIM FOR RELIEF FOR CYBERSQUATTING UNDER THE LANHAM ACT

241. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

242. Defendant, Janis Savitt in her individual capacity, has registered, trafficked in, and/or used the Domain Name (as defined hereinabove) that is confusingly similar to and/or dilutive of the Marks, which were distinctive at the time Defendant, Janis Savitt, registered, trafficked in, and/or used the Domain Name.

243. Based on the conduct and actions of Janis Savitt, as described and set forth, *infra*, including, but not limited to, Janis Savitt's formation of the Designs by Janis Savitt corporate entity while simultaneously owing a fiduciary duty to M+J Savitt, her filing of the Trademark Application, as well as her self dealing and detrimental conduct toward M+J Savitt, Defendant, Janis Savitt has a bad faith intent to profit and divert business from Plaintiffs through her unauthorized use and registration of the Domain Name and use of the Marks.

244. The actions of Defendant, Janis Savitt, constitute a violation of 15 U.S.C. §1126(d)(1).

245. As a direct and proximate result of such conduct, Plaintiff, M+J Savitt has suffered, and will continue to suffer, monetary loss and irreparable injury to its business, reputation and goodwill. Plaintiff, M+J Savitt is entitled to injunctive relief to prevent Janis Savitt's continued infringement and misuse of the Marks. Unless, Defendant, Janis Savitt, is enjoined from continuing her infringing conduct, Plaintiff, M+J Savitt will suffer harm for which there is no adequate remedy at law. Plaintiff, M+J Savitt, is also entitled to damages, including its lost profits and Defendant, Janis Savitt's profits from the improper acts alleged herein, in amounts to be proven at trial.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

1. For judgment that:

   a. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have engaged in trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114;

   b. Paul Savitt has engaged in contributory trademark infringement in violation of the Lanham Act;

   c. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have engaged in unfair competition, false designation of origin and trademark infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);

   d. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate *entity have engaged in dilution in violation of the Lanham Act;*

   e. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate

entity have engaged in trademark infringement and unfair competition in violation of the laws of the State of New York;

f. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have engaged in copyright infringement in violation of the Federal Copyright Act, 17 U.S.C. §§ 101, *et. seq.;*

g. All Defendants have engaged in contributory copyright infringement in violation of the Federal Copyright Act, 17 U.S.C. §§ 101, *et. seq.;*

h. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have engaged in trademark dilution and injury to business reputation in violation of the laws of the State of New York;

i. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have engaged in deceptive acts and practices in violation of the laws of the State of New York;

j. All Defendants breached contracts between M+J Savitt shareholders;

k. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have been unjustly enriched;

l. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity, converted M+J Savitt property;

m. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity are vicariously liable for all acts of infringement and other violations of law alleged in this Complaint;

n. All Defendants tortiously interfered with M+J Savitt's business relationships;

o. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity made materially misleading representations in Advertisements in violation

of the law of the State of New York;

p. Janis and Paul Savitt breached their fiduciary duties to M+J Savitt in violation of the laws of the State of New York;

q. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity defamed Plaintiffs' business reputation;

r. All Defendants engaged in fraudulent and deceitful conduct;

s. All Defendants were negligent;

t. Janis and Paul Savitt were wanton, reckless, malicious and grossly negligent causing Plaintiff, Wynne Savitt extreme harm; and

u. Janis and Paul Savitt intentionally inflicted emotional distress upon Plaintiff, Wynne Savitt causing her harm.

v. Janis Savitt violated 15 U.S.C. § 1126(d)(1).

2. For a preliminary and permanent injunction enjoining Defendants, and any successors or assigns, and their officers, directors, partners, agents, subcontractors, manufacturers, distributors, retailers, servants, employees, attorneys, affiliates, licensees, subsidiaries and related companies or entities, and all others acting in concert or participation with them, from:

a. Making any use of the M+J Savitt Marks (as defined hereinabove), or any other mark confusingly similar to the M+J Savitt Marks;

b. Engaging in any activity that infringes upon the Marks;

c. Assisting, aiding, or abetting any other person or entity from engaging in or performing any of the activities referred to herein;

d. Directing Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity to publicly correct any and all misleading advertising in a manner

and form to be established by the Court;

e. Directing Defendants to file with this Court and serve on Plaintiffs within thirty (30) days after service of the injunction, a report in writing, under oath, that describes in detail the manner and form in which Defendants have complied with the orders of this Court;

f. Unfairly competing with M+J Savitt in any manner whatsoever.

g. Preventing Janis Savitt from cybersquatting on the Domain Name.

3. For an order awarding Plaintiffs: (a) Defendants' profits, trebled, together with attorneys' fees and costs, to the full extent provided for by Section 35 of the Lanham Act, 15 U.S.C. § 1117 and all other applicable provisions and principals of federal and New York State law; (b) restitution to M+J Savitt of all gains, profits, savings and advantages obtained by Defendants as a result of their wrongful actions; (c) an amount sufficient to conduct a corrective advertising campaign to dispel the effects of Defendants' wrongful conduct and confusing and misleading advertising; attorneys' fees under New York General Business Law § 349; (d) actual and punitive damages in an amount sufficient to deter other and future similar conduct by Defendants and others as provided for under the common law, and holding all Defendants jointly and severally liable for said damages.

4. For an order requiring Defendants to account to Plaintiffs for Defendants' unjustly received profits resulting from the foregoing acts; and

5. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all cause of action triable by a jury.

DATED: New York, New York
October 7, 2008

Respectfully Submitted,

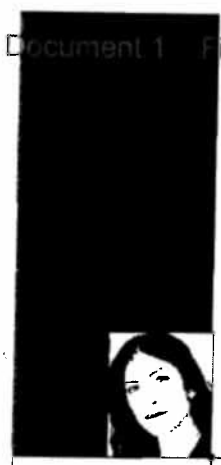
ROBERT E. SEAMAN III (RS-2734)
PETER J. GLANTZ (PG-1063)
ATTORNEYS FOR PLAINTIFFS
475 PARK AVENUE SOUTH, 26TH FLOOR
NEW YORK, NEW YORK 10016
(212) 213-0202

EXHIBIT 1

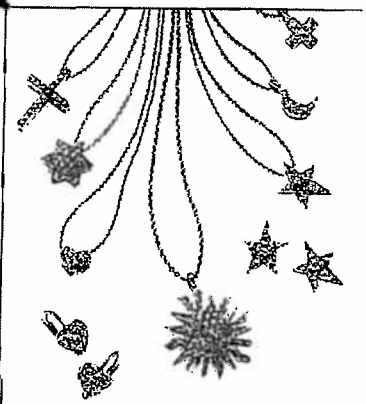
Please see attached.

Copies of M & J Savitt, Inc. Advertisements
utilizing the Janis Savitt for M & J Savitt Mark.

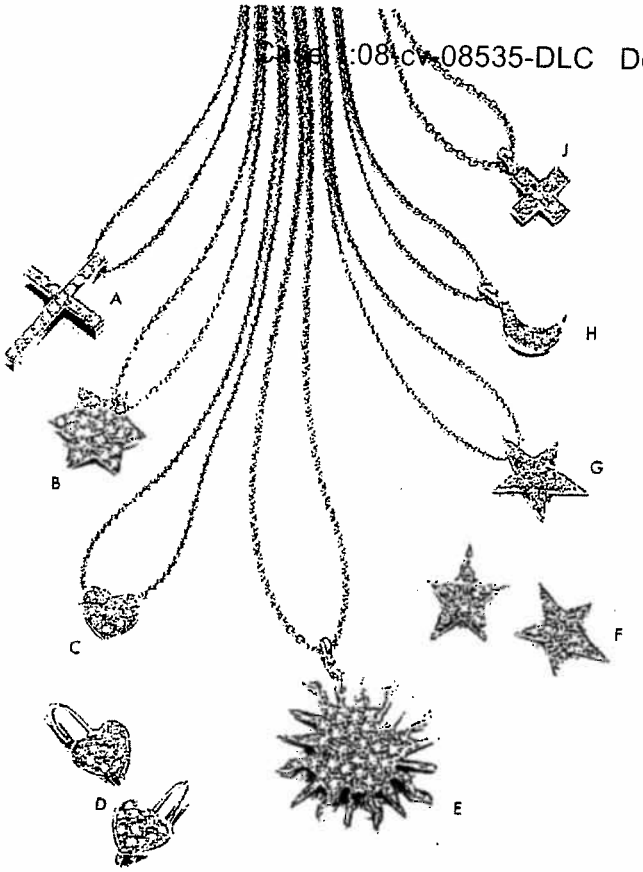
designer	EDDIE SAKAMOTO
main office	Sakamoto 365 Van Ness, Suite 501 Torrance, CA 90501 Tel: 310 618 2094 Fax: 310 618 2096
contact	Eddie Sakamoto
shows	JCK Orlando JCK Las Vegas JCK Luxury JA New York (summer)
product category	Bridal bracelets, pendant mountings.
philosophy	Keep it simple, keep it honest, keep it cool.
signature line	Simple, honest and cool.

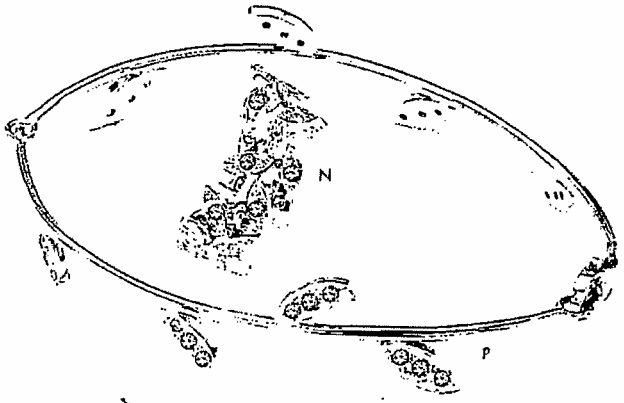


JANIS SAVITT
M+J SAVITT



designer	JANIS SAVITT
main office	M+J Savitt 475 Fifth Avenue, 20th Floor New York, NY 10017 Tel: 212 684 4221 Fax: 212 481 4684
contact	Wynne Savitt Rena Faigle
shows	JCK Las Vegas JA New York (summer)
product category	M+J Savitt semiprecious, Janis Savitt 18k white gold and diamonds.
philosophy	Beauty.
signature line	M+J Savitt line is clean, bold, luxurious and easily identifiable.





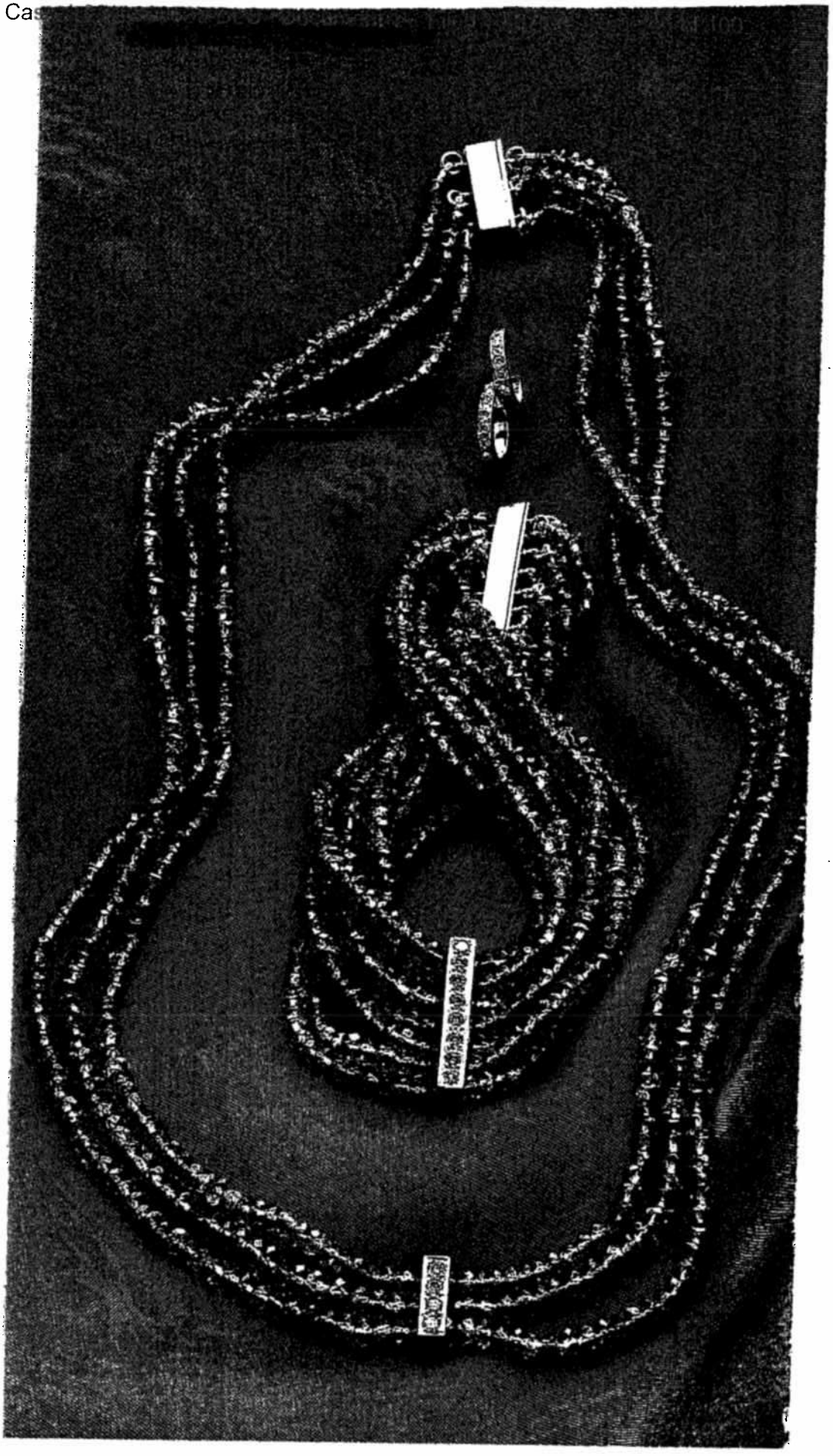
JANIS SAVITT

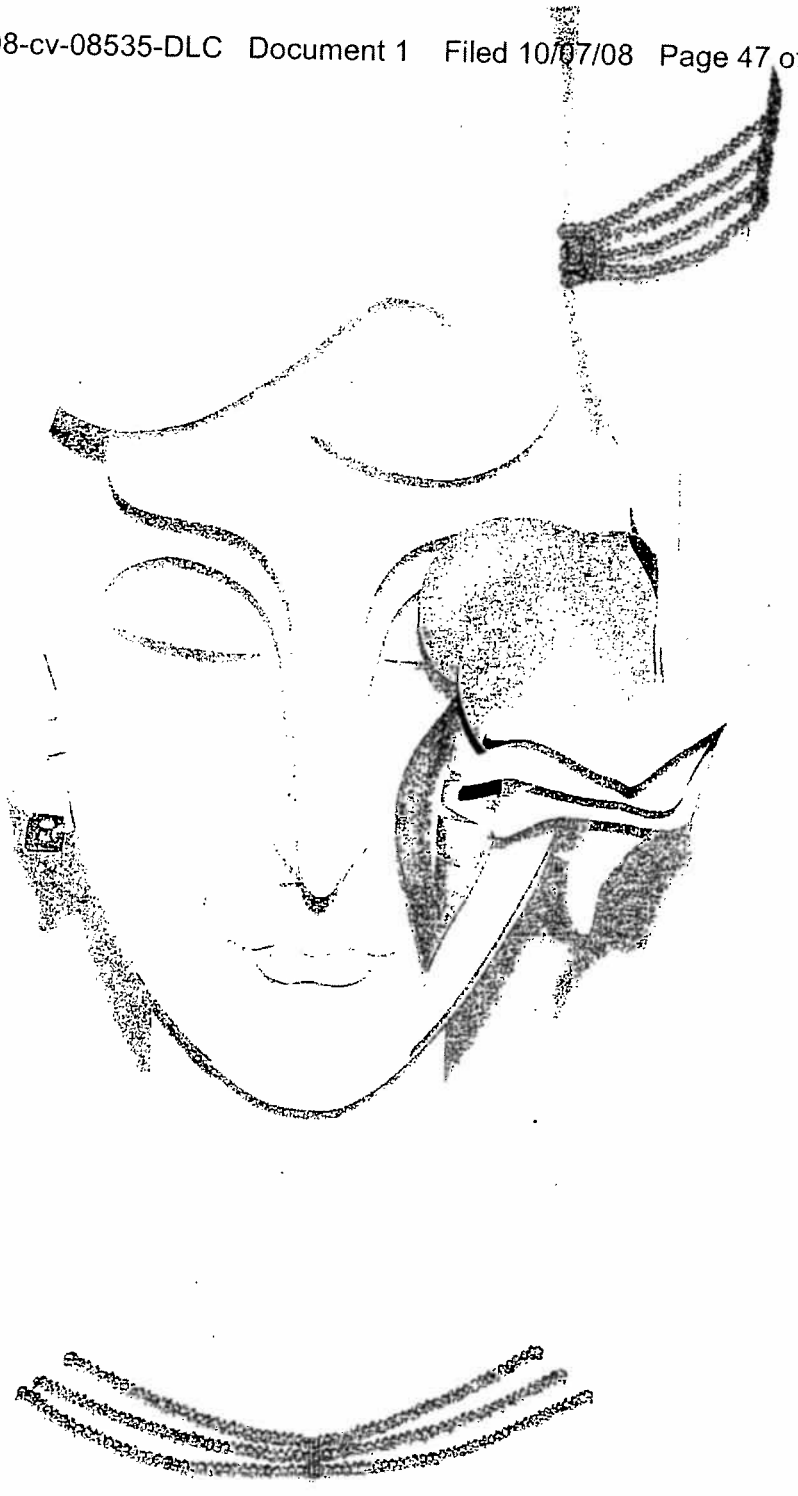
M+J SAVITT

A. Architectural cross necklace. $1,030
B. Puffed Star of David necklace. $1,160
C. Puffed heart necklace. $630
D. Puffed heart earrings. $980
E. Starburst necklace. $1,820
F. Star earrings. $820
G. Star necklace. $560
H. Moon necklace. $500
J. Swiss cross necklace. $600
K. Pavé diamond leaf earrings. $860
L. Leaf necklace. $840
M. Long branch leaf necklace with pavé and bezel-set diamonds. $2,740
N. Leaf ring. $1,360
P. Leaf bracelet. $2,010
R. Leaf earrings. $500

All in 18 karat white gold and diamonds.

Ca



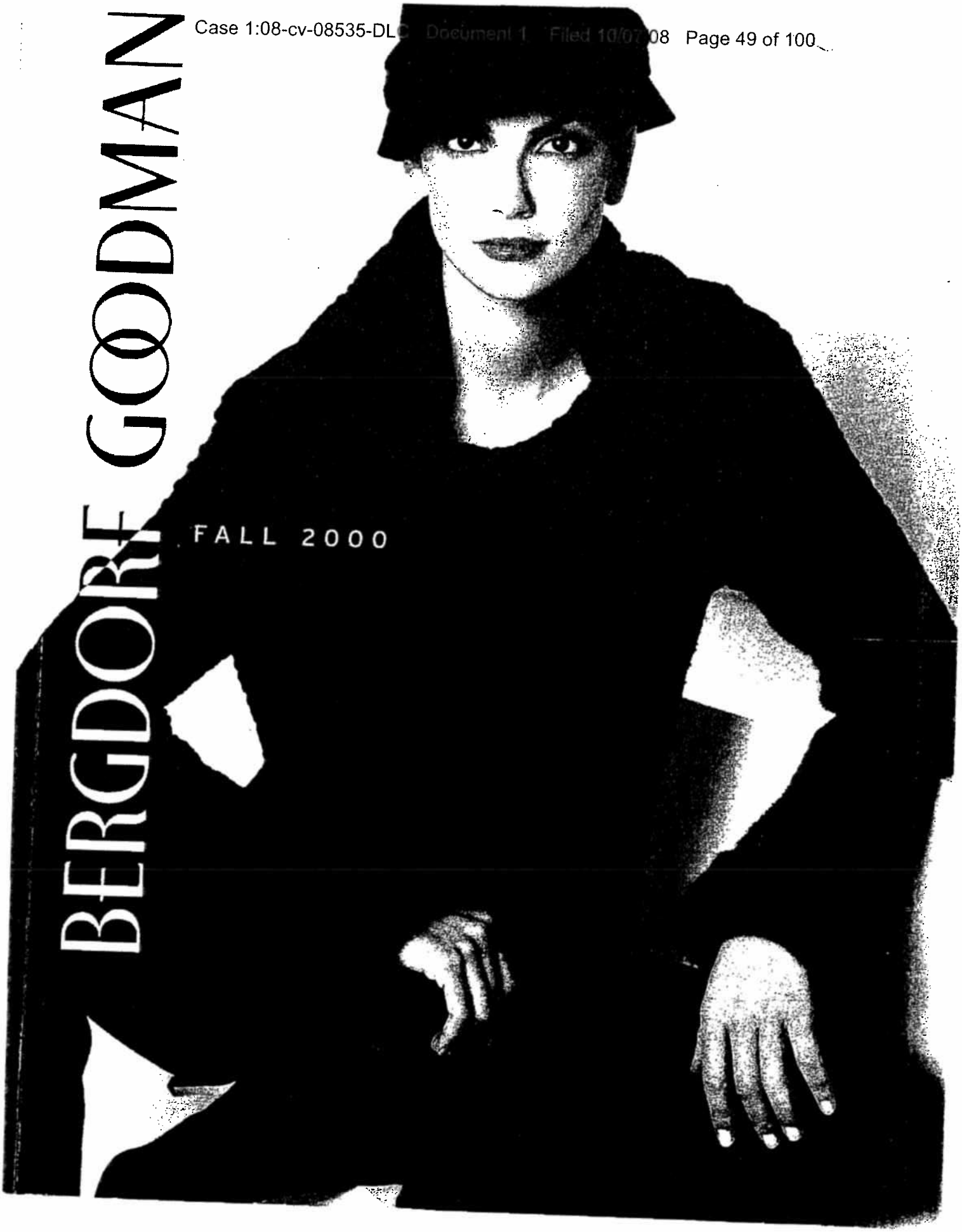


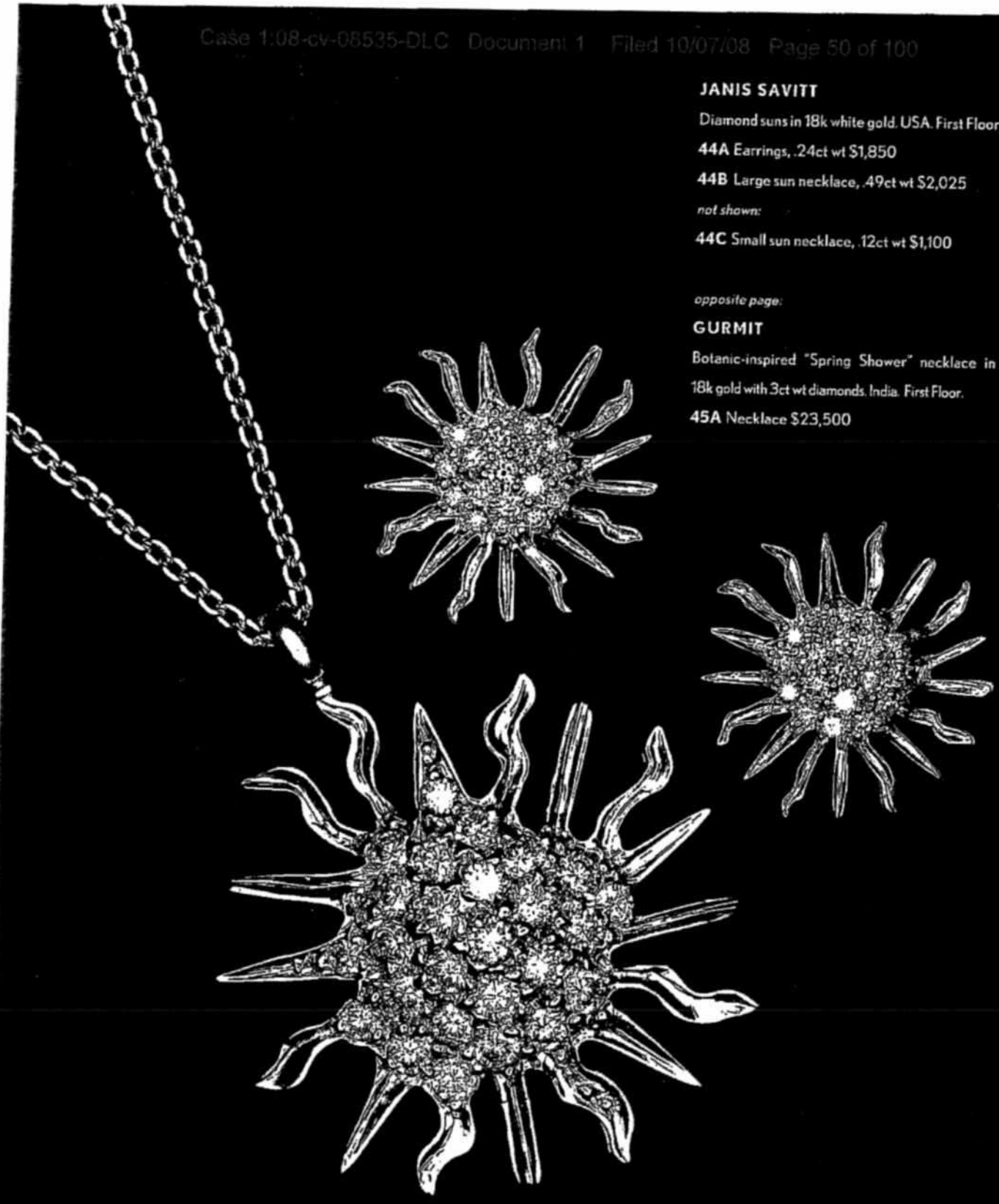
Jania Savitt for M + J Savitt aquamarine and diamond jewelry set in 18-karat white gold: 62a. Four-strand bracelet, 1,710.00. 62b. Earrings, 2,020.00. 62c. Three-strand necklace, 1,850.00.

EXHIBIT 2

Please see attached.

Copies of M & J Savitt, Inc. Advertisements
utilizing the Janis Savitt Mark.


BERGDORF GOODMAN
FALL 2000



JANIS SAVITT

Diamond suns in 18k white gold. USA. First Floor.

44A Earrings, .24ct wt $1,850

44B Large sun necklace, .49ct wt $2,025

not shown:

44C Small sun necklace, .12ct wt $1,100

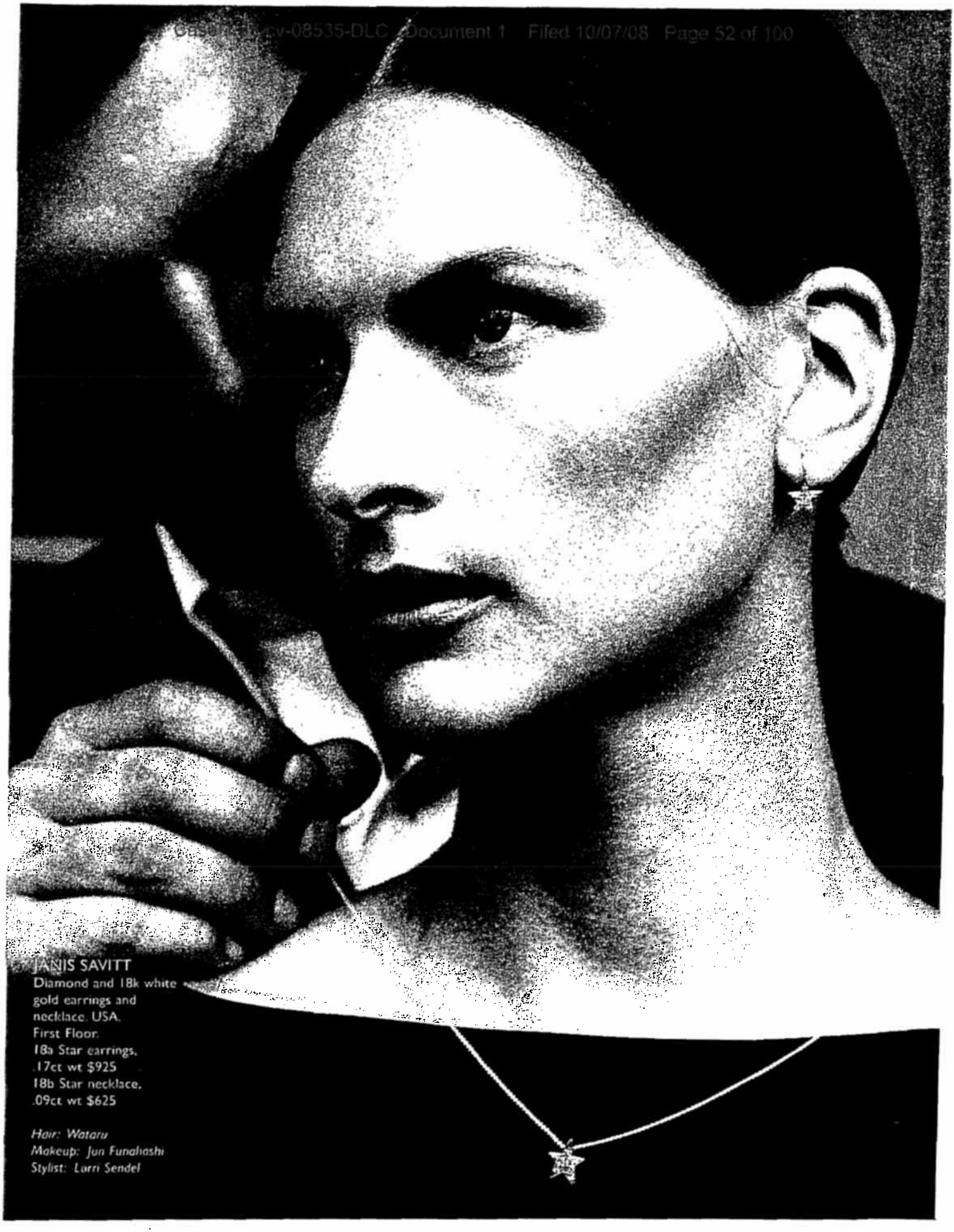
opposite page:

GURMIT

Botanic-inspired "Spring Shower" necklace in 18k gold with 3ct wt diamonds. India. First Floor.

45A Necklace $23,500

Diamond and 18k white gold earrings
and necklaces. USA. First Floor.
46a Moon earrings. .15ct wt $575
46b Moon necklace. .07ct wt $550
46c Sun necklace, .49ct wt $2,000



JANIS SAVITT
Diamond and 18k white gold earrings and necklace. USA.
First Floor.
18a Star earrings, .17ct wt $925
18b Star necklace, .09ct wt $625

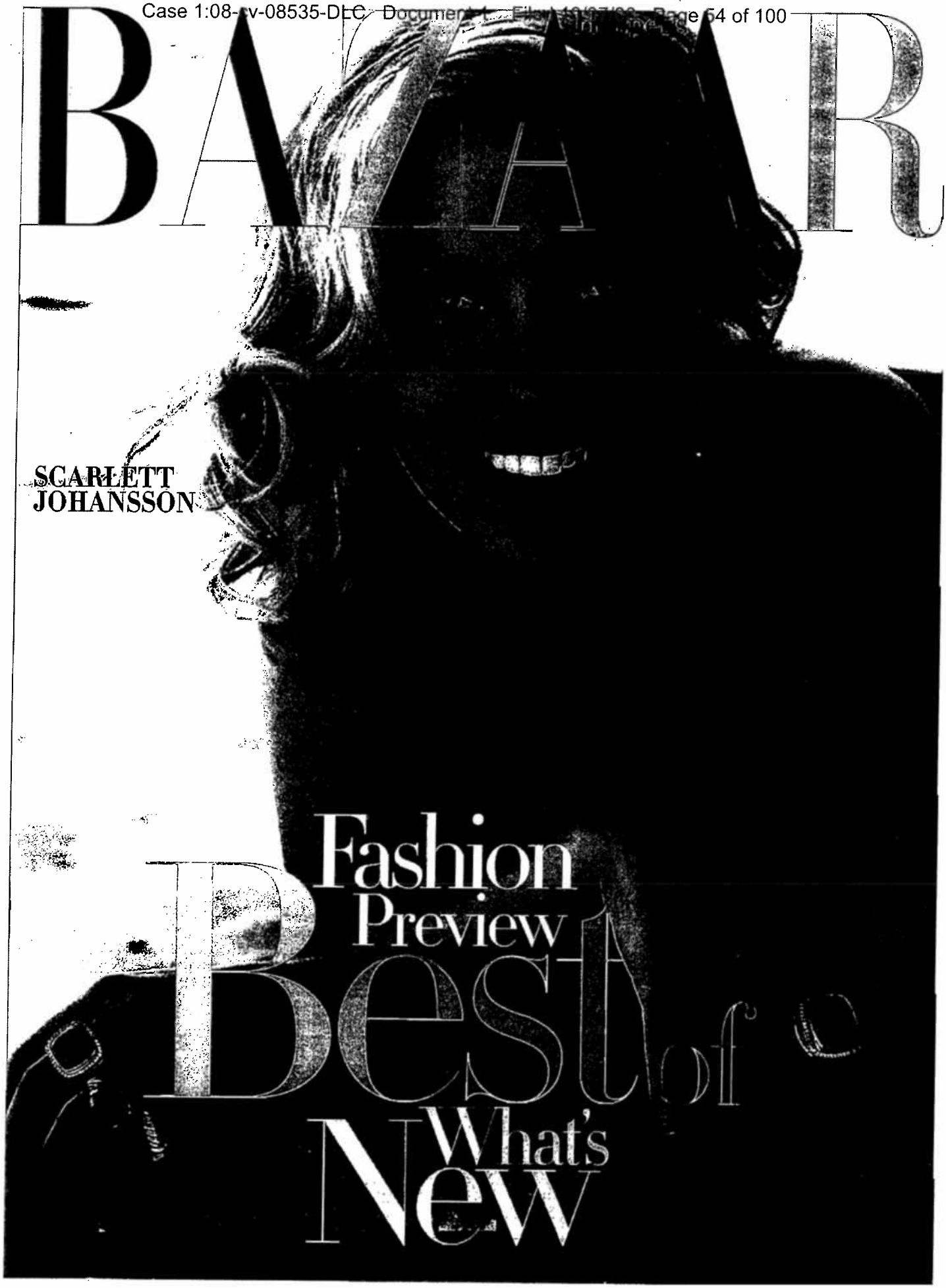
Hair: Wataru
Makeup: Jun Funahashi
Stylist: Larri Sendel

EXHIBIT 3

Please see attached.

Small sampling of M & J Savitt Advertisements and Magazine Publications.

BAZAAR



SCARLETT JOHANSSON

Fashion Preview

Best of What's New

Harper's BAZAAR
January 2005

72 Cover Story: Scarlett Johansson's Sexy Style

This Hollywood star seems equal parts woman and wide-eyed ingenue. Here, she speaks candidly about what's sexy now, loving "edgy" fashion and refusing to be more discreet. **On the cover** Scarlett Johansson, photographed by Peter Lindbergh, wears a halter dress by **Calvin Klein Collection**, $1300. Necklace, **M + J Savitt**; earrings and rings, **David Yurman**. Makeup: Absolue Cream Makeup SPF 20 ($55), Colour Focus Palette EyeColour Quad in 4Style ($37), Le Crayon Khôl EyeLiner in Black Ebony ($19.50), Hypnôse Mascara in Black ($21), Blush Subtil in Miel Glace ($26.50), Rouge Sensation LipColour in Bale ($21) and Vernis Magnetic Nail Lacquer in Willowy ($14.50). **All, Lancôme.** See Where to Buy for details. Fashion editor: Andrew Richardson. Hair: Ward; makeup: Stéphane Marais; manicure: Deborah Lippmann.

624 New Looks for Every Age

78
Fashion Preview: Best of What's New
Spring's Best Bets

92
Hits From Milan
By Mario Sorrenti

106
Best of Paris
By Alasdair McLellan

120
Highlights From New York
By Peter Lindbergh

132
The New YSL
By Anthony Ward
Text by Virginie Mouzat

140
How to Get Perfect Skin
By Donna Trope
Text by Victoria Kirby

18 Shopping: The Season's Must-Haves
Fashionable women tell *Bazaar* the one thing they want for spring

24 Ten Ways to Update Your Look
34 Beauty: Makeup That Flatters You
Bobbi Brown shares her advice for looking great

Continued on page 8

BAZAR

ESPAÑOL

EXCLUSIVA
LLIANO,
EZ AÑOS DE
TRAFALARIA
NSATEZ

MILLA
JOVOVICH
AHORA TAMBIÉN
DISEÑA

PECIAL DE
PERFUMES
Cítricos, florales, orientales
amaderados, ¿cuál va contigo?

ADEMÁS: Adolfo
Domínguez y su
estilo español: guía

2.95

Contenido

Harper's BAZAAR

ABRIL 2007

54 EN PORTADA:

Milla Jovovich

Fotografiada por Peter Kovál (www.peterkoval.com) en Shoot Digital, NY. Milla trae puesto: suéter corto, **Moschino**. Top de bikini, **Jovovich-Hawk**. Falda, **M+J Savitt**. Dijes, **Bvlgari**. Editora de moda: Gisela Castillo. Todo el maquillaje es de L'Oréal Paris. Peinado, Frankie Foye, maquillaje: Susan Houser ambos para photomanagement.com; manicure: Nausil Zaheer para Mark Edward; asistente de fotografía: Vanessa Albury y "M" Apisak Vithyanond; asistente de moda: Angela Esteban, Patricia Yague y Tracy Cyprow; retoque: Matthew Barela (www.mabdigital.com).

20

108

92

88

76

64

20 LAS REGLAS DE LA TEMPORADA

64 LO QUE DEBES USAR AHORA
Por Terry Tsiolis

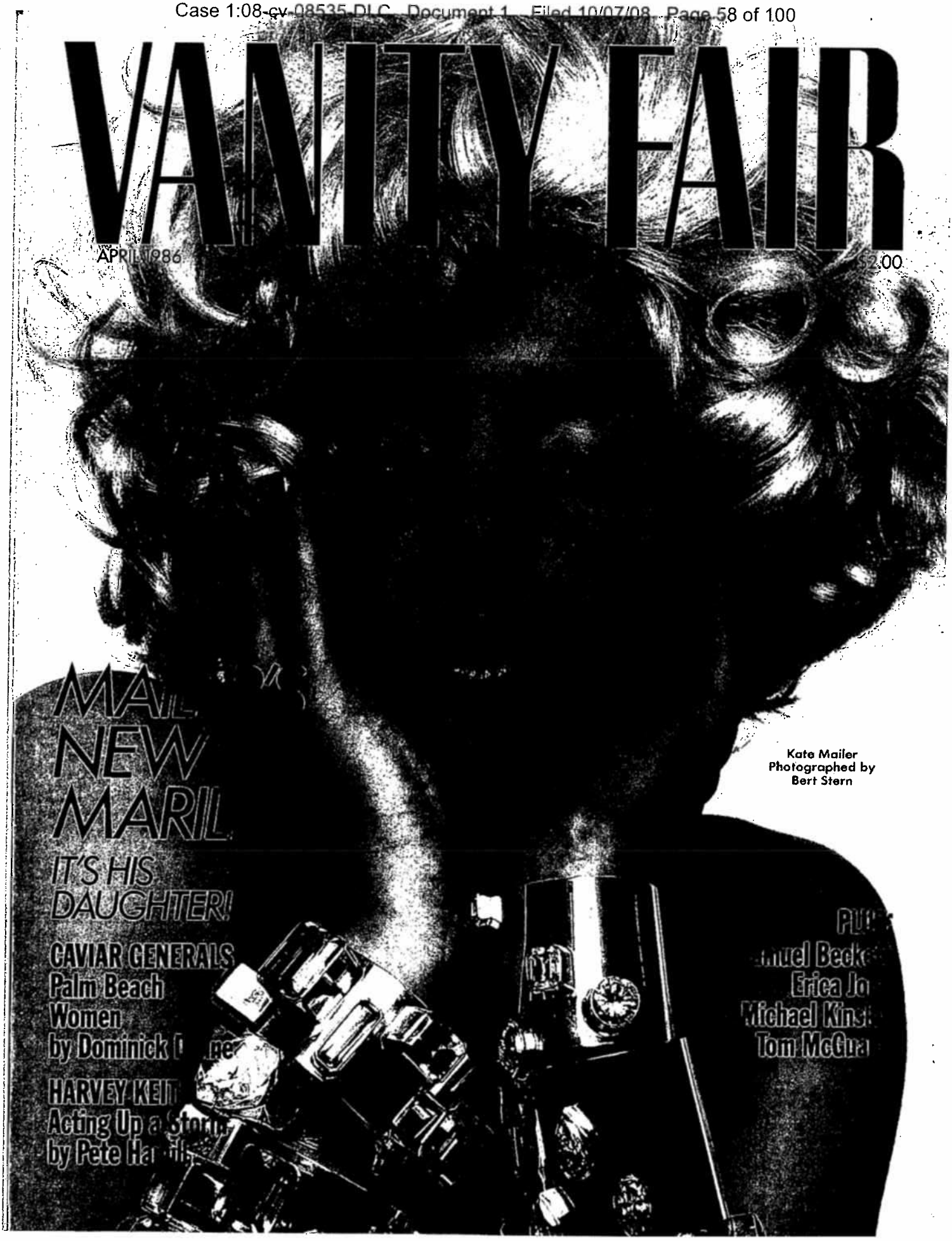
76 EXPRESIONES EN PASTEL
Por Tuertos

ADOLFO DOMÍNGUEZ, EL CREADOR DE SUEÑOS
Por Khaled Aboumrad

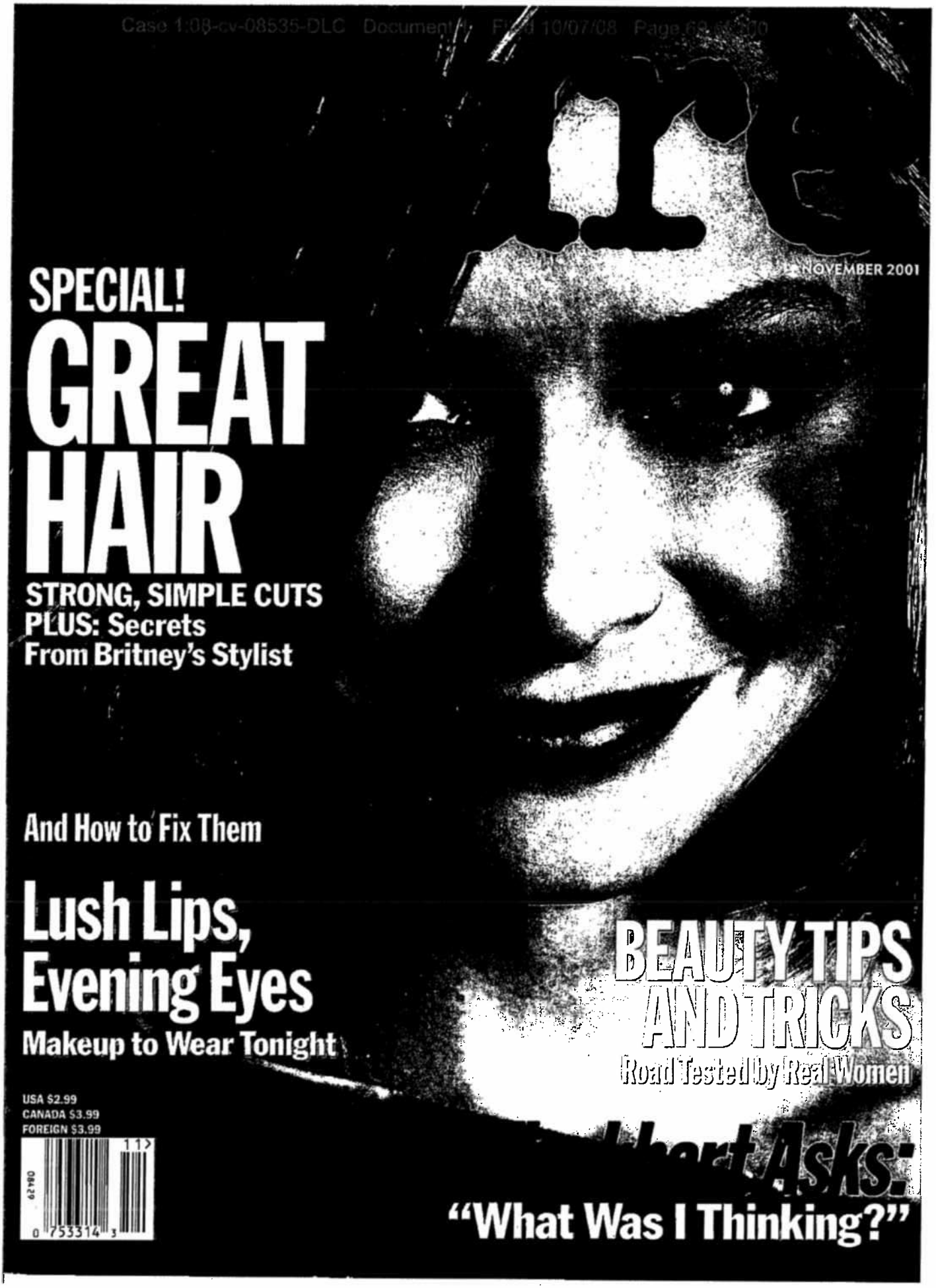
PIEZAS CLAVE EN BLANCO Y NEGRO
Por Karl Lagerfeld

ALTER EGO
Por Ana Paula Orozco

EL GLORIOSO REINADO DE GALLIANO
Por Simon Procter


VANITY FAIR
APRIL 1986
2.00
MAI
NEW
MARIL
IT'S HIS
DAUGHTER!
CAVIAR GENERALS
Palm Beach
Women
by Dominick
HARVEY KEIT
Acting Up a Storm
by Pete Ha
PLU
nuel Beck
Erica Jo
Michael Kins
Tom McGua
Kate Mailer
Photographed by
Bert Stern

THE



NOVEMBER 2001

SPECIAL!

GREAT HAIR

STRONG, SIMPLE CUTS
PLUS: Secrets From Britney's Stylist

And How to Fix Them

Lush Lips, Evening Eyes

Makeup to Wear Tonight

BEAUTY TIPS AND TRICKS

Road Tested by Real Women

...bert Asks:

"What Was I Thinking?"

USA $2.99
CANADA $3.99
FOREIGN $3.99

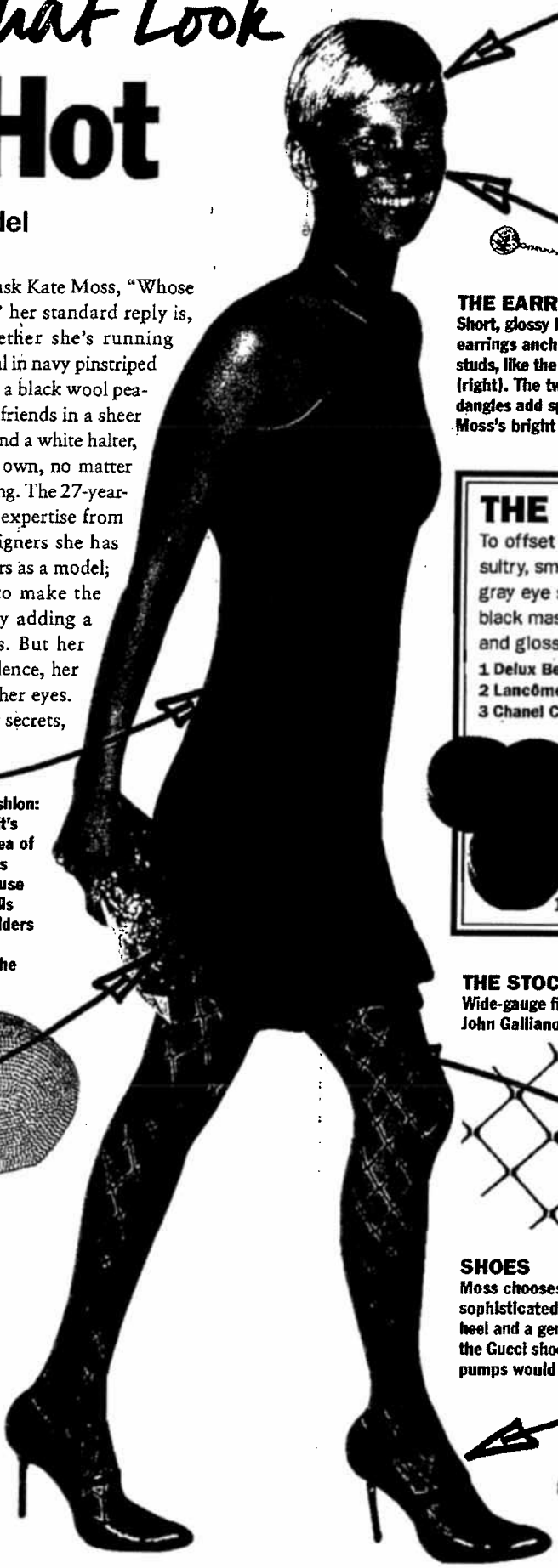
Get That Look

Icy Hot

Kate Moss: Model

By Joey Bartolomeo

When admirers ask Kate Moss, "Whose dress is that?" her standard reply is, "Mine." Whether she's running through an airport terminal in navy pinstriped pants, a newsboy cap, and a black wool pea-coat, or out at night with friends in a sheer beige, asymmetrical skirt and a white halter, Moss's look is indeed her own, no matter which designer she's wearing. The 27-year-old has absorbed a lot of expertise from the great stylists and designers she has worked with in her 13 years as a model; she clearly knows how to make the most of a simple dress by adding a few standout accessories. But her own imprint is her confidence, her spirit, and the sparkle in her eyes. Since Moss won't spill her secrets, we'll do it for you.



THE HAIR
Moss's pixie cut—reminiscent of Mia Farrow and Jean Seberg—is a softer version of her punky, razored style seen in recent Gucci ads. Her platinum hair (she has since gone back to a soft brown) looks sophisticated, not trashy, thanks to her simple style.

THE EARRINGS
Short, glossy hair calls for dangling earrings anchored by cubic-zirconia studs, like the ones by Mouawad (right). The two-inch sterling-silver dangles add sparkle, accenting Moss's bright hair and handbag.

THE MAKEUP
To offset her pale hair, Moss chooses sultry, smoky eyes, achieved with dark gray eye shadow, black eye pencil, and black mascara. Tawny, skin-tone blush and glossy beige lips balance the look.
1 Delux Beauty Flush Stick in Camel
2 Lancôme Le Crayon Khôl Ebony eyeliner
3 Chanel Creme lipstick in Beige de Chanel

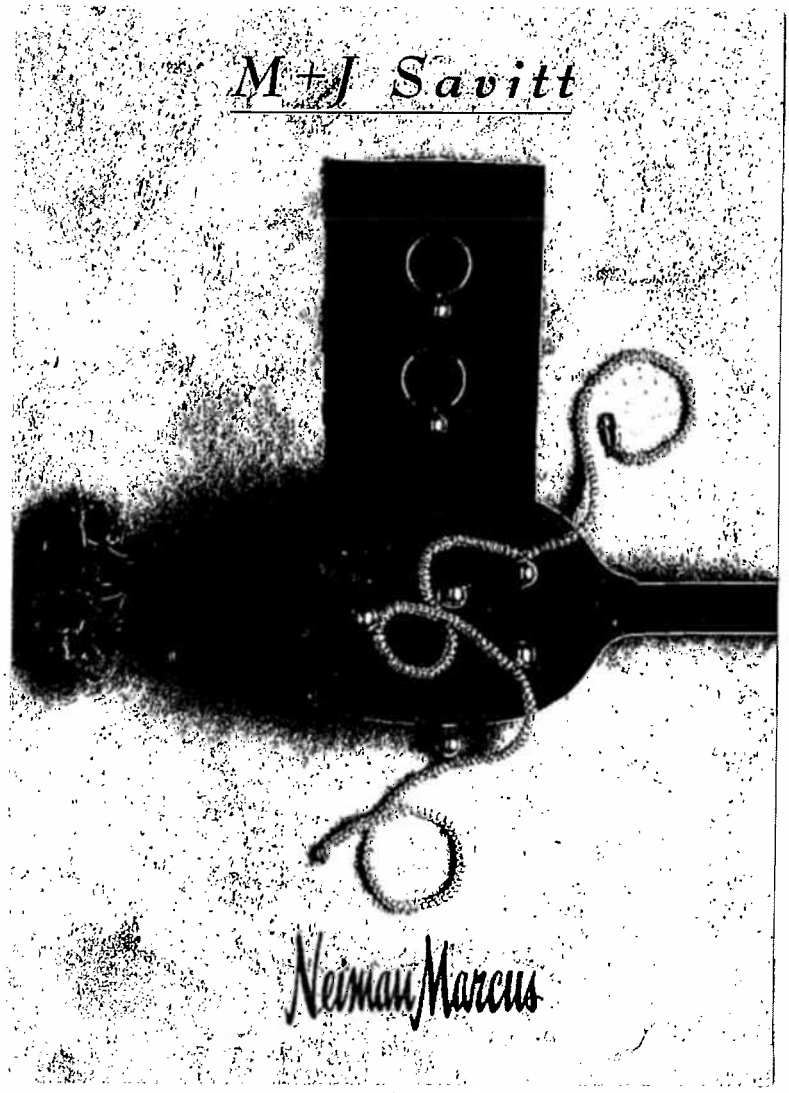
THE DRESS
The most immutable rule in fashion: If the dress is little and black, it's fail-safe. But even among a sea of similarly classified outfits, Moss stands out in this dress because of the detailing: a halter that fills in for a necklace; bared shoulders that show off her luminous skin; and the slight swing in the thigh-skimming hem.

THE BAG
Moss's glitzy, big '80s bag—similar to the one by Judith Lieber above—almost functions as jewelry. It ties in with her shiny hair, reflective earrings, and glowing skin. By carrying the clutch casually in her hand—and not wearing it from a chain from her shoulder to her hip—she looks saucy, not stiff. And since everything else is simple and understated, Moss safely avoids sensory overload.

THE STOCKINGS
Wide-gauge fishnets—the legwear du jour since John Galliano showed them at Christian Dior this spring—add a sexy twist to Moss's simple ensemble and play off her bare arms and shoulders. Warning: Fishnets worn with colored or printed dresses require an extra dose of attitude. Stockings (near left) by Victoria's Secret.

SHOES
Moss chooses Mary Janes with sophisticated touches: a high, thin heel and a gently rounded toe, like the Gucci shoes at right. Plain black pumps would work just as well.

THEODORE WOOD/CAMERAPRESS/RETNA; DAVID CDOH (STILL LIFES)


M+J Savitt
Neiman Marcus

m+j
savitt
Neiman Marcus

EXHIBIT 4

Please see attached.

Trademark Application Filing with Refusal.

United States Patent and Trademark Office

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Thu Oct 2 04:20:46 EDT 2008

Logout Please logout when you are done to release system resources allocated for you.

Start List At: OR Jump to record: **Record 1 out of 6**

Janis Savitt

Word Mark	JANIS **SAVITT**
Goods and Services	(ABANDONED) IC 014. US **002 027 028 050** . G & S: Jewelry
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77033657
Filing Date	October 31, 2006
Current Filing Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) Savitt Janis INDIVIDUAL UNITED STATES 200 West 58th st. Apt. 12B New York NEW YORK 10019
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	DEAD
Abandonment Date	April 15, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

May 12, 2008

NOTICE OF ABANDONMENT

TM101

Dennis H. Cavanaugh
D H Cavanaugh Associates
555 Fifth Avenue, 17th Floor
New York NY 10017

ATTORNEY REFERENCE NUMBER:

SERIAL NUMBER:	77/033657
MARK:	JANIS SAVITT
APPLICANT:	Savitt Janis

THE ABOVE IDENTIFIED TRADEMARK APPLICATION WAS ABANDONED IN FULL ON 04/15/2008 FOR THE FOLLOWING REASON:

NO RESPONSE TO THE OFFICE ACTION MAILED ON 10/14/2007 WAS RECEIVED IN THE UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO) WITHIN THE SIX-MONTH RESPONSE PERIOD. (15 U.S.C. 1062(b); TRADEMARK RULE 2.65(a)). YOU MAY VIEW THE OFFICE ACTION THROUGH TRADEMARK DOCUMENT RETRIEVAL (TDR) AVAILABLE AT http://tmportal.uspto.gov/external/portal/tow. **YOU CAN REQUEST REINSTATEMENT OF THE APPLICATION FOR NO FEE IF:**

- YOU HAVE PROOF THAT YOUR RESPONSE WAS RECEIVED IN THE USPTO ON OR BEFORE THE DUE DATE - SUCH AS A POSTCARD WITH A USPTO MAILROOM DATE STAMP; OR,
- YOU MAILED OR FAXED THE RESPONSE ON OR BEFORE THE DUE DATE WITH A CERTIFICATE OF MAILING OR FACSIMILE TRANSMISSION, IN ACCORDANCE WITH USPTO RULE 2.197, 37 CFR SEC. 2.197.

YOU MUST SUBMIT A COPY OF THE PREVIOUSLY SUBMITTED TIMELY RESPONSE WITHIN 2 MONTHS OF THE DATE PRINTED AT THE TOP OF THIS NOTICE ALONG WITH ONE OF THE TYPES OF PROOF SET OUT ABOVE. YOU MAY FAX THIS INFORMATION TO 571-273-8950.

IF YOU DO NOT HAVE THE PROOF NECESSARY FOR REINSTATEMENT, YOU CAN FILE A PETITION TO REVIVE THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) AVAILABLE AT http://www.uspto.gov/teas/index.html. USPTO RULE 2.66, 37 CFR SEC. 2.66, REQUIRES:

- A "PETITION TO REVIVE" TO BE FILED WITHIN 2 MONTHS OF THE DATE PRINTED AT THE TOP OF THIS NOTICE;
- A SIGNED STATEMENT BY SOMEONE WITH FIRST HAND KNOWLEDGE OF THE FACTS THAT THE DELAY IN RESPONDING BY THE DUE DATE WAS "UNINTENTIONAL";
- A PETITION FEE OF $100, MADE PAYABLE TO THE COMMISSIONER OF TRADEMARKS; AND
- A RESPONSE TO THE OFFICE ACTION (IF YOU RECEIVED THE OFFICE ACTION - OTHERWISE, A STATEMENT THAT YOU DID NOT RECEIVE THE OFFICE ACTION.)

FOR FURTHER INFORMATION CALL 1-800-786-9199

To:	Savitt Janis (dhc@dhcavanaugh.net)
Subject:	TRADEMARK APPLICATION NO. 77033657 - JANIS SAVITT - N/A
Sent:	10/14/2007 2:41:59 PM
Sent As:	ECOM101@USPTO.GOV
Attachments:	Attachment - 1 Attachment - 2 Attachment - 3 Attachment - 4 Attachment - 5 Attachment - 6 Attachment - 7 Attachment - 8 Attachment - 9 Attachment - 10 Attachment - 11 Attachment - 12 Attachment - 13 Attachment - 14 Attachment - 15

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/033657

MARK: JANIS SAVITT

77033657

CORRESPONDENT ADDRESS:
Dennis H. Cavanaugh
D H Cavanaugh Associates
555 Fifth Avenue, 17th Floor
New York NY 10017

RESPOND TO THIS ACTION:
http://www.uspto.gov/teas/eTEASpageD.htm

GENERAL TRADEMARK INFORMATION:
http://www.uspto.gov/main/trademarks.htm

APPLICANT: Savitt Janis

CORRESPONDENT'S REFERENCE/DOCKET NO:
N/A
CORRESPONDENT E-MAIL ADDRESS:
dhe@dhcavanaugh.net

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 10/14/2007

THIS IS A FINAL ACTION.

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: TEAS Plus applicants should submit the following documents using the Trademark Electronic Application System (TEAS) at http://www.uspto.gov/teas/index.html: (1) written responses to Office actions; (2) preliminary amendments; (3) changes of correspondence address; (4) changes of owner's address; (5) appointments and revocations of attorney; (6) amendments to allege use; (7) statements of use; (8) requests for extension of time to file a statement of use, and (9) requests to delete a §1(b) basis. If any of these documents are filed on paper, they must be accompanied by a $50 per class fee. 37 C.F.R. §§2.6(a)(1)(iv) and 2.23(a)(i). Telephone responses will not incur an additional fee. NOTE: In addition to the above, applicant must also continue to accept correspondence from the Office via e-mail throughout the examination process in order to avoid the additional fee. 37 C.F.R. §2.23(a)(2).

This letter responds to applicant's communication received on September 11, 2007, in which applicant argued against a Section 2(d) refusal. The refusal is maintained and made FINAL for the following reasons.

Section 2(d) - Likelihood of Confusion Refusal

In the prior Office action of March 13, 2007, registration was refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 2116162, 2941210, and 3022631. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* See the previously enclosed registrations. The same registrant owns all the registrations.

Trademark Act Section 2(d) bars registration where an applied-for mark so resembles a registered mark that it is likely, when applied to the goods and/or services, to cause confusion, mistake or to deceive the potential consumer as to the source of the goods and/or services. TMEP §1207.01. The Court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to consider in determining whether there is a likelihood of confusion. Among these factors are the similarity of the marks as to appearance, sound, meaning and commercial impression, and the relatedness of the goods and/or services. The overriding concern is to prevent buyer confusion as to the source of the goods and/or services. *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt as to the existence of a likelihood of confusion must be resolved in favor of the registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); *Lone Star Mfg. Co. v. Bill Beasley, Inc.*, 498 F.2d 906, 182 USPQ 368 (C.C.P.A. 1974).

Taking into account the relevant *du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. First, the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E .I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.*

In the present case, the applicant seeks registration of the mark JANIS SAVITT for jewelry. The cited marks are S M+J SAVITT with design, SAVITT, and M+J SAVITT, all for jewelry. As discussed in the prior Office action, the marks are highly similar because they are comprised of the identical surname SAVITT and because of the name JANIS begins with the letter J, which corresponds to the letter J in the registered marks. The goods are identical.

The applicant basically argues that the name JANIS is sufficient to distinguish the marks; that there is no indication the letter J in the registered mark is recognized by consumers to be associated with the name JANIS such that there is confusion. It also attached two registrations for jewelry goods and two registrations for clothing where the marks are comprised of names with identical surnames.

The examining attorney has carefully considered the applicant's arguments and found them unpersuasive.

In this particular case, the examining attorney begins by emphasizing the fact the goods are identical. A Section 2(d) analysis is like a sliding scale. The closer the marks, the less related the goods/services need be, and the more related the goods/services, the less similar the marks need be.

As stated in the prior Office action, *given the fact that the goods are identical*, the marks are sufficiently similar. If the goods or services of the *respective parties are closely related, the degree of similarity between marks required to support a finding of likelihood of confusion is not as* great as would apply with diverse goods or services. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992), *cert. denied* 506 U.S. 1034 (1992); *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1987); *ECI Division of E-Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980); TMEP §1207.01(b).

When viewing the marks of the applicant and registrant, they are irrefutably similar. All the marks use the identical surname SAVITT and the letter J in the registered marks correspond to the name JANIS in applicant's mark. In other words, the applicant is a "J. SAVITT." There is clearly a reasonable likelihood that consumers encountering the marks of the applicant and registrant for identical goods will believe the goods emanate from a single source. The examining attorney does not have to prove that there is actual confusion as applicant claims. The test is *likelihood* of confusion, and any doubt regarding a likelihood of confusion is resolved in favor of the prior registrant. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); TMEP §§1207.01(d)(i).

Furthermore, the examining attorney attaches several web pages found on the Internet regarding the registrant. The evidence shows that the "J" in the registered refers to "Janis Savitt.[1]" Therefore, it appears in the jewelry industry, the registered mark is known to be associated with a Janis Savitt.

Relevant consumers encountering the marks of the registrant – marks known of be associated with the name "Janis Savitt,"— and encountering the mark JANIS SAVITT, all for jewelry, are reasonably likely to believe all the jewelry emanates from a single source.

Accordingly, registration is refused under Trademark Act, Section 2(d).

Response

If applicant fails to respond to this final action within six months of the mailing date, the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond to this final action by:

(1) submitting a response that fully satisfies all outstanding requirements, if feasible (37 C.F.R. §2.64(a)); and/or

(2) filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of $100 per class (37 C.F.R. §§2.6(a)(18) and 2.64(a); TMEP §§715.01 and 1501 *et seq.*; TBMP Chapter 1200).

In certain circumstances, a petition to the Director may be filed to review a final action that is limited to procedural issues, pursuant to 37 C.F.R. §2.63(b)(2). 37 C.F.R. §2.64(a). *See* 37 C.F.R. §2.146(b), TMEP §1704, and TBMP Chapter 1201.05 for an explanation of petitionable matters. The petition fee is $100. 37 C.F.R. §2.6(a)(15).

/Jean H. Im/
Trademark Attorney
Law Office 101
571-272-9303
jean.im@uspto.gov

RESPOND TO THIS ACTION: If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office action should be filed using the form available at http://www.uspto.gov/teas/eTEASpageD.htm. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at http://tarr.uspto.gov. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

---

[1] The first article attached refers to a "Janice Savitt," which simply appears to be a misspelling of the actual name.

Neiman Marcus

NEW YORK SHOPPING

Neiman Marcus The 2007 Christmas Book is online >

HOME | RESTAURANTS | NIGHTLIFE | ENTERTAINMENT | AGENDA | SHOPPING | FASHION | BEST OF NY | TRAVEL | NEWS | REAL ESTATE | CLASSIFIEDS | VIDEO | Sitemap

Find a Store | Best Bets | Sales & Bargains | Shop-A-Matic | The Find | Store Openings | Beauty & Spas | Best of NY Shopping

Entire Site SEARCH

Subscribe & Get 6 Months FREE
Subscribe Today! | Give a Gift

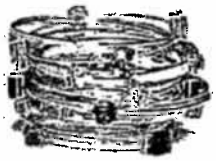
You are not logged in
Log In | Register

DEAL OF THE WEEK

Text Size: A | A | A

Arm Candy

By Rima Suqi



Stack the Savitt sisters' jewelry high at this week's sale.
(Photo: Peter Barton)

The loyal fan base for Michelle and Janice Savitt's exquisite jewelry includes designers like Michael Kors and Ralph Lauren, who've both used the Savitts' pieces in past runway shows. Admirers don't mind shelling out up to $50,000 for the sisters' intricate diamond pieces, but more affordable prices can be found at this week's sample sale (June 22–24; appointments recommended). The stackable sterling-silver-and-semiprecious-stone bangles pictured above usually run $550 apiece; now they're about $200 each. It's an easy—and fashionable—way to glam up bare arms in the summer. (475 Fifth Avenue, near 40th Street, 20th floor; 212-684-4221.)

More:

ADVERTISEMENT

THE CURRENT ISSUE

SUBSCRIBE TO NEW YORK

VIEW CONTENTS | ORDER ISSUE
COVER GALLERY | CUSTOMER SERVICE

Subscribe

Sales & Bargains - Deal of the Week »
Articles by Rima Suqi »
From the June 21, 2004 issue of *New York* »

Email This | Print This | Digg This | Reddit | del.icio.us | Furl It

Your First Name
Your Last Name
Your Email Address
CONTINUE »

Give a Gift
Your Full Name
Your Email Address
CONTINUE »

How Sleep Deprivation Is Harming Your Children

DAILY **Intelligencer**

Monthing Off

Sidewalk Chalking Is a Gateway Crime

Bono Would Totally Hate Giuliani Bnd Paul Singer

Have Money and Hype Ruined Art?

Norman Mailer on God and the Devil

Our Permanent State of Hysterical Overreaction

Ads by Google

Online Jewelry Outlet
Unbelievable Prices on Rings, Necklaces, Earrings & Bracelets
ShopAtHomeTV.com/Jewelry-Outlet

Wholesale Fashion Jewelry
Designer semi-precious & fashion jewelry for gift & apparel markets
www.AlexCarolJewelry.com

wholesale costume jewelry
Wholesale quality fashion jewelry earrings, Necklaces, bracelets, set
www.rich2B.com

Jewelry & Accessories
Big & bold designs for the fashionista on a budget.
www.luxfashionbaubles.net

Copyright © 2007, New York Magazine Holdings LLC. All Rights Reserved.
New York Magazine | Contact Us | Site Map | Media Kit | Privacy Policy | Terms | Magazine Customer Service | Newsletters | RSS Feeds

Awards

Awards for Excellence
Past Winners

Related Links

- Awards for Excellence
- DIVA Awards
- Scholarships
- Member Grants
- Shining Stars

HALL OF FAME

2006 Hedda Schupak – JCK Magazine
2005 Phyllis Bergman – Mercury Ring Corporation
2004 Mary Forte – Zale Corporation
2003 Juell Kadett – Rogers & Hollands Jewelers
2002 Harriet Schreiner – Sterling Jewelers
2001 Joan Parker – Diamond Information Center
2000 Beryl Raff – Zale Corporation
1998 Laurie Hudson – Platinum Guild International
1995 Kathryn Kimmel – Gemological Institute of America
1994 Nancy Brewer – Nancy B. & Co.
1993 Babette Goodman Cohen & Jane Goodman Baum – I. B. Goodman Co.
1990 June A. Herman – Jabel Inc.
1989 Helene Fortunoff – Fortunoff Fine Jewelry
1988 Gerry Gewirtz – Gerry Gewirtz Report
1987 Eunice Robinson Miles – Gemological Institute of America
1986 Sallie Morton – American Gem Society
1985 Peg Kirby – Finlay Fine Jewelry

BEN KAISER LIFETIME ACHIEVEMENT AWARD

2006 Mr. Terry Burman – Signet Group plc & Sterling Jewelers
2005 Mr. William Boyajian – Gemological Institute of America
1999 Mr. Ralph Destino – Cartier
1992 Mr. Ben Kaiser – Baume & Mercier, Inc.

CATEGORY I: Design: Fine Jewelry & Watches

2006 Lisa Jenks – Lisa Jenks Limited
2005 Judith Ripka – The Judith Ripka Companies, Inc.
2004 Cathy Carmendy – Cathy Carmendy, Inc.
2003 Erica Courtney – Erica Courtney, Inc.
2002 Barbara Berk – Barbara Berk Designs
2001 Doris Panos – Doris Panos Designs
2000 Susan Sadler – Susan Sadler Fine Jewelry Design

2000 Susan Sadler – Susan Sadler Fine Jewelry Design
1999 Yuri Ichihashi – Yuri Ichihashi, Inc.
1998 Judith Conway – Judith Conway, Inc.
1997 Penny Preville, Leslie Greenberg – Penny Preville, Inc.
1996 Susan Helmich – Susan Helmich Designs
1995 Anita Gumuchian, Myriam Gumuchian, Patricia Gumuchian – Gumuchian Fils Ltd.
1994 Maria Canale – Suna Bros. Inc.
1993 Barbara Westwood – Barbara Westwood Designer Jewelry
1992 Chris Correia – The Chris Correia Collection
1991 Tina Segal – H. Steppenjay Inc.
1990 Akiko Wakabayashi – Nova Styling Inc.
1989 Marsha Breslow – Marsha Breslow Collection
1988 Sandy Baker – Sandy Baker Inc.
1987 Kristin Moore – Kristin Moore Ltd.
1986 Michelle Savitt, Janis Savitt – M & J Savitt Inc.
1985 Esther Gallant – Esther Gallant Inc.
1984 Angela Cummings – Angela Cummings Inc.

CATEGORY II: Manufacturer/Dealer/Supplier for Fine Jewelry/Gemstones/Metals/Watches

2006 Andrea Hill – The Bell Group
2005 Rachel Wertheimer – JewelAmerica, Inc.
2004 Joy Toback-Galicki – Myron Toback, Inc.
2003 Norma Haas – ENH International, Inc.
2003 Linda Matias Passaro – Mont Blanc (Manufacturer/Dealer/Supplier for Watches)
2002 Ann Arnold, Isabella Hiske – Lieberfarb, Inc.
2002 Stacie Orloff – Corum USA (Manufacturer/Dealer/Supplier for Watches)
2001 Cynthia Marcusson – Cynthia Renée Co.
2000 Luly Erdel – Rudolf Erdel Platinum/OE Designs
1999 Phyllis Bergman – Mercury Ring Corp.
1998 Miriam Galli, Irene Vitau – Gemveto Jewelry Co.
1997 Aya Azriolant Andin International Inc.
1996 Julianne Jaffe – J.J. Marco
1995 Osnat Gad – Osnat Gad, Inc.
1994 Geri Bondanza – Michael Bondanza Inc.
1993 Karen Good – Michael Good Designs, Inc.
1992 Donna Chambers – Donna Chambers Inc.
1991 *Magdelena Hess – Jose Hess Inc.*
1990 Ronny Lavin – Peter Brams Inc.
1989 Diana Chatham – Chatham Created Gems
1988 June A. Herman – Jabel, Inc.
1987 Judith Rosenberg – Judith Jack, Inc.
1986 Babette Cohen, Jane Baum – I.B. Goodman Inc.
1985 Veronica Sikla – Rockson Jewelry
1984 Nancy Brewer – Nancy B. & Company

CATEGORY IIIA: Retail – More than 15 Stores

2006 Debbie Harvey - Shane Co.
2005 Nancy Skinner – Zales Outlet
2001 Ruth Fortunoff – Fortunoff Fine Jewelry
1997 Leslie Mann – Sears, Roebuck & Co.
1994 Carolyn Kelly – Saks Fifth Avenue
1993 Esther Fortunoff – Fortunoff Fine Jewelry
1991 *Marianne Mooney – Saks Fifth Avenue*
1986 Mollie Wollman – Fortunoff Fine Jewelry
1984 Helene Fortunoff – Fortunoff Fine Jewelry

CATEGORY IIIB: Retail – Fewer than 15 Stores

2006 Sally Furer - Robbins Bros.
2005 Robin Levinson – Levinson Jewelers (fewer than 15 stores)
2004 Sissy Jones – Sissy's Log Cabin

http://www.nytimes.com/2005/10/23/fashion/sundaystyles/23jewelry.html?n=Top%2FReference%2FTimes%20Topics%2FPeople%2FJ%2FJacobs%2C%20Marc 10/14/2007 02:15:34 PM

The New York Times **Fashion & Style** More Articles in Fashion & Style >

NYTimes.com Go to a Section Log In - Register Now

NYT Since 1981 Search

Fashion & Style Home | Thursday Styles | Sunday Styles | Style Magazine | Weddings & Celebrations | Columns

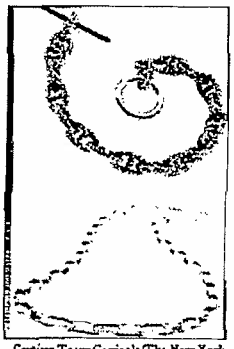
We'll All Be Linked Eventually

By KRISTINA ZIMBALIST
Published: October 23, 2005

Sign In to E-Mail This
Printer-Friendly
Reprints
Save Article

ARTICLE TOOLS SPONSORED BY DARJEELING LIMITED

IT is a common misconception that the humble chain was a Bronze Age innovation, created as a tool or an element of armor. For more than a thousand years before that, it served a more primal purpose: the flagrant display of wealth. The designer Marc Jacobs returned to this prehistoric way of thinking when he decided to accessorize his fall 2005 collection with the chain link: necklaces not wrought from metal but knit in black or gold-colored polyester, some of them long enough to wrap three times around the neck.



Cartier: Tony Cenicola/The New York Times

Hermès chain with pavé diamonds, $100,000 top. Cartier

"I just think a chain is a classic symbol of status," Mr. Jacobs said by phone from his atelier in Paris. "Maybe because there was so much rhinestone jewelry and pearl stuff from other people recently, it felt very fresh to play with chains for fall. We just wanted to do it in our way."

There were waiting lists for Mr. Jacobs's necklaces (priced from $890 to $1,100) almost before the models exited the runway, and shops quickly sold out, he said. He clearly was onto something.

Chain necklaces have "taken over" this fall, said Sarah Easley, co-owner of the shop Kima Zabête in New York. "Necklaces used to be a very small category for us," she said. "We used to do much better with earrings."

Among the shop's best sellers are Chloé long necklaces with red, white or turquoise beads ($315) that can be doubled up or worn

Advertisement

diamonds ($13,050 to $100,000). At Vuitton, dark chains are combined with resin beads ($1,200 to $1,880).

Janice Savitt, designer of the M&J Savitt jewelry, recommends mixing chains of various weights, lengths and styles. Her own chains are heavy metal, some coated in red Bakelite and some in shiny blue paint, anodized like the paint on a car. Still to ship are equally bold chains in navy, black and silver.

"I like strong looking pieces," Ms. Savitt said, "but I wear things that are big and small together. Pairing chunky chains with fine ones, ethnic with hardware, makes it look like something that's new."

The renewed popularity of the ancient chain, whatever its size or weight, shows no signs of tarnishing. Mr. Jacobs, for one, has used it again in his spring 2006 collections.

"At Vuitton," he said, "we are using chains in knit clothing, all our charms are on chains, we used some for sandals, and we're even doing a chain print."

More Articles in Fashion & Style >

14K Gold Mariner Chains
Huge selection of 14K Mariner Chain Save on discounted gold chains!
www.beejewels.com/14K-marinerchains

Jewelry Beads
Huge selection of fashion beads, pendants, connectors, clasps & more
www.rishashay.com

24K Asian Jewelry Designs
This is our specialty. 24K,18K,14K Unique 50th Anniversary gold gifts
www.cambodiangold.com

INSIDE NYTIMES.COM

Charles Taylor's *Rise and Fall*

The Ghost in the *Dazzled Museum*

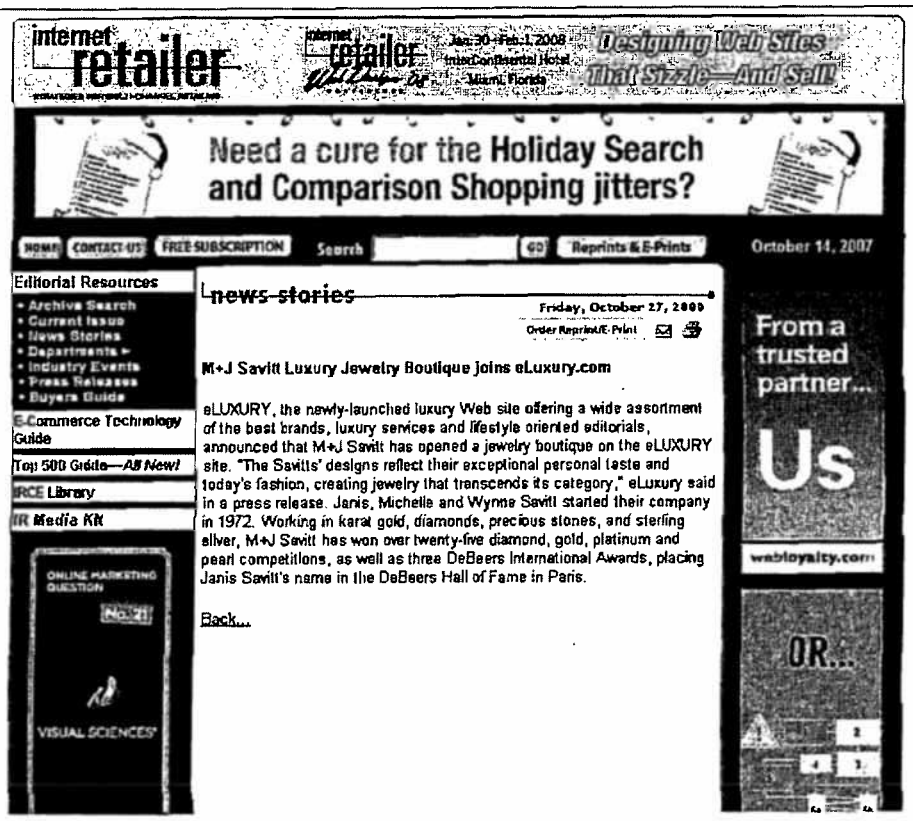
Making of a Toddler *Superstore*

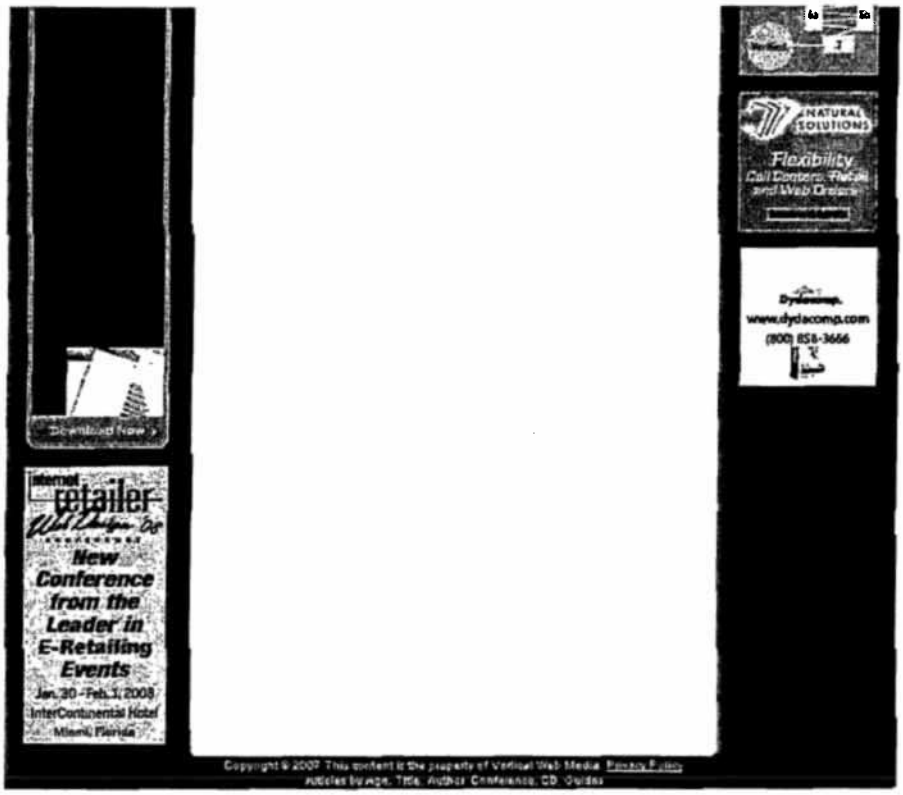
Digital *Composer*

Upgrading the Road *to Nowhere*

Copyright 2005 The New York Times Company | Home | Privacy Policy | Search | Corrections | RSS | Help | Contact Us | Work for Us | Site Map | Back to Top

http://www.internetretailer.com/dailyNews.asp?id=1654&ref=ya 10/14/2007 02:17:10 PM




NATURAL SOLUTIONS
Flexibility
www.dydacomp.com
(800) 858-3666
internet retailer
New Conference from the Leader in E-Retailing Events
Jan. 30 - Feb. 1, 2008
InterContinental Hotel
Miami, Florida

2005 CFDA Fashion Awards

Vera Wang, Marc Jacobs, and Ralph Rucci Nominated for Womenswear Designer of the Year

Swarovski Continues to Generously Underwrite the Evening

The Council of Fashion Designers of America (CFDA) announced today that Vera Wang, Marc Jacobs (for his signature collection) and Ralph Rucci for Chado Ralph Rucci have been nominated for Womenswear Designer of the Year. The 2005 CFDA Fashion Awards winners will be announced at the annual gala, underwritten by Swarovski, on June 6th at The New York Public Library.
The CFDA also announced that John Bartlett, Ralph Lauren and John Varvatos have been nominated as Menswear Designer of the Year, while Marc Jacobs, Michael Kors, Janis Savitt for M + J Savitt and Gerard Yosca have been nominated as the leading Accessory Designers.

Thom Browne, Rogan Gregory for Rogan and Alexandre Plokhov for Cloak have been nominated for Swarovski's Perry Ellis Award for Menswear, which continues the underwritar's commitment to supporting emerging American fashion talent. The nominees for Swarovski's Perry Ellis Award for Womanswear are Derek Lam, Behnaz Sarafpour, and Peter Som. For Swarovski's Perry Ellis Award for Accessory Design the nominees are Anthony Camargo and Nak Armstrong for Anthony Nak, Holly Dunlap for Hollywould, and Devi Kroell. The winner in each category will receive generous financial support and product from Swarovski, as well as exposure to the company's vast and innovative crystal resources.

This year's special award honorees are:

--*Eugenia Sheppard Award - Gilles Bensimon, Publicabon Director of ELLE*

--International Award - Alber Elbaz, Artistic Director, Lanvin

--Lifetime Achievement - Diane Von Furstenberg

Permalink
2005 CFDA Fashion Awards

Design News

Cooper-Cromar Wins Three Highly Prestigious Awards

Living Steel Honours Sustainable Architecture in UK Winning Design

London Squared Productions Creates Powerfully Candid, Animated Short Film

Design Management Future Forward

International Conference on Managing Design in Global Environments

The Five Star Science Race

Top Designers Predict Future Fashions as Neiman Marcus Turns 100

German Fall Fashion Slim Down and Get Cosy

Stella McCartney Takes Less-trodden Path to Success

Singapore Biennale 2006

Toyota To Furl Vans to Gamers

Nissan Pivo 2

Inspiration in

--Award for Fashion Influence - Kate Moss

-- Board of Director's Special Tribute - Norma Kamali

"The 2005 CFDA Fashion Awards nominees and honorees represent an impressive cross-section of creative talents in the American fashion industry. The 2005 CFDA fashion Awards is a tribute to their achievements, and celebrates the artistry of these individuals," said Peter Arnold, the executive director of the CFDA.

"Swarovski is proud to underwrite the CDFA Fashion Awards for the fourth consecutive year. As we are committed to supporting talent and creativity in the fashion industry, we are especially pleased to enhance the focus on young talent through the Swarovski Perry Ellis Awards. Each year, it has been thrilling to watch the industry embrace the inspiring creativity of these young designers and recognize their efforts to break boundaries and rise to new challenges," said Nadja Swarovski, Vice President of Swarovski International Communications.

The nominees and honorees were selected by over 450 fashion designers, press, retailers and stylists. This year's awards nominating committee will be able to vote on-line and view *each nominee's collection beginning April 13th at http://www.cfda.com, the official website* of the 2005 CDFA Fashion Awards. The final votes will be tabulated by Ernst & Young LLP, the official accounting firm of the 2005 CFDA Fashion Awards. The nominees, as well as recipients of the honorary awards, were confirmed today at a meeting of the CFDA Board of Directors.

The winners will be announced at the June 6 Awards gala. The 2005 CFDA Fashion Awards will be produced by KCD. Creative director Douglas Lloyd will art direct the graphic presentation of the awards and accompanying journal.

Background on the CFDA Fashion Awards

Womenswear Designer of the Year:

Awarded to an American designer who has made the most outstanding contribution to and has influenced the direction of women's ready-to-wear fashion with his or her Spring and Fall 2005 collections. The designer selected must have his or her business based primarily in America.

2005 Nominees:
--Marc Jacobs (for his signature collection)
--Ralph Rucci for Chado Ralph Rucci
--Vera Wang

Inspiration in Automotive Design at the Nissan Imagination Factory

Nissan Intima

Design Events

Alvar Aalto Houses Timeless Expressions

2007 Fashion District Arts Festival

Dott 07 Designs of the Time 2007

ICSID IOSA Connecting 2007 World Design Congress

Plus International Design Festival 2007

Designfest 2007

Matthew Williamson 10 Years in Fashion

Designboost

Traditional Building Exhibition and Conference

Month of Design 2007

Grooming of Tale and Beyond Symposium

PORTAL! Designed by Andrea Branzi

Design / Culture Posters for Cultural Diversity

Dutch Design Week 2007

Designer Network

Menswear Designer of the Year:
Awarded to an American designer who has made the most outstanding contribution to and has influenced the direction of men's ready-to-wear fashion with his or her Spring and Fall 2004 collections. The designer selected must have his or her business based primarily in America.

2005 Nominees:
--John Bartlett
--Ralph Lauren
--John Varvatos

Accessory Designer of the Year:
Awarded to an American designer who has made the most outstanding contribution to and has influenced the direction of accessory design with his or her Spring and Fall 2005 collections. The designer selected must have his or her business based primarily in America.

2005 Nominees:
--Marc Jacobs (for his signature collection)
--Michael Kors (for his signature collection)
--Janis Savitt for M+J Savitt
--Gerard Yosca

Swarovski's Perry Ellis Award for Ready-to-Wear:
Awarded to an American designer who has made the greatest impact as an emerging new talent for his or her womenswear design through his or her Spring and Fall 2005 collections. The Perry Ellis Awards were established to recognize and support the talent and creativity of the next generation of American designers.

2005 Nominees:
--Derek Lam
--Behnaz Sarafpour
--Peter Som

Swarovski's Perry Ellis Award for Menswear:
Awarded to an American designer who has made the greatest impact as an emerging new talent for his or her menswear design through his or her Spring and Fall 2005 collections. The Perry Ellis Awards were established to recognize and support the talent and creativity of the next generation of American designers.

2005 Nominees:
--Thom Browne
--Rogan Gregory for Rogan

Design News
Design Directory
Design Database
Designer Start
Design Agenda
Newsletter

Designer Feeds

XML/RSS
Designer Widget (Mac OS X)
Designer Gadget (Windows)
Facebook
Facebook (Directory)
Google News
MSN Alerts
Google Toolbar Button
Design Directory Button

Jewelry Business Guru by Cindy Edelstein

« July 2007 | Main | September 2007 »

August 2007

AUGUST 30, 2007

Lagos Wins Trademark Lawsuit

Court ruled the jewelry designer owns the 'Caviar' name

– JCK-Jewelers Circular Keystone, 8/28/2007 7:27:00 AM

> A federal judge in Philadelphia ruled that jewelry designer and manufacturer Michael Dawkins, Inc. infringed upon the trademark owned by jewelry designer and manufacturer Lagos, Inc. (Complicating matters somewhat is that MDI filed for Chapter 11 bankruptcy protection on Aug.2.)
>
> U.S. District Court Judge Ronald J. Buckwalter of the Eastern District of Pennsylvania, through a consent order and permanent injunction, said that Philadelphia-based Lagos owns the trademark for the "Caviar" name in jewelry designs and that MDI must stop using the name in promoting and selling its own jewelry line—specifically rings, pins, bracelets, earrings, necklaces, and watches. The consent order was issued July 9.
>
> "The suit is a signal by Lagos that it is willing and able to enforce its trademarks, especially that of its signature brand," said Lagos' attorneys Lewis F. Gould Jr. and Maxim A. Voltchenko of Duane Morris L.L.P., Philadelphia.
>
> Lagos filed a civil suit in March against New York City-based MDI and Internet retailer Twiggs, charging that the jewelry manufacturer was promoting a line of jewelry using the Caviar name, and selling the jewelry through shoptwigs.com.

...read more

Posted at 04:43 PM | Permalink | Comments (0) | TrackBack (0)

ABOUT

Email Me

JEWELRY INDUSTRY SITES

Jewelers Resource

National Jeweler magazine

Modern Jeweler

Women's Jewelry Association

JCK Magazine

JCOC.tv - video site for jewelry lovers
See our designer videos and Designer Eye band blog

Luproduct.com

LINKS

Aesthetics+Economics

buyers market blog

Fashion Mission - list of Jewelry Designers

ARCHIVES

September 2007

August 2007

July 2007

June 2007

April 2007

March 2007

CATEGORIES

Celebrity

Designers

Famous designers

JA Shows

Magazines

Marketing

PR

Retailing

Trade Shows

Trends

Web/Tech

Woman in business

RECENT POSTS

Protecting Your Product Ideas

Sybil + Website for a Book

Want a Personal Travel Assistant?

Post-Emmy's

email: cindy@jewelersresource.com.

See you on the 'net!

Posted at 10:06 AM in PR | Permalink | Comments (0) | TrackBack (0)

AUGUST 14, 2007

30TH Anniversary of JA New Designer Gallery - what a party!

This was the 30th anniversary of the JA Show's New Designer Gallery and we threw ourselves quite a fete!

First came the ceremony - nearly 50 of the 300+ alumni came to celebrate and remember old times with each other... seen in the photo is Janis Savitt (M+J Savitt) Steven Lagos, Beth Moskowitz, David Yurman, Sheila Kahn, Frederica, Karen Gerstl, Deborah Blohm, Kristin Moore and Esther Gallant.

Each having been in the New Designer Gallery when they debuted in the industry. It was a GREAT time.

Next came a reunion dinner I organized for all -- we had more than 120 people there -- all laughing and telling stories and genuinely having a ball.

This was one of those epic events that made you glad to be part of this crazy business. Next time we have an event -- I hope you all can be there!

Posted at 12:54 AM in JA Shows | Permalink | Comments (0) | TrackBack (0)

Get Discovery HD Theater and 38 more of your favorites.
DishHD™ FREE for 6 months
(with 10-month commitment) Restrictions apply
ORDER NOW
dish NETWORK
SUBSCRIBE

THE NEW YORK OBSERVER

Media | SIMON SAYS

Sponsored by

Forget About Fashion Week! Here Are 15 Autumn Must Buys

BY SIMON DOONAN
PUBLISHED: SEPTEMBER 16, 2001
TAGS: MEDIA, BALENCIAGA SA., JEI MORRISON, HOLTON BROWN LTD., PROZAC
THIS ARTICLE WAS PUBLISHED IN THE SEPTEMBER 17, 2001, EDITION OF THE NEW YORK OBSERVER

Everybody clench! Spring 2002 Fashion Week is here, and the mode-obsessed media is shoving the spring trends into your every orifice with *unprecedented ferocity. How rude! And how irrelevant to you,* the ordinary woman on the street.

After all, you won't be able to buy the stuff for another four or five months,

so why do you need to see it endlessly dissected on TV and in print? You should be focusing on this season. You know what I'm talking about ... all that fall stuff that has been endlessly over-hyped for the last six months and arrived in the stores in June.

Let's face it, girls, this season's merch-the schmattas that are actually hanging on the racks right now-are, thanks to the craven,

MORE FROM SIMON SAYS
Sayonara, Sweet Kazuko: Jewelry Designer, Loveable Kook
Embrace the Chaos! Fashion Goes Formless and Faux-Pas-Free
Dry Clean'08
Adieu to The Noose! Another Kinky Sex Shop Shutters in Chelsea
SEE ON ONE PAGE »

ADVERTISEMENT

MOST READ | MOST COMMENTED | MOST E-MAILED
A Religious-Right Suicide Pact
The Rudy Scenario Comes Into Focus
Rick Sanchez Is CNN's Teflon Man
The Best Listener in America
Right-Wing Health Care Mythology
Hey, Hey We're the Manquès!
Mort Zuckerman, the 'Happy' (Very) Landlord
Hollywood Hugs Beta Males of Law
MORE

THE OBSERVER IN PRINT

Inside This Issue

on Amazon.com). This gorgeously malevolent collection (over 50) includes one of my personal faves, "The Button." This heinous story is about the accumulated rage of a parent with a disabled child who finds an outlet by murdering a complete stranger, from whose garment he yanks the eponymous button.

9. The sweaters.

You need two: a cashmere Lavame & Shirley sweater with your initial intarsia'd into it, from the Barneys New York Collection, and a fantastically groovy Julie-Christie-In- Darling Aran sweater, hand-knitted on the Isle of Aran to your chest size. (Call *01144177O-302137.*) Perfect under the cape, or under the duster under the cape.

10. The jumbo-pearl cocktail ring. M + J Savill's silver ping-pong-sized faux-pearl cocktail ring ($340 at Goodman) completes your look-i.e., the cape, the fur hat, the buckle boots; it's a look that says bonjour !

Apropos of pearls: Designer Janis Savitt has a Jackie Collins–y tip for you: "I was having dinner with some guy at Le Bernardin. I had this scheme to get him to buy me a piece of jewelry. I sent a pearl over ahead of time to the kitchen. We ordered oysters-the pearl was inside. It worked. He found it and felt so clever, he had it made into a necklace. It was a small pearl. I didn't want him to crack his teeth."

11. The trompe l'oeil trend. Moschino and

To:	Savitt Janis (dhc@dhcavanaugh.net)
Subject:	TRADEMARK APPLICATION NO. 77033657 - JANIS SAVITT - N/A
Sent:	10/14/2007 2:42:02 PM
Sent As:	ECOM101@USPTO.GOV
Attachments:	

IMPORTANT NOTICE
USPTO OFFICE ACTION HAS ISSUED ON 10/14/2007 FOR APPLICATION SERIAL NO. 77033657

Please follow the instructions below to continue the prosecution of your application:

VIEW OFFICE ACTION: Click on this link http://portal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77033657&doc_type=OOA&mail_date=20071014 (or copy and paste this URL into the address field of your browser), or visit http://portal.uspto.gov/external/portal/tow and enter the application serial number to aceess the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this notification.

RESPONSE MAY BE REQUIRED: You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable response time period. Your response deadline will be calculated from 10/14/2007.

Do NOT hit "Reply"to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System response form at http://www.uspto.gov/teas/eTEASpageD.htm.

HELP: For *technical* assistance in accessing the Office action, please e-mail TDR@uspto.gov. Please contact the assigned examining attorney with questions about the Office action.

WARNING

1. The USPTO will NOT send a separate e-mail with the Office action attached.

2. Failure to file any required response by the applicable deadline will result in the ABANDONMENT of your application.

Trademark Snap Shot Amendment & Mail Processing Stylesheet

(Table presents the data on Amendment & Mail Processing Complete)

OVERVIEW

SERIAL NUMBER	77033657	FILING DATE	10/31/2006
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	IM, JEAN H	L.O. ASSIGNED	101

PUB INFORMATION

RUN DATE	09/14/2007		
PUB DATE	N/A		
STATUS	661-RESPONSE AFTER NON-FINAL-ACTION-ENTERED		
STATUS DATE	09/13/2007		
LITERAL MARK ELEMENT	JANIS SAVITT		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	NO	1 (a)	NO	1 (a)	NO
1 (b)	YES	1 (b)	YES	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	JANIS SAVITT
MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Savitt Janis
ADDRESS	200 West 58th st. Apt. 12B New York, NY 10019
ENTITY	01-INDIVIDUAL
CITIZENSHIP	United States of America

GOODS AND SERVICES

INTERNATIONAL CLASS	014
DESCRIPTION TEXT	Jewelry

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	014	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE

MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
09/13/2007	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	008
09/11/2007	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	007
09/11/2007	TCCA	I	TEAS CHANGE OF CORRESPONDENCE RECEIVED	006
09/11/2007	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	005
03/13/2007	GNRT	F	NON-FINAL ACTION E-MAILED	004
03/13/2007	CNRT	R	NON-FINAL ACTION WRITTEN	003
03/12/2007	DOCK	D	ASSIGNED TO EXAMINER	002
11/03/2006	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	NONE
CORRESPONDENCE ADDRESS	Dennis H. Cavanaugh D H Cavanaugh Associates 555 Fifth Avenue, 17th Floor New York NY 10017
DOMESTIC REPRESENTATIVE	NONE

Janis Savitt

Change Of Correspondence Address

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77033657
LAW OFFICE ASSIGNED	LAW OFFICE 101
MARK SECTION	
MARK	JANIS SAVITT
CORRESPONDENCE SECTION (current)	
ORIGINAL ADDRESS	SAVITT JANIS 200 W 58TH ST APT 12B NEW YORK, NY 10019-1432
NEW CORRESPONDENCE ADDRESS	
NEW ADDRESS	Dennis H. Cavanaugh D H Cavanaugh Associates 555 Fifth Avenue, 17th Floor New York New York United States 10017 212-856-7210 212-856-7211 dhc@dhcavanaugh.net
SIGNATURE SECTION	
SIGNATURE	/Dennis H. Cavanaugh/
SIGNATORY NAME	Dennis H. Cavanaugh
SIGNATORY DATE	09/11/2007
SIGNATORY POSITION	Attorney
FILING INFORMATION SECTION	
SUBMIT DATE	Tue Sep 11 15:09:52 EDT 2007
TEAS STAMP	USPTO/ROA-64.52.233.171-2 *00709111509520505 61-77033* 657-400239c5d4fd69701040e f24ccdd4346b0-N/A-N/A-200 70911150451499378

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77033657
LAW OFFICE ASSIGNED	LAW OFFICE 101
MARK SECTION (no change)	
ARGUMENT(S)	

SECTION 2(d) REFUSAL

The Examiner has cited various registered marks as grounds for refusal to register Applicant's mark in Class 14. For the reasons set forth below, Applicant respectfully requests that the Examiner withdraw the refusal.

Registration Nos. 2,116,162; 2,941,210; and 3,022,631

The factors that are examined to evaluate confusing similarity are set forth in In re E. I. DuPont de Nemours & Co., 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973). The factor most relevant here is the dissimilarity of the marks in question.

It is well settled that marks must be compared in their entireties with respect to appearance, sound, connotation and commercial impression. *On each such basis, the Applicant's mark and the cited marks are dissimilar.*

Applicant's mark consists of two words: JANIS SAVITT. This is clearly a person's name; specifically, the name of the Applicant. The cited mark consist of either one word, namely, SAVITT; or SAVITT with other words or components, namely, S M+J or M+J. The dominant component of Applicant's mark is the additional word JANIS. This dominant component serves as a clear point of visual and phonetic distinction between the marks. Contrary to the Examiner's assertion, JANIS does not "tie into" the J portion of the cited marks merely because it begins with the letter "J." Many other first names begin with letter "J" and the J in the cited marks could suggest any one of these.

The Applicant's mark and the cited marks are further distinguishable in meaning and commercial impression. Applicant's mark contains the distinguishing component JANIS. The Examiner has presented no evidence to show that this component is any less significant than SAVITT. Nor has the Examiner demonstrated that consumers encountering the Applicant's mark will associate it with any one of the cited marks, including those containing a "J." Indeed, there is no evidence that consumers who may be familiar with one or more of the cited marks will, upon encountering the Applicant's mark, reasonably believe that the jewelry bearing the respective marks emanate from a single source.

Similar, surname component marks are registered and in use for jewelry and designer goods. Thus, the average American consumer is used to seeing such marks and understanding that the goods bearing such marks do not emanate from the same, single sources. For example, both VALENTINO GARAVANI and MARIO VALENTINO co-exist for jewelry. Similarly, CHANTAL LAURENT and YVES SAINT LAURENT have co-existed for clothing. TESS printouts of these registrations are being filed concurrently herewith and are made a part hereof. Therefore, the mere fact of a common surname between the Applicant's mark and the cited marks is not proof that consumers encountering the goods bearing the marks are reasonably likely to believe that they all emanate from a single source.

In light of the foregoing factors, Applicant submits that its mark is readily distinguishable from the cited marks in overall sight, sound and meaning. For these reasons, it is respectfully requested that the Examiner withdraw the refusal based upon the cited registrations.

EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_6452233171-150451499_._Savitt_Marks.pdf
CONVERTED PDF FILE(S) (8 pages)	\\TICRS2\EXPORT14\770\336\77033657\xml1\ROA0002.JPG

	\\TICRS2\EXPORT14\770\336\77033657\xml1\ROA0004.JPG
	\\TICRS2\EXPORT14\770\336\77033657\xml1\ROA0005.JPG
	\\TICRS2\EXPORT14\770\336\77033657\xml1\ROA0006.JPG
	\\TICRS2\EXPORT14\770\336\77033657\xml1\ROA0007.JPG
	\\TICRS2\EXPORT14\770\336\77033657\xml1\ROA0008.JPG
	\\TICRS2\EXPORT14\770\336\77033657\xml1\ROA0009.JPG
DESCRIPTION OF EVIDENCE FILE	TESS printouts of marks discussed.
CORRESPONDENCE SECTION	
NAME	Dennis H. Cavanaugh
FIRM NAME	D H Cavanaugh Associates
STREET	555 Fifth Avenue, 17th Floor
CITY	New York
STATE	New York
ZIP/POSTAL CODE	10017
COUNTRY	United States
PHONE	212-856-7210
FAX	212-856-7211
EMAIL	dhc@dhcavanaugh.net
AUTHORIZED EMAIL COMMUNICATION	Yes
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Dennis H. Cavanaugh/
SIGNATORY'S NAME	Dennis H. Cavanaugh
SIGNATORY'S POSITION	Attorney
DATE SIGNED	09/11/2007
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Tue Sep 11 15:09:52 EDT 2007
TEAS STAMP	USPTO/ROA-64.52.233.171-2 00709111509520505 61-77033 657-400239c5d4fd69701040e f24ccdd4346b0-N/A-N/A-200 70911150451499378

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/30/08)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. 77033657 has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

SECTION 2(d) REFUSAL

The Examiner has cited various registered marks as grounds for refusal to register Applicant's mark in Class 14. For the reasons set forth below, Applicant respectfully requests that the Examiner withdraw the refusal.

Registration Nos. 2,116,162; 2,941,210; and 3,022,631

The factors that are examined to evaluate confusing similarity are set forth in In re E. I. DuPont de Nemours & Co., 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973). The factor most relevant here is the dissimilarity of the marks in question.

It is well settled that marks must be compared in their entireties with respect to appearance, sound, connotation and commercial impression. On each such basis, the Applicant's mark and the cited marks are dissimilar.

Applicant's mark consists of two words: JANIS SAVITT. This is clearly a person's name; specifically, the name of the Applicant. The cited mark consist of either one word, namely, SAVITT; or SAVITT with other words or components, namely, S M+J or M+J. The dominant component of Applicant's mark is the additional word JANIS. This dominant component serves as a clear point of visual and phonetic distinction between the marks. Contrary to the Examiner's assertion, JANIS does not "tie into" the J portion of the cited marks merely because it begins with the letter "J." Many other first names begin with letter "J" and the J in the cited marks could suggest any one of these.

The Applicant's mark and the cited marks are further distinguishable in meaning and commercial impression. Applicant's mark contains the distinguishing component JANIS. The Examiner has presented no evidence to show that this component is any less significant than SAVITT. Nor has the Examiner demonstrated that consumers encountering the Applicant's mark will associate it with any one of the cited marks, including those containing a "J." Indeed, there is no evidence that consumers who may be familiar with one or more of the cited marks will, upon encountering the Applicant's mark, reasonably believe that the jewelry bearing the respective marks emanate from a single source.

Similar, surname component marks are registered and in use for jewelry and designer goods. Thus, the average American consumer is used to seeing such marks and understanding that the goods bearing such marks do not emanate from the same, single sources. For example, both VALENTINO GARAVANI and MARIO VALENTINO co-exist for jewelry. Similarly, CHANTAL LAURENT and YVES SAINT LAURENT have co-existed for clothing. TESS printouts of these registrations are being filed concurrently herewith and are made a part hereof. Therefore, the mere fact of a common surname between the Applicant's mark and the cited marks is not proof that consumers encountering the goods bearing the marks are reasonably likely to believe that they all emanate from a single source.

In light of the foregoing factors, Applicant submits that its mark is readily distinguishable from the cited marks in overall sight, sound and meaning. For these reasons, it is respectfully requested that the Examiner withdraw the refusal based upon the cited registrations.

EVIDENCE
Evidence in the nature of TESS printouts of marks discussed. has been attached.
Original PDF file:
evi_6452233171-150451499_._Savitt_Marks.pdf
Converted PDF file(s) (8 pages)
Evidence-1
Evidence-2
Evidence-3
Evidence-4
Evidence-5
Evidence-6
Evidence-7
Evidence-8

CORRESPONDENCE ADDRESS CHANGE
Applicant proposes to amend the following:
Current: SAVITT JANIS 200 W 58TH ST APT 12B NEW YORK, NY 10019-1432
Proposed: Dennis H. Cavanaugh of D H Cavanaugh Associates, having an address of 555 Fifth Avenue, 17th Floor New York, New York United States 10017, whose e-mail address is dhc@dhcavanaugh.net, whose phone number is 212-856-7210 and whose fax number is 212-856-7211.

SIGNATURE(S)
Response Signature
Signature: /Dennis H. Cavanaugh/ Date: 09/11/2007
Signatory's Name: Dennis H. Cavanaugh
Signatory's Position: Attorney

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which

Case 1:08-cv-08535-DLC Document 1 Filed 10/07/08 Page 94 of 100

includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Mailing Address: Dennis H. Cavanaugh
D H Cavanaugh Associates
555 Fifth Avenue, 17th Floor
New York, New York 10017

Serial Number: 77033657
Internet Transmission Date: Tue Sep 11 15:09:52 EDT 2007
TEAS Stamp: USPTO/ROA-64.52.233.171-20070911150952O5
0561-77033657-400239c5d4fd69701040ef24ee
dd4346b0-N/A-N/A-20070911150451499378

United States Patent and Trademark Office

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Sep 11 04:07:14 EDT 2007

Logout Please logout when you are done to release system resources allocated for you.

Start List At: OR Jump to record: **Record 33 out of 42**

---

valentino garavani V

Word Mark	**VALENTINO** GARAVANI V
Goods and Services	IC 014. US 027 028. G & S: [MEN'S AND WOMEN'S JEWELRY OF PRECIOUS METALS,] COSTUME JEWELRY [, WATCHES AND CLOCKS]
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	26.03.03 - Incomplete ovals; Ovals, incomplete
Serial Number	73597954
Filing Date	September 19, 1983
Current Filing Basis	44E
Original Filing Basis	44D
Published for Opposition	September 2, 1986
Registration Number	1418315
Registration Date	November 25, 1986
Owner	(REGISTRANT) GLOBELEGANCE B.V. CORPORATION NETHERLANDS VON BOSHUIZENSTRAAT 12 AMSTERDAM NETHERLANDS (LAST LISTED OWNER) **VALENTINO** S.P.A. CORPORATION ITALY VIA TURATI 16/18 MILANO ITALY

Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	G. FRANKLIN ROTHWELL
Priority Date	June 22, 1983
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 8 (6-YR). SECTION 8(10-YR) 20070216.
Renewal	1ST RENEWAL 20070216
Other Data	THE NAME "**VALENTINO** GARAVANI" IS THE NAME OF A LIVING INDIVIDUAL WHOSE CONSENT IS OF RECORD.
Live/Dead Indicator	LIVE

SEARCH OG
FIRST DOC PREV DOC NEXT DOC LAST DOC

|.HOME | SITE INDEX| SEARCH | eBUSINESS | HELP | PRIVACY POLICY

United States Patent and Trademark Office

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Sep 11 04:07:14 EDT 2007

Typed Drawing

Word Mark	MARIO VALENTINO
Goods and Services	IC 026. US 037 039 040 042 050. G & S: [BUCKLES FOR FOOTWEAR, BELTS, HANDBAGS, CLOTHING LUGGAGE AND SMALL LEATHER GOODS, SUCH AS POUCHES, WALLETS]. FIRST USE: 19530000. FIRST USE IN COMMERCE: 19570000 IC 014. US 002 027 028 050. G & S: [JEWELRY] AND COSTUME JEWELRY; [CUFF LINKS,] TIE PINS; [GOODS IN PRECIOUS METALS, THEIR ALLOYS OR GOODS COATED THEREWITH, NAMELY ASHTRAYS, BOXES FOR CIGARS AND CIGARETTES, CIGAR-AND CIGARETTE-HOLDERS; CLOCKS] AND WATCHES [AND CASES THEREFOR]. FIRST USE: 19530000. FIRST USE IN COMMERCE: 19710000
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	73726413
Filing Date	May 4, 1988
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	August 14, 1990
Registration Number	1621113
Registration Date	November 6, 1990
Owner	(REGISTRANT) MARIO VALENTINO S.P.A. CORPORATION ITALY VIA FONTANELLE 85, NAPOLI ITALY
Attorney of Record	PERLA M. KUHN
Prior	

Registrations	0978649;1140342;1482154;1485044;AND OTHERS
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 8 (6-YR). SECTION 8(10-YR) 20011217.
Renewal	1ST RENEWAL 20011217
Other Data	THE NAME "MARIO **VALENTINO**" IN THE MARK IS A LIVING INDIVIDUAL WHOSE CONSENT IS OF RECORD.
Live/Dead Indicator	*LIVE*

TESS HOME | NEW USER | STRUCTURED | FREE FORM | BROWSE DICT | SEARCH OG | TOP | HELP | PREV LIST | CURR LIST
| FIRST DOC | PREV DOC | NEXT DOC | LAST DOC

| HOME | SITE INDEX | SEARCH | eBUSINESS | HELP | PRIVACY POLICY

United States Patent and Trademark Office

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Sep 11 04:07:14 EDT 2007

Logout Please logout when you are done to release system resources allocated for you.

Start List At: OR Jump to record: **Record 27 out of 32**

Typed Drawing

Word Mark	CHANTAL LAURENT
Goods and Services	IC 025. US 039. G & S: Skirts, Jackets, Dresses, Blouses, and Vests. FIRST USE: 19780201. FIRST USE IN COMMERCE: 19780201
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	73222865
Filing Date	July 11, 1979
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	August 11, 1981
Registration Number	1192803
Registration Date	March 30, 1982
Owner	(REGISTRANT) Hengerer; Chantal d.b.a. Chantal Laurent INDIVIDUAL 2925 Summit Hills Ct. Bettendorf IOWA 52722 (LAST LISTED OWNER) CHANTAL MARTINET ANDREWS UNKNOWN BY CHANGE OF NAME UNITED STATES 959 JEFFERSON WAY RIDGECREST CALIFORNIA 93555
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	BONNIE M. SIMONEK
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20020514.

Renewal	1ST RENEWAL 20020514
Other Data	The name "Chantal Laurent" is merely fanciful and does not identify a particular individual.
Live/Dead Indicator	LIVE

Exhibit 2

ROBERT E. SEAMAN III (RS-2734)
PETER J. GLANTZ (PG-1063)
ATTORNEYS FOR PLAINTIFFS
475 PARK AVENUE SOUTH, 26TH FLOOR
NEW YORK, NEW YORK 10016
(212) 213-0202

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M+J SAVITT, INC., WYNNE SAVITT WEINER, AND WYNNE SAVITT WEINER, DERIVATIVELY ON BEHALF OF M+J SAVITT, INC.,	CASE NO.: 08-CIV-8535
Plaintiffs,	FIRST AMENDED COMPLAINT & DEMAND FOR JURY TRIAL
v.	ECF CASE
JANIS SAVITT, DESIGNS BY JANIS SAVITT, INC. MICHELLE SAVITT DONAHOWER, MILDRED SAVITT AND PAUL SAVITT,	
Defendants.	

FIRST AMENDED COMPLAINT

Plaintiffs, M+J Savitt, Inc. ("M+J Savitt") and Wynne Savitt Weiner ("Wynne Savitt"), in her individual capacity, by and through their counsel, as and for their First Amended Complaint hereby allege, upon information and belief, as follows:

PARTIES

1. Plaintiff, M+J Savitt, is a corporation organized under the laws of the State of New York, with its principal place of business located at 500 Seventh Avenue, Floor 10B, New York, New York 10018.

2. Plaintiff, Wynne Savitt, is an individual residing at One Kensington Court, Tenafly, New Jersey 07670 (M+J Savitt and Wynne Savitt are hereinafter collectively referred to as

"Plaintiffs").

3. Defendant, Janis Savitt, is an individual residing at 200 West 58th Street, Apt. 12B, New York, New York 10019 and 459 Dune Road, Apt. 9B, Westhampton Beach, New York 11978.

4. Defendant, Michelle Savitt Donahower ("Michelle Savitt"), is an individual residing at 3 West Pomegranate Road, Rancho Palos Verdes, California 90275 and 152 East 94th Street, New York, New York 10128.

5. Defendant, Designs by Janis Savitt, Inc. ("Designs by Janis Savitt"), is a corporation organized under the laws of the State of New York, with its principal place of business located at 200 West 58th Street, New York, New York 10019 and 459 Dune Road, Apt. 9B, Westhampton Beach, New York 11978. Defendant, Janis Savitt, incorporated Designs by Janis Savitt on or about December 31, 2007, while simultaneously owing a fiduciary duty to M+J Savitt.

6. Defendant, Janis Savitt, through her actions as owner of Designs by Janis Savitt is vicariously liable for all acts of infringement and other violations of law alleged in this Complaint.

7. Defendant, Janis Savitt, is jointly and severally liable with Designs by Janis Savitt under all counts of this Complaint.

8. Defendant, Paul Savitt, is an individual residing at 429 West Broadway New York, New York 10012.

9. Defendant, Mildred Savitt, is an individual residing at 429 West Broadway New York, New York 10012. (Janis Savitt, Michelle Savitt, Mildred Savitt, Designs by Janis Savitt and Paul Savitt are hereinafter collectively referred to as "Defendants").

NATURE OF ACTION

10. This lawsuit primarily relates to the unauthorized use of M+J Savitt's famous trademarks and copyrights. The fundamental purpose of intellectual property law is to protect consumers from being confused as to the source or affiliation of the products or services that they

seek to buy. In order to assist consumers in making informed purchasing decisions, intellectual property law encourages companies to differentiate their products and services within the marketplace. This is accomplished by legally limiting the use of a brand or copyright to the owner of the applicable brand or copyright.

11. Some individuals and entities attempt to take advantage of consumers by marketing their products or services using the brands and copyrights of others. In effect, they seek a free ride on the reputation and goodwill of another's brand and/or copyrighted material. This lawsuit, *inter alia*, involves exactly such a situation – efforts by individuals and a corporation to "free ride" on the brands and copyrighted materials of another company.

12. Additionally, this lawsuit relates to, *inter alia*, mismanagement, corporate waste, theft and misuse of corporate assets, intentional infliction of emotional distress, negligence and gross negligence, breach of contract and fiduciary duties, as well as fraud and other self dealings in the context of a famous family-owned jewelry business.

JURISDICTION AND VENUE

13. This action arises in part under the Lanham Act, 15 U.S.C. §§ 1114 and 1125. This Court has federal question jurisdiction over the claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and 1338(b). This Court has supplemental jurisdiction over the New York State law claims pursuant to 28 U.S.C. § 1367(a) because those claims are so closely related to the federal claims brought herein as to form part of the same case or controversy.

14. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims herein occurred in this District.

ALLEGATIONS COMMON TO ALL CLAIMS

HISTORY OF M+J SAVITT, INC.

15. M+J Savitt, a privately held company, has an illustrious history. M+J Savitt was

incorporated in 1972, more than thirty-five (35) years ago.

16. M+J Savitt is engaged in designing, manufacturing and wholesaling fine and semi-precious designer jewelry. The company is a pioneer in combining high fashion design and jewelry.

17. For over thirty-five (35) years, M+J Savitt has developed global name-recognition and goodwill and has become a household name in the jewelry and fashion industries.

18. The M+J Savitt brand is synonymous with unique jewelry products, including a definitive design aesthetic, which designs are clean, modern, bold and innovative, yet classical, interesting and provocative.

19. Throughout its history, M+J Savitt has sold to and continues to sell to, among other retail outlets, Neiman Marcus, Saks Fifth Avenue, Barney's New York, Henri Bendel's, Bloomingdales, Bergdorf Goodman, as well as other specialty retailers and high-end jewelers.

20. Among many other accolades, M+J Savitt has won the coveted "COTY" award, been nominated for two (2) CFDA Accessory Designer of the Year awards, twenty-seven (27) DeBeers "Diamond Today" awards, and is a member of the Diamond International Hall of Fame.

21. M+J Savitt has collaborated with famous designers such as Vera Wang, Ralph Lauren and Michael Kors, to name a few.

22. Janis, Wynne and Michelle Savitt are siblings. They each own twenty-seven percent (27%) of M+J Savitt.

23. Mildred Savitt, Wynne, Janis and Michelle Savitt's mother, owns the remaining nineteen percent (19%) of M+J Savitt.

24. Upon information and belief, Mildred Savitt and Michelle Savitt are both incapacitated.

25. M+J Savitt was originally funded by defendant, Paul Savitt who is Janis, Michelle and Wynne Savitt's father and Mildred Savitt's husband. Paul Savitt, both an artist and businessman by

trade, was the original inspiration for many of M+J Savitt's jewelry designs.

26. Paul Savitt, has been an absentee officer of M+J Savitt for decades.

27. Paul Savitt's involvement with M+J Savitt was limited to creating renderings for design competitions, which designs were M+J Savitt's work for hire.

28. Paul Savitt was never compensated, failed to sign corporate tax returns for the years 1985 through 2006, neglected to guarantee a Small Business Association Loan (the "SBA Loan") and was, at all times relevant to the causes of action alleged herein, never truly in charge of the "general business, affairs and property" of M+J Savitt as required under Article III, Section 4 of M+J Savitt's By-Laws (the "By-Laws").

29. Additionally, Paul Savitt failed to supervise M+J Savitt's officers and agents, preside over periodic shareholder or director meetings and never noticed or called for annual shareholder meetings.

30. In fact, at all times relevant to the claims herein, Paul Savitt refused to discuss the business affairs of M+J Savitt with Wynne Savitt because, as only Paul Savitt can put it, talking about the Corporation was "too stressful" and he wanted to "preserve a calm in his life to survive."

31. Paul Savitt is a painter and an artist by trade.

32. At all times relevant to the allegations made herein, Janis Savitt has represented herself as President of M+J Savitt on filings with the Internal Revenue Service and to credit agencies.

33. At all times relevant to the allegations made herein, Michelle Savitt has represented herself as President of M+J Savitt on the SBA Loan.

34. Wynne Savitt has filled the void left by Janis, Michelle and Paul Savitt's absence and has taken on the role of President of M+J Savitt for over twenty (20) years.

35. Wynne Savitt has effectively managed the day to day operations of M+J Savitt by herself with very little, if any, assistance from the rest of M+J Savitt's officers and Wynne Savitt's family members.

36. Mildred Savitt has never had any operational duties on behalf of M+J Savitt.

37. Among other duties, Janis Savitt is primarily responsible for designing jewelry for M+J Savitt.

38. Among other duties, Wynne Savitt, also a jewelry designer, is primarily responsible for the sales and merchandising aspects of M+J Savitt.

39. On or about December 31, 2007, Defendant, Janis Savitt, informed M+J Savitt that she was leaving the company. However, Janis Savitt never executed the necessary legal documentation to transfer her ownership interest in M+J Savitt pursuant to the terms of the M+J Savitt By Laws and Articles of Incorporation.

M+J SAVITT'S TRADEMARKS

40. M+J Savitt has had a longstanding usage of the trademark **SAVITT** both as a trademark for jewelry, as part of its trade name and corporate identifier, as well as within magazine editorial credits, paid for advertising and promotional materials (magazine editorial credits and paid for advertising and promotional materials are hereinafter collectively referred to as "Advertisements").

41. M+J Savitt has also conducted business as **JANIS SAVITT FOR M+J SAVITT** for approximately sixteen (16) years. See Exhibit 1 annexed hereto for copies of M+J Savitt Advertisements utilizing the **JANIS SAVITT FOR M+J SAVITT** mark.

42. At the express request of Janis Savitt, M+J Savitt has approved the use of **JANIS SAVITT FOR M+J SAVITT** for branding purposes on only one segment of the company's jewelry collection; namely the Gold and Diamond Precious Metal Collection (the "Collection").

43. M+J Savitt has also conducted business as **JANIS SAVITT** for approximately sixteen (16) years. Various retail outlets such as Bergdorf Goodman utilized the mark **JANIS SAVITT** in Advertisements instead of the longer version **JANIS SAVITT FOR M+J SAVITT**. See Exhibit 2 annexed hereto for copies of M+J Savitt Advertisements utilizing the **JANIS SAVITT** mark.

44. To preserve and enhance its trademark rights, M+J Savitt has obtained several federal trademark registrations for its trademarks, all of which have been in continuous use for more than five (5) years and are therefore considered "incontestable" pursuant to 15 U.S.C. § 1115(b), including: (a) **SAVITT,** U.S. Registration No. 2,941,210, registered on September 15, 2003 for "jewelry" based on first use in commerce in 1984; (b) **S M+J SAVITT & DESIGN,** (all in stylized form), U.S. Registration No. 2,116,162, registered on November 25, 1996 for "jewelry made of precious metals, and jewelry with precious stones" based on first use in commerce in 1984; and (c) **M+J SAVITT**, U.S. Registration No. 3,022,631, registered on September 15, 2003 for "jewelry" based on first use in commerce in 1984 ("Janis Savitt for M+J Savitt", "Savitt," "S M+J Savitt & Design" (all in stylized form) and "M+J Savitt" are collectively referred to herein as the "Marks").

45. M+J Savitt has common law rights to the Marks in New York by virtue of the Marks' eligibility for protection and M+J Savitt's status as the senior user of the Marks.

46. The Marks are unique and famous distinctive designations of the source of M+J Savitt's jewelry and precious metal goods and services.

47. M+J Savitt has invested approximately two million dollars ($2,000,000.00) in retailer coop advertising programs and marketing in order to build the fame, reputation and goodwill of the Marks.

48. M+J Savitt is promoted and editorialized through a variety of media, including the Internet, magazines and newspapers across the country and the world. Specifically, M+J Savitt

promotes its products in some of the most well-known worldwide publications including, but not limited to, Harper's Bazaar, Vogue, In Style, Elle, Vanity Fair, Women's Wear Daily, Town & Country, Glamour, Cosmopolitan and Allure. See Exhibit 3 for just a small sampling of Advertisements in such publications.

49. Through M+J Savitt's action, and because of widespread and favorable public acceptance and recognition, the Marks have become distinctive designations of the source of origin of M+J Savitt's goods and services.

50. The Marks have become uniquely associated with, and hence identify M+J Savitt. The Marks are assets of incalculable value as symbols of M+J Savitt, its original designs, quality goods and services, and its goodwill. Accordingly, the Marks have developed secondary meaning.

51. The Marks have become "famous" within the meaning of the dilution provisions of the Lanham Act, 15 U.S.C. § 1125(c). For example, as a result of M+J Savitt's extensive editorial credits, advertising and promotional efforts and its continuous use of the Marks, M+J Savitt has attained a high level of brand recognition among consumers.

UNAUTHORIZED USE OF THE M+J SAVITT MARKS

52. At all times relevant to the allegations contained herein, Janis Savitt, without M+J Savitt's consent or authorization, used and is currently using the Marks in her individual capacity and for her own personal interest to compete with M+J Savitt.

53. M+J Savitt has never granted Janis Savitt or Designs by Janis Savitt any permission, authority, or license to use the Marks for the promotion of jewelry or precious metals goods or services, either directly or indirectly.

54. On or about October 31, 2006, Janis Savitt, individually and while simultaneously owing a fiduciary duty to M+J Savitt, applied for the trademark **JANIS SAVITT** for use with "jewelry" without the consent or authorization of M+J Savitt (the "Trademark Application").

55. The Trademark Application was abandoned on or about April 15, 2008 subsequent to the United States Patent and Trademark Office ("USPTO") Examining Attorney's refusal of the Trademark Application on the basis that the mark sought (**JANIS SAVITT**) was likely to be confused with the Marks. The USPTO Examining Attorney concluded that the commercial impressions conveyed by both the mark **JANIS SAVITT** and the M+J Savitt Marks were identical as to **SAVITT**, and the designations identified the same type of products, i.e. jewelry. See Exhibit 4 annexed hereto for a copy of the Trademark Application file with refusal.

56. From December 2006 to February 2007, Janis Savitt, individually, and while simultaneously owing a fiduciary duty to M+J Savitt, entered into business discussions with QVC, a cable television retailer, for the sale of jewelry items using the **SAVITT** trademark without M+J Savitt's consent or authorization.

57. Janis Savitt, individually, and while simultaneously owing a fiduciary duty to M+J Savitt, has entered into and continues to enter into business discussions with various other retailers, freelance fashion stylists, vendors and media outlets to promote and sell jewelry items using the **SAVITT** trademark without M+J Savitt's consent or authorization.

58. On or about December 31, 2007, the same day she purportedly left M+J Savitt, Janis Savitt, individually, and while simultaneously owing a fiduciary duty to M+J Savitt, formed the company "Designs by Janis Savitt, Inc." using the word mark **SAVITT** within its trade name, title, theme, brand and promotional name. Such usage relates to jewelry and precious metal goods or services and was performed without M+J Savitt's consent or authorization. See Exhibit 5 annexed hereto for a copy of documents reflecting the formation of "Designs by Janis Savitt, Inc." and obvious usage of the **SAVITT** mark within said trade name.

59. At all times relevant to the allegations contained herein, Janis Savitt, without M+J Savitt's consent or authorization, has used and is currently using the Marks in her individual capacity

and for her own personal interest to compete with M+J Savitt through "Janis Savitt d/b/a Janis by Janis Savitt, Inc.

60. At all times relevant to the allegations contained herein, Janis Savitt has created and continues to create jewelry designs using the Marks without M+J Savitt's consent or authorization. Such designs are "works for hire" under the federal copyright laws, and are therefore the exclusive property of M+J Savitt.

61. As evidence of Janis Savitt's specific intent to use the Marks in commerce and form her own corporate entity for personal gain, on or about October 31, 2006, the same day she applied for the **JANIS SAVITT** mark, and while simultaneously owing a fiduciary duty to M+J Savitt, Janis Savitt registered the domain name located at www.Janis-Savitt.com (the "Domain Name"). Consistent with Defendant Janis Savitt's pattern of wrongful, deceitful and fraudulent conduct, Defendant, Janis Savitt secreted her public identity as owner/registrant of the Domain Name through a "Domain Discreet" product/service offered by the Register.com registrars. See Exhibit 6 annexed hereto for a copy of the WHOIS records reflecting "Janis Savitt" as registrant of the Domain Name on December 12, 2007 and "Domain Discreet" as registrant of the Domain Name as of October 2, 2008.

62. After learning that Janis Savitt and Designs by Janis Savitt were using the Marks to promote their own products and services, Plaintiffs and their counsel demanded that Janis Savitt and Designs by Janis Savitt cease and desist from their infringing conduct (the "Cease and Desist Letters"). See Exhibit 7 annexed hereto for true and accurate copies of Plaintiffs' Cease and Desist letters.

63. Rather than adhering to the demands contained in the Cease and Desist Letters, Janis Savitt and Designs by Janis Savitt sought continued press coverage of their jewelry products, improperly using the Marks to promote such products, causing confusion in the marketplace and

further damage to Plaintiffs.

64. At all times relevant to the allegations contained herein, Paul Savitt has had actual knowledge of Janis Savitt's usage of the Marks and self-dealing, yet failed to act both on behalf of M+J Savitt as President of the company and in his individual capacity. See Exhibit 8 annexed hereto for correspondence placing Paul Savitt on notice of Janis Savitt's infringement on the M+J Savitt Marks, together with proof of receipt of said correspondence and handwritten notes of Paul Savitt.

65. At all times relevant to the allegations contained herein, Defendants have provided Janis Savitt and Designs by Janis Savitt with financial aid and support including, but not limited to, providing Janis Savitt and Designs by Janis Savitt with a home office located in Westhampton, New York.

66. Additionally, Defendants have been willfully blind to Janis Savitt and Designs by Janis Savitt's personal use the Marks to compete with M+J Savitt without M+J Savitt's consent or approval.

67. Janis Savitt's continued use of the Marks in Advertisements without authorization from M+J Savitt and in press releases is a blatant attempt to trade off the name and reputation of the Marks and creates a false association as a platform to launch her new competing business.

68. Janis Savitt is using the Marks boldly and prominently and in a calculated manner to suggest that Designs by Janis Savitt is sponsored by or affiliated with M+J Savitt, and this misuse has already caused enormous actual confusion.

69. Janis Savitt, as junior user of the Marks, continues to use the Marks after the USPTO has refused registration based upon the senior user's (M+J Savitt) own registration. Such conduct is indicative of bad faith.

CONSUMER CONFUSION AND HARM TO M+J SAVITT

70. Many consumers, media outlets, retailers and vendors are unaware that Designs by

Janis Savitt has no affiliation with M+J Savitt.

71. Janis Savitt's use of the Designs by Janis Savitt tradename is confusingly similar to the M+J Savitt Marks and is causing confusion in the marketplace for jewelry goods and services.

72. As a result of Designs by Janis Savitt's usage of the Marks, consumers, media outlets, retailers, freelance fashion stylists and vendors have been associating the quality of the goods and services offered by M+J Savitt with those offered by Designs By Janis Savitt and/or Janis Savitt, individually, and if dissatisfied with such goods and services, may decide to avoid M+J Savitt's goods and services in the future.

73. As a result of Designs by Janis Savitt's usage of the Marks, M+J Savitt's core jewelry designs are being misrepresented.

74. Among other things, the following facts and circumstances support the conclusion that the use of the Marks in commerce by Janis Savitt, in her individual capacity, and Designs by Janis Savitt is likely to cause confusion in the marketplace: (a) the Marks have acquired exceptionally strong secondary meaning over the course of the last thirty-five (35) years; (b) Designs by Janis Savitt and Janis Savitt, individually, use the Marks or terms confusingly similar thereto in Advertisement text and within a tradename; (c) goods and services offered by Designs by Janis Savitt and Janis Savitt, individually, directly compete with the goods or services offered by M+J Savitt; (d) Designs by Janis Savitt and Janis Savitt, individually, use the same marketing channels as M+J Savitt; (e) consumers, media outlets, freelance fashion stylists, vendors and retailers have actually been confused as a result of the conduct of Designs by Janis Savitt and Janis Savitt, individually; and (f) Designs by Janis Savitt and Janis Savitt, individually, began using the Marks or terms very similar to the Marks after the Marks were registered and after the Marks became famous and distinctive.

75. Designs by Janis Savitt and Janis Savitt in her personal capacity did so with full knowledge of M+J Savitt's rights in the Marks. In fact, it is the specific intent of Designs by Janis

Savitt and Janis Savitt to use the Marks as set forth in this Complaint in order to profit from consumer association of the Marks with Designs by Janis Savitt and Janis Savitt, individually.

76. There is substantial evidence of actual customer confusion including, but not limited to the following examples: (a) on or about November 20, 2008, Angela Collantes contacted the Corporation requesting Designs by Janis Savitt jewlery for a story in "Vogue" magazine (in Spain); (b) on or about October 8, 2008, Christina Woo sent a written request to the Corporation for the Janis Savitt assymetrical necklace that was personally selected by celebrity designer Nicole Miller as one of her favorite items; (c) on or about August 27, 2008, Molly Thompson and Lori Goldstein, employees of "LA Magazine" contacted the Corporation requesting Designs by Janis Savitt jewlery products; (d) on or about May 13, 2008, Antonia Kojuharova, European Market Editor for Elle Accessories provided the Corporation with a written inquiry about Designs by Janis Savitt; (e) on or about June 10, 2008, Emily Crouch from "W Magazine" "accidentally" sent the Corporation a gold cuff jewlery product with crystals to the Corporation, rather than Designs by Janis Savitt; and (f) on or about April 15, 2008, "InStyle" magazine sent the Corporation a request that Janis Savitt be featured in one of the magazine's stories.

77. In an April 2008 article published by the trade magazine Women's Wear Daily, Janis Savitt admits that Designs by Janis Savitt will "bring in approximately $5 million in its first year at retail." See Exhibit 9 annexed hereto for said article.

JANIS SAVITT'S FAILURE TO EXECUTE CORPORATE AGREEMENTS

78. In or about February 2003, M+J Savitt secured the SBA Loan in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00).

79. The promissory note for the SBA Loan is collateralized by Janis, Michelle and Wynne's personal assets.

80. The first security interest on the SBA Loan was Wynne Savitt's primary residence.

81. Upon receipt of the SBA Loan, M+J Savitt initiated the process of using these funds to generate working capital for the business and build its jewelry line so that M+J Savitt could earn additional income/revenue.

82. Notwithstanding the SBA Loan, M+J Savitt needed additional funding agreements with third party lending institutions and/or factors to continue to expand its business (the "Factoring Agreements").

83. However, Janis Savitt repeatedly refused to sign such Factoring Agreements, effectively blocking M+J Savitt's ability to generate additional working capital to expand and grow its business.

84. In 2001, payment of M+J Savitt's Federal and New York State tax obligations became in arrears. In connection with the past due state tax obligations, M+J Savitt's corporate accountant negotiated a settlement with the State of New York (the "Settlement Agreement"). One condition of the Settlement Agreement was that Janis, Michelle and Wynne Savitt had to each execute the Settlement Agreement.

85. Similar to Janis Savitt's refusal to sign the Factoring Agreements, after M+J Savitt's many verbal and written requests to obtain Janis Savitt's signature on the Settlement Agreement, Janis Savitt refused to execute it. In fact, Janis Savitt never signed the Settlement Agreement.

86. As a result of Janis Savitt's refusal to execute the Settlement Agreement and Factoring Agreements, M+J Savitt was unable to generate additional working capital and grow its business.

87. Additionally, based upon Janis Savitt's failure to execute the Settlement Agreement, the State of New York filed a lien against M+J Savitt's corporate bank account in the amount of One Hundred Twenty-Four Thousand One Hundred Eighty-Eight Dollars and Thirty-Two cents ($124,188.32) (the "New York State Lien").

88. Based upon Janis Savitt's failure to sign the Settlement Agreement and Factoring Agreements, together with the resulting New York State Lien, M+J Savitt had very little working capital to continue growing its business in a reasonable manner causing M+J Savitt's gross sales revenue to significantly decrease.

89. Based upon Janis Savitt's failure to sign the Settlement Agreement and Factoring Agreements, the resulting New York State Lien and M+J Savitt's inability to generate working capital to continue doing business in a reasonable manner, Wynne Savitt personally suffered damages in lost wages between 2005 and 2008 and accumulated personal credit card debt, plus interest in order to cover business costs associated with various industry trade shows.

90. At all times relevant to the allegations contained herein, Paul Savitt had actual knowledge of the forgoing conduct by Janis Savitt, and induced and even encouraged Janis Savitt to cause harm to Plaintiffs.

91. Based upon Janis Savitt's failure and refusal to sign the Settlement Agreement and Factoring Agreements, her filing of the Trademark Application in October 2006, the formation of Designs by Janis Savitt in December 2007, the registration of the Domain Name in October 2006 and repeated self dealing and improper usage of the Marks for her own personal gain and outside the scope of her fiduciary duties to M+J Savitt, Janis Savitt, together with Paul Savitt's encouragement and inducement, has intentionally engaged in an intentional and premeditated scheme to cause harm to Plaintiffs.

M+J SAVITT EMPLOYMENT ISSUES

92. At all times relevant to the allegations contained herein, Janis Savitt verbally abused and defamed Wynne Savitt and other M+J Savitt employees, creating a hostile working environment within the M+J Savitt office and damaging M+J Savitt's ability to maintain quality employees or even hire new ones, thus severely damaging M+J Savitt's ability to generate revenue and income.

93. At all times relevant to the allegations contained herein, Janis Savitt used foul language and profanity towards Wynne Savitt and M+J Savitt employees, creating a hostile working environment within the M+J Savitt office and damaging M+J Savitt's ability to maintain quality employees or even hire new ones.

94. For example, on or about February 24, 2004, an M+J Savitt employee resigned because she was "verbally abused" by Janis Savitt. As a result of Janis Savitt's conduct, the employee filed a complaint with the New York State Department of Labor against M+J Savitt. See Exhibit 10 annexed hereto for a copy of said complaint.

95. In yet another display of such defamatory and abusive conduct, Janis Savitt falsely accused Wynne Savitt of "fucking the bookkeeper" in front of M+J Savitt employees and during normal business hours.

FORGED CORPORATE CHECKS

96. M+J Savitt required two (2) signatures on each and every corporate check in order to prevent individual self-dealing, corporate waste and/or fraud by its shareholders.

97. On or about August 3, 2004 and August 10, 2004, respectively, Janis Savitt forged Michelle Savitt's signature on M+J Savitt corporate checks. See Exhibit 11 annexed hereto for copies of the forged and fraudulent checks.

98. Additionally, on or about October 24, 2005, Janis Savitt improperly signed two (2) M+J Savitt corporate checks made payable to Wynne Savitt as "Fuck you Savitt." See Exhibit 11.

MISAPPROPRIATION OF WYNNE SAVITT'S PERSONAL IDENTITY

99. On or about March 8, 2007, Janis Savitt compromised Wynne Savitt's e-mail address/account located at wsavitt@yahoo.com in an effort to disrupt M+J Savitt's business relationships and otherwise divert business from M+J Savitt to herself.

100. Specifically, Janis Savitt: (a) logged into Wynne Savitt's e-mail account without

permission; (b) changed the welcoming greeting within Wynne Savitt's e-mail account from "Welcome Wynne" to "Welcome Janis"; and (c) modified Wynne Savitt's personal information, including Wynne Savitt's mailing address and telephone number to reflect Janis Savitt's own personal contact information.

101. On or about April 22, 2007, Ms. Jennifer Rachels, a compliance case assistant for Yahoo!, Inc. ("Yahoo"), concluded that based upon the response to a certain subpoena served on Verizon Communications ("Verizon") (the applicable Internet Service Provider) to obtain information and documentation concerning Wynne Savitt's compromised personal e-mail account, Janis Savitt's home personal computer terminal was used to access and compromise Wynne Savitt's e-mail account. See Exhibit 12 for a copy of the Tenafly Police Department Incident Data Sheet.

102. As a result of the foregoing, M+J Savitt and Wynne Savitt, individually, have suffered damages in an amount to be determined at trial.

103. Based on the conduct described in paragraphs 38 to 91 herein, Plaintiff, Wynne Savitt, has been the only M+J Savitt officer trying to carry out the daily responsibilities of M+J Savitt. Defendants, Janis and Paul Savitt, have repeatedly refused to address any and all business issues relating to M+J Savitt despite Plaintiff, Wynne Savitt's, continuing attempts to notify them of same. Plaintiff, Wynne Savitt, has been running the daily affairs of M+J Savitt without receiving compensation and while all along placing her personal assets at risk and using personal funds to pay necessary corporate expenses.

MISMANAGEMENT OF M+J SAVITT BY JANIS AND MICHELLE SAVITT

104. Janis and Michelle Savitt failed to keep accurate records of M+J Savitt inventory and of M+J Savitt's finances.

105. Janis and Michelle Savitt failed to maintain M+J Savitt corporate minute books.

106. Janis and Michelle Savitt failed to conduct annual shareholder meetings.

107. Janis and Michelle Savitt frequently purchased the wrong items for inventory.

108. Following Michelle and Janis Savitt's purported departure from M+J Savitt, Janis and Michelle Savitt contacted current M+J Savitt consumers, potential consumers, retailers, freelance fashion stylists and vendors in an effort to compete with M+J Savitt while simultaneously using information they obtained while employed with M+J Savitt. The purpose of such communications was and is to divert business away from M+J Savitt and to Designs by Janis Savitt and Michelle Savitt's newly formed company.

109. Janis and Michelle Savitt frequently used M+J Savitt petty cash to reimburse themselves for personal purchases.

110. Janis and Michelle Savitt have taken property belonging to M+J Savitt for use by parties other than M+J Savitt including, but not limited to, Designs by Janis Savitt and Michelle Savitt's newly formed company. Such property includes customer files and documents belonging to M+J Savitt. Such property contains confidential, proprietary secrets and/or trade secrets.

111. Michelle and Janis Savitt have utilized M+J Savitt's resources, inventory and proprietary secrets to conduct business for themselves.

112. Designs by Janis Savitt and Michelle Savitt sell and continue to use some of M+J Savitt's inventory for profit without M+J Savitt's permission.

113. Janis Savitt and Michelle Savitt, in their personal capacities, abused M+J Savitt's policy concerning personal usage of M+J Savitt inventory to such a degree that M+J Savitt has been significantly damaged by such conduct.

114. Janis Savitt, Michelle Savitt and Designs by Janis Savitt have failed to ever compensate M+J Savitt for the M+J Savitt inventory taken from M+J Savitt for their own personal use.

115. In 2006, Janis Savitt falsely represented to Plaintiffs that she was signing M+J Savitt

U.S. Income Tax Form 1120 as "Secretary" of M+J Savitt when, in fact, she signed said tax form as "President" M+J Savitt. See Exhibit 13 annexed hereto for a copy of said tax form.

116. At all times relevant to the allegations contained herein, Janis Savitt falsely represented to Plaintiffs that she was executing company credit applications as "Secretary" of M+J Savitt when, in fact, she represented herself as "President" of M+J Savitt. See Exhibit 13 annexed hereto for a copy of said credit application.

117. At all times relevant to the allegations contained herein, Michelle Savitt falsely represented to Plaintiffs that she was executing SBA Loan documents as an employee of M+J Savitt when, in fact, she represented herself as "President" of M+J Savitt. See Exhibit 13 annexed hereto for a copy of such SBA Loan documents.

118. At all times relevant to the allegations contained herein, Janis Savitt, in her personal capacity, and while simultaneously owing a fiduciary duty to M+J Savitt and unbeknownst to Plaintiffs, falsely represented to Plaintiffs that she was using Advertisements to promote M+J Savitt jewelry products rather than her own personal products. For example, Defendant, Janis Savitt falsely represented to Plaintiffs that she would not: (a) credit herself instead of M+J Savitt in Advertisements for a variety of products in many publications, including the March 2007 issue of Town & Country Magazine; (b) credit products as "Janis Savitt for Ralph Lauren" instead of "M+J Savitt for Ralph Lauren"; (c) misuse the **JANIS SAVITT FOR M+J SAVITT** Mark for brass products that were outside of the Collection; (d) misrepresent the cost of M+J Savitt jewelry products in Advertisements including, but not limited to, in a Vogue Magazine 2007 issue for a "Big Time Necklace". See Exhibit 14 annexed hereto for copies of said misrepresentations.

THE SPECIAL SHAREHOLDER MEETING

119. On or about November 3, 2008, just days after the original Complaint was served on Paul Savitt, Paul Savitt, as the purported President of the Corporation, sent notice of a Special

Shareholder Meeting (the "Special Meeting") (the "Notice") to Wynne Savitt and the other shareholders of M+J Savitt.

120. Having actual notice that the Special Meeting was not properly called, Defendants used the Special Meeting to pass a corporate resolution, dated November 18, 2008 (the "Resolution").

121. The Resolution purportedly removed Wynne Savitt as an officer of M+J Savitt, effectively eliminating her "voice in management" and shutting her out of M+J Savitt's decision making process.

122. The purported removal of Wynne Savitt as an officer of M+J Savitt disrupted M+J Savitt's balance of power and caused Plaintiffs severe irreparable harm for which monetary damages alone cannot cure.

123. Additionally, Defendants continue to deny Wynne Savitt access to M+J Savitt's books and records.

FIRST CLAIM FOR RELIEF
FOR FEDERAL TRADEMARK INFRINGEMENT

124. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

125. The Marks (as defined hereinabove) are valid, federally registered trademarks entitled to protection under the Lanham Act.

126. The unauthorized, intentional and personal usage of the Marks by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity in commerce has caused and is likely to continue to cause consumer confusion as to the origin of sponsorship of Janis Savitt's products and services and the association of Janis Savitt's designs, products and services with M+J Savitt's products or services. See Exhibit 15 annexed hereto for just a few examples of the unauthorized, intentional and personal usage of the Marks.

127. The conduct of Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity constitutes a false designation of origin and a false description and representation, in violation of Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114(1), 1125(a).

128. The infringement by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity upon the Marks is willful and reflects their intent to exploit the goodwill and strong brand recognition associated with the Marks. See Exhibit 15.

129. Such infringement by Janis Savitt, individually and through the Designs by Janis Savitt corporate entity, has damaged M+J Savitt in an amount to be determined at trial. For example and without limitation, Janis Savitt, individually, has been unjustly enriched through her unlawful and unauthorized sales of jewelry products while using the Marks.

130. Janis Savitt's personal infringement together with the infringement being performed through the Designs by Janis Savitt corporate entity has caused and, unless restrained by this Court, will continue to cause irreparable injury to M+J Savitt.

131. M+J Savitt has no adequate remedy at law for the infringement conducted by Janis Savitt, individually, and Designs by Janis Savitt.

SECOND CLAIM FOR RELIEF
FOR CONTRIBUTORY TRADEMARK INFRINGEMENT

132. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

133. With full knowledge of M+J Savitt's rights in and to the Marks, all Defendants have provided both Janis Savitt and Designs by Janis Savitt with financial aid, including various antique items worth thousands of dollars.

134. With full knowledge of M+J Savitt's rights in and to the Marks, all Defendants have materially contributed to the trademark infringement by Janis Savitt and Designs by Janis Savitt through providing them with jewelry design services, M+J Savitt customer information, inventory

and other business plans and ideas.

135. Defendants have provided Janis Savitt and Designs by Janis Savitt with all things necessary including, but not limited to, financial funding and a home office in Westhampton Beach, New York in order to effectuate the infringement upon the Marks by Janis Savitt and Designs by Janis Savitt.

136. With full knowledge of M+J Savitt's rights in and to the Marks, all Defendants have intentionally induced both Janis Savitt and Designs by Janis Savitt to infringe upon the Marks.

137. With full knowledge of M+J Savitt's rights in and to the Marks, all Defendants have been intentionally supplying jewelry products and designs to Janis Savitt and Designs by Janis Savitt.

138. Specifically, Plaintiffs are aware of at least three (3) instances demonstrating how Defendants are providing Designs by Janis Savitt and Janis Savitt with financial aid, support and encouragement. Such conduct includes, but is not limited to, providing Janis Savitt and Designs by Janis Savitt with: (a) jewelry products and designs; (b) financial support and aid; and (c) a venue to further such infringement such as providing Janis Savitt with financing, or otherwise transferred a home office in Westhampton Beach, New York where Janis Savitt does most, if not all, of her jewelry designing for Designs by Janis Savitt.

139. Paul Savitt specifically uses his wealth as a means of controlling his family, their votes as shareholders of the Corporation and their business ventures to such an extent where he has a significant degree of control and monitoring over Janis Savitt's activities.

140. With full knowledge of M+J Savitt's rights in and to the Marks, all Defendants have been willfully blind to the ongoing violations of the third party infringers Janis Savitt and Designs by Janis Savitt.

141. Not only have Defendants had actual knowledge of the trademark infringement by Janis Savitt and Designs by Janis Savitt, but they have also been willfully blind to trying to stop it for

over a year in clear violation of their fiduciary duties owed to M+J Savitt, its officers, directors and shareholders.

142. Defendants have not only suspected wrongdoing on the part of Janis Savitt and Designs by Janis Savitt but they have also deliberately failed to investigate whether Janis Savitt and Designs by Janis Savitt were infringing upon the Marks.

143. By providing Janis Savitt and Designs by Janis Savitt with: (a) jewelry products and designs; (b) financial support and aid; and (c) a venue to further such infringement such as providing Janis Savitt with financing, or otherwise transferred, a home office in Westhampton Beach, New York where Janis Savitt does most, if not all, of her jewelry designing for Designs by Janis Savitt, Defendants have induced and encouraged Janis Savitt and Designs by Janis Savitt to infringe upon the Marks with actual and/or constructive notice of the trademark infringement by Janis Savitt and Designs by Janis Savitt.

144. Defendants' contributory infringement is willful and reflects Defendants' intent to exploit the good will and strong brand recognition associated with the Marks.

145. M+J Savitt has been damaged by Defendants' contributory infringement in an amount to be determined at trial.

146. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by Defendants' actions.

147. M+J Savitt has no adequate remedy at law for the foregoing conduct.

THIRD CLAIM FOR RELIEF
FOR FALSE REPRESENTATION

148. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

149. The use of the Marks or terms confusingly similar thereto in editorial and advertising

promotions for both Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity conveys the misleading commercial impression to the public that the products, goods and services offered by Janis Savitt and Designs by Janis Savitt, are approved, endorsed or sponsored by M+J Savitt, or are otherwise affiliated with or supported by M+J Savitt. See Exhibit 15.

150. Each of these misleading uses of the Marks constitutes a false designation of origin and false description and representation, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

151. The false representations made by both Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity are willful and reflect Janis Savitt's and Designs by Janis Savitt's intent to exploit the goodwill and strong brand recognition associated with the Marks.

152. The false representations made by Janis Savitt and Designs by Janis Savitt have damaged M+J Savitt in an amount to be determined at trial.

153. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of both Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity.

154. M+J Savitt has no adequate remedy at law for the foregoing conduct.

FOURTH CLAIM FOR RELIEF
FOR DILUTION UNDER THE LANHAM ACT

155. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

156. The Marks are famous within the meaning of the Trademark Dilution Revision Act of 2006. In particular, the following facts support the conclusion that the Marks are famous: (a) as alleged above, M+J Savitt has advertised the Marks on a nationwide basis in a broad cross-section of prominent media for several decades; (b) the Marks have received massive publicity by both M+J

Savitt and third parties; (c) M+J Savitt has earned millions of dollars in gross profits on a nationwide basis in connection with the jewelry products and services offered under the Marks; (d) the Marks have achieved a high level of actual recognition among the consuming public; and (e) as alleged above, M+J Savitt has obtained numerous federal trademark registrations for its Marks. See Exhibit 15.

157. The use of the Marks or terms confusingly similar thereto by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity in advertising promotions has lessened and will continue to lessen the capacity of M+J Savitt's famous and distinctive Marks to distinguish M+J Savitt's jewelry products and services from those of others, and has diluted the distinctive quality of the famous and nationally recognized Marks. See Exhibit 15.

158. The conduct complained of by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity is likely to cause blurring to and of the Marks and impair the distinctiveness of the Marks. Consumers are likely to associate Janis Savitt's and Designs by Janis Savitt's usage of the Marks or terms confusingly similar thereto with the Marks themselves because of the similarity between Janis Savitt's and Designs by Janis Savitt's use of the Marks or terms confusingly similar thereto and the Marks themselves.

159. In particular, the following factors make dilution by blurring more likely: (a) Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity are making use of the Marks themselves; (b) the Marks have acquired tremendous distinctiveness through M+J Savitt's promotion and use of the Marks since 1972; (c) the Marks have become famous and have achieved a high level of recognition among the consuming public; (d) the use of the Marks by Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity is substantially exclusive to M+J Savitt, its agents and licensees; (e) Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity intend to create an association

between their uses of the Marks or terms confusingly similar thereto and the Marks themselves; and (f) many consumers, retailers, media outlets and vendors actually associate the use of the Marks by Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity with the Marks themselves.

160. The conduct by Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity is also likely to cause tarnishment among the Marks that harms the reputation of the Marks because of the similarity between the uses of the Marks by Janis Savitt, in her individual capacity, and through Designs by Janis Savitt and the Marks themselves. In particular, many of the Advertisements that Janis Savitt and Designs by Janis Savitt use to promote their products, use the Marks, or terms confusingly similar thereto in the title or text of the Advertisements.

161. Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity has derived and continues to derive substantial revenue and profits from the past and ongoing dilution of the Marks as a result of their unauthorized uses of the Marks or terms confusingly similar thereto.

162. Such usage of the Marks by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity has caused damage to M+J Savitt in an amount to be determined at trial. For example, and without limitation, Janis Savitt and Designs by Janis Savitt have been unjustly enriched by their unlawful and unauthorized sales of goods and services while using the Marks.

163. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of both Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity.

164. M+J Savitt has no adequate remedy at law for the foregoing conduct.

FIFTH CLAIM FOR RELIEF FOR TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION PURSUANT TO N.Y. GEN. BUS. LAW § 360-O AND COMMON LAW

165. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

166. The aforesaid acts and conduct of Janis Savitt and Designs by Janis Savitt are, and unless enjoined, will continue to constitute trademark infringement and unfair competition in violation of the common law of the State of New York and N.Y. Gen. Bus. Law § 360-O.

167. The aforesaid acts and conduct of Janis Savitt and Designs by Janis Savitt have been willful and knowing.

168. Such usage of the Marks by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity has caused damage to M+J Savitt in an amount to be determined at trial. For example, and without limitation, Janis Savitt and Designs by Janis Savitt have been unjustly enriched by the unlawful and unauthorized sale of goods and services while using the Marks.

169. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of both Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity.

170. M+J Savitt has no adequate remedy at law for the foregoing conduct.

SIXTH CLAIM FOR RELIEF FOR COPYRIGHT INFRINGEMENT

171. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

172. M+J Savitt owns valid copyrights for its jewelry designs, including: (i) Visual Material; Author: M+J Savitt, Inc.; "2003 collection" for Jewelry; dated August 4, 2003, Registration No.: VA0001233560; (ii) Visual Material; Author: M+J Savitt, Inc.; "2004 Collection" for Jewelry,

dated July 27, 2004, Registration No.: VA0001283686; (iii) Visual Material; Author: M+J Savitt, Inc.; "2004 Collection" for Jewelry, dated March 9, 2005, Registration No.: VA0001318908; and (iv) Visual Material; Author: M+J Savitt, Inc.; "Savitt Collection" for Jewelry, dated April 17, 2003, Registration No.: VA0001203991 (collectively, the "Copyrights").

173. Janis Savitt, individually and through the Designs by Janis Savitt corporate entity has sold and continue to sell products that infringe upon the M+J Savitt's federally registered Copyrights.

174. The Copyrights and the use thereof are "works for hire" under the federal copyright laws, and are therefore the exclusive property of M+J Savitt.

175. Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity has used and continue to use jewelry designs that are "works for hire" under the federal copyright laws, and are therefore the exclusive property of M+J Savitt without M+J Savitt's consent or authorization.

176. Janis Savitt and Designs by Janis Savitt are using the Copyrights for their own benefit in violation of M+J Savitt's exclusive rights in its Copyrights and the Federal Copyright Act, 17 U.S.C. §§ 101, *et. seq.*

177. Such usage of the Copyrights by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity has caused damage to M+J Savitt in an amount to be determined at trial. For example, and without limitation, Janis Savitt and Designs by Janis Savitt have been unjustly enriched by the unlawful and unauthorized sales of goods and services while using the Copyrights.

178. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of both Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity.

179. M+J Savitt has no adequate remedy at law for the foregoing conduct.

SEVENTH CLAIM FOR RELIEF
FOR CONTRIBUTORY COPYRIGHT INFRINGEMENT

180. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

181. M+J Savitt owns valid federally registered Copyrights for various jewelry designs.

182. By providing Janis Savitt and Designs by Janis Savitt with: (a) jewelry products and designs; (b) financial support and aid including, but not limited to, supplying Janis Savitt with antiques worth thousands of dollars; and (c) a venue to further such infringement such as providing Janis Savitt with financing, or otherwise transferred, a home office in Westhampton Beach, New York where Janis Savitt does most, if not all, of her jewelry designing for Designs by Janis Savitt, all Defendants have knowingly (or with reckless disregard for M+J Savitt's rights) induced, caused, encouraged, or materially contributed to conduct by third parties.

183. The aforesaid acts and conduct of all Defendants, including their use of M+J Savitt Copyright for their own benefit violates M+J Savitt's exclusive rights in its Copyrights and the Federal Copyright Act, 17 U.S.C. §§ 101, *et. seq.*

184. All Defendants have caused damage to M+J Savitt in an amount to be determined at trial. For example, and without limitation, Defendants have been unjustly enriched by the unlawful and unauthorized sales of goods and services while using the Copyrights.

185. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by Defendants' actions.

186. M+J Savitt has no adequate remedy at law for the foregoing conduct.

EIGHTH CLAIM FOR RELIEF FOR DILUTION AND INJURY TO BUSINESS REPUTATION PURSUANT TO N.Y. GEN. BUS. LAW § 360-L

187. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

188. The aforesaid acts and conduct of Janis Savitt, in her individual capacity and through the Designs by Janis Savitt corporate entity are, unless enjoined, will continue to cause injury to M+J Savitt's business reputation and dilute the distinctive quality of the Marks in violation of N.Y. Gen. Bus. Law § 360-L.

189. The aforesaid acts and conduct of Janis Savitt and Designs by Janis Savitt have been willful and knowing.

190. Such usage of the Marks by Janis Savitt, individually, and through Designs by Janis Savitt has caused damage to M+J Savitt in an amount to be determined at trial. For example, and without limitation, Janis Savitt and Designs by Janis Savitt have been unjustly enriched by their unlawful and unauthorized sale of goods and services.

191. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of both Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity.

192. M+J Savitt has no adequate remedy at law for the foregoing conduct.

NINTH CLAIM FOR RELIEF FOR DECEPTIVE ACTS AND PRACTICES PURSUANT TO N.Y. GEN. BUS. LAW §§ 349 AND 350-A

193. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

194. The aforesaid acts and conduct of Janis Savitt and Designs by Janis Savitt are, and unless enjoined, will continue to constitute deceptive acts and practices in violation of N.Y. Gen.

Bus. Law §§ 349 and 350-a.

195. The aforesaid acts and conduct of Janis Savitt and Designs by Janis Savitt have been willful and knowing.

196. Such usage of the Marks and Copyrights by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity, has caused damage to M+J Savitt in an amount to be determined at trial.

197. For example, and without limitation, Janis Savitt and Designs by Janis Savitt have been unjustly enriched by their unlawful and unauthorized sales of goods and services generated from their use of the Marks and Copyrights in Advertisements.

198. At all times relevant to the allegations contained herein, Janis Savitt, in her personal capacity and through the Designs by Janis Savitt corporate entity, has misrepresented and continues to misrepresent M+J Savitt jewelry products in Advertisements as being her own personal products, rather than crediting M+J Savitt. See Exhibit 14.

199. At all times relevant to the allegations contained herein, Janis Savitt, in her personal capacity and through the Designs by Janis Savitt corporate entity, intentionally misrepresented and continues to intentionally misrepresent the price of M+J Savitt jewelry products in select Advertisements. See Exhibit 14.

200. At all times relevant to the allegations contained herein, Janis Savitt, in her personal capacity and through the Designs by Janis Savitt corporate entity, intentionally misrepresented the Collection by using the **JANIS SAVITT FOR M+J SAVITT** mark for jewelry items outside the scope of the Collection (as defined hereinabove). See Exhibit 15.

201. At all times relevant to the allegations contained herein, such misrepresentations made by Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity, are materially misleading.

202. The aforementioned conduct and actions by Janis Savitt occurred while she was an M+J Savitt shareholder and acting and serving as a corporate officer of M+J Savitt.

203. At all times relevant to the allegations contained herein, M+J Savitt has been directly and proximately damaged as a result of Janis Savitt's misleading representations directed at consumers in an amount to be determined at trial.

204. At all times relevant to the allegations contained herein, the acts and misrepresentations made by Janis Savitt were committed willfully, knowingly and with a high degree of moral turpitude.

205. M+J Savitt therefore should be awarded treble damages, punitive damages and reasonable attorney's fees.

206. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of both Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity.

207. M+J Savitt has no adequate remedy at law for the foregoing conduct.

TENTH CLAIM FOR RELIEF
FOR BREACH OF CONTRACT

208. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

209. M+J Savitt's Certificate of Incorporation and company by-laws constitute contracts between M+J Savitt shareholders.

210. Plaintiffs performed all required obligations in connection with such contracts.

211. By the acts described hereinabove, Defendants, Janis and Paul Savitt, breached such contracts.

212. As a proximate result of Janis and Paul Savitt's breach of such contracts, Plaintiffs

have suffered damages.

213. Accordingly, Plaintiffs are entitled to damages in an amount to be determined at trial.

ELEVENTH CLAIM FOR RELIEF
FOR COMMON LAW UNJUST ENRICHMENT

214. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

215. Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity has been unjustly enriched as result of her improper and unauthorized usage of the Marks.

216. By the acts described hereinabove, Janis Savitt has personally, and through the Designs by Janis Savitt corporate entity, retained revenues along with M+J Savitt inventory/property to which they were not equitably or legally entitled, and were unjustly enriched at Plaintiffs' expense, in violation of the common law of the State of New York.

217. As a result of the foregoing, Plaintiffs have suffered damages in an amount to be determined at trial.

TWELFTH CLAIM FOR RELIEF
FOR CONVERSION

218. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

219. From its inception, through the present, all right, title and interest in M+J Savitt's inventory (the "Inventory"), trade secrets and/or confidential and proprietary information and documents, including M+J Savitt customer and vendor lists resided with M+J Savitt (collectively, the "Confidential Information").

220. At all times relevant to the allegations contained herein, Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity, has wrongfully and without authorization,

assumed and exercised dominion and control over the Inventory and Confidential Information such that their use of the Inventory and Confidential Information is inconsistent with and in defiance of, and has seriously interfered with, M+J Savitt's ownership and right to control such Inventory and Confidential Information.

221. Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity, have thereby jointly and/or independently converted the Inventory and Confidential Information by their misappropriation of the Confidential Information and Inventory and by the fact that they have used and continue to use such Inventory and Confidential Information to unfairly compete with M+J Savitt.

222. Janis Savitt, personally and through the Designs by Janis Savitt corporate entity have knowingly, dishonestly, and intentionally procured, retained, used, and attempted to market and otherwise capitalize on the value of M+J Savitt's Inventory and Confidential Information without M+J Savitt's authorization and without first giving value to M+J Savitt for such use.

223. M+J Savitt has demanded that Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity, stop using the Inventory and Confidential Information and return such Inventory and Confidential Information to M+J Savitt.

224. To date, neither Janis Savitt nor Designs by Janis Savitt have complied with M+J Savitt's demand to return and cease using M+J Savitt's Inventory and Confidential Information.

225. M+J Savitt continues to be irreparably harmed by the conversion of M+J Savitt's Inventory and Confidential Information by Janis Savitt, personally and through the Designs by Janis Savitt corporate entity.

226. By reason of the acts alleged herein, M+J Savitt has been damaged in an amount to be determined at trial.

THIRTEENTH CLAIM FOR RELIEF
FOR TORTIOUS INTEREFERENCE WITH PROSPECTIVE BUSINESS RELATIONS

227. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

228. M+J Savitt has valid contractual and business relationships with its independent/freelance fashion stylists, magazine editorial departments, vendors, retailers, customers and media partners. These contractual relationships are highly valuable to M+J Savitt.

229. As officers of M+J Savitt, Janis Savitt and Paul Savitt have knowledge of these prospective business relationships. Additionally, Wynne Savitt has placed Janis and Paul Savitt on actual notice that some of these business relationships have been interrupted due to their conduct and actions.

230. At all times relevant to the allegations contained herein, Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity, has offered and offers competing products to potential customers, retailers, vendors and media outlets in interference with these prospective business relations.

231. At all times relevant to the allegations contained herein, Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity, has contacted and continues to contact M+J Savitt's freelance fashion stylists, magazine editorial departments, retailers, vendors, customers and media partners and has made and continues to make false representations concerning M+J Savitt and then, for no valid business reason other than to injure M+J Savitt, has sold and marketed and continues to sell and market competing jewelry products to and using such freelance fashion stylists, magazine editorial departments, retailers, vendors and customers.

232. At all times relevant to the allegations contained herein, Paul Savitt has induced and encouraged Janis Savitt to interrupt these business relationships and form her own corporate entity (Designs by Janis Savitt) with actual knowledge that Janis Savitt would interrupt or interfere with

such business relationships.

233. At all times relevant to the allegations contained herein, all Defendants used dishonest, unfair and/or improper means to interfere with M+J Savitt's business relationships.

234. As a result of the tortious interference of all Defendants, M+J Savitt was prevented from entering into business relationships with these consumers, vendors, retailers and media outlets.

235. Some consumers, vendors, retailers and media outlets did in fact stop doing business with M+J Savitt, thereby causing M+J Savitt to lose these business relationships and economic advantages. This caused M+J Savitt to suffer damages in an amount yet to be quantified but to be determined and proved at trial.

FOURTEENTH CLAIM FOR RELIEF
BREACH OF FIDUCIARY DUTY, GOOD FAITH AND FAIR DEALING

236. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

237. By reason of their positions as officers of M+J Savitt and because of their ability to control the business and corporate affairs of M+J Savitt, Janis and Paul Savitt owe M+J Savitt and its shareholders fiduciary obligations of trust, loyalty, good faith and due care, and were and are required to use their utmost ability to control and manage M+J Savitt in a fair, just, honest and equitable manner.

238. At all times relevant to the allegations contained herein, Janis and Paul Savitt were and are required to act in furtherance of the best interests of M+J Savitt and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit.

239. At all times relevant to the allegations contained herein, Janis and Paul Savitt owe M+J Savitt and its shareholders a fiduciary duty to exercise good faith and diligence in the administration of M+J Savitt's affairs and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

240. To discharge their duties, Janis and Paul Savitt are required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the financial affairs of M+J Savitt.

241. By virtue of such duties, Janis and Paul Savitt are required to, among other things: (a) conduct the affairs of M+J Savitt in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business; (b) to avoid wasting M+J Savitt assets; (c) to maximize the value of M+J Savitt's stock; and (d) to make proper and accurate representations and statements about M+J Savitt.

242. At all times relevant to the allegations contained herein, Janis and Paul Savitt's conduct and actions alleged herein involves a knowing and culpable violation of their obligations as officers of M+J Savitt, the absence of good faith on their part, and a reckless disregard for their duties to M+J Savitt and its shareholders that Janis and Paul Savitt were aware or should have been aware posed a risk of serious injury to M+J Savitt.

243. At all times relevant to the allegations contained herein, Janis and Paul Savitt breached their duties of loyalty and good faith by the aforementioned conduct and actions, as detailed herein *infra*, and by failing to prevent each other from taking such illegal actions.

244. As a direct and proximate result of Janis and Paul Savitt's improper and deceptive conduct and actions, as detailed herein *infra*, and their failure to perform their fiduciary obligations, M+J Savitt has sustained significant damages to be determined at trial. As a result of such misconduct alleged herein, Janis and Paul Savitt are liable to M+J Savitt.

245. Plaintiff, M+J Savitt has no adequate remedy at law.

FIFTHTEENTH CLAIM FOR RELIEF
FOR DEFAMATION PER SE OF BUSINESS REPUTATION

246. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

247. Defendant, Janis Savitt, has made false and defamatory written and verbal statements of and concerning Plaintiffs' professional character and reputation and has repeatedly published and/or broadcasted these statements in the State of New York, in this District, and throughout the United States to numerous third parties through false Advertisements and media stories.

248. For example, Janis Savitt falsely accused and defamed Plaintiff, Wynne Savitt, of "fucking the bookkeeper" in front of M+J Savitt employees on several occasions.

249. Additionally, Defendant, Janis Savitt, has created and continues to create false and defamatory Advertisements and stories for commercial and economic gain, which representations and statements were and are thus designed to entice M+J Savitt customers to purchase products and services from Janis Savitt, personally, or through the Designs by Janis Savitt corporate entity.

250. Such stories, Advertisements and headlines published by Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity were published with malice and reckless disregard for the truth or falsity of such publications, with the intent to injure Plaintiffs, their business reputation and to illegally divert customers away from M+J Savitt.

251. The false statements of fact published on Advertisements together with the defamatory nature of such representations become clear when the public searches for M+J Savitt's products and reads and construes such statements and representations.

252. Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity, knew that the written and verbal statements about Plaintiffs were false and had actual knowledge of their falsity at the time these statements were repeatedly published without privilege, authorization or consent.

253. Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity made these false and defamatory statements for the sole purpose of ruining Plaintiffs' personal and professional reputation and character, to cause injury to Plaintiffs within the jewelry and precious metal industry.

254. Defendant, Janis Savitt's, false and defamatory statements have cause significant and irreparable harm to Plaintiffs' reputation and character, especially within the jewelry and precious metals industry.

255. As a direct and proximate result of these false statements and representations, Plaintiff, M+J Savitt has suffered damages in an amount to be determined at trial and Wynne Savitt has personally suffered, and continues to suffer, considerable stress, emotional distress, mental anguish and intense anxiety, including special damages in that she has suffered impairment to her ability to maintain her career within the jewelry, precious metals and fashion industries.

SIXTEENTH CLAIM FOR RELIEF FOR FRAUD AND DECEIT

256. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

257. Defendants have intentionally committed fraud against Plaintiffs.

258. Defendants have intentionally converted monies and business opportunities belonging to Plaintiffs while simultaneously owing fiduciary duties to M+J Savitt.

259. Defendants continue to intentionally convert documents, files, inventory, customer and vendor lists all belonging to M+J Savitt, which lists contain M+J Savitt's proprietary secrets, confidential information and/or trade secrets.

260. Defendants are intentionally competing with M+J Savitt and are not devoting their full time and attention to M+J Savitt.

261. At all times relevant to the allegations contained herein, Defendants had no intention

of acting and serving as corporate officers, directors and fiduciaries of M+J Savitt, and instead had planned to and did utilize the Marks, inventory and confidential information for their own benefit and remuneration.

262. Defendants, in concert and cooperation with one another, made misrepresentations and omissions to Plaintiffs with respect to their abilities and intentions on acting and serving as shareholders and corporate officers of M+J Savitt, which misrepresentations and omissions were relied upon by Plaintiffs.

263. Michelle Savitt falsely represented to Wynne Savitt that she was not attending the Special Meeting. As a result of this fraudulent representation, Wynne Savitt relied to her detriment by not appearing at the Special Meeting given her reasonable belief that without Michelle Savitt's attendance at the Special Meeting, there could be no shareholder majority to constitute a quorum as required under the By-Laws thereby causing Plaintiffs irreparable harm.

264. Defendants, in concert, and cooperation with one another permitted Michelle Savitt to falsely represent to Wynne Savitt that she was not attending the Special Meeting. As a result of Defendants' failure to prevent Michelle Savitt from making such a false representation, particularly given their fiduciary duties owed to Wynne Savitt as a minority shareholder, Wynne Savitt relied to her detriment by not appearing at the Special Meeting given her reasonable belief that without Michelle Savitt's attendance at the Special Meeting, there could be no shareholder majority to constitute a quorum as required under the By-Laws thereby causing Plaintiffs irreparable harm.

265. Defendants, in concert and cooperation with one another, permitted Janis Savitt to defraud Plaintiffs by transferring her M+J Savitt stock from Janis Savitt to the Janis Savitt Irrevocable Trust (the "Trust") without any corporate resolution or majority shareholder vote.

266. Defendants, in concert and cooperation with one another, permitted Janis Savitt to utilize the Trust for her private gain to the detriment of M+J Savitt.

267. Janis Savitt materially mislead M+J Savitt by failing to deposit her corporate tax refund to M+J Savitt while instead using those funds for her personal benefit.

268. The Trust is the named tenant on Janis Savitt's New York City residential lease. In order to continue to qualify for the occupancy of her residence in New York City, Janis Savitt needed to demonstrate to her landlord that her income did not rise to a certain level as required under the New York rent control guidelines. Given that the Trust is also a shareholder of M+J Savitt, Janis Savitt was incentivized to produce lower levels of income to M+J Savitt at the very same time that increases to M+J Savitt revenues were needed so that she could qualify for the lower rent payments. Plaintiffs relied to their detriment on such fraudulent conduct by incurring excessive business operational costs, and associated personal expenditures and having to infuse time, effort and money into operating M+J Savitt.

269. At the time such conduct occurred, Defendants acting in concert and cooperation with one another knew that Janis Savitt's conduct, actions and omissions, as detailed herein *infra*, were fraudulent and deceitful.

270. Defendants, acting in concert and cooperation with one another, as part of their scheme to defraud M+J Savitt, conspired to permit Janis and Michelle Savitt to form their own entities while simultaneously converting documents, files, inventory, customer, retailer, vendor and fashion stylist proprietary lists belonging to M+J Savitt.

271. Defendants, acting in concert and cooperation with one another, intended to engage in such conduct, actions and omissions, as detailed herein *infra*, for their own benefit and to Plaintiffs' detriment.

272. As part of their scheme, Defendants' actions, conduct and omissions were taken for the specific purpose of, and resulted in, inducing Plaintiffs to rely to their detriment in incurring excessive business operational costs, and associated personal expenditures and having to infuse time,

effort and money into operating M+J Savitt. Had the true facts not been concealed to Plaintiffs, Plaintiffs would not have relied to their detriment in such a way.

273. The foregoing representations, acts and omissions were made intentionally and for the express purposes of inducing Plaintiffs to rely on their truth to Plaintiffs' detriment. Defendants conduct, acts and omissions was taken with the primary purpose and intention of defrauding and causing harm to Plaintiffs, and which did, in fact, cause harm to Plaintiffs and to receive illegal and ill gotten gains.

274. As a result of the foregoing, Plaintiffs have been damaged in an amount to be determined at trial.

SEVENTEENTH CLAIM FOR RELIEF FOR NEGLIGENCE

275. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

276. Defendants, Janis and Paul Savitt owe a fiduciary duty to Plaintiff, M+J Savitt.

277. Based upon Defendants' conduct, actions and omissions, as detailed herein *infra*, Defendants have breached their fiduciary duty, recklessly causing injury to Plaintiff, M+J Savitt.

278. As a direct and proximate cause of Defendants' negligent conduct, actions and omissions, as detailed herein *infra*, Plaintiff, M+J Savitt, has suffered significant damages to be determined at trial.

EIGHTEENTH CLAIM FOR RELIEF FOR GROSS NEGLIGENCE

279. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

280. Defendants' conduct and actions, as detailed herein *infra*, are wanton, reckless, malicious and grossly negligent.

281. As a direct and proximate cause of Defendants' grossly negligent, wanton, reckless and malicious conduct and actions, as detailed herein *infra*, Plaintiff, Wynne Savitt, has suffered extreme emotional distress, physical illness, loss of sleep and elevated anxiety.

282. As a direct and proximate cause of Defendants' grossly negligent, wanton, reckless and malicious conduct and actions, as detailed herein *infra*, Plaintiff, Wynne Savitt, has suffered significant damages to be determined at trial.

NINETEENTH CLAIM FOR RELIEF FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

283. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

284. Defendants have engaged in a vindictive campaign to not only ruin Plaintiffs' personal and professional reputation and character, but to harass Plaintiffs in order to cause Plaintiffs severe emotional distress and mental anguish.

285. Janis and Paul Savitt have made the most vile, offensive, defamatory, lewd and morally reprehensible statements and representations about Plaintiff, Wynne Savitt. Such statements and representations are so outrageous in character and extreme in degree as to go beyond all possible bounds of decency and are utterly intolerable in a civilized society.

286. By their conduct and actions, Janis and Paul Savitt are intentionally, and with malice, inflicting emotional as well as mental distress on Plaintiff, Wynne Savitt.

287. As a direct and proximate result of Janis and Paul Savitt's extreme and outrageous statements, representations and conduct, Plaintiff, Wynne Savitt, has suffered and continues to suffer severe emotional distress, mental anguish, anxiety, daily stress, sleep disruptions, constant fear and worry.

288. As a direct and proximate result of Janis and Paul Savitt's extreme and outrageous statements, representations and conduct, Plaintiff, Wynne Savitt, is experiencing intense physical and

emotional pain and perilous effects of worry that is damaging to normal activities, concentration, self-care, carrying out of business, and general enjoyment of life and life functions.

289. As a direct and proximate result of Janis and Paul Savitt's extreme and outrageous statements and conduct, Plaintiff, Wynne Savitt, is entitled to an award of compensatory damages in an amount to be determined at trial.

TWENTIETH CLAIM FOR RELIEF FOR CYBERSQUATTING UNDER THE LANHAM ACT

290. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

291. Defendant, Janis Savitt in her individual capacity, has registered, trafficked in, and/or used the Domain Name (as defined hereinabove) that is confusingly similar to and/or dilutive of the Marks, which were distinctive at the time Defendant, Janis Savitt, registered, trafficked in, and/or used the Domain Name.

292. Based on the conduct and actions of Janis Savitt, as described and set forth, *infra*, including, but not limited to, Janis Savitt's formation of the Designs by Janis Savitt corporate entity while simultaneously owing a fiduciary duty to M+J Savitt, her filing of the Trademark Application, as well as her self dealing and detrimental conduct toward M+J Savitt, Defendant, Janis Savitt has a bad faith intent to profit and divert business from Plaintiffs through her unauthorized use and registration of the Domain Name and use of the Marks.

293. The actions of Defendant, Janis Savitt, constitute a violation of 15 U.S.C. §1126(d)(1).

294. As a direct and proximate result of such conduct, Plaintiff, M+J Savitt has suffered, and will continue to suffer, monetary loss and irreparable injury to its business, reputation and goodwill. Plaintiff, M+J Savitt is entitled to injunctive relief to prevent Janis Savitt's continued infringement and misuse of the Marks. Unless, Defendant, Janis Savitt, is enjoined from continuing

her infringing conduct, Plaintiff, M+J Savitt will suffer harm for which there is no adequate remedy at law. Plaintiff, M+J Savitt, is also entitled to damages, including its lost profits and Defendant, Janis Savitt's profits from the improper acts alleged herein, in amounts to be proven at trial.

TWENTY-FIRST CLAIM FOR RELIEF BY WYNNE SAVITT WEINER ON BEHALF OF HERSELF, M+J SAVITT AND ALL OTHER SIMILARLY SITUATED SHAREHOLDERS OF M+J SAVITT FOR BREACH OF FUDUCIARY DUTY, ABUSE OF CONTROL, UNJUST ENRICHMENT, AIDING AND ABETTING BREACH OF FIDUCIARY DUTY, FRAUD AND CORPORATE WASTE

295. Plaintiff, Wynne Savitt, suing on behalf of herself, M+J Savitt and all other similarly situated stockholders of M+J Savitt ("Derivative Plaintiff"), alleges derivatively, upon information and belief as follows:

296. Derivative Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

297. Derivative Plaintiff seeks to remedy Defendants' breaches of fiduciary duties that have caused substantial financial losses to M+J Savitt and other damages including, but not limited to, its reputation and goodwill.

298. Defendants by reason of their positions as officers, directors, shareholders and/or fiduciaries of M+J Savitt and because of their ability to control the business and corporate affairs of M+J Savitt, owe M+J Savitt and its shareholders fiduciary obligations of trust, loyalty, good faith, and due care, and were and are required to use their utmost ability to control and manage M+J Savitt in a fair, honest and equitable manner.

299. Defendants were and are required to act in furtherance of the best interests of M+J Savitt and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal benefit.

300. Defendants owe M+J Savitt and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of M+J Savitt and in the use and preservation

of its property and assets, and the highest obligations of fair dealing.

301. Defendants violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision, by, in addition to the allegations in the foregoing paragraphs: (a) ensuring that M+J Savitt complied with its legal obligations and requirement, including acting only within the scope of its legal authority and disseminating truthful and accurate representations to the public; (b) conducting the affairs of M+J Savitt in an efficient, business like manner so as to make it possible to provide the highest quality performance of its business, to avoid wasting M+J Savitt's assets and to maximize the value of M+J Savitt's stock; and (c) failing to properly and accurately guide potential investors as to the true financial condition of M+J Savitt at any given time, including making accurate statements about M+J Savitt's financial results and prospects and ensuring that M+J Savitt maintained an adequate system of financial controls such that M+J Savitt's financial reporting would be true and accurate at all times.

302. Defendants, by virtue of their positions as directors and/or officers, owed to M+J Savitt and to its shareholders the fiduciary duties of loyalty, good faith, and the exercise of due care in the management and administration of M+J Savitt's affairs.

303. Defendants conduct complained of herein involves knowing and culpable violations of their obligations as directors and officers of M+J Savitt, the absence of good faith on their part, and a reckless disregard for their duties to M+J Savitt and its shareholders that Defendants were aware or should have been aware posed a risk of serious injury to M+J Savitt.

304. As a direct and proximate result of Defendants' failure to perform their fiduciary obligations, M+J Savitt has sustained significant monetary damages. As a result of the conduct alleged herein, Defendants are liable to M+J Savitt.

305. Derivative Plaintiff brings this Twenty-First Claim derivatively in the right and for the benefit of M+J Savitt to redress injuries suffered, and to be suffered, by M+J Savitt as a direct

result of the breaches of fiduciary duty, abuse of control, fraud and corporate waste, as well as the aiding and abetting thereof by the Defendants.

306. Derivative Plaintiff will adequately and fairly represent the interests of M+J Savitt in enforcing and prosecuting its rights.

307. Derivative Plaintiff is and was an owner of M+J Savitt stock during the times relevant to Defendants' wrongful course of conduct alleged herein, and remains a shareholder of M+J Savitt.

308. Derivative Plaintiff did not make a demand on M+J Savitt's Board of Directors (the "Board") to bring this action on behalf of M+J Savitt because such demand would be futile because the Board: (a) has received personal financial benefit from their misconduct; (b) have demonstrated their unwillingness and/or inability to act in compliance with their fiduciary obligations and/or to sue themselves and/or their fellow Board members for violations of law complained herein; (c) have personal, familial and professional relationships with whom they have entangled financial alliances, interests and dependencies, and therefore, they are not able to and will not vigorously prosecute such action; (d) has been willfully blind, induced and encouraged the wrongs alleged herein to have occurred and participated in efforts to conceal or disguise those wrongs from M+J Savitt's shareholders or recklessly and/or negligently disregarded the wrongs complained of herein, and are therefore not disinterested parties; and (e) would have to sue themselves, requiring them to expose themselves to millions of dollars in civil liability. Based on the foregoing any demand upon the Board would have been futile.

309. Defendants were unjustly enriched at the expense of and to the detriment of M+J Savitt and its shareholders. Derivative Plaintiff, as a shareholder and representative of M+J Savitt seeks restitution from Defendants, and each of them, and seeks an order of this Court engorging all profits, benefits and other compensation obtained by Defendants, and each of them, from their

wrongful conduct and fiduciary breaches.

310. At all times relevant to the allegations contained herein, Defendants were in possession of material, non-public, proprietary information belonging to M+J Savitt, which information was used by Defendants for their own benefit. Defendants had the custody of names and contact information of M+J Savitt's clients, potential clients, vendors, fashion stylists and retailers. Defendants provided such information to Designs by Janis Savitt causing a loss of potential clients, vendors, fashion stylists and retailers to M+J Savitt. Since the use of M+J Savitt's proprietary information for their own gain constitutes a breach of their fiduciary duties, M+J Savitt is entitled to the imposition of a constructive trust on any profits Defendants obtained thereby. Defendants have used such information for private and personal usage to compete with M+J Savitt. Based on the foregoing, Plaintiffs have been damaged in an amount to be determined at trial.

311. Defendants wasted corporate assets, by among other things, engaging in illegal activities as alleged herein and exposing M+J Savitt and its shareholders to civil liability for which they are liable. Defendants' actions have damaged M+J Savitt in an amount to be proven at trial.

312. By virtue of their role in financing and supplying Designs by Janis Savitt with designs and merchandise, Defendants were able to, and in fact did, render aid and assistance to one another in breaching their fiduciary duties. Defendants did so when they knew or should have known that the wrongful conduct alleged herein was illegal, harmful to M+J Savitt and a breach of their fiduciary duties. Based on the foregoing, M+J Savitt and its shareholders has sustained and will continue to sustain damages and injuries including, but not limited to, incurring excessive business operational costs, and associated personal expenditures and having to infuse time, effort and money into operating M+J Savitt.

313. As fiduciaries, Defendants owed M+J Savitt and its shareholders a duty of candor and full accurate disclosure regarding the true state of M+J Savitt's business and assets and their

conduct with regard thereto. As described herein, Defendants made, or aided and abetted the making of misrepresentations and concealments of material facts despite their duties to, *inter alia*, disclose the true facts of M+J Savitt. As a result of Defendants' fraud, M+J Savitt and its shareholders has sustained and will continue to sustain damages and injuries for which they have no adequate remedy at law. In addition, Defendants' acts were done maliciously, oppressively and with the intent to defraud; and Derivative Plaintiff on behalf of M+J Savitt and its shareholders are entitled to punitive and exemplary damages in an amount to be determined at trial.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

1. For judgment that:

   a. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have engaged in trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114;

   b. Paul Savitt has engaged in contributory trademark infringement in violation of the Lanham Act;

   c. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have engaged in unfair competition, false designation of origin and trademark infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);

   d. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have engaged in dilution in violation of the Lanham Act;

   e. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have engaged in trademark infringement and unfair competition in violation of the laws of the State of New York;

f. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have engaged in copyright infringement in violation of the Federal Copyright Act, 17 U.S.C. §§ 101, *et. seq.;*

g. All Defendants have engaged in contributory copyright infringement in violation of the Federal Copyright Act, 17 U.S.C. §§ 101, *et. seq.;*

h. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have engaged in trademark dilution and injury to business reputation in violation of the laws of the State of New York;

i. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have engaged in deceptive acts and practices in violation of the laws of the State of New York;

j. All Defendants breached contracts between M+J Savitt shareholders;

k. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have been unjustly enriched;

l. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity, converted M+J Savitt property;

m. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity are vicariously liable for all acts of infringement and other violations of law alleged in this Complaint;

n. All Defendants tortiously interfered with M+J Savitt's business relationships;

o. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity made materially misleading representations in Advertisements in violation of the law of the State of New York;

p. Janis and Paul Savitt breached their fiduciary duties to M+J Savitt in violation of

the laws of the State of New York;

q. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity defamed Plaintiffs' business reputation;

r. All Defendants engaged in fraudulent and deceitful conduct;

s. All Defendants were negligent;

t. Janis and Paul Savitt were wanton, reckless, malicious and grossly negligent causing Plaintiff, Wynne Savitt extreme harm; and

u. Janis and Paul Savitt intentionally inflicted emotional distress upon Plaintiff, Wynne Savitt causing her harm.

v. Janis Savitt violated 15 U.S.C. § 1126(d)(1).

2. For a preliminary and permanent injunction enjoining Defendants, and any successors or assigns, and their officers, directors, partners, agents, subcontractors, manufacturers, distributors, retailers, servants, employees, attorneys, affiliates, licensees, subsidiaries and related companies or entities, and all others acting in concert or participation with them, from:

a. Making any use of the M+J Savitt Marks (as defined hereinabove), or any other mark confusingly similar to the M+J Savitt Marks;

b. Engaging in any activity that infringes upon the Marks;

c. Assisting, aiding, or abetting any other person or entity from engaging in or performing any of the activities referred to herein;

d. Directing Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity to publicly correct any and all misleading advertising in a manner and form to be established by the Court;

e. Directing Defendants to file with this Court and serve on Plaintiffs within thirty

(30) days after service of the injunction, a report in writing, under oath, that describes in detail the manner and form in which Defendants have complied with the orders of this Court;

f. Unfairly competing with M+J Savitt in any manner whatsoever.

g. Preventing Janis Savitt from cybersquatting on the Domain Name.

3. For an order awarding Plaintiffs: (a) Defendants' profits, trebled, together with attorneys' fees and costs, to the full extent provided for by Section 35 of the Lanham Act, 15 U.S.C. § 1117 and all other applicable provisions and principals of federal and New York State law; (b) restitution to M+J Savitt of all gains, profits, savings and advantages obtained by Defendants as a result of their wrongful actions; (c) an amount sufficient to conduct a corrective advertising campaign to dispel the effects of Defendants' wrongful conduct and confusing and misleading advertising; attorneys' fees under New York General Business Law § 349; (d) actual and punitive damages in an amount sufficient to deter other and future similar conduct by Defendants and others as provided for under the common law, and holding all Defendants jointly and severally liable for said damages.

4. For an order requiring Defendants to account to Plaintiffs for Defendants' unjustly received profits resulting from the foregoing acts; and

5. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all cause of action triable by a jury.

DATED: New York, New York
December 19, 2008

Respectfully Submitted,

ROBERT E. SEAMAN III (RS-2734)
PETER J. GLANTZ (PG-1063)
ATTORNEYS FOR PLAINTIFFS
475 PARK AVENUE SOUTH, 26TH FLOOR
NEW YORK, NEW YORK 10016
(212) 213-0202

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M+J SAVITT, INC. and WYNNE SAVITT WEINER, Plaintiffs, -v- JANIS SAVITT, DESIGNS BY JANIS SAVITT, INC., MICHELLE SAVITT DONAHOWER, MILDRED SAVITT and PAUL SAVITT, Defendants.	08 Civ. 8535 (DLC) OPINION & ORDER

Appearances:

For Plaintiffs:
Robert E. Seaman III
Peter J. Glantz
475 Park Avenue South, 26th Floor
New York, NY 10016

For Defendants:
G. Roxanne Elings
David Saenz
MetLife Building
200 Park Avenue, 34th Floor
New York, NY 10166

DENISE COTE, District Judge:

Defendants have moved to dismiss plaintiffs' second amended complaint. Defendants contend that the claims asserted derivatively on behalf of plaintiff M+J Savitt should be dismissed for failure to plead demand or demand futility adequately, and that certain of plaintiff Wynne Savitt's

individual claims against defendants should be dismissed for failure to state a claim. For the reasons that follow, defendants' motion to dismiss the derivative claims is granted. Defendants' motion to dismiss Wynne's individual claims is granted as to all claims except Wynne's claim for defamation against defendant Janis Savitt.

BACKGROUND

M+J Savitt, Inc. ("M+J Savitt") is a privately held corporation organized under the laws of the State of New York, with its principal place of business located in New York City. Three siblings -- Wynne Savitt, Janis Savitt, and Michelle Savitt -- each own 27% of M+J Savitt. Their mother, Mildred Savitt owns the other 19%.

At the time the original complaint in this action was filed, the Board of Directors of M+J Savitt consisted of Wynne and Mildred (the "Old Board"). Following a November 18, 2008 Special Shareholder Meeting ("Special Meeting"), a new Board of Directors was chosen: Paul Savitt (Mildred's husband and the siblings' father), Janis, and Michelle (collectively the "New Board"). The New Board was in place when the first and second amended complaints were filed.

Plaintiffs withdrew their original complaint in the face of a motion to dismiss, and they filed an amended complaint ("first

amended complaint") on December 22, 2008. On February 4, 2009, this Court addressed defendants' motion to dismiss the first amended complaint at a conference with the parties. The Court addressed only the part of the motion that pertained to requirements for derivative claims; it did not address defendants' other arguments for dismissing certain causes of action. Plaintiffs' brief in opposition to that motion stated that when the first amended complaint was filed, "the Corporation's Board was comprised of three (3) members: Janis, Paul and Michelle Savitt (the 'New Board')." Plaintiffs argued in that brief that "[t]he Board that is in place at the time the operative pleading is filed is the one that must be considered in determining whether a demand is excuse [sic]." As such, this Court addressed whether Wynne had met the pleading requirements of Fed. R. Civ. P. 23.1 and New York State law for bringing her derivative claims in relation to the "New Board."

The Court found that the first amended complaint's allegations were "far too conclusory to meet either the demand requirement or the futility requirement, either of which has to be pleaded with particularity." Specifically, the Court found that while the complaint could be read in its entirety to plead that demand would be futile because Janis was "an interested director with respect to the transactions that are at issue," plaintiffs had not adequately pled that either Paul or Michelle

were interested "with respect to the transactions that are at issue here." The Court therefore granted this part of defendants' motion to dismiss, and granted leave to plaintiffs to file an amended pleading to cure the defects the Court noted. The Court informed plaintiffs' that this was their final opportunity to amend, and that the purpose of this permitted amendment was to address whether the defects the Court noted in the pleading as to demand and demand futility could be cured.[1]

Plaintiffs' then filed the instant complaint, their second amended complaint, which contains many entirely new allegations. Most of the new allegations pertain to alleged misconduct on the part of Michelle and her husband Sepp Donahower that is distinct from the allegations that had previously been the core of the Wynne's derivative claims (which had primarily concerned alleged misconduct on the part of Janis). With these new allegations of wrongdoing, the plaintiffs added Michelle and other defendants to many of the claims previously pleaded. Plaintiffs' claims that are asserted against new defendants Sepp Donahower and Seppel, Inc. are outside the scope of the permitted amendment,

[1] An April 2009 trial date had been chosen on December 9, 2008 in response to the plaintiffs' request for an expedited schedule for this litigation. As a result, discovery was ongoing as the parties litigated the adequacy of the complaint; fact discovery was due to close on February 27, 2009. There was no suggestion at the conference therefore that the plaintiffs would be able to bring new claims or add new defendants at this late date, and no request by the plaintiffs that they be able to do so.

which was allowed solely to cure defects in the pleading of demand and demand futility as to the actions challenged in the claims of the first amended complaint, and will be stricken. Similarly, any claims newly asserted against the defendants named in the first amended complaint are also beyond the scope of the permitted amendment. For example, the second amended complaint asserts nine causes of action against Michelle that were not previously asserted against her (as well as three new claims against Mildred and one new claim against Paul). These new allegations of liability as to these defendants will be considered only insofar as the facts relating to these new allegations bear upon the issues of demand and demand futility as to the transactions plaintiffs challenged in their claims in the first amended complaint. Additionally, the second amended complaint's 17th cause of action for negligence and 18th cause of action for gross negligence are now pleaded on behalf of both Wynne and M+J Savitt, whereas previously the negligence claim was only asserted on behalf of the corporation and the gross negligence claim was only asserted on behalf of Wynne. These amendments are also outside the scope of the permitted amendment and will be stricken. To the extent that the second amended complaint added new factual allegations to cure defects identified in the motion to dismiss the claims that were pleaded

in the first amended complaint, these allegations have been considered and are addressed below.

The following facts are drawn from the second amended complaint and attached exhibits, and are assumed to be true for the purposes of deciding the motion to dismiss. M+J Savitt is engaged in the business of designing, manufacturing, and wholesaling fine and semi-precious designer jewelry. M+J Savitt sells its products to stores such as Neiman Marcus and Saks Fifth Avenue.

The main allegation in the second amended complaint is that Janis Savitt used and is using M+J Savitt's trademarks and intellectual property for her own personal benefit without the authorization of the corporation. The complaint alleges that Janis, on or about December 31, 2007, formed a company called "Designs by Janis Savitt, Inc." which uses M+J Savitt's word mark SAVITT within its name. Janis is using this entity to compete with M+J Savitt. These actions have created confusion among consumers who do not realize that Designs by Janis Savitt is not affiliated with M+J Savitt.

M+J Savitt sent Janis cease and desist letters concerning her conduct on May 11, 2007 and February 26, 2008. The May 2007 letter was signed by Wynne and Michelle Savitt. Also in May 2007, Wynne sent Paul and Mildred a note informing them that cease and desist letters were sent to Janis. Wynne's note said

that Janis should respond to these letters and that the letters "should serve as a formal document to bring discussions to the table, formally."

The second amended complaint also alleges that Michelle, along with her husband Sepp, are using M+J Savitt "Marks, Copyrights and designs" for their own interest and in competition with M+J Savitt without authorization. It further alleges that Michelle and Sepp created a corporate entity, Seppe1, Inc., that is competing with M+J Savitt and selling jewelry that Michelle stole from M+J Savitt. The complaint also alleges that Michelle, upon information and belief, is incapacitated. Michelle would frequently fail to show up for work at M+J Savitt or work for only a few hours, and she improperly paid personal expenses on her corporate credit card from M+J Savitt funds. In addition, Michelle falsely represented to Wynne that Michelle was not going to attend the Special Meeting.

The second amended complaint also describes additional wrongdoing relating to the operation of M+J Savitt, including the following: Janis failed to sign certain factoring agreements that would allow M+J Savitt to generate capital, as well a settlement agreement between M+J Savitt and the State of New York regarding past due M+J Savitt taxes; Janis signed certain documents as "President" of M+J Savitt when she had represented

to plaintiffs that she would sign them as "Secretary"; Janis verbally abused and defamed Wynne and other M+J Savitt employees, using foul language and profanity -- specifically, Janis accused Wynne of "fucking the bookkeeper" in front of M+J Savitt employees during business hours; Janis forged Michelle's signature on a check, and accessed and changed Wynne's personal email account; and Michelle and Janis failed to keep adequate M+J Savitt inventory and financial records, purchased the wrong inventory, and used M+J Savitt petty cash for personal expenses. In addition to the items of inventory that Michelle stole from M+J Savitt, Janis stole various other items.

As to Paul Savitt, he originally funded M+J Savitt, and was the inspiration for many of its jewelry designs. He was an "absentee" officer who was not compensated and did not sign corporate tax returns. Both Paul and Mildred provided Janis and Designs by Janis with financial aid, including a home office in Westhampton, New York and certain antiques. In addition, Paul and Mildred gave Janis and Designs by Janis jewelry designs, inventory, and customer information.

As for allegations against all individual defendants, the complaint states that all defendants are assisting one another in selling products that bear M+J Savitt marks to compete with M+J Savitt. In addition, all defendants are providing each

other with the jewelry Janis stole, the jewelry Michelle stole, and other inventory and merchandise.

The second amended complaint alleges 21 causes of action against various combinations of defendants. Claims 1-9, 12-14, 17 and 20 are brought only on behalf of M+J Savitt to redress injuries to M+J Savitt;[2] claims 10-11 and 15-16 are brought on behalf of both Wynne and M+J Savitt. Claims 18 and 19 are brought on behalf of Wynne alone.[3]

DISCUSSION

A. Derivative Claims

At the outset, it is well-settled that "[a]n action to redress injuries to a corporation cannot be maintained by a shareholder in his own name but must be brought in the name of the corporation through a derivative action." Bankers Trust Co. v. Rhoades, 859 F.2d 1096, 1101 (2d Cir. 1988) (citation omitted). Thus, despite the fact that only the 21st cause of action in the second amended complaint is styled as a derivative claim, the claims described above that are asserting injury to

[2] As discussed above, while the second amended complaint seeks to newly assert Claim 17 on behalf of Wynne individually as well, that amendment is outside the scope of the permitted amendment and is stricken.

[3] As discussed above, while the second amended complaint seeks to newly assert Claim 18 on behalf of M+J Savitt as well, that amendment is outside the scope of the permitted amendment and is stricken.

M+J Savitt cannot be brought by Wynne as plaintiff except via a derivative action.[4]

"The derivative form of action permits an individual shareholder to bring suit to enforce a corporate cause of action against officers, directors, and third parties." Kamen v. Kemper Fin. Servs., Inc., 500 U.S. 90, 95 (1991) (citation omitted). Under Fed. R. Civ. P. 23.1, the complaint of a shareholder bringing a derivative action must, inter alia, "state with particularity . . . any effort by the plaintiff to obtain the desired action from the directors or comparable authority" and "the reasons for not obtaining the action or not making the effort." Fed. R. Civ. P. 23.1(b)(3). The Supreme Court has stated that this rule is one of procedure that "speaks only to the adequacy of the shareholder representative's pleadings," Kamen, 500 U.S. at 96, and therefore the substance of the demand requirement and any exception for demand futility is analyzed by looking to state law. Id. at 108-09; see also Scalisi v. Fund Asset Mgmt., L.P., 380 F.3d 133, 138 (2d Cir. 2004) ("The substantive law which determines whether demand is, in fact, futile is provided by the state of incorporation of the entity on whose behalf the plaintiff is seeking relief."); Kalin

[4] The second amended complaint newly alleges that Wynne has authority to initiate a direct lawsuit on behalf of M+J Savitt. This allegation is outside the scope of the permitted amendment and will be stricken.

v. Xanboo, Inc., 526 F. Supp. 2d 392, 409 (S.D.N.Y. 2007) ("adequacy of the demand is governed by state law").

Under New York law, Business Corporation Law § 626(c) similarly states that "the complaint shall set forth with particularity the efforts of the plaintiff to secure the initiation of such action by the board or the reasons for not making such effort." This statute "codified a rule of equity developed in early shareholder derivative actions requiring plaintiffs to demand that the corporation initiate an action, unless such demand was futile, before commencing an action on the corporation's behalf." Marx v. Akers, 88 N.Y.2d 189, 193-94 (1996) (citation omitted). "On the one hand, derivative actions are not favored in the law because they ask courts to second-guess the business judgment of the individuals charged with managing the company." Bansbach v. Zinn, 1 N.Y.3d 1, 8 (2003). "On the other hand, derivative actions serve the important purpose of protecting corporations and minority shareholders against officers and directors who, in discharging their official responsibilities, place other interests ahead of those of the corporation." Id.

> The purposes of the demand requirement are to (1) relieve courts from deciding matters of internal corporate governance by providing corporate directors with opportunities to correct alleged abuses, (2) provide corporate boards with reasonable protection from harassment by litigation on matters clearly within the discretion of directors, and (3) discourage

> "strike suits" commenced by shareholders for personal gain rather than for the benefit of the corporation.

Marx, 88 N.Y.2d at 194; see also Kamen, 500 U.S. at 96 ("The purpose of the demand requirement is to afford the directors an opportunity to exercise their reasonable business judgment and waive a legal right vested in the corporation in the belief that its best interests will be promoted by not insisting on such right." (citation omitted)).

In New York, demand is excused for futility under the following circumstances:

> (1) Demand is excused because of futility when a complaint alleges with particularity that a majority of the board of directors is interested in the challenged transaction. Director interest may either be self-interest in the transaction at issue (see, Barr v. Wackman, [36 N.Y.2d 371,] 376 [1975] [receipt of "personal benefits"]), or a loss of independence because a director with no direct interest in a transaction is "controlled" by a self-interested director. (2) Demand is excused because of futility when a complaint alleges with particularity that the board of directors did not fully inform themselves about the challenged transaction to the extent reasonably appropriate under the circumstances. The long-standing rule is that a director "does not exempt himself from liability by failing to do more than passively rubber-stamp the decisions of the active managers. (3) Demand is excused because of futility when a complaint alleges with particularity that the challenged transaction was so egregious on its face that it could not have been the product of sound business judgment of the directors.

Marx, 88 N.Y.2d at 200-01 (citation omitted).

"Directors are self-interested in a challenged transaction where they will receive a direct financial benefit from the

transaction which is different from the benefit to shareholders generally." Id. at 202. "A charge of interest must be made with particularity. Simply naming a majority of the board as defendants with conclusory allegations of wrongdoing or control is insufficient to circumvent the requirement of demand." Bansbach, 1 N.Y.3d at 11. Likewise, "[t]he bare claim that the directors . . . should be viewed as interested because they are substantially likely to be held liable for their actions is not enough." Wandel ex rel. Bed Bath & Beyond, Inc. v. Eisenberg, 871 N.Y.S.2d 102, 105 (1st Dep't 2009) (citation omitted). "[A]bsent specific allegations of self-dealing or bias on the part of a majority of the board, mere approval and acquiescence [in the dealings complained of] are insufficient to render demand futile," Lewis v. Graves, 701 F.2d 245, 248 (2d Cir. 1983) (interpreting Fed. R. Civ. P. 23.1), though "[p]articular allegations of formal board participation in and approval of active wrongdoing may . . . suffice to defeat a motion to dismiss." Barr v. Wackman, 36 N.Y.2d 371, 381 (1975); see also Brewster v. Lacy, 805 N.Y.S.2d 56, 57 (1st Dep't 2005) (finding demand not futile and distinguishing situation where "board members . . . were clearly aware of alleged practices, including illegal ones, that were complained of over a lengthy period, and consciously chose to refrain from taking action over an inordinate amount of time").

In applying these standards to the instant motion, the parties seem unclear as to whether to look to the Old or New Board. As discussed above, plaintiffs' prior briefing conceded that the proper board to look to is the one in place at the time the operative pleading is filed, which in this case is the New Board. See also Brody v. Chemical Bank, 517 F.2d 932, 934 (2d Cir. 1975) (when board in place changed between the filing of first and second complaint, proper board for assessing demand and demand futility of the new operative complaint was the new board).[5] Thus, on the instant motion, the issues of demand and demand futility must be addressed with respect to the New Board.[6]

[5] While Harris v. Carter, 582 A.2d 222, 230-31 (Del. Ch. 1990), cast doubt on this aspect of Brody, the circumstances at issue in Harris do not apply in this case. For one, this case involves New York law, not Delaware law. More significantly, the Delaware courts have explained that the exception described in Harris that would excuse a derivative plaintiff from having to make a new demand (or show it would be futile) when filing an amended derivative complaint after a new board of directors is installed applies only if "first, the original complaint was well pleaded as a derivative action; second, the original complaint satisfied the legal test for demand excusal; and third, the act or transaction complained of in the amendment is essentially the same as the act or transaction challenged in the original complaint." Braddock v. Zimmerman, 906 A.2d 776, 786 (Del. Super. Ct. 2006). Additionally, "where a complaint is amended with permission following a dismissal without prejudice, even if the act or transaction complained of in the amendment is essentially the same conduct that was challenged in the original dismissed complaint, the Rule 23.1 demand inquiry must be assessed by reference to the board in place at the time when the amended complaint is filed." Id. In the instant case, there has been no previous well-pleaded derivative complaint, and as such, the relevant board for assessing the demand inquiry is the

In finding that plaintiffs' first amended complaint did not adequately plead demand futility, this Court found that that complaint, taken as a whole, could be read to show that Janis was an interested director in the transactions at issue in this litigation under the standards discussed above, but that such a showing had not been pled with particularity as to Michelle or Paul. Upon amendment, plaintiffs add new allegations describing Michelle's use of M+J Savitt's intellectual property and inventory for her own benefit. These new allegations, however, do not adequately show how Michelle is an interested director with respect to the transactions the litigation seeks to challenge involving Janis's use of M+J intellectual property to benefit herself and compete with the corporation. Plaintiffs' efforts to link these two separate sets of transactions are entirely conclusory (e.g., the allegation that all defendants are "assisting" one another in selling products that compete with M+J Savitt), and simply do not allege with sufficient particularity how Michelle is an interested director as to Janis's alleged misuse of M+J Savitt intellectual property and

---

one in place at the time of the filing of the second amended complaint.

[6] Plaintiffs' allegations in the second amended complaint that because the Special Meeting was invalid, the Old Board was actually in place at the time of the filing of the second amended complaint, are outside the scope of the permitted amendment and will not be considered.

inventory, which is the conduct this litigation seeks to challenge. Additionally, plaintiffs also do not allege with sufficient particularity that Michelle is an interested director by virtue of her being under another director's control.

As for the third member of the Board, plaintiffs have alleged no facts demonstrating that Paul is deriving any personal financial benefit from any of Janis' actions, nor any facts that he is under the control of anyone else. As such, plaintiffs have not pled with particularity that Paul is "interested" in the transactions that plaintiffs seek to have the corporation challenge. Plaintiffs' brief in opposition fails to even argue that Paul was an interested director. Thus, Wynne has simply not pled with the requisite particularity that a majority of the New Board was interested with respect to the conduct that she seeks to challenge via this derivative suit, i.e., Janis's misuse of the corporation's intellectual property for personal gain. Simply naming Paul as a defendant and alleging claims of breach of fiduciary duty and negligence for not stopping this conduct are insufficient to establish interest.

Plaintiffs have also failed to show that demand is excused because "the board of directors did not fully inform themselves about the challenged transaction to the extent reasonably appropriate under the circumstances." Marx, 88 N.Y.2d at 200.

The second amended complaint conclusorily asserts that various defendants, including members of the New Board, did not inform themselves of the transactions alleged in the complaint. This contention, however, is not pled with particularity; there are no specific allegations in the complaint that demonstrate that board members simply "rubber-stamped" the decisions of more active managers by failing to inform themselves of the relevant dealings. Id.; see also Lewis, 701 F.2d at 249 ("bald charges of mere failure to take corrective action are . . . inadequate to demonstrate futility"). Vague allegations that the board was willfully blind do not fill this void. Plaintiffs have not pleaded with any particularity how the board failed to inform itself to the proper extent of the complained of conduct. In fact, plaintiffs' brief in opposition to the instant motion does not even address this prong of the Marx test as to Paul, but only claims that Michelle failed to inform herself, despite this prong's focus on actions of the board as a whole.

Additionally, plaintiffs' claims as to this prong of the demand futility test are belied by the other claims in the complaint. As to the core transactions that Wynne seeks to challenge on the corporation's behalf -- Janis's use of M+J Savitt intellectual property and inventory to compete with the corporation -- the complaint alleges that the defendants, including the New Board members, induced and encouraged such

actions with full knowledge of "M+J Savitt's rights in and to" the intellectual property. Thus, plaintiffs' argument that the Board failed to inform themselves fully to the appropriate extent fails.

Finally, plaintiffs have not alleged with particularity that demand should be excused because "the challenged transaction[s were] so egregious on [their] face that [they] could not have been the product of sound business judgment of the directors." Marx, 88 N.Y.2d at 200-01 (citation omitted). Plaintiffs' brief argues that certain of Michelle's conduct, such as stealing inventory, was so egregious that it could not be the product of sound business judgment. Plaintiffs' argument misses the point. The inquiry is not whether Michelle's individual conduct was egregious, but rather it is whether the board's action (or inaction) in response to the conduct this litigation seeks to challenge -- Janis's misuse of M+J Savitt's intellectual property and inventory -- could not be the product of business judgment. See, e.g., Wandel, 871 N.Y.S.2d at 106 (describing case where demand found futile where "factual allegations drew a picture of a backdating process so open and egregious as to preclude the possibility that issuance and approval of those options could constitute an appropriate exercise of business

judgment on the part of the board of directors" (citation omitted)); see also Marx, 88 N.Y.2d at 202 (finding that "[t]he complaint does not allege particular facts in contending that the board failed to . . . exercise its business judgment in" taking challenged action). Plaintiffs do not plead with sufficient particularity facts demonstrating that the board's failure to take action was not the product of sound business judgment. Ultimately, plaintiffs have not shown that demand on the New Board would have been futile.[7]

2. Plaintiffs' Alleged Demands

Plaintiffs allege in their second amended complaint that they made demands on the Old and New Board. This bare allegation, however, is completely insufficient to satisfy the heightened pleading standards of Fed. R. Civ. P. 23.1 and NY BCL § 626(c), which both require plaintiffs to plead their demand efforts with particularity. The only specific communication to which the plaintiffs point is a May 17, 2007 letter from Wynne to Mildred and Paul alerting them to certain of Janis's alleged

[7] Plaintiffs seem to recognize that they did not plead demand futility adequately, as they explain in papers on a separate motion that they attempted to voluntarily dismiss this action without prejudice "based upon an independent analysis of the challenged futility issue, as well as considering whether the demand, required for the shareholder derivative action, was proper."

misdeeds and stating that the letter was a formal document to "bring discussions to the table." Even assuming this letter was sent to all of the board members, the letter simply asks to raise issues for discussion, and states that a response is requested only from Janis. This letter cannot be construed as an attempt to get the board to initiate this action, and therefore plaintiffs' have not pled that a demand was made on the board with sufficient particularity.[8] Because plaintiffs have not pled demand or demand futility with sufficient particularity, the claims brought derivatively by Wynne to redress injury to M+J Savitt are dismissed.[9]

---

[8] While the instant motion to dismiss was pending, plaintiffs advised the Court that Wynne had made a formal demand on the New Board dated March 4, 2009. This demand, however, does not help their position on the instant motion to dismiss, because, as discussed above, the purpose of the demand requirement is to give the corporation the opportunity to respond to the challenged actions prior to filing suit. See Bansbach, 1 N.Y.3d at 4 ("Because a derivative action is brought on the corporation's behalf, the law generally requires that demand first be made on the board of directors to pursue the claim." (Emphasis supplied)); see also In re Omnicom Group Inc. S'holder Derivative Litig., 842 N.Y.S.2d 408, 410 (1st Dep't 2007) (explaining that Court of Appeals in Marx "emphasized that pre-suit demand is the rule, that excusing demand is the exception, and that the exception should not be permitted to swallow the rule" (emphasis supplied)).

[9] Because the derivative claims are dismissed on this ground, it is unnecessary to reach defendants' argument that dismissal is appropriate because of inadequate verification of the pleadings.

B. Wynne's Individual Claims

The complaint contains six causes of action asserted by Wynne for injuries to herself, as opposed to M+J Savitt: breach of contract, unjust enrichment, defamation, fraud, gross negligence, and intentional infliction of emotion distress. Defendants move to dismiss these claims for failure to state a claim upon which relief can be granted. While the federal claims in this action have been dismissed as discussed above, this case is on the eve of trial, discovery has been completed, and the remaining state law claims do not present novel issues of state law. Thus, this Court will exercise its discretion to exercise supplemental jurisdiction over these remaining state law claims. See Adams v. Suozzi, 517 F.3d 124, 129 (2d Cir. 2008); Kolari v. New York-Presbyterian Hosp., 455 F.3d 118, 122-23 & n.6 (2d Cir. 2006).

A trial court considering a Rule 12(b)(6) motion must "accept as true all factual statements alleged in the complaint and draw all reasonable inferences in favor of the non-moving party." McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 191 (2d Cir. 2007). At the same time, "conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to defeat a motion to dismiss." Achtman v. Kirby, McInerney & Squire, LLP, 464 F.3d 328, 337 (2d Cir. 2006) (citation omitted).

Under the pleading standard set forth in Rule 8(a)(2), complaints must include a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "[A] plaintiff is required only to give a defendant fair notice of what the claim is and the grounds upon which it rests." Leibowitz v. Cornell Univ., 445 F.3d 586, 591 (2d Cir. 2006). Rule 8 is fashioned in the interest of fair and reasonable notice, not technicality, and therefore is "not meant to impose a great burden upon a plaintiff." Dura Pharms., Inc. v. Broudo, 544 U.S. 336, 347 (2005).

A court considering a Rule 12(b)(6) motion applies a "flexible plausibility standard, which obliges a pleader to amplify a claim with some factual allegations in those contexts where such amplification is needed to render the claim plausible." Boykin v. KeyCorp, 521 F.3d 202, 213 (2d Cir. 2008) (citation omitted). "To survive dismissal, the plaintiff must provide the grounds upon which his claim rests through factual allegations sufficient to raise a right to relief above the speculative level." ATSI Commc'ns, Inc. v. Shaar Fund, Ltd., 493 F.3d 87, 98 (2d Cir. 2007).

1. Breach of Contract

The elements of a breach of contract claim under New York law are as follows: (1) the existence of an agreement; (2)

adequate performance of the contract by the plaintiff; (3) breach of contract by the defendant; and (4) damages. See Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co., 375 F.3d 168, 177 (2d Cir. 2004); see also Harsco Corp. v. Segui, 91 F.3d 337, 348 (2d Cir. 1996). "[A] company's certificate of incorporation and by-laws in substance are a contract between the corporation and its shareholders and among the shareholders inter se." Management Techs., Inc. v. Morris, 961 F. Supp. 640, 646 (S.D.N.Y. 1997).

In the first amended complaint, Wynne asserted that Janis and Paul were liable to her for breach of contract.[10] She claimed that M+J Savitt's certificate of incorporation and bylaws were contracts between M+J Savitt shareholders, that she had performed under the contracts, and that by the acts described in the complaint Janis and Paul had breached these contracts. Wynne's allegations fail to state a claim for breach of contract, as they do not allege what provision or provisions of the contracts the defendants breached by virtue of their actions. Simply conclusorily alleging that all of the actions described previously in the complaint were a breach of these contracts generally is insufficient to plead the element of breach beyond a speculative level.

[10] Wynne's assertions of this claim in the second amended complaint against additional defendants are beyond the scope of the permitted amendment and are stricken.

Wynne's new allegation in the second amended complaint that Janis and Paul breached the contract by breaching the implied covenant of good faith and fair dealing cannot save this claim. "Integral to a finding of a breach of the implied covenant [of good faith and fair dealing] is a party's action that directly violates an obligation that may be presumed to have been intended by the parties." M/A-COM Sec. Corp. v. Galesi, 904 F.2d 134, 136 (2d Cir. 1990); see also Thyroff v. Nationwide Mut. Ins. Co., 460 F.3d 400, 407-08 (2d Cir. 2006). The implied covenant of good faith and fair dealing "can only impose an obligation consistent with other mutually agreed upon terms in the contract. It does not add to the contract a substantive provision not included by the parties." Broder v. Cablevision Sys. Corp., 418 F.3d 187, 198-99 (2d Cir. 2005) (citation omitted). Plaintiffs have not described the provisions of the contracts that allegedly were breached, nor have they pled what obligations and rights can be presumed to have been intended from the contracts' substantive provisions. As such, plaintiffs' fail to state a claim for breach on this theory, and defendants' motion to dismiss this claim is granted.

2. Unjust Enrichment

"To prevail on a claim for unjust enrichment in New York, a plaintiff must establish (1) that the defendant benefitted; (2)

at the plaintiff's expense; and (3) that equity and good conscience require restitution." Beth Israel Med. Ctr. v. Horizon Blue Cross and Blue Shield of New Jersey, Inc., 448 F.3d 573, 586 (2d Cir. 2006) (citation omitted). "The theory of unjust enrichment lies as a quasi-contract claim. It is an obligation the law creates in the absence of any agreement." Id. (citation omitted). The essence of an unjust enrichment claim "is that one party has received money or a benefit at the expense of another." Kaye v. Grossman, 202 F.3d 611, 616 (2d Cir. 2000) (citation omitted). To bring such a claim, the plaintiff must have bestowed the benefit on the defendant. See Aymes v. Gateway Demolition Inc., 817 N.Y.S.2d 233, 234 (1st Dep't 2006). It is not sufficient for defendant to receive some indirect benefit -- the benefit received must be "specific and direct" to support an unjust enrichment claim. Kaye, 202 F.3d at 616.

In the first amended complaint, Wynne alleged that Janis was unjustly enriched by her use of M+J Savitt intellectual property and inventory. Wynne claims in the second amended complaint that she personally lent M+J Savitt hundreds of thousands of dollars, and that Janis was unjustly enriched by not having to make such payments.[11] The benefit conferred by

[11] Plaintiffs' assertion of this claim against additional defendants is outside the scope of the permitted amendment.

Wynne in this situation, however, went directly to M+J Savitt; Wynne does not assert that her loans were made to Janis. Moreover, she does not allege that Janis was under any obligation to make similar payments to M+J Savitt such that Wynne's loan relieved her of those obligations and thereby conferred a benefit on them for which equity requires restitution. See id. (overturning verdict finding unjust enrichment where plaintiff "offered no evidence demonstrating that [defendant] actually received any portion of the loan, nor did she show that the loan relieved [defendant] of any financial obligations for which she otherwise would have been responsible")

Wynne's additional allegations on this claim in the second amended complaint state that Janis improperly used M+J Savitt property and money for her personal use, while Wynne did not engage in such acts. The fact that Wynne did not engage in this conduct, however, is insufficient to plead that Wynne herself conveyed some sort of benefit on defendants that in equity should be hers. Finally, Wynne's claims that Janis's use of M+J Savitt's intellectual property and inventory hurt the value of Wynne's stock and that she was unjustly enriched by such use again do not allege any benefit that Wynne, as opposed to M+J Savitt, conferred upon Janis. Thus, Wynne has failed to state a claim for unjust enrichment.

3. Defamation

"Under New York law, the elements of a defamation claim are a false statement, published without privilege or authorization to a third party, constituting fault and it must either cause special harm or constitute defamation per se." Peters v. Baldwin Union Free School Dist., 320 F.3d 164, 169 (2d Cir. 2003) (citation omitted); see also Albert v. Loksen, 239 F.3d 256, 265-66 (2d Cir. 2001) (spoken defamation is slander and "[t]he elements of a cause of action for slander under New York law are (i) a defamatory statement of fact, (ii) that is false, (iii) published to a third party, (iv) of and concerning the plaintiff, (v) made with the applicable level of fault on the part of the speaker, (vi) either causing special harm or constituting slander per se, and (vii) not protected by privilege" (citation omitted)).

Wynne alleges that Janis defamed her by falsely accusing Wynne of "fucking the bookkeeper" in front of M+J Savitt employees on "several occasions" during normal business hours.[12] Defendants move to dismiss the claim on two grounds: that it is outside of the one year statute of limitations and that it was

[12] The additional allegations of defamation are asserted on behalf of, and for injury to, M+J Savitt, and therefore cannot be brought derivatively by Wynne for the reasons discussed above.

not sufficiently pleaded with specificity as to the time, manner, and persons to whom it was published.

As for the first contention, plaintiffs argue that the statement was made on multiple occasions and that defendants "know[]" it was made within the statute of limitations. It is unclear from the complaint when the statement was made and therefore whether it was within the statute of limitations. A statute of limitations defense is an affirmative defense upon which the defendants bear the burden of proof. See Overall v. Estate of Klotz, 52 F.3d 398, 403 (2d Cir. 1995). Because the allegations of the complaint do not clearly demonstrate the claim is time-barred, it will not be dismissed on this ground.

As for the second contention, while it is true that defamation plaintiffs in New York must plead the particular words complained of and "must allege the time, place and manner of the false statement and . . . specify to whom it was made," Dillon v. City of New York, 704 N.Y.S.2d 1, 5 (1st Dep't 1999), "a defamation action brought in federal court is governed by Fed. R. Civ. P. 8, which requires averments to be simple, concise, and direct, and not by such a state pleading requirement . . . ." Odom v. Columbia Univ., 906 F. Supp. 188, 196 (S.D.N.Y. 1995) (citation omitted); see also Hogan v. Wal-Mart Stores, Inc., 167 F.3d 781, 783 (2d Cir. 1999) (federal law governs matters of procedure). Wynne's allegation that Janis

made her statement on several occasions, in front of M+J Savitt employees during business hours, is sufficient to put defendants on notice of the claim. Therefore, the motion to dismiss Wynne's defamation claim against Janis is denied.

4. Fraud

"The elements of fraud under New York law are: (1) a misrepresentation or a material omission of material fact which was false and known by defendant to be false, (2) made for the purpose of inducing the plaintiff to rely on it, and (3) justifiably relied upon by the plaintiff, (4) who then suffered an injury as a result of such reliance." City of New York v. Smokes-Spirits.Com, Inc., 541 F.3d 425, 454 (2d Cir. 2008) (citation omitted). "[A]llegations of third-party reliance . . . are insufficient to make out a common law fraud claim under New York law." Id. Additionally, a claim for fraud "may be predicated on acts of concealment where the defendant had a duty to disclose material information." Id. (citation omitted).

"Federal Rule of Civil Procedure 9(b) sets forth a heightened pleading standard for allegations of fraud: 'In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.'" Lerner v. Fleet Bank, N.A., 459 F.3d 273, 290 (2d Cir. 2006). Under Rule 9(b), "the complaint must: (1) specify the statements that

the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent." Id. (citation omitted). While, "[m]alice, intent, knowledge, and other condition of mind of a person may be averred generally," courts "must not mistake the relaxation of Rule 9(b)'s specificity requirement regarding condition of mind for a license to base claims of fraud on speculation and conclusory allegations. . . . [P]laintiffs must allege facts that give rise to a strong inference of fraudulent intent." Id. (citation omitted).

Most of the allegations in the second amended complaint allege conduct that purportedly defrauded M+J Savitt, causing injuries to the corporation. Wynne cannot assert such claims in this action for the reasons discussed above. In addition, most of the allegations simply allege wrongful conduct on the part of defendants, such as the claims that defendants have converted M+J Savitt inventory and are competing with M+J Savitt, and are completely devoid of any alleged misrepresentations and reliance, and as such fail to state a claim for fraud. The allegation that "[d]efendants, in concert and cooperation with one another, made material misrepresentations and omissions to Plaintiffs with respect to their abilities and intentions on acting and serving as shareholders and corporate officers" falls

far short of the heightened pleading requirements for fraud discussed above.

The only statement alleged that comes close to fulfilling the pleading requirements for defrauding Wynne is the allegation that Michelle falsely represented to Wynne that Michelle was not going to attend the Special Meeting, and that Wynne relied on this representation to her detriment in believing that without Michelle, no quorum would be constituted. Even this statement, however, fails to meet the pleading requirements for fraud, as it does not allege when and where Michelle made this statement, nor does it allege facts that give rise to a strong inference of fraudulent intent. Thus, defendants' motion to dismiss the claim for fraud is granted.

5. Gross Negligence

"To establish a prima facie case of negligence under New York law, a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom." Id. at 286 (citation omitted). Gross negligence is "conduct that evinces a reckless disregard for the rights of others or smacks of intentional wrongdoing." American Telephone and Telegraph Co. v. City of New York, 83 F.3d 549, 556 (2d Cir. 1996) (citation omitted).

In the first amended complaint, Wynne's claim for gross negligence simply alleged that defendants' actions that had been described earlier in the complaint were "wanton, reckless, malicious and grossly negligent." The second amended complaint newly alleges that defendants owed fiduciary duties to Wynne as a minority shareholder that were breached.

> "[A] shareholder, even a sole shareholder or one in a closely held corporation, typically does not have standing to sue for injuries to the corporation itself. However, where a defendant owes an independent duty to the shareholder and the shareholder and the defendant are in privity, the shareholder may sue for damages caused by the defendant's negligence which results in injury that is personal to the shareholder and independent of the damage caused to the corporation. Often, such damages consist of loss in value of the plaintiff's shares in the corporation."

Lawrence Ins. Group, Inc. v. KPMG Peat Marwick L.L.P., 773 N.Y.S.2d 164, 166 (3d Dep't 2004) (citation omitted) (emphasis supplied); see also Barbour v. Knecht, 743 N.Y.S.2d 483, 491 (1st Dep't 2002) ("Majority shareholders and directors of a close corporation stand in a fiduciary relationship with the corporation and minority stockholders and are required to exercise the utmost good faith. Since defendant . . . is a close corporation, plaintiff's complaint that she and the other minority shareholders have been frozen out of the management of the corporation asserts a cognizable wrong." (citation omitted)).

Even assuming plaintiffs have adequately pled an independent duty owed by defendants to Wynne by virtue of her status as a minority shareholder, the second amended complaint is still deficient as to this cause of action. Plaintiffs simply state that all of the "Challenged Transactions" that are listed later in the second amended complaint (and the failure to address those transactions) demonstrate gross negligence on the part of defendants. Simply referring to 37 asserted wrongful actions, taken by different defendants and at different times, does not adequately plead how each or any of these actions (or failure to act in response) breached a specific duty, and furthermore how that particular breach meets the high standard for gross negligence. Additionally, the "Challenged Transactions" are generally the same wrongful acts upon which plaintiffs based their claims of injury to M+J Savitt. Plaintiffs have not adequately pleaded which of these acts that caused injury to M+J Savitt also caused an "injury that is personal to [Wynne] and independent of the damage caused to the corporation." Lawrence, 773 N.Y.S.2d at 166. As such, plaintiffs have failed to state a claim for gross negligence, and the motion to dismiss the claim is granted.

6. Intentional Infliction of Emotional Distress

"Under New York law, a claim of intentional infliction of emotional distress requires: (1) extreme and outrageous conduct; (2) intent to cause, or reckless disregard of a substantial probability of causing, severe emotional distress; (3) a causal connection between the conduct and the injury; and (4) severe emotional distress." Conboy v. AT & T Corp., 241 F.3d 242, 258 (2d Cir. 2001) (citation omitted). "[T]he standard for stating a valid claim of intentional infliction of emotional distress is rigorous, and difficult to satisfy." Id. (citation omitted). "The conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." Id. (citation omitted).

Courts have sustained claims of intentional infliction of emotional distress where the claims "involved some combination of public humiliation, false accusations of criminal or heinous conduct, verbal abuse or harassment, physical threats, permanent loss of employment, or conduct contrary to public policy." Stuto v. Fleishman, 164 F.3d 820, 828 (2d Cir. 1999); see also Eves v. Ray, 840 N.Y.S.2d 105, 106-07 (2d Dep't 2007) (claim sustained where evidence showed a "deliberate and malicious campaign of harassment or intimidation" including threatening the defendant both physically and financially, and stalking him

"despite the fact that the defendant had obtained a temporary order of protection" (citation omitted)). The New York Court of Appeals, however, has indicated that it is unlikely to recognize claims for intentional infliction of emotional distress where other tort remedies are available. See Fischer v. Maloney, 43 N.Y.2d 553, 557-58 (1978); see also Herlihy v. Metropolitan Museum of Art, 214 A.D.2d 250, 263 (1st Dep't 1995) ("plaintiff's cause of action for intentional infliction of emotional distress must . . . fail because it falls within the ambit of other traditional tort liability which, in this case, is reflected in plaintiff's causes of action sounding in defamation").

Wynne asserts this cause of action against Janis and Paul. As to Janis, Wynne alleges, as described above, that Janis told Wynne that she was "fucking the bookkeeper" in front of M+J Savitt employees. Wynne also states that Janis has repeatedly "communicated to Wynne Savitt and her family members her intention to cause them severe bodily injury to such an extent that Wynne Savitt has sought to file a criminal restraining order against Janis." As for Paul, he told Wynne she was "out of his estate" and has prevented Wynne from visiting her mother. The complaint alleges generally that both Paul and Janis have made "vile, offensive, defamatory, lewd and morally reprehensible statements and representations about" Wynne.

The statements and actions attributed to Paul regarding his estate and Mildred do not meet the rigorous standard for asserting a claim for intentional infliction of emotional distress as a matter of law. Wynne's contention that Janis and Paul made certain unspecified vile and morally reprehensible statements about Wynne is too vague and conclusory to state a claim for intentional infliction of emotional distress. As such, defendants' motion to dismiss this claim will be granted as to Paul.

As for Janis's actions, the statement regarding the bookkeeper, as discussed above, falls within the ambit of her claim for defamation, and thus Wynne's intentional infliction of emotional distress claim based on that statement fails. Additionally, the statement, while offensive, is not so outrageous as to satisfy the rigorous standard for asserting this claim. Wynne's allegations of Janis's threats of bodily harm are too vague and conclusory, in the context of this heated dispute between family members who are involved in a close corporation, to be said to be so outrageous and extreme such as to constitute intentional infliction of emotional distress. Thus, defendants' motion to dismiss Wynne's claim for intentional infliction of emotional distress as to Janis is also granted.

CONCLUSION

Defendants' February 14, 2009 motion to dismiss is denied as to plaintiff Wynne Savitt's claim for defamation against Janis Savitt, and it is granted with prejudice as to all other claims. A scheduling order shall govern further proceedings on the remaining defamation claim.

SO ORDERED:

Dated: New York, New York
March 17, 2009

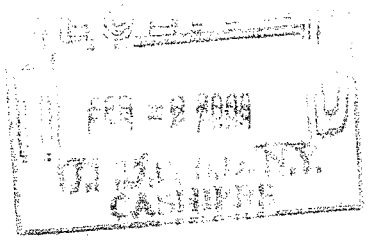
DENISE COTE
United States District Judge

Exhibit 4

ROBERT E. SEAMAN III (RS-2734)
PETER J. GLANTZ (PG-1063)
ATTORNEYS FOR PLAINTIFFS
175 PARK AVENUE SOUTH, 26TH FLOOR
NEW YORK, NEW YORK 10016
(212) 213-0202

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M+J SAVITT, INC., WYNNE SAVITT WEINER, AND WYNNE SAVITT WEINER, DERIVATIVELY ON BEHALF OF M+J SAVITT, INC.,	:	CASE NO.: 08-CIV-8535
Plaintiffs,	:	SECOND AMENDED COMPLAINT & DEMAND FOR JURY TRIAL
v.	:	
	:	ECF CASE
JANIS SAVITT, DESIGNS BY JANIS SAVITT, INC. MICHELLE SAVITT DONAHOWER, MILDRED SAVITT, PAUL SAVITT, SEPP DONAHOWER AND SEPPE1, INC.,	:	
Defendants.	:	



SECOND AMENDED COMPLAINT

Plaintiffs, M+J Savitt, Inc. ("M+J Savitt") and Wynne Savitt Weiner ("Wynne Savitt"), in her individual capacity and as President of M+J Savitt, by and through their counsel, as and for their Second Amended Complaint hereby allege, upon information and belief, as follows:

PARTIES

1. M+J Savitt is a corporation organized under the laws of the State of New York, with its principal place of business located at 500 Seventh Avenue, Floor 10B, New York, New York 10018.

2. Wynne Savitt is an individual residing at One Kensington Court, Tenafly, New Jersey 07670 and is President of M+J Savitt (M+J Savitt and Wynne Savitt are hereinafter collectively

referred to as "Plaintiffs").

3. As President of M+J Savitt, Wynne Savitt has the requisite authority to initiate a direct lawsuit on behalf of M+J Savitt.

4. As an oppressed minority shareholder of M+J Savitt, Wynne Savitt has the requisite authority to initiate the shareholder derivative claims set forth herein.

5. Janis Savitt is an individual residing at 200 West 58th Street, Apt. 12B, New York, New York 10019 and 459 Dune Road, Apt. 9B, Westhampton Beach, New York 11978 ("Janis Savitt").

6. Michelle Savitt Donahower ("Michelle Savitt") is an individual residing at 3 West Pomegranate Road, Rancho Palos Verdes, California 90275 and 152 East 94th Street, New York, New York 10128.

7. Sepp Donahower ("Sepp Donahower") is an individual residing at 3 West Pomegranate Road, Rancho Palos Verdes, California 90275 and 152 East 94th Street, New York, New York 10128.

8. Designs by Janis Savitt, Inc. ("Designs by Janis Savitt") is a corporation organized under the laws of the State of New York, with its principal place of business located at 200 West 58th Street, New York, New York 10019 and 459 Dune Road, Apt. 9B, Westhampton Beach, New York 11978.

9. Janis Savitt incorporated Designs by Janis Savitt on or about December 31, 2007, while simultaneously owing a fiduciary duty to M+J Savitt.

10. Seppe1, Inc. ("Seppe1") is a corporation organized under the laws of the State of California, with its principal place of business located in Rancho Palo Verdes, California.

11. Sepp Donahower and Michelle Savitt incorporated Seppe1 during the same period in time in which Michelle Savitt owed a fiduciary duty to M+J Savitt.

12. Sepp Donahower and Michelle Savitt are co-owners of Seppe1.

13. Seppe1 is in the business of selling jewelry and semi-precious metals at retail and is a direct competitor of M+J Savitt.

14. Janis Savitt, through her actions as owner of Designs by Janis Savitt is vicariously liable for all acts of infringement and other violations of law alleged in this Second Amended Complaint.

15. Janis Savitt is jointly and severally liable with Designs by Janis Savitt under all applicable counts of this Second Amended Complaint.

16. Michelle Savitt, through her actions as co-owner of Seppe1 is vicariously liable for all acts of infringement and other violations of law alleged in this Second Amended Complaint.

17. Sepp Donahower through his actions as co-owner of Seppe1 is jointly and severally liable with Seppe1 under all applicable counts of this Second Amended Complaint.

18. Sepp Donahower, through his actions as co-owner of Seppe1 is vicariously liable for all acts of trademark and copyright infringement and other applicable violations of law alleged in this Second Amended Complaint.

19. Paul Savitt is an individual residing at 429 West Broadway New York, New York 10012.

20. Mildred Savitt is an individual residing at 429 West Broadway New York, New York 10012.

21. At the time Plaintiffs' original Complaint was filed, Mildred Savitt was a member of M+J Savitt's Board of Directors.

22. Given the disputed November 18, 2008 special shareholder meeting, at the time this Second Amended Complaint was filed M+J Savitt's board of directors is comprised of only Wynne and Mildred Savitt. (Janis Savitt, Michelle Savitt, Mildred Savitt, Designs by Janis Savitt, Paul Savitt,

NATURE OF ACTION

23. This lawsuit primarily relates to the unauthorized use of M+J Savitt's famous trademarks and copyrights. The fundamental purpose of intellectual property law is to protect consumers from being confused as to the source or affiliation of the products or services that they seek to buy. In order to assist consumers in making informed purchasing decisions, intellectual property law encourages companies to differentiate their products and services within the marketplace. This is accomplished by legally limiting the use of a brand or copyright to the owner of the applicable brand or copyright.

24. Some individuals and entities attempt to take advantage of consumers by marketing their products or services using the brands and copyrights of others. In effect, they seek a free ride on the reputation and goodwill of another's brand and/or copyrighted material. This lawsuit, *inter alia*, involves exactly such a situation – efforts by individuals and a corporation to "free ride" on the brands and copyrighted materials of another company.

25. Additionally, this lawsuit relates to, *inter alia*, mismanagement, corporate waste, theft and misuse of corporate assets, intentional infliction of emotional distress, negligence and gross negligence, breach of contract and fiduciary duties, as well as fraud and other self dealings in the context of a famous family-owned jewelry business.

JURISDICTION AND VENUE

26. This action arises in part under the Lanham Act, 15 U.S.C. §§ 1114 and 1125. This Court has federal question jurisdiction over the claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and 1338(b). This Court has supplemental jurisdiction over the New York State law claims pursuant to 28 U.S.C. § 1367(a) because those claims are so closely related to the federal claims brought herein as to form part of the same case or controversy.

27. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims herein occurred in this District.

ALLEGATIONS COMMON TO ALL CLAIMS

HISTORY OF M+J SAVITT, INC.

28. M+J Savitt, a privately held company, has an illustrious history. M+J Savitt was incorporated in 1972, more than thirty-five (35) years ago.

29. M+J Savitt is engaged in designing, manufacturing and wholesaling fine and semi-precious designer jewelry. The company is a pioneer in combining high fashion design and jewelry.

30. For over thirty-five (35) years, M+J Savitt has developed global name-recognition and goodwill and has become a household name in the jewelry and fashion industries.

31. The M+J Savitt brand is synonymous with unique jewelry products, including a definitive design aesthetic, which designs are clean, modern, bold and innovative, yet classical, interesting and provocative.

32. Throughout its history, M+J Savitt has sold to and continues to sell to, among other retail outlets, Neiman Marcus, Saks Fifth Avenue, Barney's New York, Henri Bendel's, Bloomingdales, Bergdorf Goodman, as well as other specialty retailers and high-end jewelers.

33. Among many other accolades, M+J Savitt has won the coveted "COTY" award, been nominated for two (2) CFDA Accessory Designer of the Year awards, twenty-seven (27) DeBeers "Diamond Today" awards, and is a member of the Diamond International Hall of Fame.

34. M+J Savitt has collaborated with famous designers such as Vera Wang, Ralph Lauren and Michael Kors, to name a few.

35. Janis, Wynne and Michelle Savitt are siblings. They each own twenty-seven percent (27%) of M+J Savitt.

36. Mildred Savitt, Wynne, Janis and Michelle Savitt's mother, owns the remaining

nineteen percent (19%) of M+J Savitt.

37. Upon information and belief, and according to a 1985 M+J Savitt resolution, Michelle Savitt is incapacitated. Upon information and belief, there has not been any modification of this corporate resolution.

38. M+J Savitt was originally funded by defendant, Paul Savitt who is Janis, Michelle and Wynne Savitt's father and Mildred Savitt's husband. Paul Savitt, both an artist and businessman by trade, was the original inspiration for many of M+J Savitt's jewelry designs.

39. Paul Savitt, has been an absentee officer of M+J Savitt for decades.

40. Paul Savitt's involvement with M+J Savitt was limited to creating renderings for design competitions, which designs were M+J Savitt's work for hire.

41. Paul Savitt was never compensated, failed to sign corporate tax returns for the years 1985 through 2006, neglected to guarantee a Small Business Association Loan (the "SBA Loan") and was, at all times relevant to the causes of action alleged herein, never truly in charge of the "general business, affairs and property" of M+J Savitt as required under Article III, Section 4 of M+J Savitt's By-Laws (the "By-Laws").

42. Additionally, Paul Savitt failed to supervise M+J Savitt's officers and agents, preside over periodic shareholder or director meetings and never noticed or called for annual shareholder meetings.

43. In fact, at all times relevant to the claims herein, Paul Savitt refused to discuss the business affairs of M+J Savitt with Wynne Savitt because, as only Paul Savitt can put it, talking about the Corporation was "too stressful" and he wanted to "preserve a calm in his life to survive."

44. Paul Savitt is a painter and an artist by trade.

45. At all times relevant to the allegations made herein, Janis Savitt has represented herself as President of M+J Savitt on, among other corporate documents, filings with the Internal

46. At all times relevant to the allegations made herein, Michelle Savitt has also represented herself as President of M+J Savitt on, among other corporate documents, a Small Business Association loan (the "SBA Loan").

47. As mandated under the By-Laws, Wynne Savitt, as Executive Vice-President of M+J Savitt, has filled the void left by Paul Savitt's absence and has taken on the role of President of M+J Savitt for over twenty (20) years.

48. Wynne Savitt has effectively managed the day to day operations of M+J Savitt by herself with very little, if any, assistance from the rest of M+J Savitt's officers and Wynne Savitt's family members.

49. Mildred Savitt has never had any operational duties on behalf of M+J Savitt.

50. Among other duties, Janis Savitt is primarily responsible for designing jewelry for M+J Savitt.

51. Among other duties, Wynne Savitt, also a jewelry designer, is primarily responsible for the sales and merchandising aspects of M+J Savitt.

52. On or about December 31, 2007, Janis Savitt, failed to execute the necessary legal documentation to transfer her ownership interest or her in M+J Savitt pursuant to the terms of the M+J Savitt By Laws and Articles of Incorporation.

M+J SAVITT'S TRADEMARKS

53. M+J Savitt has had a longstanding usage of the trademark **SAVITT** both as a trademark for jewelry, as part of its trade name and corporate identifier, as well as within magazine editorial credits, paid for advertising and promotional materials (magazine editorial credits and paid for advertising and promotional materials are hereinafter collectively referred to as "Advertisements").

54. M+J Savitt has also conducted business as **JANIS SAVITT FOR M+J SAVITT** for approximately sixteen (16) years. See Exhibit 1 annexed hereto for copies of M+J Savitt Advertisements utilizing the **JANIS SAVITT FOR M+J SAVITT** mark.

55. At the express request of Janis Savitt, M+J Savitt approved the use of **JANIS SAVITT FOR M+J SAVITT** for branding purposes on only one segment of the company's jewelry collection; namely the Gold and Diamond Precious Metal Collection (the "Collection").

56. M+J Savitt has also conducted business as **JANIS SAVITT** for approximately sixteen (16) years. Various retail outlets such as Bergdorf Goodman utilized the mark **JANIS SAVITT** in Advertisements instead of the longer version **JANIS SAVITT FOR M+J SAVITT**. See Exhibit 2 annexed hereto for copies of M+J Savitt Advertisements utilizing the **JANIS SAVITT** mark.

57. To preserve and enhance its trademark rights, M+J Savitt has obtained several federal trademark registrations for its trademarks, all of which have been in continuous use for more than five (5) years and are therefore considered "incontestable" pursuant to 15 U.S.C. § 1115(b), including: (a) **SAVITT,** U.S. Registration No. 2,941,210, registered on September 15, 2003 for "jewelry" based on first use in commerce in 1984; (b) **S M+J SAVITT & DESIGN**, (all in stylized form), U.S. Registration No. 2,116,162, registered on November 25, 1996 for "jewelry made of precious metals, and jewelry with precious stones" based on first use in commerce in 1984; and (c) **M+J SAVITT**, U.S. Registration No. 3,022,631, registered on September 15, 2003 for "jewelry" based on first use in commerce in 1984 ("Janis Savitt for M+J Savitt", "Savitt," "S M+J Savitt & Design" (all in stylized form) and "M+J Savitt" are collectively referred to herein as the "Marks").

58. M+J Savitt has common law rights to the Marks in New York by virtue of the Marks' eligibility for protection and M+J Savitt's status as the senior user of the Marks.

59. The Marks are unique and famous distinctive designations of the source of M+J

Savitt's jewelry and precious metal goods and services.

60. M+J Savitt has invested approximately two million dollars ($2,000,000.00) in retailer coop advertising programs and marketing in order to build the fame, reputation and goodwill of the Marks.

61. M+J Savitt is promoted and editorialized through a variety of media, including the Internet, magazines and newspapers across the country and the world. Specifically, M+J Savitt promotes its products in some of the most well-known worldwide publications including, but not limited to, Harper's Bazaar, Vogue, In Style, Elle, Vanity Fair, Women's Wear Daily, Town & Country, Glamour, Cosmopolitan and Allure. See Exhibit 3 for just a small sampling of Advertisements in such publications.

62. Through M+J Savitt's action, and because of widespread and favorable public acceptance and recognition, the Marks have become distinctive designations of the source of origin of M+J Savitt's goods and services.

63. The Marks have become uniquely associated with, and hence identify M+J Savitt. The Marks are assets of incalculable value as symbols of M+J Savitt, its original designs, quality goods and services, and its goodwill. Accordingly, the Marks have developed secondary meaning.

64. The Marks have become "famous" within the meaning of the dilution provisions of the Lanham Act, 15 U.S.C. § 1125(c). For example, as a result of M+J Savitt's extensive editorial credits, advertising and promotional efforts and its continuous use of the Marks, M+J Savitt has attained a high level of brand recognition among consumers.

Savitt's consent or authorization, used and is currently using the Marks in her individual capacity and for her own personal interest to compete with M+J Savitt.

66. M+J Savitt has never granted Janis Savitt or Designs by Janis Savitt any permission, authority, or license to use the Marks for the promotion of jewelry or precious metals goods or services, either directly or indirectly.

67. On or about October 31, 2006, Janis Savitt, individually and while simultaneously owing a fiduciary duty to M+J Savitt, applied for the trademark **JANIS SAVITT** for use with "jewelry" without the consent or authorization of M+J Savitt (the "Trademark Application").

68. The Trademark Application was abandoned on or about April 15, 2008 subsequent to the United States Patent and Trademark Office ("USPTO") Examining Attorney's refusal of the Trademark Application on the basis that the mark sought (**JANIS SAVITT**) was likely to be confused with the Marks. The USPTO Examining Attorney concluded that the commercial impressions conveyed by both the mark **JANIS SAVITT** and the M+J Savitt Marks were identical as to **SAVITT**, and the designations identified the same type of products, i.e. jewelry. See Exhibit 4 annexed hereto for a copy of the Trademark Application file with refusal.

69. From December 2006 to February 2007, Janis Savitt, individually, and while simultaneously owing a fiduciary duty to M+J Savitt, entered into business discussions with QVC, a cable television retailer, for the sale of jewelry items using the **SAVITT** trademark without M+J Savitt's consent or authorization.

70. Janis Savitt, individually, and while simultaneously owing a fiduciary duty to M+J Savitt, has entered into and continues to enter into business discussions with various other retailers, freelance fashion stylists, vendors and media outlets to promote and sell jewelry items using the

SAVITT trademark without M+J Savitt's consent or authorization.

71. On or about December 31, 2007, the same day she purportedly left M+J Savitt, Janis Savitt, individually, and while simultaneously owing a fiduciary duty to M+J Savitt, formed the company "Designs by Janis Savitt, Inc." using the word mark **SAVITT** within its trade name, title, theme, brand and promotional name. Such usage relates to jewelry and precious metal goods or services and was performed without M+J Savitt's consent or authorization. See Exhibit 5 annexed hereto for a copy of documents reflecting the formation of "Designs by Janis Savitt, Inc." and obvious usage of the **SAVITT** mark within said trade name.

72. At all times relevant to the allegations contained herein, Janis Savitt, without M+J Savitt's consent or authorization, has used and is currently using the Marks in her individual capacity and for her own personal interest to compete with M+J Savitt through "Janis Savitt d/b/a Janis by Janis Savitt, Inc."

73. At all times relevant to the allegations contained herein, Janis Savitt has created and continues to create jewelry designs using the Marks without M+J Savitt's consent or authorization. Such designs are "works for hire" under the federal copyright laws, and are therefore the exclusive property of M+J Savitt.

74. As evidence of Janis Savitt's specific intent to use the Marks in commerce and form her own corporate entity for personal gain, on or about October 31, 2006, the same day she applied for the **JANIS SAVITT** mark, and while simultaneously owing a fiduciary duty to M+J Savitt, Janis Savitt registered the domain name located at www.Janis-Savitt.com (the "Domain Name"). Consistent with Defendant Janis Savitt's pattern of wrongful, deceitful and fraudulent conduct, Defendant, Janis Savitt secreted her public identity as owner/registrant of the Domain Name through a "Domain Discreet" product/service offered by the Register.com registrars. See Exhibit 6 annexed hereto for a copy of the WHOIS records reflecting "Janis Savitt" as registrant of the

Domain Name on December 12, 2007 and "Domain Discreet" as registrant of the Domain Name as of October 2, 2008.

75. After learning that Janis Savitt and Designs by Janis Savitt were using the Marks to promote their own products and services, Plaintiffs and their counsel demanded that Janis Savitt and Designs by Janis Savitt cease and desist from their infringing conduct (the "Cease and Desist Letters"). See Exhibit 7 annexed hereto for true and accurate copies of Plaintiffs' Cease and Desist letters.

76. Rather than adhering to the demands contained in the Cease and Desist Letters, Janis Savitt and Designs by Janis Savitt sought continued press coverage of their jewelry products, improperly using the Marks to promote such products, causing confusion in the marketplace and further damage to Plaintiffs.

77. At all times relevant to the allegations contained herein, Paul Savitt has had actual knowledge of Janis Savitt's usage of the Marks and self-dealing, yet failed to act both on behalf of M+J Savitt as President of the company and in his individual capacity. See Exhibit 8 annexed hereto for correspondence placing Paul Savitt on notice of Janis Savitt's infringement on the M+J Savitt Marks, together with proof of receipt of said correspondence and handwritten notes of Paul Savitt.

78. At all times relevant to the allegations contained herein, Defendants have provided Janis Savitt and Designs by Janis Savitt with financial aid and support including, but not limited to, providing Janis Savitt and Designs by Janis Savitt with a home office located in Westhampton, New York.

79. Additionally, Defendants have been willfully blind to Janis Savitt and Designs by Janis Savitt's personal use the Marks to compete with M+J Savitt without M+J Savitt's consent or approval.

80. Janis Savitt's continued use of the Marks in Advertisements without authorization

from M+J Savitt and in press releases is a blatant attempt to trade off the name and reputation of the Marks and creates a false association as a platform to launch her new competing business.

81. Janis Savitt is using the Marks boldly and prominently and in a calculated manner to suggest that Designs by Janis Savitt is sponsored by or affiliated with M+J Savitt, and this misuse has already caused enormous actual confusion.

82. Janis Savitt, as junior user of the Marks, continues to use the Marks after the USPTO has refused registration based upon the senior user's (M+J Savitt) own registration. Such conduct is indicative of bad faith.

UNAUTHORIZED USE OF THE M+J SAVITT INTELLECTUAL PROPERTY BY MICHELLE SAVITT, SEPP DONAHOWER AND SEPPE1

83. New investigation has revealed that at all times relevant to the allegations contained herein, Michelle Savitt and Sepp Donahower, without M+J Savitt's consent or authorization, used and are currently using M+J Savitt's Marks, Copyrights and designs in their individual capacity and for their own personal interest to compete with M+J Savitt.

84. M+J Savitt has never granted Michelle Savitt, Sepp Donahower, or Seppe1 any permission, authority, or license to use M+J Savitt's Marks, Copyrights and designs for the promotion of jewelry or precious metals goods or services, either directly or indirectly.

85. Specifically, Michelle Savitt, Sepp Donahower and Seppe1 are also selling the Michelle Savitt Stolen Jewelry (as defined and described with particularity hereinbelow), to the public without M+J Savitt's consent or authorization.

86. New investigation has revealed that while simultaneously owing a fiduciary duty to M+J Savitt, Michelle Savitt, through the Seppe1 corporate entity, has entered into business discussions with M+J Savitt vendors and customers, for the sale of jewelry items using the **SAVITT** trademark without M+J Savitt's consent or authorization.

87. New investigation has revealed that Michelle Savitt, individually, and while

simultaneously owing a fiduciary duty to M+J Savitt, has entered into and continues to enter into business discussions with various other retailers, freelance fashion stylists, vendors and media outlets to promote and sell jewelry items using the **SAVITT** trademark through the Seppel corporate entity without M+J Savitt's consent or authorization.

88. In January 2009, Wynne Savitt contacted Seppel and requested a description of the type of jewelry that Seppel sold. On this telephone call, a Seppel representative stated that Seppel sold "Savitt jewelry."

89. Some of the M+J Savitt merchandise being sold to the public through Seppel are the Michelle Savitt Stolen Jewelry, as specifically described and defined hereinbelow.

90. Michelle Savitt, while simultaneously owing a fiduciary duty to M+J Savitt, formed Seppel using the word mark **SAVITT** to promote its jewelry and precious metal goods or services. Such conduct was performed without M+J Savitt's consent or authorization.

91. At all times relevant to the allegations contained herein, Michelle Savitt has created and continues to create jewelry designs for Seppel using M+J Savitt's Copyrights and designs without M+J Savitt's consent or authorization. Such designs are "works for hire" under the federal copyright laws, and are therefore the exclusive property of M+J Savitt.

92. At all times relevant to the allegations contained herein, Sepp Donahower has provided Michelle Savitt and Seppel with financial aid and support including, but not limited to, extending financing to Seppel.

93. Additionally, Sepp Donahower has been willfully blind to Michelle Savitt's and Seppel's personal use the Marks, Copyrights and designs to compete with M+J Savitt without M+J Savitt's consent or approval. Specifically, Sepp Donahower has had actual knowledge of Plaintiffs' allegations against the Savitt family. In fact, throughout the early part of 2008, Sepp Donahower was instrumental in locating specific examples of how Janis Savitt was misusing the M+J Savitt

Marks, Copyrights and designs and providing such examples to Wynne Savitt. Yet, Sepp Donahower, despite having actual knowledge of same formed Seppe1, in part, to liquidate whatever M+J Savitt merchandise that was stolen from M+J Savitt by his wife, Michelle Savitt.

94. The continued use of the Marks, Copyrights and designs by Michelle Savitt, Sepp Donahower and Seppe1 without authorization from M+J Savitt is a blatant attempt to trade off the name and reputation of the Marks and creates a false association as a platform to launch a new competing business.

95. The use of the Marks, Copyrights and designs by Michelle Savitt, Sepp Donahower and Seppe1 are performed boldly and prominently and in a calculated manner to suggest that Seppe1 is sponsored by or affiliated with M+J Savitt, and this misuse has already caused enormous actual confusion.

96. Michelle Savitt, Sepp Donahower and Seppe1, as junior user of the Marks, continues to use the Marks after the instant lawsuit was filed. Such conduct is indicative of bad faith.

CONFUSION AND HARM TO M+J SAVITT BY JANIS SAVITT AND DESIGNS BY JANIS SAVITT, INC.

97. Many consumers, media outlets, retailers and vendors are unaware that Designs by Janis Savitt has no affiliation with M+J Savitt.

98. Janis Savitt's use of the Designs by Janis Savitt tradename is confusingly similar to the M+J Savitt Marks and is causing confusion in the marketplace for jewelry goods and services.

99. As a result of Designs by Janis Savitt's usage of the Marks, consumers, media outlets, retailers, freelance fashion stylists and vendors have been associating the quality of the goods and services offered by M+J Savitt with those offered by Designs By Janis Savitt and/or Janis Savitt, individually, and if dissatisfied with such goods and services, may decide to avoid M+J Savitt's goods and services in the future.

100. As a result of Designs by Janis Savitt's usage of the Marks, M+J Savitt's core jewelry

designs are being misrepresented.

101. Among other things, the following facts and circumstances support the conclusion that the use of the Marks in commerce by Janis Savitt, in her individual capacity, and Designs by Janis Savitt is likely to cause confusion in the marketplace: (a) the Marks have acquired exceptionally strong secondary meaning over the course of the last thirty-five (35) years; (b) Designs by Janis Savitt and Janis Savitt, individually, use the Marks or terms confusingly similar thereto in Advertisement text and within a tradename; (c) goods and services offered by Designs by Janis Savitt and Janis Savitt, individually, directly compete with the goods or services offered by M+J Savitt; (d) Designs by Janis Savitt and Janis Savitt, individually, use the same marketing channels as M+J Savitt; (e) consumers, media outlets, freelance fashion stylists, vendors and retailers have actually been confused as a result of the conduct of Designs by Janis Savitt and Janis Savitt, individually; and (f) Designs by Janis Savitt and Janis Savitt, individually, began using the Marks or terms very similar to the Marks after the Marks were registered and after the Marks became famous and distinctive.

102. Designs by Janis Savitt and Janis Savitt in her personal capacity did so with full knowledge of M+J Savitt's rights in the Marks. In fact, it is the specific intent of Designs by Janis Savitt and Janis Savitt to use the Marks as set forth in this Complaint in order to profit from consumer association of the Marks with Designs by Janis Savitt and Janis Savitt, individually.

103. There is substantial evidence of actual customer confusion including, but not limited to the following examples: (a) on or about November 20, 2008, Angela Collantes contacted the Corporation requesting Designs by Janis Savitt jewlery for a story in "Vogue" magazine (in Spain); (b) on or about October 8, 2008, Christina Woo sent a written request to the Corporation for the Janis Savitt assymetrical necklace that was personally selected by celebrity designer Nicole Miller as one of her favorite items; (c) on or about August 27, 2008, Molly Thompson and Lori Goldstein, employees of "LA Magazine" contacted the Corporation requesting Designs by Janis Savitt jewlery

products; (d) on or about May 13, 2008, Antonia Kojuharova, European Market Editor for Elle Accessories provided the Corporation with a written inquiry about Designs by Janis Savitt; (e) on or about June 10, 2008, Emily Crouch from "W Magazine" "accidentally" sent the Corporation a gold cuff jewlery product with crystals to the Corporation, rather than Designs by Janis Savitt; and (f) on or about April 15, 2008, "InStyle" magazine sent the Corporation a request that Janis Savitt be featured in one of the magazine's stories.

104. In an April 2008 article published by the trade magazine *Women's Wear Daily*, Janis Savitt admits that Designs by Janis Savitt will "bring in approximately $5 million in its first year at retail." See Exhibit 9 annexed hereto for said article.

JANIS SAVITT'S FAILURE TO EXECUTE CORPORATE AGREEMENTS

105. In or about February 2003, M+J Savitt secured the SBA Loan in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00).

106. The promissory note for the SBA Loan is collateralized by Janis, Michelle and Wynne's personal assets.

107. The first security interest on the SBA Loan was Wynne Savitt's primary residence.

108. Upon receipt of the SBA Loan, M+J Savitt initiated the process of using these funds to generate working capital for the business and build its jewelry line so that M+J Savitt could earn additional income/revenue.

109. Notwithstanding the SBA Loan, M+J Savitt needed additional funding agreements with third party lending institutions and/or factors to continue to expand its business (the "Factoring Agreements").

110. However, Janis Savitt repeatedly refused to sign such Factoring Agreements, effectively blocking M+J Savitt's ability to generate additional working capital to expand and grow its business.

111. In 2001, payment of M+J Savitt's Federal and New York State tax obligations became in arrears. In connection with the past due state tax obligations, M+J Savitt's corporate accountant negotiated a settlement with the State of New York (the "Settlement Agreement"). One condition of the Settlement Agreement was that Janis, Michelle and Wynne Savitt had to each execute the Settlement Agreement.

112. Similar to Janis Savitt's refusal to sign the Factoring Agreements, after M+J Savitt's many verbal and written requests to obtain Janis Savitt's signature on the Settlement Agreement, Janis Savitt refused to execute it. In fact, Janis Savitt never signed the Settlement Agreement.

113. As a result of Janis Savitt's refusal to execute the Settlement Agreement and Factoring Agreements, M+J Savitt was unable to generate additional working capital and grow its business.

114. Additionally, based upon Janis Savitt's failure to execute the Settlement Agreement, the State of New York filed a lien against M+J Savitt's corporate bank account in the amount of One Hundred Twenty-Four Thousand One Hundred Eighty-Eight Dollars and Thirty-Two cents ($124,188.32) (the "New York State Lien").

115. Based upon Janis Savitt's failure to sign the Settlement Agreement and Factoring Agreements, together with the resulting New York State Lien, M+J Savitt had very little working capital to continue growing its business in a reasonable manner causing M+J Savitt's gross sales revenue to significantly decrease.

116. Based upon Janis Savitt's failure to sign the Settlement Agreement and Factoring Agreements, the resulting New York State Lien and M+J Savitt's inability to generate working capital to continue doing business in a reasonable manner, Wynne Savitt personally suffered damages in lost wages between 2005 and 2008 and accumulated personal credit card debt, plus interest in order to cover business costs associated with various industry trade shows.

117. At all times relevant to the allegations contained herein, Paul Savitt had actual knowledge of the forgoing conduct by Janis Savitt, and induced and even encouraged Janis Savitt to cause harm to Plaintiffs.

118. Based upon Janis Savitt's failure and refusal to sign the Settlement Agreement and Factoring Agreements, her filing of the Trademark Application in October 2006, the formation of Designs by Janis Savitt in December 2007, the registration of the Domain Name in October 2006 and repeated self dealing and improper usage of the Marks for her own personal gain and outside the scope of her fiduciary duties to M+J Savitt, Janis Savitt, together with Paul Savitt's encouragement and inducement, has intentionally engaged in an intentional and premeditated scheme to cause harm to Plaintiffs.

M+J SAVITT EMPLOYMENT ISSUES

119. At all times relevant to the allegations contained herein, Janis Savitt verbally abused and defamed Wynne Savitt and other M+J Savitt employees, creating a hostile working environment within the M+J Savitt office and damaging M+J Savitt's ability to maintain quality employees or even hire new ones, thus severely damaging M+J Savitt's ability to generate revenue and income.

120. At all times relevant to the allegations contained herein, Janis Savitt used foul language and profanity towards Wynne Savitt and M+J Savitt employees, creating a hostile working environment within the M+J Savitt office and damaging M+J Savitt's ability to maintain quality employees or even hire new ones.

121. For example, on or about February 24, 2004, an M+J Savitt employee resigned because she was "verbally abused" by Janis Savitt. As a result of Janis Savitt's conduct, the employee filed a complaint with the New York State Department of Labor against M+J Savitt. See Exhibit 10 annexed hereto for a copy of said complaint.

122. In yet another display of such defamatory and abusive conduct, Janis Savitt falsely

accused Wynne Savitt of "fucking the bookkeeper" in front of M+J Savitt employees and during normal business hours.

FORGED CORPORATE CHECKS

123. M+J Savitt required two (2) signatures on each and every corporate check in order to prevent individual self-dealing, corporate waste and/or fraud by its shareholders.

124. On or about August 3, 2004 and August 10, 2004, respectively, Janis Savitt forged Michelle Savitt's signature on M+J Savitt corporate checks. See Exhibit 11 annexed hereto for copies of the forged and fraudulent checks.

125. Additionally, on or about October 24, 2005, Janis Savitt improperly signed two (2) M+J Savitt corporate checks made payable to Wynne Savitt as "Fuck you Savitt." See Exhibit 11.

MISAPPROPRIATION OF WYNNE SAVITT'S PERSONAL IDENTITY

126. On or about March 8, 2007, Janis Savitt compromised Wynne Savitt's e-mail address/account located at wsavitt@yahoo.com in an effort to disrupt M+J Savitt's business relationships and otherwise divert business from M+J Savitt to herself.

127. Specifically, Janis Savitt: (a) logged into Wynne Savitt's e-mail account without permission; (b) changed the welcoming greeting within Wynne Savitt's e-mail account from "Welcome Wynne" to "Welcome Janis"; and (c) modified Wynne Savitt's personal information, including Wynne Savitt's mailing address and telephone number to reflect Janis Savitt's own personal contact information.

128. On or about April 22, 2007, Ms. Jennifer Rachels, a compliance case assistant for Yahoo!, Inc. ("Yahoo"), concluded that based upon the response to a certain subpoena served on Verizon Communications ("Verizon") (the applicable Internet Service Provider) to obtain information and documentation concerning Wynne Savitt's compromised personal e-mail account,

Janis Savitt's home personal computer terminal was used to access and compromise Wynne Savitt's e-mail account. See Exhibit 12 for a copy of the Tenafly Police Department Incident Data Sheet.

129. As a result of the foregoing, M+J Savitt and Wynne Savitt, individually, have suffered damages in an amount to be determined at trial.

130. Based on the conduct described in paragraphs 38 to 91 herein, Plaintiff, Wynne Savitt, has been the only M+J Savitt officer trying to carry out the daily responsibilities of M+J Savitt. Defendants, Janis and Paul Savitt, have repeatedly refused to address any and all business issues relating to M+J Savitt despite Plaintiff, Wynne Savitt's, continuing attempts to notify them of same. Plaintiff, Wynne Savitt, has been running the daily affairs of M+J Savitt without receiving compensation and while all along placing her personal assets at risk and using personal funds to pay necessary corporate expenses.

MISMANAGEMENT OF M+J SAVITT BY JANIS AND MICHELLE SAVITT

131. Janis and Michelle Savitt failed to keep accurate records of M+J Savitt inventory and of M+J Savitt's finances.

132. Janis Savitt, as M+J Savitt's Secretary, failed to maintain M+J Savitt corporate minute books.

133. Janis and Michelle Savitt failed to conduct annual shareholder meetings.

134. Janis and Michelle Savitt frequently purchased the wrong items for inventory.

135. Following Michelle and Janis Savitt's purported departure from M+J Savitt, Janis and Michelle Savitt contacted current M+J Savitt consumers, potential consumers, retailers, freelance fashion stylists and vendors in an effort to compete with M+J Savitt while simultaneously using information they obtained while employed with M+J Savitt. The purpose of such communications was and is to divert business away from M+J Savitt and to Designs by Janis Savitt and Seppel.

136. Janis and Michelle Savitt frequently used M+J Savitt petty cash to reimburse

themselves for personal purchases.

137. Specifically, Michelle Savitt would pick previously used New York City Metrocards off of the New York City streets and then falsely submit these Metrocards to M+J Savitt's bookkeeper for reimbursement.

138. To the extent Michelle Savitt actually used New York City Metrocards, Michelle Savitt would submit false Metrocard receipts to M+J Savitt's bookkeeper for reimbursement even though she used the Metrocards for personal reasons rather than to conduct business on behalf of M+J Savitt or to attend corporate meetings.

139. Additionally, Janis and Michelle Savitt would tear food, beverage and entertainment receipts in half and submit both portions of the torn receipts to M+J Savitt's bookkeeper for reimbursement so that they would be reimbursed twice.

140. Janis and Michelle Savitt have also taken property belonging to M+J Savitt for use by parties other than M+J Savitt including, but not limited to, Designs by Janis Savitt and Seppe1. Such property includes customer files and documents belonging to M+J Savitt. Such property also contains confidential, proprietary secrets and/or trade secrets.

141. Specifically, Janis Savitt has converted the following items from M+J Savitt: (i) a wide, thick, diamond and gold pave front ring featured in the November 2008 issue of *Vogue* as "Janis by Janis Savitt" ring – Style # DR92; (ii) an original pave diamond and gold inside out hoop earrings – Style #DE316; (iii) a gold and diamond large pave sun pendant on chain – Style #DP250; (iv) a large gold and diamond gypsy earring set – Style #DE196; (v) a gold and diamond straight line bracelet with large diamonds all the way around with two (2) pieces of thick flat band rings with baguette and round diamonds in gold – Style #DR356/dr357; (vi) gold and CZ chandelier earrings – style # CSE238; (vii) all pave diamond/gold pyramid style hinged bracelets; (viii) gold and diamond large square pave top ring – Revised Style #472; (ix) a gold and diamond multi-strand snake chain

bracelet with a diamond clasp; (x) a "Rolls Royce" sterling silver gold pin; (xi) a rised M+J Savitt signature "large sun desk piece" in silver/gold; (xi) a pyramid sterling gold collar; and (xii) a pyramid sterling gold bangle; and (xiii) sterling silver shirt cuffs with CZ cufflinks (collectively, "Janis Savitt's Stolen Jewelry").

142. Specifically, Michelle Savitt has taken the following items from M+J Savitt: (i) "South Sea" pearl and diamond drop earrings – Style #CSE287; (ii) a "citrine on citrine" draped necklace with diamonds – Style #CSP280; (iii) approximately four (4) different size diamond straight line "Stick Bracelets" with gold and diamonds – Style #DB214A and DB#120; (iv) approximately ten (10) assorted gold and bezel set color stone bangles Style# CSB366, 367, 368; (v) approximately six (6) assorted gold and diamond "Stick Bracelets" with inset bezel colored stones – Style #CSB79, 80, 82; (vi) thick gold and diamond hinged bangle with burnished diamonds – Style #DB208; (vii) a gold and Citrine sandwich set of earrings; (viii) a gold and diamond "citrine" pendant on a chain – Style# CSP155; (ix) a gold, diamond and "citrine" blue topaz pendant – Style #CSP195; (x) a gold and diamond green tourmaline angle ring – Style #CSR229; (xi) a gold step ring color stone with diamonds – Style #CSR155; (xii) a gold and diamond buckle with loop – Style #DACC34, 33; (xiii) two (2) sterling silver and turquoise cabochon bracelets; Style #SSB6022; and (xiv) sterline, citrine and rutliated quartz hinged bracelet – Style #SSB5244 (collectively, "Michelle Savitt's Stolen Jewelry").

143. Michelle and Janis Savitt have utilized M+J Savitt's resources, inventory and proprietary secrets to conduct business for themselves through Seppe1 and Designs By Janis Savitt.

144. Designs by Janis Savitt, Janis Savitt, Michelle Savitt, Sepp Donahower and Seppe1 sell and continue to use some of M+J Savitt's inventory for profit without M+J Savitt's permission.

145. Janis Savitt and Michelle Savitt, in their personal capacities, abused M+J Savitt's policy concerning personal usage of M+J Savitt inventory to such a degree that M+J Savitt has been

significantly damaged by such conduct.

146. Janis Savitt, Michelle Savitt and Designs by Janis Savitt have failed to ever compensate M+J Savitt for the Janis Savitt Stolen Jewelry and the Michelle Savitt Stolen Jewelry.

147. In 2006, Janis Savitt falsely represented to Plaintiffs that she was signing M+J Savitt U.S. Income Tax Form 1120 as "Secretary" of M+J Savitt when, in fact, she signed said tax form as "President" M+J Savitt. See Exhibit 13 annexed hereto for a copy of said tax form.

148. At all times relevant to the allegations contained herein, Janis Savitt falsely represented to Plaintiffs that she was executing company credit applications as "Secretary" of M+J Savitt when, in fact, she represented herself as "President" of M+J Savitt. See Exhibit 13 annexed hereto for a copy of said credit application.

149. At all times relevant to the allegations contained herein, Michelle Savitt falsely represented to Plaintiffs that she was executing SBA Loan documents as an employee of M+J Savitt when, in fact, she represented herself as "President" of M+J Savitt. See Exhibit 13 annexed hereto for a copy of such SBA Loan documents.

150. At all times relevant to the allegations contained herein, Janis Savitt, in her personal capacity, and while simultaneously owing a fiduciary duty to M+J Savitt and unbeknownst to Plaintiffs, falsely represented to Plaintiffs that she was using Advertisements to promote M+J Savitt jewelry products rather than her own personal products. For example, Defendant, Janis Savitt falsely represented to Plaintiffs that she would not: (a) credit herself instead of M+J Savitt in Advertisements for a variety of products in many publications, including the March 2007 issue of Town & Country Magazine; (b) credit products as "Janis Savitt for Ralph Lauren" instead of "M+J Savitt for Ralph Lauren"; (c) misuse the **JANIS SAVITT FOR M+J SAVITT** Mark for brass products that were outside of the Collection; (d) misrepresent the cost of M+J Savitt jewelry products in Advertisements including, but not limited to, in a Vogue Magazine 2007 issue for a "Big

Time Necklace". See Exhibit 14 annexed hereto for copies of said misrepresentations.

151. Michelle Savitt frequently failed to show up at work and during the times in which she did show up at work, she only worked for a couple of hours per day.

152. In June 2008, Michelle Savitt left an M+J Savitt showroom sale after only being there for a few hours. As a result, M+J Savitt had to incur additional expenses in order to fully staff the showroom sale.

153. In June 2008, M+J Savitt merchandise was sent to Michelle Savitt for a charity event. Michelle Savitt converted such merchandise and transferred the merchandise to Seppel on consignment. M+J Savitt never consented or authorized such conduct.

154. Michelle Savitt without the consent or authorization of M+J Savitt impermissibly accessed an M+J Savitt corporate bank account to pay her corporate credit card despite the fact that the corporate card contained personal expenses.

THE SPECIAL SHAREHOLDER MEETING

155. On or about November 3, 2008, just days after the original Complaint was served on Paul Savitt, Paul Savitt impermissibly sent notice of a Special Shareholder Meeting (the "Special Meeting") (the "Notice") to Wynne Savitt and the other shareholders of M+J Savitt.

156. Having actual notice that the Special Meeting was not properly called, Defendants, including Sepp Donahower who attended the Special Meeting, used the Special Meeting to pass a corporate resolution, dated November 18, 2008 (the "Resolution").

157. The Resolution purportedly removed Wynne Savitt as an officer of M+J Savitt, effectively eliminating her "voice in management" and shutting her out of M+J Savitt's decision making process.

158. The purported removal of Wynne Savitt as an officer of M+J Savitt disrupted M+J Savitt's balance of power and caused Plaintiffs severe irreparable harm for which monetary damages

alone cannot cure.

159. Defendants continue to deny Wynne Savitt access to M+J Savitt's books and records.

160. While Plaintiffs dispute the validity of the Special Meeting, a second corporate resolution was passed at the Special Meeting naming Janis, Michelle and Paul Savitt as directors of M+J Savitt (the "New Board").

161. Assuming that the Special Meeting was validly noticed, which Plaintiffs' vehemently deny, the New Board was in place at the time Plaintiffs' Second Amended Complaint was filed.

162. In the event that the Special Meeting is deemed invalid, the board of directors at the time Plaintiffs' Second Amended Complaint was filed was Mildred and Wynne Savitt (the "Old Board").

163. Apparently, Michelle Savitt "never wanted" to be a director or officer of M+J Savitt. See Exhibit 15 annexed hereto and incorporated herein by reference.

164. Michelle Savitt only agreed to become a director and officer of M+J Savitt after being "pressured" by Defendants' lawyers. In fact, Michelle Savitt was "surprised" to discover that she was named a director and officer of M+J Savitt. See Exhibit 15.

165. Michelle Savitt was not given any "advance notice" of her new role as director and officer of M+J Savitt. See Exhibit 15.

166. Michelle Savitt was not given any "warning of the risks and jeopardy" of accepting the roles as director and officer of M+J Savitt. See Exhibit 15.

167. Additionally, Michelle Savitt falsely represented to Wynne Savitt that she was not attending the Special Meeting. As a result of this fraudulent representation, Wynne Savitt relied to her detriment by not appearing at the Special Meeting given her reasonable belief that without Michelle Savitt's attendance at the Special Meeting, there could be no shareholder majority to

constitute a quorum as required under the By-Laws thereby causing Plaintiffs irreparable harm.

168. Based on the foregoing, the Special Meeting was not only improperly noticed but the New Board was also elected under fraudulent and deceptive means.

FIRST CLAIM FOR RELIEF
FOR FEDERAL TRADEMARK INFRINGEMENT AS AGAINST JANIS SAVITT, DESIGNS BY JANIS SAVIT, MICHELLE SAVIT, SEPP DONAHOWER AND SEPPE1, INC.

169. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

170. The Marks (as defined hereinabove) are valid, federally registered trademarks entitled to protection under the Lanham Act.

171. The unauthorized, intentional and personal usage of the Marks by Janis Savitt, Michelle Savitt, Sepp Donahower, Designs by Janis Savitt and Seppe1 in commerce has caused and is likely to continue to cause consumer confusion as to the origin of sponsorship of their products and services and the association of their designs, products and services with M+J Savitt's products or services. See Exhibit 16 annexed hereto for just a few examples of Janis Savitt and Designs by Janis Savitt's unauthorized, intentional and personal usage of the Marks.

172. The conduct of Janis Savitt, Michelle Savitt, Sepp Donahower, Designs by Janis Savitt and Seppe1 constitutes a false designation of origin and a false description and representation, in violation of Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114(1), 1125(a).

173. The infringement by Janis Savitt, Michelle Savitt, Sepp Donahower, Designs by Janis Savitt and Seppe1 upon the Marks is willful and reflects their intent to exploit the goodwill and strong brand recognition associated with the Marks. See Exhibit 16.

174. Such infringement by Janis Savitt, Michelle Savitt, Sepp Donahower, Designs by Janis Savitt and Seppe1, has damaged M+J Savitt in an amount to be determined at trial. For example and without limitation, Janis Savitt, Michelle Savitt, Sepp Donahower, Designs by Janis

Savitt and Seppe1 have been unjustly enriched through their unlawful and unauthorized sales of jewelry products while using the Marks.

175. Janis Savitt, Michelle Savitt, Sepp Donahower, Designs by Janis Savitt and Seppe1's infringement has caused and, unless restrained by this Court, will continue to cause irreparable injury to M+J Savitt.

176. M+J Savitt has no adequate remedy at law for the infringement conducted by Janis Savitt, Michelle Savitt, Sepp Donahower, Designs by Janis Savitt and Seppe1.

SECOND CLAIM FOR RELIEF
FOR CONTRIBUTORY TRADEMARK INFRINGEMENT AS AGAINST ALL DEFENDANTS

177. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

178. With full knowledge of M+J Savitt's rights in and to the Marks, Paul and Mildred Savitt have provided both Janis Savitt and Designs by Janis Savitt with financial aid, including various antique items worth thousands of dollars.

179. With full knowledge of M+J Savitt's rights in and to the Marks, Sepp Donahower has provided Michelle Savitt and Seppe1 with financial aid, including supplying Seppe1 with corporate financing to open their retail outlet.

180. With full knowledge of M+J Savitt's rights in and to the Marks, Paul and Mildred Savitt have materially contributed to the trademark infringement by Janis Savitt and Designs by Janis Savitt through providing them with jewelry design services, M+J Savitt customer information, inventory, merchandise and other business plans and ideas.

181. With full knowledge of M+J Savitt's rights in and to the Marks, Sepp Donahower has materially contributed to the trademark infringement by Michelle Savitt and Seppe1 through providing them with corporate financing to open the Seppe1 retail outlet.

182. Paul and Mildred Savitt have provided Janis Savitt and Designs by Janis Savitt with all things necessary including, but not limited to, financial funding and a home office in Westhampton Beach, New York in order to effectuate the infringement upon the Marks by Janis Savitt and Designs by Janis Savitt.

183. Sepp Donahower has provided Michelle Savitt and Seppe1 with all things necessary including, but not limited to, financial funding for the Seppe1 retail outlet.

184. With full knowledge of M+J Savitt's rights in and to the Marks, all Defendants have intentionally induced Janis Savitt, Designs by Janis Savitt, Michelle Savitt and Seppe1 to infringe upon the Marks.

185. With full knowledge of M+J Savitt's rights in and to the Marks, Paul, Mildred, Michelle and Janis Savitt have been intentionally supplying one another jewelry products and designs that are being sold through Seppe1 and Designs by Janis Savitt.

186. Paul and Mildred Savitt are providing Designs by Janis Savitt and Janis Savitt with financial aid, support and encouragement by: (a) supplying Janis Savitt and Designs by Janis Savitt with M+J Savitt jewelry products and designs; (b) providing them with antique furniture and paintings which are worth thousands of dollars; and (c) entering into a landlord-tenant relationship through a home office in Westhampton Beach, New York where Janis Savitt does most, if not all, of her jewelry designing for Designs by Janis Savitt.

187. Paul and Mildred Savitt have also been willfully blind to the infringement of Janis Savitt and Designs by Janis Savitt. For example, Paul and Mildred Savitt have each individually failed to investigate such infringement despite their fiduciary obligations to do so.

188. For example, despite being placed on actual notice of many of the Challenged Transactions (as defined hereinbelow; including those related to infringement upon M+J Savitt's intellectual property) Mildred, Paul and Michelle Savitt never investigated such infringement for

years despite their fiduciary obligations to do so.

189. Moreover, Michelle, Mildred and Paul each assisted Janis Savitt and Designs by Janis Savitt, Inc. in selling products. Specifically, Paul Savitt, to this day, still supplies Janis Savitt, Michelle Savitt and Designs by Janis Savitt with products and jewelry designs.

190. Conversely, Janis, Paul and Mildred Savitt, together with the financial support of Sepp Donahower each assisted Michelle Savitt in selling products through Seppe1 that bear the M+J Savitt's Marks.

191. All Defendants are assisting one another in selling products that bear the Marks to directly compete with M+J Savitt.

192. All Defendants are providing one another with M+J Savitt customer information, inventory, merchandise, the Michelle Savitt Stolen Jewelry, the Janis Savitt Stolen Jewelry, business plans, bullion and product designs.

193. Sepp Donahower is providing Michelle Savitt and Seppe1 with financial aid, support and encouragement extending financing to open the Seppe1 retail outlet.

194. Paul Savitt specifically uses his wealth as a means of controlling his family, their votes as shareholders of the Corporation and their business ventures to such an extent where he has a significant degree of control and monitoring over Janis Savitt's activities.

195. With full knowledge of M+J Savitt's rights in and to the Marks, all Defendants have been willfully blind to the ongoing violations of the third party infringers Janis Savitt, Michelle Savitt, Seppe1 and Designs by Janis Savitt.

196. Not only have Janis, Michelle, Paul and Mildred Savitt had actual knowledge of the trademark infringement by Janis Savitt, Michelle Savitt, Seppe1 and Designs by Janis Savitt, but they have also been willfully blind to trying to stop it for over a year in clear violation of their fiduciary duties owed to M+J Savitt, its officers, directors and shareholders.

197. Not only has Sepp Donahower had actual knowledge of the trademark infringement by Janis Savitt, Michelle Savitt, Seppe1 and Designs by Janis Savitt, but he has also been willfully blind to trying to stop it for over a year. In fact, Sepp Donahower was initially the person that advised Wynne Savitt that Janis Savitt and Designs by Janis Savitt were infringing upon M+J Savitt's Marks.

198. All Defendants have not only suspected wrongdoing on the part of Janis Savitt and Designs by Janis Savitt but they have also deliberately failed to investigate whether Janis Savitt and Designs by Janis Savitt were infringing upon the Marks.

199. Sepp Donahower has not only suspected wrongdoing on the part of Janis Savitt, Michelle Savitt, Seppe1 and Designs by Janis Savitt but he has also deliberately failed to stop Seppe1 from infringing upon the Marks.

200. Defendants' contributory infringement is willful and reflects Defendants' intent to exploit the good will and strong brand recognition associated with the Marks.

201. M+J Savitt has been damaged by Defendants' contributory infringement in an amount to be determined at trial.

202. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by Defendants' actions.

203. M+J Savitt has no adequate remedy at law for the foregoing conduct.

THIRD CLAIM FOR RELIEF FOR FALSE REPRESENTATION AS AGAINST JANIS SAVITT AND DESIGNS BY JANIS SAVITT, INC.

204. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

205. The use of the Marks or terms confusingly similar thereto in editorial and advertising promotions for both Janis Savitt, individually, and through the Designs by Janis Savitt corporate

entity conveys the misleading commercial impression to the public that the products, goods and services offered by Janis Savitt and Designs by Janis Savitt are approved, endorsed or sponsored by M+J Savitt, or are otherwise affiliated with or supported by M+J Savitt. See Exhibit 16.

206. Each of these misleading uses of the Marks constitutes a false designation of origin and false description and representation, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

207. The false representations made by both Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity are willful and reflect Janis Savitt's and Designs by Janis Savitt's intent to exploit the goodwill and strong brand recognition associated with the Marks.

208. The false representations made by Janis Savitt and Designs by Janis Savitt have damaged M+J Savitt in an amount to be determined at trial.

209. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of both Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity.

210. M+J Savitt has no adequate remedy at law for the foregoing conduct.

FOURTH CLAIM FOR RELIEF FOR DILUTION UNDER THE LANHAM ACT AS AGAINST JANIS SAVITT AND DEISGNS BY JANIS SAVITT, INC.

211. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

212. The Marks are famous within the meaning of the Trademark Dilution Revision Act of 2006. In particular, the following facts support the conclusion that the Marks are famous: (a) as alleged above, M+J Savitt has advertised the Marks on a nationwide basis in a broad cross-section of prominent media for several decades; (b) the Marks have received massive publicity by both M+J Savitt and third parties; (c) M+J Savitt has earned millions of dollars in gross profits on a nationwide

basis in connection with the jewelry products and services offered under the Marks; (d) the Marks have achieved a high level of actual recognition among the consuming public; and (e) as alleged above, M+J Savitt has obtained numerous federal trademark registrations for its Marks. See Exhibit 15.

213. The use of the Marks or terms confusingly similar thereto by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity in advertising promotions has lessened and will continue to lessen the capacity of M+J Savitt's famous and distinctive Marks to distinguish M+J Savitt's jewelry products and services from those of others, and has diluted the distinctive quality of the famous and nationally recognized Marks. See Exhibit 16.

214. The conduct complained of by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity is likely to cause blurring to and of the Marks and impair the distinctiveness of the Marks. Consumers are likely to associate Janis Savitt's and Designs by Janis Savitt's usage of the Marks or terms confusingly similar thereto with the Marks themselves because of the similarity between Janis Savitt's and Designs by Janis Savitt's use of the Marks or terms confusingly similar thereto and the Marks themselves.

215. In particular, the following factors make dilution by blurring more likely: (a) Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity are making use of the Marks themselves; (b) the Marks have acquired tremendous distinctiveness through M+J Savitt's promotion and use of the Marks since 1972; (c) the Marks have become famous and have achieved a high level of recognition among the consuming public; (d) the use of the Marks by Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity is substantially exclusive to M+J Savitt, its agents and licensees; (e) Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity intend to create an association between their uses of the Marks or terms confusingly similar thereto and the Marks themselves; and

(f) many consumers, retailers, media outlets and vendors actually associate the use of the Marks by Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity with the Marks themselves.

216. The conduct by Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt corporate entity is also likely to cause tarnishment among the Marks that harms the reputation of the Marks because of the similarity between the uses of the Marks by Janis Savitt, in her individual capacity, and through Designs by Janis Savitt and the Marks themselves. In particular, many of the Advertisements that Janis Savitt and Designs by Janis Savitt use to promote their products, use the Marks, or terms confusingly similar thereto in the title or text of the Advertisements.

217. Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity has derived and continues to derive substantial revenue and profits from the past and ongoing dilution of the Marks as a result of their unauthorized uses of the Marks or terms confusingly similar thereto.

218. Such usage of the Marks by Janis Savitt, individually, and through the Designs by Janis Savitt corporate entity has caused damage to M+J Savitt in an amount to be determined at trial. For example, and without limitation, Janis Savitt and Designs by Janis Savitt have been unjustly enriched by their unlawful and unauthorized sales of goods and services while using the Marks.

219. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of both Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity.

220. M+J Savitt has no adequate remedy at law for the foregoing conduct.

FIFTH CLAIM FOR RELIEF
FOR TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION PURSUANT TO N.Y. GEN. BUS. LAW § 360-O AND COMMON LAW AS AGAINST JANIS SAVITT, MICHELLE SAVITT, SEPP DONAHOWER, SEPPE1, INC. AND DESIGNS BY JANIS SAVITT, INC.

221. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

222. The aforesaid acts and conduct of Janis Savitt, Michelle Savitt, Sepp Donahower, Seppe1 and Designs by Janis Savitt are, and unless enjoined, will continue to constitute trademark infringement and unfair competition in violation of the common law of the State of New York and N.Y. Gen. Bus. Law § 360-O.

223. The aforesaid acts and conduct of Janis Savitt, Michelle Savitt, Sepp Donahower, Seppe1 and Designs by Janis Savitt have been willful and knowing.

224. Such usage of the Marks by Janis Savitt, Michelle Savitt, Sepp Donahower, Seppe1 and Designs by Janis Savitt have caused damage to M+J Savitt in an amount to be determined at trial. For example, and without limitation, Janis Savitt, Michelle Savitt, Sepp Donahower, Seppe1 and Designs by Janis Savitt have been unjustly enriched by the unlawful and unauthorized sale of goods and services while using the Marks.

225. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of both Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity.

226. M+J Savitt has no adequate remedy at law for the foregoing conduct.

SIXTH CLAIM FOR RELIEF
FOR COPYRIGHT INFRINGEMENT AS AGAINST JANIS SAVITT, MICHELLE SAVITT, SEPP DONAHOWER, SEPPE 1, INC. AND DESIGNS BY JANIS SAVITT, INC.

227. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

228. M+J Savitt owns valid copyrights for its jewelry designs, including: (i) Visual Material; Author: M+J Savitt, Inc.; "2003 collection" for Jewelry; dated August 4, 2003, Registration No.: VA0001233560; (ii) Visual Material; Author: M+J Savitt, Inc.; "2004 Collection" for Jewelry, dated July 27, 2004, Registration No.: VA0001283686; (iii) Visual Material; Author: M+J Savitt, Inc.; "2004 Collection" for Jewelry, dated March 9, 2005, Registration No.: VA0001318908; and (iv) Visual Material; Author: M+J Savitt, Inc.; "Savitt Collection" for Jewelry, dated April 17, 2003, Registration No.: VA0001203991 (collectively, the "Copyrights").

229. Plaintiffs are aware of at least one instance where Janis and Michelle Savitt continue to sell M+J Savitt's signature federally registered Copyrighted design which is representative of a sun-like pendant. In fact, Janis Savitt ordered ten (10) castings/blanks for products generated from this copyrighted design and is now selling these protected products though the Designs by Janis Savitt corporate entity.

230. Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppe1 have sold and continue to sell products that infringe upon the M+J Savitt's federally registered Copyrights, including the Michelle and Janis Stolen Jewelry.

231. The Copyrights and the use thereof are "works for hire" under the federal copyright laws, and are therefore the exclusive property of M+J Savitt.

232. Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppe1 have used and continue to use jewelry designs that are "works for hire" under the federal copyright laws, and are therefore the exclusive property of M+J Savitt without M+J Savitt's consent or authorization.

233. Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppe1 are using the Copyrights for their own benefit in violation of M+J Savitt's exclusive rights in its Copyrights and the Federal Copyright Act, 17 U.S.C. §§ 101, *et. seq.*

234. Such usage of the Copyrights by Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppe1 has caused damage to M+J Savitt in an amount to be determined at trial. For example, and without limitation, Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppe1 have been unjustly enriched by the unlawful and unauthorized sales of goods and services while using the Copyrights.

235. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppe1.

236. M+J Savitt has no adequate remedy at law for the foregoing conduct.

SEVENTH CLAIM FOR RELIEF
FOR CONTRIBUTORY COPYRIGHT INFRINGEMENT AS AGAINST ALL DEFENDANTS

237. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

238. M+J Savitt owns valid federally registered Copyrights for various jewelry designs.

239. With full knowledge of M+J Savitt's rights in and to the Copyrights, Paul and Mildred Savitt have provided both Janis Savitt and Designs by Janis Savitt with financial aid, including various antique items worth thousands of dollars.

240. With full knowledge of M+J Savitt's rights in and to the Copyrights, Sepp Donahower has provided Michelle Savitt and Seppe1 with financial aid, including supplying Seppe1 with corporate financing to open their retail outlet.

241. With full knowledge of M+J Savitt's rights in and to the Copyrights, Paul and Mildred Savitt have materially contributed to the trademark infringement by Janis Savitt and Designs by Janis Savitt through providing them with jewelry design services, M+J Savitt customer information, inventory, merchandise and other business plans and ideas.

242. With full knowledge of M+J Savitt's rights in and to the Copyrights, Sepp Donahower has materially contributed to the trademark infringement by Michelle Savitt and Seppe1 through providing them with corporate financing to open the Seppe1 retail outlet.

243. Paul and Mildred Savitt have provided Janis Savitt and Designs by Janis Savitt with all things necessary including, but not limited to, financial funding and a home office in Westhampton Beach, New York in order to effectuate the infringement upon the Copyrights by Janis Savitt and Designs by Janis Savitt.

244. Sepp Donahower has provided Michelle Savitt and Seppe1 with all things necessary including, but not limited to, financial funding for the Seppe1 retail outlet.

245. With full knowledge of M+J Savitt's rights in and to the Marks, all Defendants have intentionally induced Janis Savitt, Designs by Janis Savitt, Michelle Savitt and Seppe1 to infringe upon the Copyrights.

246. With full knowledge of M+J Savitt's rights in and to the Copyrights, Paul, Mildred, Michelle and Janis Savitt have been intentionally supplying one another jewelry products and designs that are being sold through Seppe1 and Designs by Janis Savitt.

247. Paul and Mildred Savitt are providing Designs by Janis Savitt and Janis Savitt with financial aid, support and encouragement by: (a) supplying Janis Savitt and Designs by Janis Savitt with M+J Savitt jewelry products and designs; (b) providing them with antique furniture and paintings which are worth thousands of dollars; and (c) entering into a landlord-tenant relationship through a home office in Westhampton Beach, New York where Janis Savitt does most, if not all, of her jewelry designing for Designs by Janis Savitt.

248. Paul and Mildred Savitt have also been willfully blind to the Copyright infringement of Janis Savitt and Designs by Janis Savitt. For example, Paul and Mildred Savitt have each individually failed to investigate such Copyright infringement despite their fiduciary obligations to do

so.

249. For example, despite being placed on actual notice of many of the Challenged Transactions (as defined hereinbelow; including those related to infringement upon M+J Savitt's intellectual property) Mildred, Paul and Michelle Savitt never investigated such infringement for years despite their fiduciary obligations to do so.

250. Moreover, Michelle, Mildred and Paul each assisted Janis Savitt and Designs by Janis Savitt, Inc. in selling products. Specifically, Paul Savitt, to this day, still supplies Janis Savitt, Michelle Savitt and Designs by Janis Savitt with products and jewelry designs that are protected M+J Savitt Copyrights.

251. Conversely, Janis, Paul and Mildred Savitt, together with the financial support of Sepp Donahower each assisted Michelle Savitt in selling M+J Savitt copyrighted collections through Seppel.

252. All Defendants are assisting one another in selling products that are M+J Savitt Copyrights to directly compete with M+J Savitt.

253. All Defendants are providing one another with M+J Savitt customer information, inventory, merchandise, the Michelle Savitt Stolen Jewelry, the Janis Savitt Stolen Jewelry, business plans, bullion and product designs. Some of the Michelle and Janis Stolen Jewelry are M+J Savitt Copyrights including, but not limited to M+J Savitt's signature sun-like piece.

254. Sepp Donahower is providing Michelle Savitt and Seppel with financial aid, support and encouragement including, but not limited to supplying Michelle Savitt and Seppel with M+J Savitt jewelry products and designs such as the Michelle Savitt Stolen Jewelry and extending financing to the Seppel retail outlet.

255. Paul Savitt specifically uses his wealth as a means of controlling his family, their votes as shareholders of the Corporation and their business ventures to such an extent where he has

a significant degree of control and monitoring over Janis Savitt's activities.

256. Sepp Donahower specifically uses his role of co-owner of Seppe1 as a means of controlling Michelle Savitt's business ventures to such an extent where he has a significant degree of control and monitoring over Michelle Savitt's activities.

257. With full knowledge of M+J Savitt's rights in and to the Copyrights, all Defendants have been willfully blind to the ongoing violations of the third party infringers Janis Savitt, Michelle Savitt, Seppe1 and Designs by Janis Savitt.

258. Not only have Janis, Michelle, Paul and Mildred Savitt had actual knowledge of the Copyright infringement by Janis Savitt, Michelle Savitt, Seppe1 and Designs by Janis Savitt, but they have also been willfully blind to trying to stop it for over a year in clear violation of their fiduciary duties owed to M+J Savitt, its officers, directors and shareholders.

259. Not only has Sepp Donahower had actual knowledge of the Copyright infringement by Janis Savitt, Michelle Savitt, Seppe1 and Designs by Janis Savitt, but he has also been willfully blind to trying to stop it for over a year.

260. All Defendants have not only suspected wrongdoing on the part of Janis Savitt and Designs by Janis Savitt but they have also deliberately failed to investigate whether Janis Savitt and Designs by Janis Savitt were infringing upon the Marks.

261. Sepp Donahower has not only suspected wrongdoing on the part of Janis Savitt, Michelle Savitt, Seppe1 and Designs by Janis Savitt but he has also deliberately failed to stop Seppe1 from infringing upon the Marks. In fact, Sepp Donahower was initially the person that advised Wynne Savitt that Janis Savitt and Designs by Janis Savitt were infringing upon M+J Savitt's Copyrights.

262. Defendants' contributory infringement is willful and reflects Defendants' intent to exploit the good will and strong brand recognition associated with the Copyrights.

263. M+J Savitt has been damaged by Defendants' contributory infringement in an

264. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by Defendants' actions.

265. M+J Savitt has no adequate remedy at law for the foregoing conduct.

266. By providing Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppel with: (a) jewelry products and designs; (b) financial support and aid including, but not limited to, supplying Janis Savitt with antiques worth thousands of dollars; and (c) a venue to further such infringement such as providing Janis Savitt with financing, or otherwise transferred, a home office in Westhampton Beach, New York where Janis Savitt does most, if not all, of her jewelry designing for Designs by Janis Savitt, all Defendants have knowingly (or with reckless disregard for M+J Savitt's rights) induced, caused, encouraged, or materially contributed to conduct by third parties.

267. The aforesaid acts and conduct of all Defendants, including their use of M+J Savitt Copyrights for their own benefit violates M+J Savitt's exclusive rights in its Copyrights and the Federal Copyright Act, 17 U.S.C. §§ 101, *et. seq.*

268. All Defendants have caused damage to M+J Savitt in an amount to be determined at trial. For example, and without limitation, Defendants have been unjustly enriched by the unlawful and unauthorized sales of goods and services while using the Copyrights.

269. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by Defendants' actions.

270. M+J Savitt has no adequate remedy at law for the foregoing conduct.

EIGHTH CLAIM FOR RELIEF FOR DILUTION AND INJURY TO BUSINESS REPUTATION PURSUANT TO N.Y. GEN. BUS. LAW § 360-L AS AGAINST JANIS SAVITT, SEPP DONAHOWER, MICHELLE SAVITT, SEPPE1 AND DESIGNS BY JANIS SAVITT, INC.

271. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

272. The aforesaid acts and conduct of Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppe1 are, unless enjoined, will continue to cause injury to M+J Savitt's business reputation and dilute the distinctive quality of the Marks in violation of N.Y. Gen. Bus. Law § 360-L.

273. The aforesaid acts and conduct of Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppe1 have been willful and knowing.

274. Such usage of the Marks Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppe1 has caused damage to M+J Savitt in an amount to be determined at trial. For example, and without limitation, Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppe1 have been unjustly enriched by their unlawful and unauthorized sale of goods and services.

275. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppe1.

276. M+J Savitt has no adequate remedy at law for the foregoing conduct.

NINTH CLAIM FOR RELIEF FOR DECEPTIVE ACTS AND PRACTICES PURSUANT TO N.Y. GEN. BUS. LAW §§ 349 AND 350-A AS AGAINST JANIS SAVITT, MICHELLE SAVITT, SEPP DONAHOWER, DESIGNS BY JANIS SAVITT, INC. AND SEPPE1, INC.

277. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

278. The aforesaid acts and conduct of Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppel are, and unless enjoined, will continue to constitute deceptive acts and practices in violation of N.Y. Gen. Bus. Law §§ 349 and 350-a.

279. The aforesaid acts and conduct of Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppel have been willful and knowing.

280. Such usage of the Marks and Copyrights by Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppel, has caused damage to M+J Savitt in an amount to be determined at trial.

281. For example, and without limitation, Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppel have been unjustly enriched by their unlawful and unauthorized sales of goods and services generated from their use of the Marks and Copyrights in Advertisements.

282. At all times relevant to the allegations contained herein, Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppel, have misrepresented and continue to misrepresent M+J Savitt jewelry products in Advertisements as being their own personal products, rather than crediting M+J Savitt. See Exhibit 14.

283. At all times relevant to the allegations contained herein, Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppel, intentionally misrepresented and continue to intentionally misrepresent the price of M+J Savitt jewelry products in select Advertisements. See Exhibit 14.

284. At all times relevant to the allegations contained herein, Janis Savitt, in her personal capacity and through the Designs by Janis Savitt corporate entity, intentionally misrepresented the Collection by using the **JANIS SAVITT FOR M+J SAVITT** mark for jewelry items outside the scope of the Collection (as defined hereinabove). See Exhibit 16.

285. At all times relevant to the allegations contained herein, such misrepresentations

made by Janis Savitt, in her personal capacity, and through the Designs by Janis Savitt corporate entity, are materially misleading.

286. The aforementioned conduct and actions by Janis and Michelle Savitt occurred while they were M+J Savitt shareholders and acting and serving as corporate officers or employees of M+J Savitt.

287. At all times relevant to the allegations contained herein, M+J Savitt has been directly and proximately damaged as a result of the misleading representations by Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppel which are directed at consumers in an amount to be determined at trial.

288. At all times relevant to the allegations contained herein, the acts and misrepresentations made by Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppel were committed willfully, knowingly and with a high degree of moral turpitude.

289. M+J Savitt therefore should be awarded treble damages, punitive damages and reasonable attorney's fees.

290. M+J Savitt has been, and absent injunctive relief will continue to be, irreparably harmed by the actions of Janis Savitt, Designs by Janis Savitt, Michelle Savitt, Sepp Donahower and Seppel.

291. M+J Savitt has no adequate remedy at law for the foregoing conduct.

TENTH CLAIM FOR RELIEF FOR BREACH OF CONTRACT AS AGAINST PAUL, MILDRED, MICHELLE, JANIS SAVITT AND M+J SAVITT

292. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

293. M+J Savitt's Certificate of Incorporation and company by-laws constitute contracts between M+J Savitt shareholders, officers and directors.

294. Plaintiffs performed all required obligations in connection with such contracts.

295. By the acts described herein, including but not limited to, Michelle Savitt's Stolen Jewelry and Janis Savitt's Stolen Jewelry, the repeated failure of Janis, Michelle, Mildred and Paul Savitt to comply with their covenants of good faith and fair dealing under the company's by-laws and Certificate of Incorporation, Janis, Michelle, Mildred and Paul Savitt have breached such contracts.

296. Mildred, Janis, Paul and Michelle Savitt, at one time or another, received consideration by way of executive compensation for their roles as purported officers and/or directors of M+J Savitt.

297. Through the Challenged Transactions (described in detail hereinbelow), together with Michelle and Janis Savitt's Stolen Jewelry and the plethora of malfeasance alleged herein, such as in June 2008, Michelle Savitt's conversion of M+J Savitt merchandise to Seppe1 on purported consignment and her impermissible access to an M+J Savitt corporate bank account to pay her corporate credit card despite the fact that the corporate card contained personal expenses.

298. Mildred, Janis, Paul and Michelle Savitt have therefore breached the covenants of good faith and fair dealing arising from the Corporation's By-Laws and Certificate of Incorporation severely damaging M+J Savitt directly and as an intended third party beneficiary and Wynne Savitt personally and as a minority shareholder of M+J Savitt.

299. As a proximate result of Mildred, Janis, Paul and Michelle Savitt breach of such contracts, Plaintiffs have suffered damages.

300. Accordingly, Plaintiffs are entitled to damages in an amount to be determined at trial.

ELEVENTH CLAIM FOR RELIEF
FOR COMMON LAW UNJUST ENRICHMENT AS AGAINST ALL DEFENDANTS

301. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

302. Wynne Savitt has personally extended hundreds of thousands of dollars to M+J Savitt while the Defendants collectively and unjustly benefitted from not having to make such payments or even share equally in making such payments.

303. Janis and Michelle Savitt frequently used M+J Savitt's petty cash to reimburse themselves for personal purchases thereby unjustly obtaining personal benefits that Wynne Savitt did not.

304. Janis and Michelle Savitt repeatedly used corporate inventory for their own personal interests without compensating M+J Savitt for such items, thereby hurting the value of Wynne Savitt's stock. As a result, Janis and Michelle Savitt were unjustly obtaining benefits that both Plaintiffs personally did not.

305. Janis and Michelle Savitt possess the Michelle and Janis Stolen Jewelry without compensating M+J Savitt for such items, thereby hurting the value of Wynne Savitt's stock. As a result, Janis and Michelle Savitt were unjustly obtaining benefits that both Plaintiffs personally did not.

306. All Defendants unjustly retained monies generated from corporate tax returns that should have been refunded to M+J Savitt. However, Wynne Savitt personally refunded these monies to M+J Savitt.

307. Therefore, these pecuniary benefits were not shared equally between the shareholders. Given such inequality, Defendants, individually as well as M+J Savitt itself, have been unjustly enriched and equity and good conscience require restitution.

308. Janis Savitt, in her individual capacity, and through the Designs by Janis Savitt

309. Michelle Savitt, Sepp Donahower and Seppe1 have been unjustly enriched as result of their improper and unauthorized usage of the Marks.

310. By the acts described hereinabove, all Defendants retained revenues along with M+J Savitt inventory/property to which they were not equitably or legally entitled, and were unjustly enriched at Plaintiffs' expense, in violation of the common law of the State of New York.

311. As a result of the foregoing, Plaintiffs have suffered damages in an amount to be determined at trial.

TWELFTH CLAIM FOR RELIEF
FOR CONVERSION AS AGAINST JANIS SAVITT, MICHELLE SAVITT, SEPPE1 AND DESIGNS BY JANIS SAVITT, INC.

312. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

313. From its inception, through the present, all right, title and interest in M+J Savitt's inventory, the Michelle and Janis Savitt Stolen Jewelry (collectively, the "Inventory"), trade secrets and/or confidential and proprietary information and documents, including M+J Savitt customer and vendor lists resided with M+J Savitt (collectively, the "Confidential Information").

314. At all times relevant to the allegations contained herein, Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity, has wrongfully and without authorization, assumed and exercised dominion and control over the Inventory and Confidential Information such that their use of the Inventory and Confidential Information is inconsistent with and in defiance of, and has seriously interfered with, M+J Savitt's ownership and right to control such Inventory and Confidential Information.

315. Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity,

have thereby jointly and/or independently converted the Inventory and Confidential Information by their misappropriation of the Confidential Information and Inventory and by the fact that they have used and continue to use such Inventory and Confidential Information to unfairly compete with M+J Savitt.

316. Janis Savitt, Michelle Savitt, Seppe1 and Designs by Janis Savitt have knowingly, dishonestly, and intentionally procured, retained, used, and attempted to market and otherwise capitalize on the value of the Inventory and Confidential Information without M+J Savitt's authorization and without first giving value to M+J Savitt for such use.

317. M+J Savitt has demanded that Janis Savitt, Michelle Savitt, Seppe1 and Designs by Janis Savitt have been unjustly enriched as result of her improper and unauthorized usage of the Marks.

318. Plaintiffs have demanded that Janis Savitt, Michelle Savitt, Seppe1 and Designs by Janis Savitt, stop using the Inventory and Confidential Information and return such Inventory and Confidential Information to M+J Savitt.

319. To date, Janis Savitt, Michelle Savitt, Seppe1 and Designs by Janis Savitt have complied with M+J Savitt's demand to return and cease using the Inventory and Confidential Information.

320. M+J Savitt continues to be irreparably harmed by the conversion of the Inventory and Confidential Information by Janis Savitt, Michelle Savitt, Seppe1 and Designs by Janis Savitt.

321. By reason of the acts alleged herein, M+J Savitt has been damaged in an amount to be determined at trial.

THIRTEENTH CLAIM FOR RELIEF FOR TORTIOUS INTEREFERENCE WITH PROSPECTIVE BUSINESS RELATIONS AS AGAINST JANIS SAVITT, DESIGNS BY JANIS SAVITT, INC. MICHELLE SAVITT, AND SEPPE1, INC.

322. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as

if fully set forth herein.

323. M+J Savitt has valid contractual and business relationships with its independent/freelance fashion stylists, magazine editorial departments, vendors, retailers, customers and media partners. These contractual relationships are highly valuable to M+J Savitt.

324. As officers, employees and/or directors of M+J Savitt, Janis and Michelle have knowledge of these prospective business relationships. Additionally, Wynne Savitt has placed Michelle Savitt, Janis Savitt, Seppe1 and Designs by Janis Savitt on actual notice that some of these business relationships have been interrupted due to their conduct and actions.

325. Janis Savitt and Designs by Janis Savitt have entered into business relationships with M+J Savitt business partners. These business partners include, but are not limited to, Michael Kors and Ralph Lauren, as well as private customers R. Gerber and Paul Schindler. None of the monies generated from these business relationships have been deposited in M+J Savitt bank accounts. In fact, the proceeds generated from these business relationships have gone to Janis Savitt and Designs by Janis Savitt.

326. Additionally, Seppe1, Michelle Savitt and Sepp Donahower have entered into business relationships with M+J Savitt customers. In fact, they have sold the Michelle Savitt Stolen Jewelry to such M+J Savitt customers and have kept the proceeds generated from such sales.

327. At all times relevant to the allegations contained herein, Michelle Savitt, Janis Savitt, Seppe1 and Designs by Janis Savitt, have offered and offer competing products to potential customers, retailers, vendors and media outlets in interference with these prospective business relations.

328. At all times relevant to the allegations contained herein, Michelle Savitt, Janis Savitt, Seppe1 and Designs by Janis Savitt have contacted and continues to contact M+J Savitt's freelance fashion stylists, magazine editorial departments, retailers, vendors, customers and media partners

and has made and continues to make false representations concerning M+J Savitt and then, for no valid business reason other than to injure M+J Savitt, has sold and marketed and continues to sell and market competing jewelry products to and using such freelance fashion stylists, magazine editorial departments, retailers, vendors and customers.

329. At all times relevant to the allegations contained herein, Janis Savitt, Michelle Savitt, Seppe1 and Designs by Janis Savitt used dishonest, unfair and/or improper means to interfere with M+J Savitt's business relationships.

330. As a result of the tortious interference of Janis Savitt, Michelle Savitt, Seppe1 and Designs by Janis Savitt, M+J Savitt was prevented from entering into business relationships with these consumers, vendors, retailers and media outlets.

331. Some consumers, vendors, retailers and media outlets did in fact stop doing business with M+J Savitt, thereby causing M+J Savitt to lose these business relationships and economic advantages. This caused M+J Savitt to suffer damages in an amount yet to be quantified but to be determined and proved at trial.

FOURTEENTH CLAIM FOR RELIEF
BREACH OF FIDUCIARY DUTY, GOOD FAITH AND FAIR DEALING AS AGAINST MICHELLE SAVITT, PAUL SAVITT, MILDRED SAVITT AND JANIS SAVITT

332. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

333. By reason of their positions as officers, directors and/or shareholders of M+J Savitt and because of their ability to control the business and corporate affairs of M+J Savitt, Janis, Paul, Michelle and Mildred Savitt owe M+J Savitt and its shareholders fiduciary obligations of trust, loyalty, good faith and due care, and were and are required to use their utmost ability to control and manage M+J Savitt in a fair, just, honest and equitable manner.

334. At all times relevant to the allegations contained herein, Janis, Paul, Michelle and

Mildred Savitt were and are required to act in furtherance of the best interests of M+J Savitt and its shareholders and not for their own personal interest or benefit.

335. At all times relevant to the allegations contained herein, Janis, Paul, Michelle and Mildred Savitt owe M+J Savitt and its shareholders a fiduciary duty to exercise good faith and diligence in the administration of M+J Savitt's affairs and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

336. To discharge their duties, Janis, Paul, Michelle and Mildred Savitt are required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the financial affairs of M+J Savitt.

337. By virtue of such duties, Janis, Paul, Michelle and Mildred Savitt are required to, among other things: (a) conduct the affairs of M+J Savitt in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business; (b) to avoid wasting M+J Savitt assets; (c) to maximize the value of M+J Savitt's stock; and (d) to make proper and accurate representations and statements about M+J Savitt.

338. At all times relevant to the allegations contained herein, Janis, Paul, Michelle and Mildred Savitt's conduct and actions alleged herein involves a knowing and culpable violation of their obligations as officers, directors and/or shareholders of M+J Savitt, the absence of good faith on their part, and a reckless disregard for their duties to M+J Savitt and its shareholders that Janis, Paul, Michelle and Mildred Savitt were aware or should have been aware posed a risk of serious injury to M+J Savitt.

339. At all times relevant to the allegations contained herein, Janis, Paul, Michelle and Mildred Savitt breached their duties of loyalty and good faith by the aforementioned conduct and actions, as detailed herein *infra*, and by failing to prevent each other from taking such illegal actions.

340. As a direct and proximate result of Janis, Paul, Michelle and Mildred Savitt's improper and deceptive conduct and actions, as detailed herein *infra*, and their failure to perform their fiduciary obligations, Plaintiffs have sustained significant damages to be determined at trial. As a result of such misconduct alleged herein, Janis, Paul, Michelle and Mildred Savitt are liable to M+J Savitt.

341. Plaintiffs have no adequate remedy at law.

FIFTHTEENTH CLAIM FOR RELIEF FOR DEFAMATION PER SE OF BUSINESS REPUTATION AS AGAINST JANIS SAVITT

342. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

343. Defendant, Janis Savitt, has made false and defamatory written and verbal statements of and concerning Plaintiffs' professional character and reputation and has repeatedly published and/or broadcasted these statements in the State of New York, in this District, and throughout the United States to numerous third parties through false Advertisements and media stories.

344. For example, Janis Savitt falsely accused and defamed Plaintiff, Wynne Savitt, of "fucking the bookkeeper" in front of M+J Savitt employees on several occasions.

345. Additionally, Defendant, Janis Savitt, has created and continues to create false and defamatory Advertisements and stories for commercial and economic gain, which representations and statements were and are thus designed to entice M+J Savitt customers to purchase products and services from Janis Savitt, personally, or through the Designs by Janis Savitt corporate entity.

346. Such stories, Advertisements and headlines published by Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity were published with malice and reckless disregard for the truth or falsity of such publications, with the intent to injure Plaintiffs, their business reputation and to illegally divert customers away from M+J Savitt.

347. The false statements of fact published on Advertisements together with the defamatory nature of such representations become clear when the public searches for M+J Savitt's products and reads and construes such statements and representations.

348. Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity, knew that the written and verbal statements about Plaintiffs were false and had actual knowledge of their falsity at the time these statements were repeatedly published without privilege, authorization or consent.

349. Janis Savitt, personally, and through the Designs by Janis Savitt corporate entity made these false and defamatory statements for the sole purpose of ruining Plaintiffs' personal and professional reputation and character, to cause injury to Plaintiffs within the jewelry and precious metal industry.

350. Defendant, Janis Savitt's, false and defamatory statements have cause significant and irreparable harm to Plaintiffs' reputation and character, especially within the jewelry and precious metals industry.

351. As a direct and proximate result of these false statements and representations, Plaintiff, M+J Savitt has suffered damages in an amount to be determined at trial and Wynne Savitt has personally suffered, and continues to suffer, considerable stress, emotional distress, mental anguish and intense anxiety, including special damages in that she has suffered impairment to her ability to maintain her career within the jewelry, precious metals and fashion industries.

SIXTEENTH CLAIM FOR RELIEF
FOR FRAUD AND DECEIT AS AGAINST ALL DEFENDANTS

352. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

353. Defendants have intentionally committed fraud against Plaintiffs.

354. Defendants have intentionally converted monies and business opportunities

belonging to Plaintiffs while simultaneously owing fiduciary duties to M+J Savitt.

355. Defendants continue to intentionally convert documents, files, inventory, customer and vendor lists all belonging to M+J Savitt, which lists contain M+J Savitt's proprietary secrets, Confidential Information and/or trade secrets.

356. Defendants are intentionally competing with M+J Savitt and are not devoting their full time and attention to M+J Savitt.

357. At all times relevant to the allegations contained herein, Defendants had no intention of acting and serving as corporate officers, directors and fiduciaries of M+J Savitt, and instead had planned to and did utilize the Marks, Inventory and Confidential information for their own benefit and remuneration.

358. Defendants, in concert and cooperation with one another, made material misrepresentations and omissions to Plaintiffs with respect to their abilities and intentions on acting and serving as shareholders and corporate officers of M+J Savitt, which misrepresentations and omissions were relied upon by Plaintiffs to their detriment.

359. For example, Michelle Savitt falsely represented to Wynne Savitt that she was not attending the Special Meeting. As a result of this fraudulent and material representation, Wynne Savitt relied to her detriment by not appearing at the Special Meeting given her reasonable belief that without Michelle Savitt's attendance at the Special Meeting, there could be no shareholder majority to constitute a quorum as required under the By-Laws thereby causing Plaintiffs irreparable harm.

360. Defendants, in concert, and cooperation with one another permitted Michelle Savitt to falsely represent to Wynne Savitt that she was not attending the Special Meeting. As a result of Defendants' failure to prevent Michelle Savitt from making such a false representation, particularly given their fiduciary duties owed to Wynne Savitt as a minority shareholder, Wynne Savitt relied to her detriment by not appearing at the Special Meeting given her reasonable belief that without

Michelle Savitt's attendance at the Special Meeting, there could be no shareholder majority to [redacted] Plaintiffs irreparable harm.

361. For example, Michelle Savitt has defrauded M+J Savitt by: (i) continuing to use M+J Savitt's designs, Copyrights and Marks through Seppe1, and secreting the profits and proceeds derived therefrom; (ii) frequently using M+J Savitt petty cash to reimburse herself for personal purchases; (iii) using and profiting from the Michelle Savitt Stolen Jewelry (as defined hereinabove) without compensating M+J Savitt; (iv) wasting M+J Savitt assets by forcing M+J Savitt to pay for her adult child's health insurance; (v) receiving an overpayment of six hundred dollars ($600.00) per month in salary for a ten (10) year period; (vi) engaging in unauthorized contact with current M+J Savitt consumers, potential consumers, retailers, freelance fashion stylists and vendors in an effort to compete with M+J Savitt while simultaneously using information she obtained while employed with M+J Savitt; (vii) intentionally diverting business away from M+J Savitt and to Seppe1; (vii) falsifying reimbursement receipts for Long Island Railroad tickets to and from Westhampton Beach, New York despite the fact that she was vacationing rather than working; (viii) falsifying reimbursement receipts for personal dinners at the famous Elaine's restaurant in New York City; (ix) falsifying purchase orders from M+J Savitt contractors; (x) fraudulently submitting New York City Metrocards to M+J Savitt for reimbursement given that the Metrocards were used for personal rather than corporate reasons; and (xi) failing to show up for work on a routine basis despite being paid a salary.

362. Specifically, Michelle Savitt would tear food, beverage and entertainment receipts in half and submit such torn receipts to M+J Savitt's bookkeeper for reimbursement so that she would be reimbursed double of what she should have legitimately been entitled to.

363. Michelle Savitt has also taken property belonging to M+J Savitt for use by parties other than M+J Savitt including, but not limited to, Seppe1. Such property includes customer files

and documents belonging to M+J Savitt. Such property contains confidential, proprietary secrets and/or trade secrets.

364. For the years 2005 through 2007, Janis, Mildred, Paul and Michelle Savitt retained monies generated from corporate tax returns that should have been refunded to M+J Savitt.

365. As yet another example of how Defendants' defrauded M+J Savitt and its shareholders, the Special Meeting was apparently arranged under fraudulent and deceptive pretenses. For example, the Special Meeting was: (i) it was improperly noticed; (ii) improper because a majority of shareholders with the requisite capacity to vote failed to request that the President notice the Special Meeting in violation of M+J Savitt's By-Laws; (iii) improper because given that Michelle Savitt, a twenty-seven percent (27%) shareholder of M+J Savitt, is, by Defendants' own admission, and pursuant to an un-amended 1985 M+J Savitt corporate resolution, there was no quorum at the Special Meeting; and alternatively, even assuming that Michelle Savitt is deemed to have the requisite capacity as a voting shareholder, she nevertheless fraudulently represented to Wynne Savitt and her husband, Michael Weiner, that she was not attending the Special Meeting, causing Wynne Savitt to rely to her detriment by not appearing at the Special Meeting; and (iv) was invalid because Michelle Savitt "never wanted" to be a director or officer of M+J Savitt, only agreed to become a director and officer of M+J Savitt after being "pressured" by Defendants' and their lawyers, was "surprised" to discover that she was named a director and officer of M+J Savitt, was not given any "advance notice" of her new role as director and officer of M+J Savitt and was not given any "warning of the risks and jeopardy" of accepting the roles as director and officer of M+J Savitt. See Exhibit 15.

366. Based on the foregoing, the Special Meeting was not only improperly noticed but the New Board was also elected under fraudulent and deceptive means.

367. Furthermore, Defendants, in concert and cooperation with one another, permitted Janis Savitt to defraud Plaintiffs by transferring her M+J Savitt stock from Janis Savitt to the Janis

Savitt Irrevocable Trust (the "Trust") without any corporate resolution or majority shareholder vote.

368. Defendants in concert and cooperation with one another permitted Janis Savitt to utilize the Trust for her private gain to the detriment of M+J Savitt.

369. The Trust is the named tenant on Janis Savitt's New York City residential lease. In order to continue to qualify for the occupancy of her residence in New York City, Janis Savitt needed to demonstrate to her landlord that her income did not rise to a certain level as required under the New York rent control guidelines. Given that the Trust is also a shareholder of M+J Savitt, Janis Savitt was incentivized to produce lower levels of income to M+J Savitt at the very same time that increases to M+J Savitt revenues were needed so that she could qualify for the lower rent payments. Plaintiffs relied to their detriment on such fraudulent conduct by incurring excessive business operational costs, and associated personal expenditures and having to infuse time, effort and money into operating M+J Savitt.

370. Additionally, Janis, Paul, Mildred and Michelle Savitt also materially mislead M+J Savitt by failing to deposit their corporate tax refunds to M+J Savitt while instead using those funds for her personal benefit.

371. The Challenged Transactions (as defined hereinbelow) alone are sufficiently specific to delineate and explain how Defendants defrauded Plaintiffs and why it was reasonable for Plaintiffs to justifiably rely upon such fraudulent representations and conduct.

372. Such fraud is consistent with the fact that Janis Savitt sought to form a competing jewelry business, effectively damaging M+J Savitt and its value while simultaneously intentionally conspiring with Defendants compete with it.

373. Plaintiffs relied to their detriment on such fraudulent conduct by incurring excessive business operational costs and associated personal expenditures and having to infuse time, effort and money into operating M+J Savitt.

374. Paul, Mildred and Michelle Savitt had full knowledge of Janis Savitt's *ultra vires* stock [redacted] succeeding to defraud M+J Savitt and its shareholders.

375. In fact, Janis and Michelle Savitt are intentionally competing with M+J Savitt and are not devoting their full time and attention to M+J Savitt. Such conduct, while also forming the basis of some of Plaintiffs' claims, also rise to the level of a direct fraud on M+J Savitt and its stockholders.

376. Defendants have had little intention of acting and serving as corporate officers, directors and fiduciaries of M+J Savitt. Instead, they intentionally defrauded it and its shareholders for years.

377. Defendants' material misrepresentations harmed Plaintiffs by undermining Plaintiffs' ability to pay down debt on certain bank loans as well as the SBA Loan, without sacrificing growth to M+J Savitt and its shareholders.

378. Janis Savitt fraudulently and materially represented to M+J Savitt and its shareholders that she did not "know" that such contracts needed to be executed or that "she spoke to" M+J Savitt's accountant and that he "never advised her of same."

379. Plaintiffs relied on these material representations to their detriment as set forth hereinabove.

380. Defendants have plotted, planned and conspired with one another to defraud M+J Savitt and its shareholder in an effort to compete with M+J Savitt by themselves. In further reliance upon Defendants' fraudulent representations, M+J Savitt did not have adequate capital to compensate its suppliers or pay for raw materials.

381. Moreover, based upon Defendants' fraudulent material representations, Wynne Savitt was forced to personally guarantee the SBA Loan with her own personal assets.

382. In fact, Wynne Savitt, as a result of Defendants' intentional and material lies, personally suffered damages in lost wages between 2005 and 2008 and accumulated personal credit card debt, plus interest in order to cover business costs associated with various industry trade shows.

383. At the time such conduct occurred, Defendants acting in concert and cooperation with one another knew that their own conduct, actions and omissions, as detailed herein *infra*, were fraudulent and deceitful.

384. Defendants, acting in concert and cooperation with one another, as part of their scheme to defraud M+J Savitt, conspired to permit Janis and Michelle Savitt to form their own entities while simultaneously converting documents, files, inventory, customer, retailer, vendor and fashion stylist proprietary lists belonging to M+J Savitt.

385. Defendants, acting in concert and cooperation with one another, intended to engage in such conduct, actions and omissions, as detailed herein *infra*, for their own benefit and to Plaintiffs' detriment.

386. As part of their scheme, Defendants' actions, conduct and omissions were taken for the specific purpose of, and resulted in, inducing Plaintiffs to rely to their detriment in incurring excessive business operational costs, and associated personal expenditures and having to infuse time, effort and money into operating M+J Savitt. Had the true facts not been concealed to Plaintiffs, Plaintiffs would not have relied to their detriment in such a way.

387. The foregoing representations, acts and omissions were made intentionally and for the express purposes of inducing Plaintiffs to rely on their truth to Plaintiffs' detriment. Defendants conduct, acts and omissions was taken with the primary purpose and intention of defrauding and causing harm to Plaintiffs, and which did, in fact, cause harm to Plaintiffs and to receive illegal and ill gotten gains.

388. As a result of the foregoing, Plaintiffs have been damaged in an amount to be

determined at trial.

SEVENTEENTH CLAIM FOR RELIEF
FOR NEGLIGENCE AS AGAINST JANIS, PAUL, MILDRED AND MICHELLE SAVITT

389. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

390. Janis, Michelle, Mildred and Paul Savitt owe fiduciary duties to Plaintiffs.

391. Collectively, the Challenged Transactions (as defined and particularly described hereinbelow) give rise to negligent conduct and actions toward Plaintiffs.

392. Janis, Michelle, Mildred and Paul Savitt's failure to even address any of the Challenged Transactions is a breach of their duties. Their repeated failure to address, let alone rectify, any of the Challenged Transactions rises to the level of negligent behavior.

393. In fact, there are no plausible explanations for why Janis, Michelle, Mildred and Paul Savitt repeatedly allowed the Challenged Transactions to occur, let alone to permit such conduct to go unchecked and unfettered for years.

394. The facts specifically alleged herein do not implicate merely negligent decision making and/or behavior by Janis, Michelle, Mildred and Paul Savitt but rather, the allegations set forth herein suggest that Janis, Michelle, Mildred and Paul Savitt failed to exercise any business judgment and failed to make any good faith attempt to fulfill their fiduciary duties to M+J Savitt and its stockholders despite being placed on repeated notice of same.

395. As a result of such negligent conduct, Plaintiffs have suffered severe damages as set forth and alleged herein.

396. Based upon Janis, Michelle, Mildred and Paul Savitt's conduct, actions and omissions, as detailed herein *infra*, Janis, Michelle, Mildred and Paul Savitt have breached their fiduciary duties, recklessly causing injury to Plaintiffs.

397. As a direct and proximate cause of Janis, Michelle, Mildred and Paul Savitt's

negligent conduct, actions and omissions, as detailed herein *infra*, Plaintiffs have suffered significant damages to be determined at trial such as insurance, excessive business operational costs, and associated personal expenditures and having to infuse time, effort and money into operating M+J Savitt.

EIGHTEENTH CLAIM FOR RELIEF FOR GROSS NEGLIGENCE AS AGAINST JANIS, PAUL, MILDRED AND MICHELLE SAVITT

398. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

399. Collectively, the Challenged Transactions (as defined hereinbelow) give rise to grossly negligent, wanton, reckless and malicious conduct and actions toward Plaintiffs.

400. Clearly, Janis, Paul, Mildred and Michelle Savitt owed fiduciary duties to M+J Savitt but they also owed duties to Wynne Savitt as a minority shareholder of M+J Savitt.

401. Janis, Paul, Mildred and Michelle Savitt's failure to even address any of the Challenged Transactions is a breach of their fiduciary duties. Their repeated failure to address, let alone rectify, any of the Challenged Transactions rises to the level of grossly negligent, wanton, reckless and malicious behavior.

402. In fact, there are no plausible explanations for why Janis, Paul, Mildred and Michelle Savitt repeatedly allowed the Challenged Transactions to occur, let alone to permit such conduct to go unchecked and unfettered for years.

403. The facts specifically alleged herein do not implicate merely negligent or grossly negligent decision making and/or behavior by Janis, Paul, Mildred and Michelle Savitt, but rather, the allegations set forth herein suggest that Janis, Paul, Mildred and Michelle Savitt failed to exercise any business judgment and failed to make any good faith attempt to fulfill their fiduciary duties to

M+J Savitt and its stockholders despite being placed on repeated notice of same. As a result of such [redacted] as set forth and alleged herein.

404. Janis, Paul, Mildred and Michelle Savitt's conduct and actions, as detailed herein *infra*, are wanton, reckless, malicious and grossly negligent.

405. As a direct and proximate cause of Janis, Paul, Mildred and Michelle Savitt's grossly negligent, wanton, reckless and malicious conduct and actions, as detailed herein *infra*, Plaintiffs have suffered extreme emotional distress, physical illness, loss of sleep and elevated anxiety.

406. As a direct and proximate cause of Janis, Paul, Mildred and Michelle Savitt's grossly negligent, wanton, reckless and malicious conduct and actions, as detailed herein *infra*, Plaintiffs have suffered significant damages to be determined at trial, such as incurring excessive business operational costs, and associated personal expenditures and having to infuse time, effort and money into operating M+J Savitt.

NINETEENTH CLAIM FOR RELIEF FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AS AGAINST JANIS AND PAUL SAVITT

407. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

408. Defendants have engaged in a vindictive campaign to not only ruin Plaintiffs' personal and professional reputation and character, but to harass Plaintiffs in order to cause Plaintiffs severe emotional distress and mental anguish.

409. For example, Paul and Janis Savitt have performed the following acts: (a) Paul Savitt has stated directly to Wynne Savitt that she was "out of his estate"; (b) Paul Savitt has prevented Wynne Savitt from seeing her own mother, who is purportedly dying, although Wynne Savitt maintains that: (i) Paul Savitt has been repeating this same mantra for ten (10) years now; (ii) Mildred Savitt is healthy enough to venture to West Hampton, New York every weekend; (iii) she was

recently shopping at *Tanger's* outlets in New York; (c) Janis Savitt has repeated to Wynne Savitt that she is "fucking the bookkeeper" in front of other employees; and (d) Janis and Paul Savitt have made the most vile, offensive, defamatory, lewd and morally reprehensible statements about Wynne Savitt, and to Wynne Savitt, that are so outrageous in character and extreme in degree as to go beyond all possible bounds of decency and are utterly intolerable in a civilized society.

410. In fact, Janis Savitt has repeatedly communicated to Wynne Savitt and her family members her intention to cause them severe bodily injury to such an extent that Wynne Savitt has sought to file a criminal restraining order against Janis Savitt with her local police department.

411. Janis and Paul Savitt have made the most vile, offensive, defamatory, lewd and morally reprehensible statements and representations about Plaintiff, Wynne Savitt. Such statements and representations are so outrageous in character and extreme in degree as to go beyond all possible bounds of decency and are utterly intolerable in a civilized society.

412. By their conduct and actions, Janis and Paul Savitt are intentionally, and with malice, inflicting emotional as well as mental distress on Wynne Savitt.

413. As a direct and proximate result of Janis and Paul Savitt's extreme and outrageous statements, representations and conduct, Plaintiff, Wynne Savitt, has suffered and continues to suffer severe emotional distress, mental anguish, anxiety, daily stress, sleep disruptions, constant fear and worry.

414. Wynne Savitt suffers from severe recalcitrant psoriasis which disease is particularly severe on the palms of her hands. This has resulted in thick scaling plaques that form deep fissures that bleed and cause her severe pain and make any type of manual activity extremely difficult. She has been tried on a variety of both topical and systemic anti-psoriasis modalities with little improvement. Psoriasis is an autoimmune disorder in which the body's immune system attacks skin cells thereby causing inflammation, swelling, scaling and fissuring as has occurred in Wynne Savitt.

The cause of the severe recalcitrant psoriasis is a direct result of many of the acts complained of herein including, but not limited to, her family's personal and corporate behavior toward Wynne Savitt. Her disease is aggravated by stress and her condition was definitely worsened by Defendants' vindictive, extreme and outrageous conduct.

415. In this vein, Paul and Janis Savitt have engaged, and continue to engage in a vindictive campaign to not only ruin Wynne Savitt's personal and professional reputation and character, but to harass her in order to cause her severe emotional distress and mental anguish.

416. As a direct and proximate result of Janis and Paul Savitt's extreme and outrageous statements, representations and conduct, Wynne Savitt, is experiencing intense physical and emotional pain and perilous effects of worry that is damaging to normal activities, concentration, self-care, carrying out of business, and general enjoyment of life and life functions.

417. As a direct and proximate result of Janis and Paul Savitt's extreme and outrageous statements and conduct Wynne Savitt, is entitled to an award of compensatory and punitive damages in an amount to be determined at trial.

TWENTIETH CLAIM FOR RELIEF FOR CYBERSQUATTING UNDER THE LANHAM ACT AS AGAINST JANIS SAVITT

418. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

419. Defendant, Janis Savitt in her individual capacity, has registered, trafficked in, and/or used the Domain Name (as defined hereinabove) that is confusingly similar to and/or dilutive of the Marks, which were distinctive at the time Defendant, Janis Savitt, registered, trafficked in, and/or used the Domain Name.

420. Based on the conduct and actions of Janis Savitt, as described and set forth, *infra*, including, but not limited to, Janis Savitt's formation of the Designs by Janis Savitt corporate entity while simultaneously owing a fiduciary duty to M+J Savitt, her filing of the Trademark Application,

as well as her self dealing and detrimental conduct toward M+J Savitt, Defendant, Janis Savitt has a bad faith intent to profit and divert business from Plaintiffs through her unauthorized use and registration of the Domain Name and use of the Marks.

421. The actions of Defendant, Janis Savitt, constitute a violation of 15 U.S.C. §1126(d)(1).

422. As a direct and proximate result of such conduct, Plaintiff, M+J Savitt has suffered, and will continue to suffer, monetary loss and irreparable injury to its business, reputation and goodwill. Plaintiff, M+J Savitt is entitled to injunctive relief to prevent Janis Savitt's continued infringement and misuse of the Marks. Unless, Defendant, Janis Savitt, is enjoined from continuing her infringing conduct, Plaintiff, M+J Savitt will suffer harm for which there is no adequate remedy at law. Plaintiff, M+J Savitt, is also entitled to damages, including its lost profits and Defendant, Janis Savitt's profits from the improper acts alleged herein, in amounts to be proven at trial.

TWENTY-FIRST CLAIM FOR RELIEF BY WYNNE SAVITT WEINER, DERIVATIVELY ON BEHALF OF M+J SAVITT, INC. FOR BREACH OF FUDUCIARY DUTY, ABUSE OF CONTROL, UNJUST ENRICHMENT, AIDING AND ABETTING BREACH OF FIDUCIARY DUTY, FRAUD AND CORPORATE WASTE AS AGAINST PAUL, MILDRED, JANIS AND MICHELLE SAVITT, AS WELL AS M+J SAVITT

THE CHALLENGED TRANSACTIONS

423. Plaintiff, Wynne Savitt, derivatively on behalf of M+J Savitt and all other similarly situated stockholders of M+J Savitt ("Derivative Plaintiff"), alleges upon information and belief as follows:

424. Derivative Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

425. The Challenged Transactions are defined as follows: (i) Janis Savitt's filing of THE Trademark Application for the trademark **JANIS SAVITT** for use with "jewelry" without the consent or authorization of M+J Savitt; (ii) Janis Savitt's continued use of M+J Savitt's intellectual

property even after she was notified to cease and desist and subsequent to the refusal of her Trademark Application on the basis that the mark sought (JANIS SAVITT) was likely to be confused with M+J Savitt's trademarks; (iii) Janis Savitt's business discussions with, among many other business partners of M+J Savitt, Michael Kors, Ralph Lauren, private customers R. Gerber and Paul Schindler, for the sale of jewelry items in an effort to divert significant monies away from M+J Savitt toward Designs by Janis Savitt, Inc. and/or Janis Savitt, individually; (iv) Janis Savitt's formation of a competing business entity entitled, "Designs by Janis Savitt, Inc.," which tradename is comprised of M+J Savitt's trademarks; (v) Janis Savitt's usage of M+J Savitt's copyrighted designs which are "works for hire" under the federal copyright laws, and are therefore the exclusive property of M+J Savitt together with her usage of the federally registered Copyrighted merchandise that is protected under the federal copyright laws; (vi) Janis Savitt's registration of the Domain Name and her intentional act of secreting her public identity as owner/registrant of the Domain Name; (vii) Michelle Savitt's continued use of M+J Savitt's Marks, Copyrights and designs through Seppe 1; (viii) Michelle and Janis Savitt's removal of the Michelle and Janis Savitt Stolen Jewelry (as defined hereinabove) and the secreting of profits derived from the sale of such merchandise; (ix) Paul and Mildred Savitt's failure to act on behalf of M+J Savitt as purported officers, directors and/or shareholders of it, despite having actual knowledge of the wrongful acts and Challenged Transactions set forth herein; (x) Janis and Michelle Savitt's conversion of the Inventory and Confidential Information (as defined hereinabove) to unfairly compete with M+J Savitt; (xi) Paul and Mildred Savitt's continued financial support of Seppe1 and Designs by Janis Savitt as described hereinabove; (xii) Janis, Michelle, Mildred and Paul Savitt's failure to conduct M+J Savitt's affairs in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business, to avoid wasting the M+J Savitt's assets, to maximize the value of M+J Savitt's stock and to make proper and accurate representations and statements about M+J Savitt;

(xiii) Janis and Michelle Savitt's frequent use of the M+J Savitt's petty cash to reimburse themselves for personal purchases; (xiv) Janis Savitt's repeated representations that she was using M+J Savitt's promotional materials to market M+J Savitt's jewelry products – instead, Janis Savitt used M+J Savitt's promotional materials outside of the branded diamond collection and to compete with M+J Savitt's personally including, but not limited to, falsely representing to Plaintiffs that she would not: (a) credit herself in promotional materials for a variety of products in many publications, including the March 2007 issue of Town & Country Magazine; (b) credit products as "Janis Savitt for Ralph Lauren" instead of "M+J Savitt for Ralph Lauren"; (c) misuse the **JANIS SAVITT FOR M+J SAVITT** trademark for silver or brass products, rather than for goods within the appropriate jewelry collection; and (d) misrepresent the cost of the Corporation's jewelry products in promotional materials including, but not limited to, in a Vogue Magazine 2007 issue for a "Big Time Necklace;" (xv) Janis and Michelle Savitt's possession and usage of material, non-public, proprietary information belonging to M+J Savitt, such as names and contact information of M+J Savitt's customers, clients, potential clients, vendors, fashion stylists and retailers, which information was used by for their own benefit and to compete with M+J Savitt; and (xvi) Janis, Paul, Mildred and Michelle Savitt's engagement in illegal activities exposing M+J Savitt and its shareholders to civil liability for which they are liable; (xvii) Janis and Michelle Savitt's failure to keep accurate records of M+J Savitt Inventory and of M+J Savitt's finances; (xviii) Janis Savitt's failure, as M+J Savitt's Secretary, to maintain M+J Savitt corporate minute books; (xix) Janis and Michelle Savitt's failure to conduct annual shareholder meetings; (xx) Janis and Michelle Savitt's frequent purchasing of the wrong items for Inventory; (xxi) the election of the New Board under fraudulent and deceptive means and pretenses; (xxii) Wynne Savitt having to personally extend hundreds of thousands of dollars to M+J Savitt while Janis, Michelle, Paul and Mildred Savitt collectively and unjustly benefitted from not having to make such payments or even share equally in making such payments;

(xxiii) Janis and Michelle Savitt's repeated use corporate Inventory for their own personal interests without compensating M+J Savitt for such items, thereby hurting the value of Wynne Savitt's stock; (xxiv) Janis, Paul, Mildred and Michelle Savitt's unjustly retained monies generated from corporate tax returns that should have been refunded to M+J Savitt; (xxv) Janis, Paul, Michelle and Mildred Savitt's violation of their obligations as officers, directors and/or shareholders of M+J Savitt, the absence of good faith on their part, and a reckless disregard for their duties to M+J Savitt and its shareholders despite having actual knowledge of the risk of serious injury to M+J Savitt; (xxvi) Michelle Savitt's wasting of M+J Savitt assets by forcing M+J Savitt to pay for her adult child's health insurance even though her adult child was not an employee of M+J Savitt; (xxvi) Michelle Savitt's receipt of an overpayment of six hundred dollars ($600.00) per month in salary for a ten (10) year period; (xxvii) Michelle Savitt's engagement in unauthorized contacts with current M+J Savitt consumers, potential consumers, retailers, freelance fashion stylists and vendors in an effort to compete with M+J Savitt while simultaneously using information she obtained while employed with M+J Savitt; (xxviii) Janis and Michelle Savitt's intentional diversion of business away from M+J Savitt and to Seppe1; (xxix) Janis and Michelle Savitt's falsification of reimbursement receipts for Long Island Railroad tickets to and from Westhampton Beach, New York despite the fact that they were vacationing rather than working; (xxx) Michelle Savitt's falsification of reimbursement receipts for personal dinners at the famous Elaine's restaurant in New York City; (xxxi) Michelle Savitt's falsification of purchase orders from M+J Savitt contractors; (xxxii) Michelle Savitt's fraudulent submission of New York City Metrocards to M+J Savitt for reimbursement given that the Metrocards were used for personal rather than corporate reasons; (xxxii) Michelle Savitt's failure to show up for work on a routine basis despite being paid a salary; and (xxxiii) all Defendants, in concert and cooperation with one another, permission of Janis Savitt to defraud Plaintiffs by transferring her M+J Savitt stock from Janis Savitt to the Trust without any corporate resolution or

426. Janis, Michelle, Mildred and Paul Savitt's failure to even address any of the Challenged Transactions is a breach of their fiduciary duties.

427. Paul and Mildred Savitt have continued to fail to act on behalf of M+J Savitt as its purported officers, directors and/or shareholders of, despite having actual knowledge of the wrongful acts and Challenged Transactions set forth herein.

428. Paul and Mildred Savitt's continue to financially support Janis, Michelle, Designs by Janis Savitt and Seppe1.

429. Since the Special Meeting, the New Board has failed to pay Wynne Savitt's corporate credit cards while simultaneously paying their own corporate credit cards.

430. Since the Special Meeting, the New Board has failed to timely provide Wynne Savitt with her W2 tax form as required under federal law.

431. The New Board has failed to conduct M+J Savitt's affairs in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business, to avoid wasting M+J Savitt's assets, to maximize the value of M+J Savitt's stock and to make proper and accurate representations and statements about M+J Savitt's.

432. The New Board has engaged in illegal activities exposing M+J Savitt and its shareholders to civil liability for which they are liable.

433. The Challenged Transactions trigger a variety of causes of action on behalf of Plaintiffs both derivatively and directly.

434. The New Board has personal, familial and professional relationships with which they have entangled financial alliances, interests and dependencies.

435. The New Board has been willfully blind to, induced and encouraged the Challenged Transactions to have occurred.

436. The New Board has participated in efforts to conceal or disguise those wrongs from M+J Savitt's shareholders or recklessly and/or negligently disregarded the wrongs complained of therein. Such conduct puts directly into question whether the decision-making and oversight processes of the New Board were employed in a good faith effort to advance the corporate interest.

DEMAND ON THE NEW AND OLD BOARD WOULD HAVE BEEN FUTILE

437. As alleged herein, the facts belie any assertion that either the New Board or Mildred Savitt as half of the Old Board exercised *any* business judgment or made *any* good faith attempt to fulfill their fiduciary duties owed to M+J Savitt and its shareholders.

438. The facts specifically alleged herein do not implicate merely negligent or grossly negligent decision making and/or behavior by the New Board, they also suggest that the New and Old Boards failed to exercise *any* business judgment and failed to make *any* good faith attempt to fulfill their fiduciary duties to M+J Savitt and its stockholders despite being placed on repeated notice of same.

A MAJORITY OF THE NEW BOARD IS RECEIVING A DIRECT FINANCIAL BENEFIT FROM THE CHALLENGED TRANSACTIONS

439. At a minimum, Janis and Michelle Savitt, two-thirds of the New Board, are directly receiving financial benefit from engaging in the Challenged Transactions.

440. Janis and Michelle Savitt have both formed new entities that compete with M+J Savitt during the same period in which they owe fiduciary duties to M+J Savitt.

441. In fact, in an April 2008 article published by the trade magazine Women's Wear Daily, Janis Savitt, as the sole owner of Designs by Janis Savitt, Inc., admitted that she will "bring in approximately $5 million in its first year at retail."

442. Janis Savitt: (i) frequently used M+J Savitt's petty cash to reimburse themselves for personal purchases; (ii) repeatedly used corporate inventory for her own personal interests without compensating M+J Savitt for such items; and (iii) has removed the Janis Savitt Stolen Jewelry from

M+J Savitt without compensating M+J Savitt for such merchandise.

443. Michelle Savitt: (i) continues to use M+J Savitt's designs, Copyrights and Marks through Seppel, and has secreted the profits and proceeds derived therefrom; (ii) frequently used M+J Savitt petty cash to reimburse herself for personal purchases; (iii) used and is profiting from the Michelle Savitt Stolen Jewelry (as defined hereinabove) without compensating M+J Savitt; (iv) wasted M+J Savitt assets by forcing M+J Savitt to pay for her adult child's health insurance despite the fact that her adult child was not an employee of M+J Savitt; (v) has received an overpayment of six hundred dollars ($600.00) per month in salary for a ten (10) year period; (v) has engaged in unauthorized contact with current M+J Savitt consumers, potential consumers, retailers, freelance fashion stylists and vendors in an effort to compete with M+J Savitt while simultaneously using information she obtained while employed with M+J Savitt; (vi) intentionally diverted business away from M+J Savitt and to Seppel; (vii) falsified reimbursement receipts for Long Island Railroad tickets to and from Westhampton Beach, New York despite the fact that she was vacationing rather than working; (viii) falsified reimbursement receipts for personal dinners at the famous Elaine's restaurant in New York City; (viii) falsified purchase orders from M+J Savitt contractors; (ix) fraudulently submitted New York City Metrocards to M+J Savitt for reimbursement given that the Metrocards were used for personal rather than corporate reasons; (x) despite not knowing the risks involved with becoming a corporate officer and director of M+J Savitt and despite being "pressured" to attend the Special Meeting, made fraudulent representations to Wynne Savitt in connection with her attendance thereof, thereby incurring the added financial benefit of being able to continue selling the Michelle Savitt Stolen Jewelry through Seppel without consequence; and (xi) failed to show up for work on a routine basis despite being paid a salary.

444. Specifically, Michelle Savitt would tear food, beverage and entertainment receipts in half and submit such torn receipts to M+J Savitt's bookkeeper for reimbursement so that she would

445. Michelle Savitt has also taken property belonging to M+J Savitt for use by parties other than M+J Savitt including, but not limited to, Seppe1. Such property includes customer files and documents belonging to M+J Savitt. Such property contains confidential, proprietary secrets and/or trade secrets.

446. For the years 2005 through 2007, Janis, Mildred, Paul and Michelle Savitt retained monies generated from corporate tax returns that should have been refunded to M+J Savitt.

447. None of the aforementioned pecuniary benefits were shared equally between the shareholders.

448. Janis Savitt obtained additional pecuniary benefits because her corporate tax return and stock were both in the name of the "Janis Savitt Irrevocable Trust" (the "Trust").

449. Paul, Mildred and Michelle Savitt, in concert and cooperation with one another, permitted Janis Savitt to defraud Plaintiffs by transferring her M+J Savitt stock from "Janis Savitt" to the Trust without any corporate resolution or majority shareholder vote.

450. The Trust is the named tenant on Janis Savitt's New York City residential lease.

451. In order to continue to qualify for the occupancy of her residence in New York City, Janis Savitt needed to demonstrate to her landlord that her income did not rise to a certain level as required under the New York City rent control guidelines.

452. Given that the Trust is also a shareholder of the Corporation, Janis Savitt was incentivized to produce reduced levels of income so that she could personally qualify for lower rental payments at the very same time that increases to the Corporation's revenues were needed.

453. Janis and Michelle Savitt, during the period in which the Challenged Transactions occurred were receiving annualized compensation and benefits from M+J Savitt.

Challenged Transactions to the extent reasonably appropriate under the circumstances. As set forth hereinabove, Plaintiffs notified both Mildred and Paul Savitt of the Challenged Transactions on several occasions spanning a three (3) year period.

455. In fact, on or about May 17, 2007, Wynne Savitt, on M+J Savitt's letterhead, demanded that Mildred Savitt (at that time, half of the Old Board) and Paul Savitt (purportedly a member of the New Board at the time this Second Amended Complaint was filed) address the Challenged Transactions. In it, Wynne Savitt stated that her correspondence served "as a formal document to bring discussions to the table."

456. Despite such notification, Paul, Mildred, Janis and Michelle Savitt failed to take the time to seriously review Wynne Savitt's contentions. Instead, they intentionally and consciously disregarded their responsibilities, adopting a "we don't care about the risks" attitude concerning the Challenged Transactions.

457. Knowing or deliberate indifference by both the New and Old Boards (other than Wynne Savitt) to their duties to act faithfully and with appropriate care is conduct that was not taken honestly and in good faith to advance the best interests of M+J Savitt.

458. The New and Old Board knew that they were ignoring the Challenged Transactions without adequate information and deliberation, yet they simply did not care if the decision to ignore the Challenged Transactions caused M+J Savitt and its stockholders to suffer injury or loss.

459. The Old and New Board have breached their obligations to act honestly and in good faith in M+J Savitt's best interests. The New and Old Board's failure to fully inform themselves about the Challenged Transactions to the extent reasonably appropriate under the circumstances fell outside the protections of the business judgment rule.

THE CHALLENGED TRANSACTIONS ARE SO EGREGIOUS ON THEIR FACE THAT THEY COULD NOT HAVE BEEN THE PRODUCT OF SOUND BUSINESS JUDGMENT OF THE DIRECTORS

460. In addition to the Challenged Transactions (which by themselves are egregious), the conduct of Janis Savitt was beyond conspicuously bad or offensive. For example, Janis Savitt: (i) falsely accused Wynne Savitt of "fucking the bookkeeper" in front of M+J Savitt's employees and during normal business hours; (ii) improperly signed two (2) corporate checks made payable to Wynne Savitt as "Fuck you Savitt;"; and (iii) compromised Wynne Savitt's personal e-mail address/account in an effort to harass Wynne Savitt, disrupt M+J Savitt's business relationships and otherwise divert business from M+J Savitt to herself and/or to illegally spy on Wynne Savitt.

461. Notwithstanding Michelle Savitt's role in the Challenged Transactions, Michelle Savitt's egregious conduct includes her false representations to Wynne Savitt that she was not attending an improperly noticed the Special Meeting. As a result of this fraudulent representation, Wynne Savitt relied to her detriment by not appearing at the Special Meeting given her reasonable belief that without Michelle Savitt's attendance at the Special Meeting, there could be no shareholder majority to constitute a quorum as required under M+J Savitt's By-Laws thereby causing Plaintiffs irreparable harm.

462. Michelle Savitt: (i) continues to use M+J Savitt's designs, Copyrights and Marks through Seppe1, and has secreted the profits and proceeds derived therefrom; (ii) frequently used M+J Savitt petty cash to reimburse herself for personal purchases; (iii) used and is profiting from the Michelle Savitt Stolen Jewelry (as defined hereinabove) without compensating M+J Savitt; (iv) wasted M+J Savitt assets by forcing M+J Savitt to pay for her adult child's health insurance and also receiving an overpayment of six hundred dollars ($600.00) per month in salary for a ten (10) year period; (v) has engaged in unauthorized contact with current M+J Savitt consumers, potential consumers, retailers, freelance fashion stylists and vendors in an effort to compete with M+J Savitt while simultaneously using information she obtained while employed with M+J Savitt; (vi)

intentionally diverted business away from M+J Savitt and to Seppel; (vii) falsified reimbursement receipts for Long Island Railroad tickets to and from Westhampton Beach, New York despite the fact that she was vacationing rather than working; (viii) falsified reimbursement receipts for personal dinners at the famous Elaine's restaurant in New York City; (viii) falsified purchase orders from M+J Savitt contractors; (ix) fraudulently submitted New York City Metrocards to M+J Savitt for reimbursement given that the Metrocards were used for personal rather than corporate reasons; (x) despite not knowing the risks involved with becoming a corporate officer and director of M+J Savitt and despite being "pressured" to attend the Special Meeting, made fraudulent representations to Wynne Savitt in connection with her attendance thereof, thereby incurring the added financial benefit of being able to continue selling the Michelle Savitt Stolen Jewelry through Seppel without consequence; and (xi) failed to show up for work on a routine basis despite being paid a salary.

463. Specifically, Michelle Savitt would tear food, beverage and entertainment receipts in half and submit such torn receipts to M+J Savitt's bookkeeper for reimbursement so that she would be reimbursed double of what she should have legitimately been entitled to.

464. Michelle Savitt has also taken property belonging to M+J Savitt for use by parties other than M+J Savitt including, but not limited to, Seppel. Such property includes customer files and documents belonging to M+J Savitt. Such property contains confidential, proprietary secrets and/or trade secrets.

465. For the years 2005 through 2007, Janis, Mildred, Paul and Michelle Savitt retained monies generated from corporate tax returns that should have been refunded to M+J Savitt.

466. Janis and Michelle Savitt as sixty-six percent (66%) of the New Board and assuming the Special Meeting was not valid, Mildred Savitt as fifty percent (50%) of the Old Board, all actively participated in the Challenged Transactions, and knowingly violated their fiduciary obligations in failing to stop any of them from occurring.

467. A director who would knowingly allow the Challenged Transactions to occur is tantamount to tacitly approving such conduct.

468. As a result, M+J Savitt's New and Old Board faces, at the very least, a substantial likelihood of liability given that the Challenged Transactions qualify as being so egregious on their face that board approval cannot meet the test of business judgment, and therefore a substantial likelihood of director liability exists.

469. To the extent that the New Board continues to knowingly fail to act in connection with the Challenged Transactions and the above-referenced conduct by Janis and Michelle Savitt, the lack of action by the New Board is *ultra vires* rather than the product of valid business judgment.

IN THE EVENT THAT A DEMAND ON M+J SAVITT'S BOARD IS NOT EXCUSED, PLAINTIFFS' MADE VALID DEMANDS

470. Alternatively, Plaintiffs made demands on the New Board and Old Board on numerous occasions spanning a three (3) year period. In fact, on or about May 17, 2007, Wynne Savitt, on M+J Savitt's letterhead, demanded that Mildred Savitt (at that time, a member of the Old Board) and Paul Savitt (a member of the New Board at the time the Amended Complaint was filed) address the Challenged Transactions.

471. In it, Wynne Savitt stated that her correspondence served "as a formal document to bring discussions to the table." At a minimum, Plaintiffs notified the New and Old Board of the Challenged Transactions numerous other times.

472. Plaintiffs clearly informed Defendants of the existence of a potential shareholder derivative action. Therefore, in the event that a demand on M+J Savitt's New and Old Board is not excused, Plaintiffs made a valid demand.

473. Derivative Plaintiff seeks to remedy the breaches of fiduciary duties by the Old and New Board that have caused substantial financial losses to M+J Savitt and other damages including, but not limited to, its reputation and goodwill.

474. Janis, Michelle, Paul and Mildred Savitt by reason of their positions as officers, directors, shareholders and/or fiduciaries of M+J Savitt and because of their ability to control the business and corporate affairs of M+J Savitt, owe M+J Savitt and its shareholders fiduciary obligations of trust, loyalty, good faith, and due care, and were and are required to use their utmost ability to control and manage M+J Savitt in a fair, honest and equitable manner.

475. Janis, Michelle, Paul and Mildred Savitt were and are required to act in furtherance of the best interests of M+J Savitt and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal benefit.

476. Janis, Michelle, Paul and Mildred Savitt owe M+J Savitt and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of M+J Savitt and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

477. Janis, Michelle, Paul and Mildred Savitt violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision, by, in addition to the allegations in the foregoing paragraphs: (a) ensuring that M+J Savitt complied with its legal obligations and requirement, including acting only within the scope of its legal authority and disseminating truthful and accurate representations to the public; (b) conducting the affairs of M+J Savitt in an efficient, business like manner so as to make it possible to provide the highest quality performance of its business, to avoid wasting M+J Savitt's assets and to maximize the value of M+J Savitt's stock; and (c) failing to properly and accurately guide potential investors as to the true financial condition of M+J Savitt at any given time, including making accurate statements about M+J Savitt's financial results and prospects and ensuring that M+J Savitt maintained an adequate system of financial controls such that M+J Savitt's financial reporting would be true and accurate at all times.

478. Janis, Michelle, Paul and Mildred Savitt, by virtue of their positions as directors

and/or officers, owed to M+J Savitt and to its shareholders the fiduciary duties of loyalty, good faith, and the exercise of due care in the management and administration of M+J Savitt's affairs.

479. The conduct of Janis, Michelle, Paul and Mildred Savitt complained of herein involves knowing and culpable violations of their obligations as directors and officers of M+J Savitt, the absence of good faith on their part, and a reckless disregard for their duties to M+J Savitt and its shareholders that Janis, Michelle, Paul and Mildred Savitt were aware or should have been aware posed a risk of serious injury to M+J Savitt.

480. As a direct and proximate result of Janis, Michelle, Paul and Mildred Savitt's failure to perform their fiduciary obligations, M+J Savitt has sustained significant monetary damages. As a result of the conduct alleged herein, Janis, Michelle, Paul and Mildred Savitt are liable to M+J Savitt.

481. Derivative Plaintiff brings this Twenty-First Claim derivatively in the right and for the benefit of M+J Savitt to redress injuries suffered, and to be suffered, by M+J Savitt as a direct result of the breaches of fiduciary duty, abuse of control, fraud and corporate waste, as well as the aiding and abetting thereof by Janis, Michelle, Paul and Mildred Savitt.

482. Derivative Plaintiff will adequately and fairly represent the interests of M+J Savitt in enforcing and prosecuting its rights.

483. Derivative Plaintiff is and was an owner of M+J Savitt stock during the times relevant to Defendants' wrongful course of conduct alleged herein, and remains a shareholder of M+J Savitt.

484. In the event that a Derivative Plaintiff failed to make a proper demand on the New and Old Board to bring this action on behalf of M+J Savitt, Derivative Plaintiff did not do so because such demand would be futile because the New and Old Boards: (a) have received personal financial benefit from their misconduct; (b) have demonstrated their unwillingness and/or inability to act in compliance with their fiduciary obligations and/or to sue themselves and/or their fellow

Board members for violations of law complained herein; (c) have personal, familial and professional relationships with whom they have entangled financial alliances, interests and dependencies, and therefore, they are not able to and will not vigorously prosecute such action; (d) have been willfully blind, induced and encouraged the wrongs alleged herein to have occurred and participated in efforts to conceal or disguise those wrongs from M+J Savitt's shareholders or recklessly and/or negligently disregarded the wrongs complained of herein, and are therefore not disinterested parties; and (e) would have to sue themselves, requiring them to expose themselves to millions of dollars in civil liability. Based on the foregoing any demand upon the New and Old Board would have been futile.

485. Janis, Michelle, Paul and Mildred Savitt were unjustly enriched at the expense of and to the detriment of M+J Savitt and its shareholders.

486. Derivative Plaintiff, as a shareholder and representative of M+J Savitt seeks restitution from Janis, Michelle, Paul and Mildred Savitt, and each of them, and seeks an order engorging all profits, benefits and other compensation obtained by the Janis, Michelle, Paul and Mildred Savitt, and each of them, from their wrongful conduct and fiduciary breaches.

487. Janis and Michelle Savitt have engaged in illegal activities as alleged herein and exposed M+J Savitt and its shareholders to civil liability for which they are liable. The actions of Janis, Michelle, Paul and Mildred Savitt have damaged M+J Savitt in an amount to be proven at trial.

488. By virtue of their role in financing and supplying Designs by Janis Savitt with designs and merchandise, Janis, Michelle, Paul and Mildred Savitt were able to, and in fact did, render aid and assistance to one another in breaching their fiduciary duties. Janis, Michelle, Paul and Mildred Savitt did so when they knew or should have known that the wrongful conduct alleged herein was illegal, harmful to M+J Savitt and a breach of their fiduciary duties.

489. Based on the foregoing, M+J Savitt and its shareholders has sustained and will

continue to sustain damages and injuries including, but not limited to, incurring excessive business operational costs, and associated personal expenditures and having to infuse time, effort and money into operating M+J Savitt.

490. As fiduciaries, Janis, Michelle, Paul and Mildred Savitt owed M+J Savitt and its shareholders a duty of candor and full accurate disclosure regarding the true state of M+J Savitt's business and assets and their conduct with regard thereto.

491. As described herein, Janis, Michelle, Paul and Mildred Savitt made, or aided and abetted the making of misrepresentations and concealments of material facts despite their duties to, *inter alia*, disclose the true facts of M+J Savitt.

492. As a result of Janis, Michelle, Paul and Mildred Savitt's fraud, M+J Savitt and its shareholders has sustained and will continue to sustain damages and injuries for which they have no adequate remedy at law.

493. In addition, Janis, Michelle, Paul and Mildred Savitt's acts were done maliciously, oppressively and with the intent to defraud and Derivative Plaintiff on behalf of M+J Savitt and its shareholders are entitled to punitive and exemplary damages in an amount to be determined at trial.

494. Based on the foregoing, Plaintiffs have been damaged in an amount to be determined at trial.

WYNNE SAVITT HAS THE CAPACITY TO ASSERT A DERIVATIVE CAUSE OF ACTION

495. Wynne Savitt is a fair and adequate representative of the interests of M+J Savitt's shareholders for the sole reason that M+J Savitt's shareholders failed to re-elect Wynne Savitt as a director or officer of M+J Savitt.

496. The Special Meeting was improper because: (i) it was improperly noticed; (ii) a majority of shareholders with the requisite capacity to vote failed to request that the President notice the Special Meeting in violation of M+J Savitt's By-Laws; (iii) given that Michelle Savitt, a twenty-

seven percent (27%) shareholder of M+J Savitt, is, by Defendants' own admission, and pursuant to an un-amended 1985 M+J Savitt corporate resolution, there was no quorum at the Special Meeting; and (iv) alternatively, even assuming that Michelle Savitt is deemed to have the requisite capacity as a voting shareholder, she nevertheless fraudulently represented to Wynne Savitt and her husband, Michael Weiner, that she was not attending the Special Meeting, causing Wynne Savitt to rely to her detriment by not appearing at the Special Meeting. Moreover, Michelle Savitt "never wanted" to be a director or officer of M+J Savitt. See Exhibit 15. Michelle Savitt only agreed to become a director and officer of M+J Savitt after being "pressured" by Defendants' lawyers. In fact, Michelle Savitt was "surprised" to discover that she was named a director and officer of M+J Savitt. See Exhibit 15. Michelle Savitt was not given any "advance notice" of her new role as director and officer of M+J Savitt. See Exhibit 15. Michelle Savitt was not given any "warning of the risks and jeopardy" of accepting the roles as director and officer of M+J Savitt. See Exhibit 15.

497. Based on the foregoing, the Special Meeting was not only improperly noticed but the New Board was also elected under fraudulent and deceptive means.

498. Wynne Savitt is, as of now, the sole complaining shareholder. In 2007, Michelle Savitt also complained about some of the Challenged Transactions. Therefore, any argument that Wynne Savitt was the sole driving force behind this lawsuit would be futile.

499. Wynne Savitt is the only shareholder of M+J Savitt who is qualified to serve in a fiduciary capacity as a representative of M+J Savitt's shareholders.

500. The other shareholders of M+J Savitt (Janis, Mildred and Michelle Savitt) cannot fairly and adequately represent the interests of M+J Savitt because of the Challenged Transactions and their roles as financiers and owners of businesses that are in direct competition with M+J Savitt.

501. As a result, the only shareholder who can fairly and adequately represent the class is Wynne Savitt.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

1. For judgment that:

   a. Janis Savitt, Michelle Savitt, Sepp Donahower, Designs by Janis Savitt and Seppel have engaged in trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114;

   b. All Defendants have engaged in contributory trademark infringement in violation of the Lanham Act;

   c. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have engaged in unfair competition, false designation of origin and trademark infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);

   d. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have engaged in dilution in violation of the Lanham Act;

   e. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity have engaged in trademark infringement and unfair competition in violation of the laws of the State of New York;

   f. Janis Savitt, Michelle Savitt, Sepp Donahower, Designs by Janis Savitt and Seppel have engaged in copyright infringement in violation of the Federal Copyright Act, 17 U.S.C. §§ 101, *et. seq.;*

   g. All Defendants have engaged in contributory copyright infringement in violation of the Federal Copyright Act, 17 U.S.C. §§ 101, *et. seq.;*

   h. Janis Savitt, Michelle Savitt, Sepp Donahower, Designs by Janis Savitt and Seppel have engaged in trademark dilution and injury to business reputation in

violation of the laws of the State of New York;

i. Janis Savitt, Michelle Savitt, Sepp Donahower, Designs by Janis Savitt and Seppe1 have engaged in deceptive acts and practices in violation of the laws of the State of New York;

j. Janis Savitt, Michelle Savitt, Paul Savitt and Michelle Savitt breached contracts between M+J Savitt shareholders;

k. All Defendants have been unjustly enriched;

l. Janis Savitt, Michelle Savitt, Sepp Donahower, Designs by Janis Savitt and Seppe1, converted M+J Savitt property;

m. Janis Savitt, Michelle Savitt and Sepp Donahower are vicariously liable for all acts of infringement and other violations of law alleged in this Second Amended Complaint;

n. Janis Savitt, Michelle Savitt, Sepp Donahower, Designs by Janis Savitt and Seppe1 tortiously interfered with M+J Savitt's business relationships;

o. Janis Savitt, individually, and through the Designs by Janis Savitt, Inc. corporate entity made materially misleading representations in Advertisements in violation of the law of the State of New York;

p. Janis Savitt, Michelle Savitt, Mildred Savitt and Paul Savitt breached their fiduciary duties to M+J Savitt in violation of the laws of the State of New York;

q. Janis Savitt defamed Plaintiffs' business reputation;

r. All Defendants engaged in fraudulent and deceitful conduct;

s. Janis Savitt, Michelle Savitt, Paul Savitt and Mildred Savitt were negligent;

t. Janis Savitt, Michelle Savitt, Paul Savitt and Mildred Savitt were wanton, reckless, malicious and grossly negligent causing Plaintiffs extreme harm; and

u. Janis and Paul Savitt intentionally inflicted emotional distress upon Wynne Savitt causing her harm.

v. Janis Savitt violated 15 U.S.C. § 1126(d)(1).

2. For a preliminary and permanent injunction enjoining Defendants, and any successors or assigns, and their officers, directors, partners, agents, subcontractors, manufacturers, distributors, retailers, servants, employees, attorneys, affiliates, licensees, subsidiaries and related companies or entities, and all others acting in concert or participation with them, from:

a. Making any use of the M+J Savitt Marks (as defined hereinabove), or any other mark confusingly similar to the M+J Savitt Marks;

b. Engaging in any activity that infringes upon the Marks;

c. Assisting, aiding, or abetting any other person or entity from engaging in or performing any of the activities referred to herein;

d. Directing Janis Savitt, Designs by Janis Savitt, Michelle Savitt and Seppel to publicly correct any and all misleading advertising in a manner and form to be established by the Court;

e. Directing Defendants to file with this Court and serve on Plaintiffs within thirty (30) days after service of the injunction, a report in writing, under oath, that describes in detail the manner and form in which Defendants have complied with the orders of this Court;

f. Unfairly competing with M+J Savitt in any manner whatsoever.

g. Preventing Janis Savitt from cybersquatting on the Domain Name.

3. For an order awarding Plaintiffs: (a) Defendants' profits, trebled, together with attorneys' fees and costs, to the full extent provided for by Section 35 of the Lanham

Act, 15 U.S.C. § 1117 and all other applicable provisions and principals of federal and New York State law; (b) restitution to M+I Savitt of all gains, profits, savings and advantages obtained by Defendants as a result of their wrongful actions; (c) an amount sufficient to conduct a corrective advertising campaign to dispel the effects of Defendants' wrongful conduct and confusing and misleading advertising; attorneys' fees under New York General Business Law § 349; (d) actual and punitive damages in an amount sufficient to deter other and future similar conduct by Defendants and others as provided for under the common law, and holding all Defendants jointly and severally liable for said damages.

4. For an order requiring Defendants to account to Plaintiffs for Defendants' unjustly received profits resulting from the foregoing acts; and

5. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all cause of action triable by a jury.

DATED: New York, New York
February 9, 2009

Respectfully Submitted,

ROBERT E. SEAMAN III (RS-2734)
PETER J. GLANTZ (PG-1063)
ATTORNEYS FOR PLAINTIFFS
475 PARK AVENUE SOUTH, 26TH FLOOR
NEW YORK, NEW YORK 10016
(212) 213-0202

ROBERT E. SEAMAN III (RS-2734)
PETER J. GLANTZ (PG-1063)
ATTORNEYS FOR PLAINTIFFS
475 PARK AVENUE SOUTH, 26TH FLOOR
NEW YORK, NEW YORK 10016
(212) 213-0202

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M+J SAVITT, INC., WYNNE SAVITT WEINER, AND WYNNE SAVITT WEINER, DERIVATIVELY ON BEHALF OF M+J SAVITT, INC., Plaintiffs, v. JANIS SAVITT, DESIGNS BY JANIS SAVITT, INC. MICHELLE SAVITT DONAHOWER, MILDRED SAVITT, PAUL SAVITT, SEPP DONAHOWER and SEPPE1, INC., Defendants.	CASE NO.: 08-CIV-8535 ECF CASE

VERIFICATION TO FIRST AMENDED COMPLAINT

I, Wynne Savitt Weiner am a twenty-seven percent (27%) shareholder of M+J Savitt, Inc. I declare that I have reviewed the Second Amended Complaint in the above-captioned matter and I authorize its filing. I have reviewed the allegations made in the Second Amended Complaint, and to those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely on my counsel and their investigation and for that reason I believe them to be true. I further declare that I am a current owner of M+J Savitt, Inc. stock and have been an owner of such stock from at least 1984 to the present.

Dated: February 9, 2009

Wynne Savitt Weiner

Exhibit 5

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

MICHELLE SAVITT and M+J SAVITT, INC.	Index No.:
Plaintiffs,	**SUMMONS** 12101200
-against-	
GREENBERG TRAURIG, LLP, PAUL D. SCHINDLER, G. ROXANNE ELINGS, JANIS SAVITT and DESIGNS BY JANIS SAVITT, INC.,	
Defendants.	

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Verified Complaint of the Plaintiffs, a copy of which is herewith served upon you and serve copies of your Answer upon BROOME, PALANT & SHAPIRO, P.C., attorneys for Plaintiffs, whose address is 225 Broadway, Suite 630, New York, New York 10007 within twenty (20) days after the service of this Summons and the Complaint within, exclusive of the day of service, or within thirty (30) days after service is completed if service is made in any manner other than by personal delivery to you within this State; and in case of your failure to appear or Answer, a judgment will be taken against you by default for the relief demanded in the annexed Complaint.

Dated: New York, New York
January 27, 2012

FILED
FEB 02 2012
COUNTY CLERK'S OFFICE
NEW YORK

Yours, etc.

BROOME, PALANT & SHAPIRO, P.C.
Attorney for Plaintiffs

By: _____
ALEXANDER SHAPIRO, ESQ.
225 Broadway, Suite 630
New York, NY 10007
212-608-1140

Basis of Venue: Plaintiff's place of residence and Defendants' place of business and /or residence

Plaintiff Michelle Savitt resides at: 12 East 86 St., New York, New York

TO:

Defendant Addresses:

Greenberg Traurig, LLP
200 Park Avenue, New York NY 10166

Paul D. Schindler, Esq.
200 Park Avenue, New York, NY 10166

G. Roxanne Elings, Esq.
200 Park Avenue, New York, NY 10166

Janis Savitt
200 West 58th Street, Apt. 12B
New York, NY 10019

Designs by Janis Savitt, Inc.
200 West 58th Street, Apt. 12B
New York, NY 10019

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

MICHELLE SAVITT and M+J SAVITT, INC.	:	Index No.: 101200/12
Plaintiffs,	:	**VERIFIED COMPLAINT**
-against-	:	
GREENBERG TRAURIG, LLP, PAUL D. SCHINDLER, G. ROXANNE ELINGS, JANIS SAVITT and DESIGNS BY JANIS SAVITT, INC.,	:	
Defendants.	:	

FILED
FEB 02 2012
COUNTY CLERK'S OFFICE
NEW YORK

Plaintiffs MICHELLE SAVITT ("MICHELLE") and M+J SAVITT, INC. ("M+J"), by their undersigned counsel, BROOME, PALANT & SHAPIRO, P.C., for their Complaint against Defendants GREENBERG TRAURIG, LLP ("GT"), PAUL D. SCHINDLER ("SCHINDLER"), G. ROXANNE ELINGS ("ELINGS"), JANIS SAVITT ("JANIS") and DESIGNS BY JANIS SAVITT, INC. ("DESIGNS"), collectively referred to as "Defendants", allege as follows upon information and belief for all times stated:

INTRODUCTION

1. Plaintiffs bring this action against Defendants GREENBERG TRAURIG, LLP, PAUL SCHINDLER and ROXANNE ELINGS to recover damages for breach of fiduciary duties, fraud, legal malpractice and other malevolent tortious acts. This case presents the outrageous situation where trusted attorneys, acting under the guise of legal representation, wrongfully undertook joint legal representation of parties to a litigation proceeding with materially adverse interests and deliberately, intentionally and willfully breached their fiduciary duties by defrauding their new clients, Plaintiffs MICHELLE SAVITT and M+J, in order to advance the litigation interests of their old clients, Defendants JANIS and her company,

Supreme Court Records OnLine Library - page 3 of 64

DESIGNS BY JANIS SAVITT, INC.

2. In furtherance of this fraudulent scheme standing in violation of the fundamental guiding principles of the legal profession, Defendants ELINGS, SCHINDLER and GT deliberately misrepresented to Plaintiffs herein that there were no meritorious causes of action which they could have pursued against Defendants JANIS and DESIGNS and lied that there was no need for MICHELLE and M+J to retain independent counsel and that it is advisable for them and JANIS and DESIGNS to be represented by one firm.

3. In violation of the Code of Professional Responsibility and the time-honored rules of legal ethics, defendants PAUL SCHINDLER and ROXANNE ELINGS undertook this joint legal representation in the case known as Wynne Savitt Weiner v. Janis Savitt et al ("Prior Action"). As fully described below, in the Prior Action the interests of Plaintiffs were materially adverse to those of JANIS SAVITT and her company, DESIGNS BY JANIS SAVITT, INC., in that Plaintiffs could have, and should have, asserted meritorious causes of action against JANIS SAVITT and her company and would have prevailed on their claims.

4. In the Prior Action, plaintiff Wynne Savitt Weiner, who was one of four shareholders of M+J and a director and officer thereof, initially commenced the action against JANIS and DESIGNS for, among other things, infringing on M+J trademarks, breach of contract, diverting clients, commencing a competing venture and otherwise unfairly competing with M+J.

5. Paul Savitt, who was M+J's president and the father of JANIS, MICHELLE and Wynne Savitt Weiner, was also joined in the initial action on the basis that he allegedly aided and permitted JANIS SAVITT in committing her tortious acts. MICHELLE and Mildred Savitt, who was the other shareholder and the mother of Wynne Savitt Weiner, JANIS and MICHELLE,

Supreme Court Records OnLine Library - page 4 of 64

were subsequently joined in the Prior Action.

6. At the time when GT assumed joint representation, JANIS was already an existing client of GT, ELINGS and SCHINDLER. Throughout this joint representation, the defendant attorneys sought to advance JANIS's interests at the expense and to the detriment of Plaintiffs.

7. Defendants GT, ELINGS and SCHINDLER never disclosed to Plaintiffs that there was a conflict of interest in one firm representing parties with materially adverse interests or that Plaintiffs could have asserted meritorious claims against JANIS and her company, including, as more fully described below, claims based in breach of fiduciary duties, unfair competition, breach of contract and trademark infringement.

8. As part of their dishonest scheme to advance JANIS SAVITT's interests in litigation, Defendants ELINGS, SCHINDLER and GT convinced MICHELLE to accept GT's legal representation and misrepresented to her that there were no meritorious claims that she could have asserted against JANIS SAVITT and her company.

9. Thereafter, Defendants GT, ELINGS and SCHINDLER counseled MICHELLE and M+J to waive all their rights, claims and causes of action against JANIS and the companies that she owned and controlled.

10. Plaintiffs followed Defendants SCHINDLER, ELINGS and GT's advice and entered into a settlement agreement whereby, in addition to releasing Wynne Savitt Weiner, they also released JANIS SAVITT and her company from all liability.

11. Within a week after MICHELLE entered into a settlement agreement with respect to the Prior Action, GT attorneys prepared new wills for Paul Savitt and Mildred Savitt whereby MICHELLE was effectively disinherited and her interests under the wills were to be used to pay

Supreme Court Records OnLine Library - page 5 of 64

GT's outstanding legal fees and to reimburse JANIS for all the legal fees previously paid to GT. All of the instructions for the preparation of the wills came directly from or through JANIS, who was the real architect of the wills and the one paying for their preparation. A team of GT lawyers and staff arrived at the ailing parents' home to execute and witness the wills under which GT was a *de facto* beneficiary.

12. Present wills are the subject of a will contest pending in the Surrogate's Court of New York County.

13. After the settlement of the Prior Action, JANIS took complete control of M+J, denied and continues to deny MICHELLE all access to corporate books and records, and has deliberately acted against the best interests of M+J by usurping its corporate opportunities while converting its inventories, goodwill and other assets.

14. Since the settlement of the Prior Action, JANIS has also continued to carry on a campaign of calculated and intentional misinformation of the press and the jewelry business community by misappropriating for herself the credit for designs and work done by MICHELLE, thereby significantly impairing the goodwill associated with MICHELLE's name and otherwise causing her great harm.

THE PARTIES

15. Greenberg Traurig, LLP is a New York limited liability partnership engaged in the practice of law with a principal place of business located at 200 Park Avenue, New York, New York 10166.

16. PAUL D. SCHINDLER is an attorney duly admitted to practice law before the courts of the State of New York and is a shareholder in GT and a member of the firm. PAUL SCHINDLER conducts business out of GT's New York office located at 200 Park Avenue, New

Supreme Court Records OnLine Library - page 6 of 64

York, New York 10166. Defendant SCHINDLER is the head of GT's entertainment law department.

17. G. ROXANNE ELINGS is an attorney duly admitted to practice law before the courts of the State of New York and is a shareholder in GT and a member in the firm. ROXANNE ELINGS conducts business out of GT's New York office located at 200 Park Avenue, New York, New York 10166.

18. JANIS SAVITT is a resident of the State of New York and resides at 200 West 58th Street Apt. 12 B, New York, New York 10019.

19. DESIGNS BY JANIS SAVITT, INC. is a New York corporation wholly owned and controlled by JANIS SAVITT with a principal place of business located at 200 West 58th Street Apt. 12 B, New York, New York 10019.

20. MICHELLE SAVITT is a resident of the State of New York and resides at 12 East 86th Street, Apt. 429, New York, New York 10028

21. M+J SAVITT, INC. is a New York corporation with a principal place of business at 200 West 58th Street Apt. 12 B, New York, New York 10019.

STATEMENT OF FACTS

22. M+J SAVITT, INC. ("M+J") is a closely held corporation with an illustrious history in the jewelry industry. At the time of the Prior Action, the equity of M+J was owned by Wynne Savitt Weiner, MICHELLE and JANIS, who are three sisters, and their mother, Mildred Savitt. Each of the siblings owned Twenty-Seven (27) percent of the equity with the remaining Nineteen (19) percent being owned by Mildred Savitt.

23. In the almost four decades since its founding in 1972, M+J has become one of the

Supreme Court Records OnLine Library - page 7 of 64

leading names in designing, manufacturing and wholesaling fine and semi-precious designer jewelry. M+J clients included names such as Cartier, Michael Kors and Ralph Lauren, and its own brands were carried by retailers including Nieman Marcus, Bergdorf Goodman, Saks Fifth Avenue, Barneys New York, Henri Bendel's, Bloomingdales and other specialty and high-end retailers.

24. The M+J name reached iconic status – its designs were often subjects of leading fashion magazine articles and their pieces were worn by top celebrities. The success and reputation of M+J is illustrated by its numerous awards and accolades – M+J was awarded the coveted "COTY" award, received twenty-seven (27) DeBeers "Diamond Today" awards, and was inducted to the Diamond International Hall of Fame.

25. MICHELLE and JANIS were the M+J designers and Wynne Savitt Weiner was its business manager.

26. Since its inception, M+J has had a longstanding usage of the trademark "SAVITT", both as a trademark for its products, as part of its trade name and corporate identifier, and within advertisements and promotional materials. To protect its trademark rights, M+J has obtained numerous federal trademark registrations for its trademarks, all of which have been in continuous use for more than five (5) years, which makes them "incontestable" under 15 U.S.C. Sec 115(b).

27. M+J federal trademark registrations include: (i) "SAVITT", U.S. Registration No. 2,941,210, registered on September 15, 2003 for "jewelry" based on first use in commerce in 1984; (ii) "S M+J SAVITT & DESIGN" (all in stylized form), U.S. Registration No. 2,116,162, registered on November 25, 1996 for "jewelry made of precious metals, and jewelry with precious stones" based on first use in commerce in 1984; and (iii) "M+J SAVITT", U.S.

Supreme Court Records OnLine Library - page 8 of 64

Registration No. 3,022,631, registered on September 15, 2003 for "jewelry" based on first use in commerce in 1984.

28. In addition, for approximately sixteen (16) years M+J had also conducted business under the names of "JANIS SAVITT FOR M + J SAVITT" and "JANIS SAVITT".

29. The inclusion and usage of "JANIS SAVITT" within the branding, marketing and promotion of M+J and its products was done upon the request of Defendant JANIS, who convinced the M+J shareholders, directors and officers that this would be done in the best interests of M+J.

30. The M+J trademarks became uniquely associated with M+J and developed secondary meaning, rendering them "famous" within the meaning of the dilution provisions of the Lanham Act, 15 U.S.C. Sec. 1125(c).

31. In or about 1992, M+J and its shareholders entered into an oral agreement ("Agreement") with Defendant JANIS whereby it was agreed that M+J would identify, market, promote and advertise its various products under the names of "JANIS SAVITT" and "JANIS SAVITT FOR M + J SAVITT" on the condition and in consideration of the following terms, conditions, and covenants: (i) the inclusion of the name "JANIS SAVITT" in the marketing, promotion, advertisement and branding of M+J products would be made for the exclusive benefit of M+J and not for the personal benefit of Defendant JANIS SAVITT, individually; (ii) such usage would be limited for branding purposes to the Gold and Diamond Precious Metal Collection, which is one segment of the company's jewelry collection; (iii) that as a result of M+J investing substantial sums into the marketing, promotion and advertising of the products sold and identified under "JANIS SAVITT" and "JANIS SAVITT FOR M + J SAVITT", all rights and proprietary interests relating to "JANIS SAVITT" and "JANIS SAVITT FOR M+J

Supreme Court Records OnLine Library - page 9 of 64

SAVITT", including trademark rights, would be the exclusive property of M+J for as long as M+J would be conducting business.

32. Further, it was agreed, understood and implied that in consideration of M+J's extensive efforts and investments in promoting and adding commercial value to the name "JANIS SAVITT", she would not later turn around and use the name "JANIS SAVITT" in a venture directly competing with M+J.

33. Since the Agreement, M+J has invested millions of dollars into marketing, advertising and promoting the trade names "JANIS SAVITT" and "JANIS SAVITT FOR M+J SAVITT". In total, M+J has invested approximately two million dollars ($2,000,000.00) in retailer coop advertising programs and marketing in order to build the fame, reputation and goodwill for its trademarks. As a direct result of M+J's substantial investments, as well as using its own reputation, contacts, relationships and channels to promote "JANIS SAVITT" and "JANIS SAVITT FOR M+J SAVITT", M+J has created substantial value in the name "JANIS SAVITT", which provided Defendant JANIS with a competitive advantage against M+J.

34. On or about October 31, 2006, Defendant JANIS, while an officer, director and shareholder of M+J, applied, in her individual name, for the trademark "JANIS SAVITT" for use with "jewelry" (the "Trademark Application"). This was done without the permission or consent of M+J and at a time when Defendant JANIS owed fiduciary duties to M+J and its stockholders.

35. However, a USPTO Examining Attorney refused the Trademark Application on the basis that the mark sought was likely to be confused with M+J trademarks and would infringe on M+J's vested trademark rights. The USPTO Examining Attorney opined that the commercial impressions conveyed by "JANIS SAVITT" and the M+J trademarks were identical in light of the prominent use of "SAVITT" and the mark sought being intended for use in the

Supreme Court Records OnLine Library - page 10 of 64

jewelry industry.

36. In addition, as part of her comprehensive plan of deception designed for her to maximize all the advantages she could derive from M+J before revealing her competitive venture, Defendant JANIS registered the website domain of www.Janis-Savitt.com and secreted her public identity as owner/registrant of said domain name through a "Domain Discrete" product service offered by the Register.com registrars.

37. On December 31, 2007, for her own personal benefit and without the consent or permission of M+J, Defendant JANIS started a venture which competed directly with M+J. On that day, Defendant JANIS incorporated "Designs by Janis Savitt, Inc." Additionally, since that time, Defendant JANIS has competed with M+J through "Janis Savitt d/b/a Janis by Janis Savitt, Inc." These actions were undertaken by Defendant JANIS in violation of M+J trademark rights and in breach of her fiduciary duties owed to M+J and its stockholders.

38. In competing with M+J, Defendant JANIS capitalized on the fact that over the period of sixteen (16) years the public, designers, retailers and fashion magazine publishers came to know "JANIS SAVITT" as being one of M+J lines and synonymous therewith. The public, designers, retailers and the press were actually confused and perceived Defendant JANIS's products and works as those of M+J. In fact, on numerous occasions, magazine publications, being under the impression that Designs by Janis Savitt, Inc. was M+J or affiliated therewith, erroneously sent to M+J correspondences intended for Defendant JANIS.

39. After approximately sixteen (16) years of M+J investing heavily into marketing, promoting and advertising "JANIS SAVITT" and "JANIS SAVITT FOR M+J SAVITT", thereby adding substantial commercial value to Defendant JANIS's name, Defendant JANIS wielded this advantage to unfairly compete with M+J to its detriment.

Supreme Court Records OnLine Library - page 11 of 64

40. While being an officer and director of M+J and thereafter, Defendant JANIS utilized M+J's contacts and channels to promote her own venture and actively solicited existing M+J clients and valuable business contacts for herself, thereby successfully diverting them from M+J. The M+J clients so diverted included Ralph Lauren, which was one of M+J's top clients. For example, right after Defendant JANIS left M+J, Ralph Lauren faxed in to M+J an order for an M+J design bangle bracelet which Ralph Lauren used to purchase from M+J and which was M+J proven great seller. Shortly thereafter, Ralph Lauren contacted Wynne Weiner Savitt, apologized and indicated that the order was withdrawn from M+J and would be sent to Janis Savitt.

41. As a direct result of Defendant JANIS opening up a competing venture with M+J, infringing on its trademarks and unfairly competing with it through her ill-begotten unfair competitive advantages, M+J suffered substantial damages, including loss of income and the dilution of its very valuable trademarks.

42. In addition, on numerous occasions, Defendant JANIS SAVITT wrongfully misrepresented, in advertisements, M+J products as those of her own. For example, Defendant JANIS: (i) credited herself instead of M+J in numerous advertisements for a variety of products in many publications, including, without limitation, the March 2007 issue of Town & Country Magazine; (ii) incorrectly credited products as "Janis Savitt for Ralph Lauren" instead of "M+J Savitt for Ralph Lauren"; (iii) misrepresented the cost of various M+J jewelry products in various advertisements, including, but not limited to, in a Vogue Magazine 2007 issue for a "Big Time Necklace".

43. Defendant JANIS SAVITT, before and after the Prior Action, on numerous occasions misappropriated the credit for MICHELLE's designs and work by misrepresenting to

Supreme Court Records OnLine Library - page 12 of 64

the press, retailers, designers and the public at large MICHELLE's designs and work as her own.

44. As a direct result of Defendant JANIS's tortious acts, M+J stockholders, including Plaintiff MICHELLE, suffered serious loss of value to and diminution of their stock.

THE PRIOR ACTION

45. On October 7, 2008, Wynne Savitt Weiner and M+J commenced the Prior Action in the United States District Court for the Southern District of New York. A copy of the initial complaint of the Prior Action (the "Prior Complaint") is annexed hereto as **Exhibit "A"**.

46. Among other things, if MICHELLE and M+J had independent legal counsel who would have advised them about the meritorious causes of action which each could have asserted against JANIS and DESIGNS, the causes of action contained in the Prior Complaint, with the exception of those claims asserted against Paul Savitt, could have been and would have been maintained by MICHELLE and M+J.

GREENBERG TRAURIG REPRESENTATION

47. Defendants ELINGS, SCHINDLER and GT organized a special meeting of the shareholders of M+J, which was held on November 18, 2008 at their Manhattan office. The purpose of this meeting was to remove Wynne Savitt Weiner as a director and officer of M+J and to authorize the discontinuance of the causes of action asserted by M+J in the Prior Complaint.

48. In an effort to effectuate this objective, Defendants GT, ELINGS and SCHINDLER sought to persuade MICHELLE to take their side and to vote in accordance with their instructions. To induce MICHELLE to side with JANIS, Defendants ELINGS,

Supreme Court Records OnLine Library - page 13 of 64

SCHINDLER and GT, acting in concert, misrepresented to MICHELLE that all of the claims asserted by plaintiffs in the Prior Action lacked merit and "did not have a leg to stand on".

49. MICHELLE was further advised by Defendants GT, ELINGS and SCHINDLER that the case would end up costing M+J significant funds, which will all be spent on a frivolous case.

50. Plaintiff MICHELLE relied upon the misrepresentations of Defendants ELINGS, SCHINDLER and GT, which reliance proved to be to her detriment.

51. Believing that the claims asserted in the Prior Action were devoid of any merit, on November 18, 2008, MICHELLE attended the special meeting of the shareholders of M+J.

52. On November 18, 2008, Defendants ELING and SCHINDLER, both of whom were present during the special meeting of the shareholders of GT, assured MICHELLE that she was doing the right thing and misrepresented that the claims in the Prior Action had no merit.

53. In misrepresenting that the claims asserted in the Prior Action had no merit whatsoever, Defendants ELINGS and SCHINDLER were aware of the falsity of their representations and made said misrepresentation knowingly, willfully and deliberately with the specific intent of misleading Plaintiffs MICHELLE and M+J.

54. At no point in time before, during or after the said special meeting of the shareholders did Defendants ELING, SCHINDLER or any other GT attorney, employee, agent or servant advise MICHELLE to consult with independent legal counsel or of the conflict of interest.

55. At the November 18, 2008 special meeting of the shareholders, GT presented carefully prepared scripts which were handed to the shareholders for the purpose of each shareholder reading the requisite language verbatim.

56. In light of her debilitating neurological disease, Mildred Savitt was unable to attend the meeting, and, according to Defendants JANIS, ELINGS and SCHINDLER, she purportedly provided a duly executed proxy to Paul Savitt so that he could vote in her place at the meeting.

57. JANIS, MICHELLE and Paul Savitt each read the designated portions of the prepared script, thereby removing Wynne as a director and officer of M+J and determined that M+J should not continue its claims in the Prior Action.

58. In advising the shareholders and directors of M+J to discontinue the M+J's claims, GT rendered legal advice and acted as legal counsel to M+J, at which point an attorney-client relationship existed between GT and M+J.

59. At the November 18, 2008 special meeting of the shareholders, Defendants ELINGS and SCHINDLER wrongly advised and intentionally misrepresented to the M+J shareholders, directors and officers that the claims that were asserted in its name in the Prior Action were devoid of merit.

60. Subsequent to the November 18, 2008 special meeting of the shareholders, Wynne Savitt Weiner interposed an amended complaint, wherein in addition to her individual claims, she sought to institute a derivative action on behalf of M+J and also joined MICHELLE as a co-defendant.

61. Sometime thereafter, Defendants ELINGS and SCHINDLER advised MICHELLE that GT offered to represent her in the federal proceedings. At that time, the defendants consisted of JANIS, Designs by Janis Savitt, Inc., MICHELLE, Mildred Savitt and Paul Savitt, and M+J was a counterclaimant.

62. Defendant ELINGS recommended that all defendants and counterclaimants be

Supreme Court Records OnLine Library - page 15 of 64

represented by same counsel, that there was no need for MICHELLE or for M+J to get independent legal counsel, and that MICHELLE would not be personally liable for any of the legal fees.

63. At the time when Defendants ELINGS, SCHINDLER and GT offered to undertake such joint legal representation of all defendants and counterclaimants, there was a clear conflict of interest because MICHELLE, M+J and Mildred Savitt all had meritorious claims that could have been asserted against JANIS and DESIGNS.

64. At no point in time did Defendants ELINGS, SCHINDLER or any other GT attorney, employee, contractor or agent disclose to MICHELLE, in writing or verbally, that there was any conflict of interest in GT undertaking such joint legal representation.

65. At no point in time did Defendants ELINGS, SCHINDLER or any other GT attorney, employee, contractor or agent disclose to M+J, whether in writing or verbally, that there was any conflict of interest in GT undertaking such joint legal representation.

66. Such disclosure was mandatory under the Code of Professional Responsibility Rule 1.7, its predecessor, and other authority.

67. In reliance on GT's misrepresentations that there were no meritorious claims against JANIS or her company, and, being ignorant of the fact that there was a material conflict of interest, MICHELLE consented to GT becoming her attorney in the Prior Action.

68. If MICHELLE had been advised that there was a material conflict of interest and that she could have asserted her own claims against JANIS and her company, she would not have consented to the joint representation and would have sought independent legal counsel.

69. In reliance on GT's misrepresentations that there were no meritorious claims against JANIS or her company, and, being ignorant of the fact that there was a material conflict

Supreme Court Records OnLine Library - page 16 of 64

of interest, M+J, through its Board, voted to discontinue M+J's claims in the Prior Complaint and consented to GT becoming its attorney in the Prior Action.

70. If M+J had been advised that there was a material conflict of interest and that it had meritorious claims to assert against JANIS and her company, M+J would have sought out independent legal counsel to advise it of its rights, would not have voted to discontinue M+J's claims, and would have proceeded with the claims asserted in the Prior Complaint.

71. At the time GT undertook said joint representation, JANIS had already been its old client.

72. At all times during the pendency of the Prior Action, its settlement and at all times prior and after thereof, Defendants ELINGS, SCHINDLER and GT protected and sought to advance only the interests of JANIS and her company to the exclusion of, and against the interests of, MICHELLE and M+J.

73. GT proceeded to represent MICHELLE in the Prior Action without any retainer agreement between her and GT.

74. On numerous occasions GT promised Plaintiff MICHELLE and her husband, Sepp Donahower, that a retainer agreement would be sent to them for review, but none was ever provided or signed.

75. At all times, Defendants ELINGS, SCHINDLER and GT were loyal only to JANIS and DESIGNS and had no loyalty to their other clients, including MICHELLE and M+J.

76. At all times, Defendants ELINGS, SCHINDLER and GT agreed to the joint representation and in fact strongly encouraged it solely for strategic reasons, all for the benefit of JANIS in that they sought to control MICHELLE: a) so that M+J's claims in the Prior Complaint would not be pursued, and (b) so that MICHELLE would not retain independent

Supreme Court Records OnLine Library - page 17 of 64

counsel who would advise her to proceed with filing claims against JANIS and DESIGNS.

77. Prior to the commencement of the Prior Action, JANIS was indebted to GT for outstanding legal fees and her potentially losing the Prior Action could have rendered her insolvent and unable to pay these outstanding fees.

78. In defending the Prior Action, GT's outstanding legal fees escalated to a sum of approximately nine hundred thousand dollars ($900,000.00), of which approximately six hundred thousand dollars ($600,000.00) remained unpaid at the conclusion of the Prior Action.

79. Most if not virtually all of the time expended by GT in connection with the Prior Action was in defending and promoting the interests of JANIS and her company and any time spent on attending depositions and performing other services for Paul Savitt and Mildred Savitt was merely ancillary and incidental to GT's serving of JANIS's interests.

80. However, the amounts paid towards the outstanding bill were primarily generated from Paul and Mildred Savitt's retirement savings, which they needed for custodial and medical care.

81. According to statements made by JANIS to MICHELLE during the pendency of the Prior Action, Defendant SCHINDLER personally loaned to JANIS the sum of approximately forty thousand dollars ($40,000.00) so that she could pay down the outstanding bill to help him keep face with the other partners.

82. Defendant SCHINDLER also received from JANIS an M+J necklace which was the property of M+J and worth more than $100,000.00, all without paying M+J any compensation therefor.

THE SETTLEMENT AGREEMENT AND CONCLUSION OF THE PRIOR ACTION

83. After the November 18, 2008 shareholder meeting, Wynne, no longer being a

Supreme Court Records OnLine Library - page 18 of 64

member of the board of directors or an officer of M+J, could only seek redress for M+J's injuries through a derivative action.

84. Since MICHELLE and all other directors other than JANIS had no pecuniary interest in the competing venture of JANIS, nor received any pecuniary benefit from her acts of trademark infringement, the Honorable Denise Cote opined that plaintiffs had failed to establish futility of demand on the board of directors, and, therefore, failure to make demand was not excused.

85. As a result, the federal court indicated that it would dismiss all derivative claims, which, according to the court, encompassed all of the plaintiffs' causes of action except Wynne's defamation claims. The dismissal was purely on procedural grounds and not on the merits of the causes of action asserted.

86. On July 16, 2009, all the parties to the Prior Action entered into a settlement agreement resolving all the claims (the "Settlement Agreement"). A copy of the Settlement Agreement is annexed hereto as **Exhibit "B"**.

87. MICHELLE's husband, Sepp Donahower, and his company, were also parties to the Settlement Agreement although there were no pending claims against either of them at that time.

88. Under the terms of the Settlement Agreement, each party released every other party from any and all liability for anything whatsoever, whether known or unknown.

89. By signing the Settlement Agreement, MICHELLE and M+J released all rights and claims against JANIS and DESIGNS.

90. At the time the Settlement Agreement was reached, MICHELLE and her husband were residents of the State of California.

Supreme Court Records OnLine Library - page 19 of 64

91. As further proof of the fact that the Defendant attorneys were protecting the interests of JANIS only and were seeking to protect her from possible claims of MICHELLE and M+J, GT attorneys, on their own initiative and not on the request of opposing counsel, inserted into the Settlement Agreement a provision whereby MICHELLE, her husband and his company waived all the protective provisions of Section 1542 of the California Civil Code, which provides that: "[a] general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

92. In including said provision on its own initiative, GT breached their duty of loyalty to MICHELLE and caused her to waive valuable rights and protections of Section 1542.

93. Since January of 2009 and as of the date of the Settlement Agreement, GT was in possession or control of various M+J jewelry, inventories, raw materials and other assets which GT was supposed to deliver to M+J after the settlement.

94. GT released all of the M+J assets in its possession or control to Defendant JANIS without any restrictions or consent of MICHELLE or of M+J Board. However, when MICHELLE sought to sell some of M+J inventories to pay M+J expenses, Defendant ELINGS sent MICHELLE a letter demanding the return of all inventories she intended to sell on behalf of M+J.

95. Defendant JANIS converted most of the M+J assets previously held or controlled by GT and used them for her own personal benefit to the exclusion of M+J.

96. Since the Settlement Agreement, MICHELLE, as a director and shareholder of M+J, on numerous occasions requested Defendant JANIS to provide her access to M+J's corporate books and records.

Supreme Court Records OnLine Library - page 20 of 64

97. However, JANIS repeatedly denied MICHELLE all such access and usurped to herself all of the management powers and corporate assets.

EXECUTION OF THE WILLS

98. At about the time GT was finalizing the terms of the Settlement Agreement, its attorneys were preparing new wills for Paul and Mildred Savitt ("New Wills).

99. At or about that time, Defendant JANIS was significantly delinquent in paying her outstanding legal fees to GT, with the total amount outstanding being approximately six hundred thousand dollars ($600,000.00).

100. Defendants ELINGS, SCHINDLER and GT conspired and reached an agreement with JANIS that they would all act in concert to take all necessary steps, including exercising undue influence, to make sure that the outstanding legal fees would be paid out of the estates of Paul and Mildred Savitt and that GT would prepare such wills and arrange for their execution.

101. In connection with the drafting and the preparation of the New Wills, virtually all of the instructions as to testamentary dispositions were received by GT exclusively through JANIS.

102. On July 22, 2009, the New Wills were executed by Paul Savitt and Mildred Savitt at their home residence.

103. On July 22, 2009, a team of GT personnel arrived at the residence of Paul Savitt and Mildred Savitt to supervise the execution of New Wills.

104. All of the witnesses to the New Wills were either GT attorneys, employees, contractors or agents.

105. The New Wills revoked the prior wills of Paul and Mildred Savitt which were

Supreme Court Records OnLine Library - page 21 of 64

executed in 2005 ("Old Wills").

106. Under the Old Wills, which were essentially mirror image wills, in event that there was no surviving spouse, MICHELLE was to act as the executrix and each of the three daughters would receive an equal share of the estate.

107. Under the New Wills, which are also essentially mirror image wills, in event that there is no surviving spouse, virtually the entirety of the estates goes to JANIS, who is also named as the executrix.

108. Under the New Wills, MICHELLE's interest is limited to one half of the net proceeds from the sales of Mildred's West Hampton property, after the payment of all outstanding mortgages and encumbrances, real estate commissions, and all outstanding legal fees and reimbursement to JANIS of all of the legal fees paid by her.

109. The fair market value of this West Hampton property is believed, based on comparable sales, to be about one million three hundred thousand dollars ($1,300,000.00), and the equity therein is not believed to exceed eight hundred and fifty thousand dollars ($850,000.00).

110. However, Defendant JANIS sold the West Hampton property for Nine Hundred Thousand Dollars ($900,000.00), which sum us about Four Hundred Thousand Dollars ($400,000.00) below fair market value.

111. In essence, MICHELLE has been effectively disinherited with her portion of the inheritance going to paying GT for its legal fees and reimbursing JANIS for her legal fees.

112. In drafting the New Wills, GT has made itself a de facto beneficiary.

113. GT is presently representing the Estate of Paul Savitt and the Estate of Mildred Savitt in connection with probate proceedings filed by JANIS in the Surrogate Court, New York

Supreme Court Records OnLine Library - page 22 of 64

County.

M+J POST-SETTLEMENT AGREEMENT

114. Since the time of the Settlement Agreement, M+J has been managed and controlled by JANIS.

115. M+J closed its office location and all of its records are in the possession of JANIS

116. Presently, M+J has two directors: MICHELLE and JANIS.

117. Presently, M+J has three shareholders: MICHELLE, JANIS and the Estate of Mildred Savitt.

118. JANIS is the Preliminary Executor of the Estate of Mildred Savitt.

119. JANIS received from GT all of the inventories, raw materials, models, expensive jewelry, costly office furniture and equipment, and other assets of M+J which were in GT's possession or control ("GT Inventories").

120. Defendant JANIS never transferred the GT Inventories to M+J.

121. Defendant JANIS converted the GT Inventories for her own personal use, benefit and enrichment, all of which was to the exclusion of M+J.

122. After taking control of M+J, JANIS has converted and continues to convert for her personal use and benefit M+J inventories and other assets.

123. After the Settlement Agreement, JANIS has been selling and continues to sell old M+J inventories under the names of Defendant DESIGNS., with all revenues and profits therefrom going to JANIS and Defendant DESIGNS.

124. After the Settlement Agreement, JANIS has been using M+J as a venue for liquidating undesirable inventory of Defendant DESIGNS at highly discounted prices, which serves to undermine the four decades of segment, market and price positioning of M+J.

Supreme Court Records OnLine Library - page 23 of 64

125. All the revenues and profits from these sales inure to the exclusive benefit of JANIS and her company.

126. MICHELLE at no point in time approved, consented to, excused or ratified these actions by JANIS.

127. On numerous occasions after the Settlement Agreement, MICHELLE demanded JANIS to account for her actions and to provide her access to corporate books and records. On June 7, 2011, MICHELLE sent JANIS a correspondence once again demanding access to the corporate books and records. A copy of said correspondence is annexed hereto as **Exhibit C**.

128. As of the time of this Complaint, JANIS never produced any of the requested information and failed to grant MICHELLE access to the corporate books and records.

129. Despite MICHELLE's repeated demands for access to information, books and records of M+J, JANIS never complied with such demands and to date MICHELLE, being a shareholder and director of M+J, has been denied such access.

130. In a pattern of ongoing misconduct starting approximately in January of 2007 and continuing until the present time, Defendant JANIS has been making false, disparaging and defamatory statements about M+J and MICHELLE, which statements were made for JANIS's personal pecuniary gain.

131. As a result of MICHELLE and M+J waiving any and all claims against JANIS when they signed the Settlement Agreement, with respect to JANIS and Defendant DESIGNS, the present Complaint seeks relief for acts occurring after the date of the Settlement Agreement.

Conversion of Goodwill and Misappropriation of Design Credits

132. Since the time of the Settlement Agreement, JANIS has provided false, fabricated and misleading information about M+J and its designs to various publications,

Supreme Court Records OnLine Library - page 24 of 64

distributors and retailers.

133. JANIS repeatedly stated and misrepresented to the press and others that she was "the" designer for M+J and that the sole design credit for M+J products, including for its award winning designs, belongs to JANIS and not to MICHELLE.

134. These statements were false because MICHELLE, who is one of the company's founders, was one of its primary designers and the credit for a substantial percentage of M+J designs, including many of its best-selling designs, belonged to MICHELLE.

135. In representing to the press, jewelry business community and consumers that she was '"the designer" for M+J, Defendant JANIS took credit for MICHELLE's designs, including many designs which represented M+J's leading products and best-selling items.

136. As a result of JANIS's repeated false statements wherein she misappropriated all of the credit for the designs of M+J and of MICHELLE, the public formed the perception that the involvement of MICHELLE and Wynne Weiner Savitt was inconsequential and immaterial to M+J's success and that JANIS was essentially M+J. This facilitated and enabled JANIS to convert M+J clients, accounts and goodwill for her own individual gain.

137. By virtue of the abovementioned pattern of deceptive conduct aimed at converting MICHELLE's design credits and to wrongfully minimize her contributions to the success of M+J, MICHELLE was seriously and irreparably injured in her profit making abilities, was caused to suffer serious emotional harm and was otherwise damaged and caused to suffer harm.

138. By virtue of the abovementioned pattern of deceptive conduct aimed at converting M+J design credits and goodwill, M+J has suffered serious and irreparable injury to its goodwill, has lost business opportunities and has been otherwise damaged and caused to suffer harm.

Conversion of Raw Materials, Inventories and other Assets belonging to M+J

139. After taking control of M+J subsequent to the Settlement Agreement, JANIS

Supreme Court Records OnLine Library - page 25 of 64

converted its raw materials, inventories and other assets for use by her and by Defendant DESIGNS BY JANIS SAVITT, INC. The basis for the forgoing claims is that numerous items which have been sold and are being sold by JANIS through DESIGNS BY JANIS SAVITT, INC. use or contain raw materials or represent inventories that were the property of M+J.

140. Defendants SCHINDLER, ELINGS and GT denied MICHELLE any access to the GT Inventories and aided and abetted JANIS in converting said inventories for her own pecuniary gain so that she could pay off her legal bills.

141. Only a minor portion of the sales proceeds are believed to have gone for the payment of legitimate expenses of M+J.

142. At no point in time did M+J receive any compensation from JANIS or from DESIGNS for the M+J inventories and raw materials sold by JANIS or by Defendant DESIGNS for the benefit of Defendants JANIS and DESIGNS.

143. The approximate total value of these raw materials so converted by JANIS is believed to exceed Five Hundred Thousand Dollars ($500,000.00).

Wrongful Use of M+J for Designs by Janis Savitt, Inc.'s Purposes and Pecuniary Gain

144. JANIS has used and still uses the M+J name for the purpose of liquidating closeout items of Defendant DESIGNS so as not to damage or detract from the tradename of DESIGNS BY JANIS SAVITT, INC., Janis by Janis Savitt or JANIS SAVITT.

145. Despite the fact that Defendant DESIGNS BY JANIS SAVITT, INC. sells its closeout items under the M+J brand, neither JANIS nor her company ever provided any of the sales proceeds to M+J, with all sales proceeds inuring to JANIS and to DESIGNS BY JANIS SAVITT, INC.

Supreme Court Records OnLine Library - page 26 of 64

Conversion of corporate opportunities, breach of fiduciary duties and mismanagement

146. Since the Settlement Agreement, JANIS has taken absolute control of M+J. Defendant JANIS has unilaterally moved the corporate office to her own residence and from the time of the Settlement Agreement took possession of all corporate books and records, all to the exclusion of the other M+J officers and directors.

147. Despite the fact that for the past two (2) years MICHELLE has repeatedly requested JANIS for access to all corporate books and records, JANIS has refused to provide any access whatsoever. JANIS has effectively ousted MICHELLE, who is presently the only other remaining director, from the control and management of M+J.

148. Since her taking over the control and management of M+J, JANIS has at all times used M+J as a vehicle for wrongfully enriching and benefiting herself and Defendant DESIGNS BY JANIS SAVITT, INC.

149. During this period, JANIS has not sought nor does she presently seek to promote the interests of M+J and has acted and still acts against its best interests.

150. In managing and controlling M+J, JANIS has undertaken no action whatsoever to: (i) market or promote M+J and its products; (ii) design or develop new products for M+J; (iii) secure new distribution channels for M+J or expand existing ones; (iv) preserve M+J's existing clients, vendors and distribution channels; or (v) preserve M+J assets, including inventories and goodwill.

151. On the contrary, during the same time, JANIS has used her position as the managing officer and director to divert: (i) all of M+J's marketing, promotion, sales and distribution channels; (ii) M+J clients, accounts and vendors; (iii) M+J goodwill; and (iv) business opportunities.

Supreme Court Records OnLine Library - page 27 of 64

152. In large part, the foregoing diversion was facilitated: (i) by the similarity between the names "Janis Savitt" and "Designs by Janis Savitt, Inc." with "M+J Savitt, Inc."; (ii) by the fact that for sixteen (16) years M+J was actively marketing and promoting the name "Janis Savitt" in connection with its product lines; (iii) Janis Savitt's pervasive ongoing scheme of publicly spreading false information in order to misappropriate design credits for M+J designs and products; and (iv) by Janis Savitt utilizing M+J's contacts and channels to promote her own company.

153. This misconduct on the part of JANIS is tortious and amounts to breach of fiduciary duties and the diversion of corporate opportunities.

154. By virtue of the above, M+J has been seriously damaged in that it no longer has any material revenues, assets, clients, distribution and sales channels and its goodwill has been effectively wiped out and converted to Defendants JANIS and DESIGNS.

155. Among other things, M+J has been damaged in that it has lost its stream of revenues which it had prior to JANIS taking its control and engaging in persistent and repeated acts of stripping it of its assets and usurping all of its opportunities.

156. Based on the diminution in the fair market value of the M+J goodwill, of its intellectual property rights and the reduction in its revenue streams, M+J has been damaged in amount believed to exceed Ten Million Dollars ($10,000,000.00).

157. In addition, without injunctive relief enjoining JANIS and DESIGNS from continuously raiding M+J assets and engaging in the multitude of tortious conduct as abovementioned, M+J will suffer irreparable harm and may never recover.

Supreme Court Records OnLine Library - page 28 of 64

THE DEMAND LETTER

158. On September 20, 2011, MICHELLE, in her capacity as shareholder of M+J, sent a demand letter to the M+J Board (the "Demand Letter") requesting that the Board commence litigation proceedings against Defendants GT, ELINGS, SCHINDLER and JANIS. A copy of the Demand Letter, together with all exhibits illustrating misappropriation of design credit, conversion of raw materials and inventories, using M+J as a platform for liquidating DESIGN's closeout items and other things is annexed hereto as **Exhibit "D"**.

159. As of the date of this Complaint, no action was taken by the M+J Board with respect to the Demand Letter and none is expected to be undertaken since JANIS, who is one of the only two Directors of M+J, is self-interested in the transactions involved.

160. Although demand on the board should be excused as futile because JANIS, being self-interested, would not authorize commencement of litigation proceedings against herself and against her GT attorneys who are alleged to have aided and abetted her in perpetrating the torts as set forth in this Complaint, Plaintiff MICHELLE made the demand on the Board to give it a chance to consider the Demand Letter.

161. Approximately four months passed since the Demand Letter was served yet the Board has failed to undertake any action.

162. The Court should permit Plaintiff MICHELLE to maintain the derivative claims asserted in this Complaint because: (a) the Board failed to act on the Demand Letter for nearly four months; (b) in any event demand on the Board should be excused as futile because of the fact that one-half of the Board is clearly self-interested in the transactions alleged, which means that no board resolution of action will be taken; and (c) the derivative claims are in the best interests of the corporation.

Supreme Court Records OnLine Library - page 29 of 64

AS FOR THE FIRST CAUSE OF ACTION
BY PLAINTIFF MICHELLE SAVITT AGAINST DEFENDANTS SCHINDLER, ELINGS AND GT

BREACH OF FIDUCIARY DUTIES

163. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162 as if more fully set forth herein at length.

164. An attorney-client relationship existed between MICHELLE and Defendants ELINGS, SCHINDLER and GT, and Defendants ELINGS, SCHINDLER and GT continuously represented MICHELLE until after the date of the Settlement Agreement.

165. As attorneys, Defendants ELINGS, SCHINDLER and GT owed MICHELLE fiduciary duties.

166. As attorneys, Defendants ELINGS, SCHINDLER and GT owed MICHELLE the duty of loyalty.

167. As her attorneys, Defendants ELINGS, SCHINDLER and GT were charged with the duty of being MICHELLE's advocates and advancing her interests.

168. Defendants ELINGS, SCHINDLER and GT owed MICHELLE the duty to disclose possible conflicts of interest.

169. Defendants ELINGS, SCHINDLER and GT owed MICHELLE the duty of not undertaking any joint representation where as a result of a conflict of interest said defendants would not be able to properly advance or protect MICHELLE's interests.

170. In representing MICHELLE, said defendants breached their fiduciary duties, were disloyal to her, and during the course of their representation advanced the interests of JANIS to the detriment of MICHELLE.

Supreme Court Records OnLine Library - page 30 of 64

171. Defendants ELINGS, SCHINDLER and GT intentionally mislead MICHELLE into believing that there were no meritorious claims that she could have asserted against JANIS. All of the above was done in bad faith and in an effort to advance JANIS's interests in litigation at the expense of MICHELLE.

172. Defendants ELINGS, SCHINDLER and GT, acting in bad faith and having full knowledge that the terms of the Settlement Agreement were against MICHELLE's interests and would result in her waiver of all her claims against JANIS, counseled MICHELLE to enter into the Settlement Agreement.

173. In an effort to further protect JANIS from MICHELLE, Defendants ELINGS, SCHINDLER and GT inserted into the Settlement Agreement language causing MICHELLE, her husband and his company to waive all benefits of Section 1542 of the California Civil Code.

174. By advancing the interests of JANIS and her company over and above and at the expense of MICHELLE's interests, Defendants ELINGS, SCHINDLER and GT breached their fiduciary duties, including the duty of loyalty.

175. Defendants ELINGS, SCHINDLER and GT further breached their fiduciary duties by intentionally misleading MICHELLE into believing that there were no meritorious causes of action that she could bring against JANIS and her company.

176. Defendants ELINGS, SCHINDLER and GT breached their fiduciary duties to MICHELLE by failing to disclose to her that there was a conflict of interest.

177. Defendants ELINGS, SCHINDLER and GT breached their fiduciary duties to MICHELLE by undertaking joint representation of parties to a litigation proceeding whose interests were materially adverse.

178. Throughout the course of their representation, Defendants ELINGS,

Supreme Court Records OnLine Library - page 31 of 64

SCHINDLER and GT acted in bad faith and intentionally betrayed the interests of MICHELLE.

179. Prior to undertaking formal representation of MICHELLE, Defendants ELINGS, SCHINDLER and GT consulted her about the merits of the causes of actions asserted in the Prior Action by Wynne, and, for the purpose of obtaining MICHELLE's cooperation in participating in the November 18, 2008 meeting of the M+J shareholders, intentionally misrepresented to her that Wynne's action had no merit whatsoever.

180. Defendants ELINGS, SCHINDLER and GT owed fiduciary duties to MICHELLE at the time when she was a prospective client and breached said duties by intentionally misleading her, advising her that there was no need for her to consult with independent legal counsel and in misrepresenting that there were no meritorious causes of action that could be asserted against JANIS.

181. But for Defendants ELINGS, SCHINDLER and GT advising MICHELLE that there were no meritorious causes of action that could be asserted against JANIS and that there was no need for MICHELLE to seek independent legal counsel, MICHELLE would have sought out independent legal counsel and would have initiated claims against JANIS and Designs by Janis Savitt, Inc.

182. But for Defendants ELINGS, SCHINDLER and GT misrepresenting to MICHELLE that there were no meritorious causes of action that could be asserted against JANIS and her company, MICHELLE would not have entered into the Settlement Agreement.

183. But for Defendants ELINGS, SCHINDLER and GT's misrepresentations, MICHELLE would not have agreed to the joint legal representation and would not have voted in favor of not continuing M+J's claims in the Prior Action and would have voted differently at the November 18, 2008 meeting of the M+J shareholders.

Supreme Court Records OnLine Library - page 32 of 64

184. At all times relevant hereto, MICHELLE perceived Defendants ELINGS, SCHINDLER and GT as being amongst the best, most knowledgeable, highly experienced, reputable and trustworthy lawyers. As a result, MICHELLE trusted them and believed all of their misrepresentations and legal advice.

185. If MICHELLE had retained independent legal counsel, such counsel would have advised MICHELLE that she and M+J had various meritorious causes of action that could be asserted against JANIS and Designs by Janis Savitt, Inc., including, without limitation, breach of fiduciary duties, trademark infringement, unfair competition, tortious interference with contractual interests, tortious interference with economic advantage, breach of contract, tortious misappropriation of credit, injury to and diminution of shareholder equity as well as the other causes of action identified in the Prior Action. ("Prior Causes of Action").

186. Out of the Prior Causes of Action, MICHELLE could have asserted, in her individual capacity, among other things, claims arising out of JANIS's breaching her fiduciary duties to M+J stockholders, breach of contract, tortious misappropriation of credit for MICHELLE's designs, and diminution of stockholder equity ("Individual Causes of Action").

187. M+J could have asserted causes of action for JANIS breaching her fiduciary duties to the corporation, trademark infringement, unfair competition, tortious interference with contracts, tortious interference with economic advantage, breach of contract, including the 1992 Agreement, misappropriation of credit for M+J work and the other causes of action identified in the Prior Action ("M+J Causes of Action").

188. But for Defendants' breaching their fiduciary duties to MICHELLE, she would have commenced legal proceedings against JANIS and Designs by Janis Savitt, Inc. and would have prevailed on the Individual Claims.

Supreme Court Records OnLine Library - page 33 of 64

189. As a direct and proximate result of JANIS's tortious acts and breach of the Agreement, MICHELLE suffered substantial damages, including significant diminution in the value of her M+J stock.

190. Prior to JANIS's tortious acts diminishing the value of M+J stockholder equity, on several occasions during the ten years preceding the Prior Action, reputable companies and investors expressed interest in purchasing M+J and its equity for top market rates. No sales transactions were consummated because MICHELLE, JANIS and Wynne were not ready to sell the company at those times.

191. Since JANIS commenced her competing venture, no parties expressed any interest in purchasing M+J or its equity. As a direct result of JANIS's various tortious acts, M+J's market value has plummeted to the point that the company is not marketable, particularly since its intellectual property rights, client accounts and good will, which were its primary assets, have been converted and diluted by JANIS to the point that no reasonable investor would consider purchasing the company.

192. By virtue of Defendants ELINGS, SCHINDLER and GT breaching their fiduciary duties to MICHELLE through intentional, deliberate and bad faith conduct, MICHELLE was damaged in amount to be determined at trial but believed to exceed ten million dollars ($10,000,000.00).

193. As a result of the bad faith and intentional nature of the misconduct involved herein, MICHELLE is entitled to treble damages in amount of Thirty Million Dollars ($30,000,000) and costs, including reasonable attorney fees in connection with the prosecution of this action.

Supreme Court Records OnLine Library - page 34 of 64

AS FOR THE SECOND CAUSE OF ACTION BY PLAINTIFF MICHELLE SAVITT AGAINST DEFENDANTS SCHINDLER, ELINGS AND GT

FRAUD

194. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162 and 164 through 193, inclusive, as if more fully set forth herein at length.

195. On numerous occasions, Defendants ELINGS, SCHINDLER and GT perpetrated actionable fraud against MICHELLE and are liable therefor.

196. More specifically, on November 18, 2008, Defendants ELINGS and SCHINDLER, acting in concert and in their capacity as representatives of GT, perpetrated a fraud against MICHELLE ("First Fraud") because: (i) they represented to MICHELLE that all of the claims asserted against JANIS and Designs by Janis Savitt, Inc. in the Prior Complaint were devoid of any merit; (ii) said representations were in fact false; (iii) at the time when Defendants made said misrepresentations they were aware of their falsity; (iv) Defendants knowingly made said misrepresentations for the purpose of misleading MICHELLE so that she would not join sides with Wynne, would not assert claims against JANIS and her company, and would follow all of Defendants' instructions with respect to the November 18, 2008 meeting of the M+J shareholders; (v) MICHELLE relied upon these misrepresentations; (vi) MICHELLE's reliance was reasonable; and (vii) MICHELLE's reliance was to her detriment because as a direct and proximate result of these misrepresentations, she failed to assert any claims against JANIS and her company and at the November 18, 2008 meeting agreed to follow Defendants' instructions, read verbatim from the scripts provided by Defendants, and voted for the discontinuance of M+J's claims against JANIS and Designs by Janis Savitt, Inc.

197. In addition, on November 18, 2008, Defendants ELINGS and SCHINDLER,

Supreme Court Records OnLine Library - page 35 of 64

acting in concert and in their capacity as representatives of GT, perpetrated another act of fraud against MICHELLE ("Second Fraud") because: (i) they represented to MICHELLE that there was no need for her to consult with independent legal counsel; (ii) said representation was in fact false; (iii) at the time when Defendants made said misrepresentation they were aware of its falsity; (iv) Defendants knowingly made said misrepresentation for the purpose of keeping MICHELLE in the dark and misleading her so that she would not join sides with Wynne, would not assert claims against JANIS and her company, and would follow all of Defendants' instructions with respect to the November 18, 2008 meeting of the M+J shareholders; (v) MICHELLE relied upon these misrepresentations; (vi) MICHELLE's reliance was reasonable; and (vii) MICHELLE's reliance was to her detriment because as a direct and proximate result of these misrepresentations, she was not advised of the fact that she and M+J had meritorious causes of action against JANIS and her company, and at the November 18, 2008 meeting agreed to follow Defendants' instructions, read verbatim from the scripts provided by Defendants, and voted for the discontinuance of M+J's claims against JANIS and Designs by Janis Savitt, Inc.

198. Immediately after MICHELLE learned of the fact that she was joined in the Prior Action, MICHELLE and her husband, Sepp Donahower, who was at all times acting as agent for MICHELLE, spoke and communicated with Defendants ELINGS and SCHINDLER about GT's legal representation of her interests. During the course of said discussions, Defendants ELINGS and SCHINDLER, acting in concert and in their capacity as representatives of GT, perpetrated two more acts of fraud against MICHELLE ("Third Fraud" and "Fourth Fraud", respectively).

199. With respect to the Third Fraud, said Defendants: (i) represented to MICHELLE that there was no need for her to consult with or retain independent legal counsel and that it was in everyone's best interests to have all legal representation done "under one roof"; (ii) said

Supreme Court Records OnLine Library - page 36 of 64

representation was in fact false; (iii) at the time when Defendants made said misrepresentation they were aware of its falsity; (iv) Defendants knowingly made said misrepresentation for the purpose of keeping MICHELLE in the dark and misleading her so that she would not join sides with Wynne and would not assert claims against JANIS; (v) MICHELLE relied upon these misrepresentations; (vi) MICHELLE's reliance was reasonable; and (vii) MICHELLE's reliance was to her detriment because as a direct and proximate result of these misrepresentations, she was not advised by independent legal counsel of the fact that she and M+J had meritorious causes of action against JANIS and her company.

200. With respect to the Fourth Fraud, said Defendants: (i) again represented to MICHELLE that all of the claims asserted against JANIS and Designs by Janis Savitt, Inc. in the Prior Complaint were devoid of any merit, that the causes of action in the Prior Complaint "did not have a leg to stand on", and that no meritorious claims otherwise existed against JANIS and her company; (ii) said representations were in fact false; (iii) at the time when Defendants made said misrepresentations they were aware of their falsity; (iv) Defendants knowingly made said misrepresentations for the purpose of misleading MICHELLE so that she would not join sides with Wynne, so that Defendants could control her to advance JANIS's litigation interests, and so that she would not assert claims against JANIS and her company; (v) MICHELLE relied upon these misrepresentations; (vi) MICHELLE's reliance was reasonable; and (vii) MICHELLE's reliance was to her detriment because as a direct and proximate result of these misrepresentations, she failed to assert any claims against JANIS and her company.

201. Further, said Defendants perpetrated another act of fraud against MICHELLE when they intentionally mislead her into executing the Settlement Agreement (the "Fifth Fraud"). As part of their ongoing fraudulent scheme, Defendants committed the Fifth Fraud

Supreme Court Records OnLine Library - page 37 of 64

when on or about the week of July 16, 2008, they: (i) again represented to MICHELLE and assured her that all of the claims asserted against JANIS and Designs by Janis Savitt, Inc. in the Prior Complaint were devoid of any merit and that it is in her interests to execute the Settlement Agreement; (ii) said representations were in fact false; (iii) at the time when Defendants made said misrepresentations they were aware of their falsity; (iv) Defendants knowingly made said misrepresentations for the purpose of misleading MICHELLE so that she would waive all her rights, claims, and causes of action against JANIS and Designs by Janis Savitt, Inc.; (v) MICHELLE relied upon these misrepresentations; (vi) MICHELLE's reliance was reasonable; and (vii) MICHELLE's reliance was to her detriment because as a direct and proximate result of these misrepresentations, she forever waived all of her claims and rights against JANIS and Designs by Janis Savitt, Inc., including her meritorious Individual Causes of Action.

202. As a direct, foreseeable and proximate result of the First, Second, Third, Fourth and Fifth Frauds that were perpetrated against MICHELLE, she did not recover damages and compensation from JANIS and DESIGNS which would have otherwise been recovered by her but for the fraudulent acts on the part of said Defendants.

203. By virtue of the foregoing, Defendants ELINGS, SCHINDLER and GT are liable to MICHELLE for fraud and she is entitled to recover from them all her damages, including the value of the damages that she would have recovered against JANIS and Designs by Janis Savitt, Inc. had she not been defrauded as above , which damages shall be determined at trial but whose value is believed to exceed ten million dollars ($10,000,000.00).

204. As a result of the bad faith and intentional nature of the misconduct involved in the perpetration of the aforementioned fraud, MICHELLE is entitled to treble damages in amount of Thirty Million Dollars ($30,000,000) and costs, including reasonable attorney fees in

Supreme Court Records OnLine Library - page 38 of 64

connection with the prosecution of this action.

AS FOR THE THIRD CAUSE OF ACTION BY PLAINTIFF MICHELLE SAVITT AGAINST DEFENDANTS SCHINDLER, ELINGS AND GT

LEGAL MALPRACTICE

205. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, and 195 through 204, inclusive, as if more fully set forth herein at length.

206. Defendant ELINGS is a specialist in the field of trademark litigation and is therefore held to a more exacting standard than the general practitioner practicing in Manhattan, New York.

207. Defendant GT is a sophisticated large-size law firm and its attorneys include highly experienced litigators knowledgeable in the field of commercial litigation, including prosecution and defense of claims based in business and partnership disputes, breach of fiduciary duties, and various business torts, including unfair competition and trademark infringement.

208. Defendants ELINGS, SCHINDLER and GT committed legal malpractice in that they deviated from the accepted standard of care in failing to advise MICHELLE to assert claims against JANIS and DESIGNS and in failing to advise MICHELLE that there were meritorious causes of action for her to assert.

209. A reasonably prudent attorney practicing in Manhattan, New York, and, more particularly, specialists practicing in the fields of trademark and commercial litigation, would have advised MICHELLE to file her Individual Causes of Action against JANIS and DESIGNS and would have disclosed to MICHELLE that she had meritorious causes of action to assert.

210. Defendants ELINGS, SCHINDLER and GT committed legal malpractice in that

Supreme Court Records OnLine Library - page 39 of 64

they deviated from the accepted standard of care in counseling MICHELLE to enter into the Settlement Agreement wherein she waived all of her rights and causes of action against JANIS and DESIGNS.

211. A reasonably prudent attorney practicing in Manhattan, New York, and, more particularly, specialists practicing in the fields of trademark and commercial litigation, would not have included terms in the Settlement Agreement whereby MICHELLE waived all her claims and rights against JANIS and DESIGNS.

212. Defendants ELINGS, SCHINDLER and GT deviated from the accepted standard of care when they failed to disclose to MICHELLE that there was a material conflict of interest in their undertaking joint legal representation of MICHELLE, JANIS and DESIGNS.

213. A reasonably prudent attorney practicing in New York would have disclosed to MICHELLE that there was a material conflict of interest in such joint legal representation and would not have undertaken such representation unless MICHELLE would have been provided with an appropriate written disclosure of the conflict of interest, would have given her written waiver thereof, and the attorney would have believed that he or she may faithfully represent both clients.

214. But for the acts of legal malpractice as complained of above, MICHELLE would have initiated claims against JANIS and DESIGNS and would have prevailed on her Individual Causes of Action.

215. As a direct and proximate result of the complained of acts of legal malpractice, MICHELLE did not recover from JANIS for her Individual Causes of Action, which she would have otherwise done absent the malpractice.

216. By virtue of the foregoing, MICHELLE is entitled to recover from Defendants

Supreme Court Records OnLine Library - page 40 of 64

ELINGS, SCHINDLER and GT all sums and compensation that she would have recovered from JANIS and DESIGNS if it were not for the malpractice, which amounts are to be determined at trial but are believed to exceed ten million dollars ($10,000,000.00).

AS FOR THE FOURTH CAUSE OF ACTION BY PLAINTIFF MICHELLE SAVITT AGAINST DEFENDANTS SCHINDLER, ELINGS, GT AND JANIS SAVITT

PRIMA FACIE TORT

217. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, and 195 through 204, 206 through 216, inclusive, as if more fully set forth herein at length.

218. Defendants SCHINDLER, ELINGS and GT conspired with JANIS to take advantage of and exercise undue influence over Paul Savitt and Mildred Savitt so that they would execute wills ensuring the payment of all outstanding legal fees to GT and reimbursement to JANIS of all legal fees paid by her.

219. By virtue of lending forty thousand dollars ($40,000.00) to JANIS, Defendant SCHINDLER had a personal stake in the provisions in the New Wills establishing payments of legal fees to GT and reimbursement to JANIS of legal fees paid by her, which would permit JANIS to repay to him the amounts lent by him to her.

220. There was a conflict of interest in GT representing Mildred Savitt and JANIS because as a shareholder of M+J, Mildred Savitt had meritorious causes of action against JANIS and her company.

221. Although Paul Savitt was named as a defendant in the Prior Action, the primary tortfeasor as alleged in the Prior Complaint was JANIS.

222. At the time of the Prior Action, Mildred Savitt was already unable to

Supreme Court Records OnLine Library - page 41 of 64

communicate with even those closest to her, had advanced and highly debilitating neurological disease in the form of highly advanced Parkinsons disease, was suffering from hallucinations and was unable to discuss with GT attorneys or anyone else the advisability or desirability of GT representing her interests and at no point did she give her knowing consent to their representation.

223. Mildred Savitt was only joined in the Prior Action after she allegedly gave Paul Savitt a proxy to vote on her behalf at the November 18, 2008 shareholder meeting.

224. At all times during GT's defense of the Prior Action, its entire strategy was focused on defending the interests of JANIS, and almost all of the attorney hours expanded by GT on representing Paul or Mildred were merely incidental to the representation of JANIS.

225. Despite the fact that there was the abovementioned conflict of interest and any time expanded by GT in representing Paul Savitt or Mildred Savitt was merely incidental to its representation of JANIS, GT sought to collect from Paul Savitt and Mildred Savitt most if virtually not all of the legal fees for the case, which, during the lifetime of Paul Savitt and Mildred Savitt, required them to liquidate most of their retirement savings and funds reserved for custodial and medical care.

226. To ensure payment of their legal bills, GT made itself a de facto beneficiary by including specific provisions in the New Wills requiring the estates of Paul Savitt and Mildred Savitt to pay for all of the outstanding fees owed to GT regardless of the fact that most, if not all, of the legal time was spent on representing JANIS and that the estates of Paul Savitt and Mildred Savitt would otherwise have standing to assert meritorious defenses to GT's collection efforts had it solely been a creditor of the decedents.

227. GT attorneys drafted the New Wills with all instructions therefor being provided

Supreme Court Records OnLine Library - page 42 of 64

by JANIS, who was also the one to pay the legal fees associated with her parents' estate planning.

228. JANIS was the real architect of the New Wills which expressed her wishes and not the wishes of the testators. Defendants SCHINDLER, ELINGS and GT were aware of this fact yet proceeded with the drafting and execution of the New Wills.

229. The New Wills were executed specifically at a time when Mildred and Paul Savitt's twenty-four hour a day caregiver had a day off, which occurred only one day every two weeks.

230. As a result of the New Wills being executed, MICHELLE was wrongfully deprived of her interests as set forth in her parents' prior wills. Even if the New Wills are admitted to probate, as a result of the misconduct of said Defendants, MICHELLE's inheritance will be unjustly reduced by the amount of GT legal fees which otherwise would be uncollectible.

231. In conspiring with JANIS to prepare the New Wills and arranging for their execution, Defendants engaged in a series of specific acts, which together amount to tortious conduct sufficient to constitute a prima facie tort regardless of whether the New Wills will be admitted to probate.

232. Defendants SCHINDLER, ELINGS and GT acted with disinterested malevolence in committing the prima facie tort.

233. By virtue of the foregoing and as direct and proximate result of Defendants committing the prima facie tort, MICHELLE has been injured in an amount to be determined at trial but believed to exceed five million dollars ($5,000,000.00).

Supreme Court Records OnLine Library - page 43 of 64

AS FOR THE FIFTH CAUSE OF ACTION

BY PLAINTIFF MICHELLE SAVITT AGAINST DEFENDANT JANIS SAVITT
BREACH OF FIDUCIARY DUTIES AND OUSTER

234. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, and 195 through 204, 206 through 216, and 218 through 233, inclusive, as if more fully set forth herein at length.

235. As the controlling shareholder of a close corporation, Defendant JANIS owes fiduciary duties to MICHELLE.

236. As a shareholder of a close corporation and as its officer and director, MICHELLE is entitled to access to all of the corporate books, records and to participate in the management of M+J.

237. By wrongfully denying MICHELLE all access to the corporation, Defendant JANIS has effectively and wrongfully ousted MICHELLE and in so doing breached her fiduciary duties owed to MICHELLE.

238. By deliberately converting for herself M+J assets and by intentionally failing to advance its interests, Defendant JANIS breached her fiduciary duties not only to M+J, but also to MICHELLE.

239. By virtue of the foregoing, Plaintiff MICHELLE is entitled to recover from Defendant JANIS damages as a result of Defendant JANIS breaching her fiduciary duties by virtue of acts occurring after the Settlement Agreement, with the sum of the damages to be determined at trial but believed to exceed One Million Dollars ($1,000,000.00), including treble and punitive damages in amount of Three Million Dollars ($3,000,000.00) together with reasonable costs and attorney fees.

Supreme Court Records OnLine Library - page 44 of 64

AS FOR THE SIXTH CAUSE OF ACTION
BY PLAINTIFF MICHELLE SAVITT AGAINST DEFENDANT JANIS SAVITT
TORTIOUS MISAPPROPRIATION OF DESIGN CREDIT

240. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 204, 206 through 216, 216 through 220, and 222 through 239 inclusive, as if more fully set forth herein at length.

241. Over a period of almost four decades, Plaintiff MICHELLE, through hard work, dedication, talent and experience, has acquired a reputation as an outstanding, talented and prominent designer of fine jewelry.

242. Since the establishment of M+J and before, Plaintiff MICHELLE produced thousands of designs, many of which were the subject of prestigious awards and accolades.

243. On numerous occasions, Defendant JANIS usurped and converted to herself the credit for MICHELLE's designs and continues to do so in press articles and information provided to fine jewelry retailers and to others.

244. As a result of the fact that Plaintiff MICHELLE, by signing the Settlement Agreement, waived all her claims against JANIS that had existed or accrued by the time of the Settlement Agreement, in the present Complaint MICHELLE seeks to recover from Defendant JANIS compensation for acts that occurred and are continuing to occur after the date of the Settlement Agreement. As alleged in the foregoing Causes of Action numbered "One" through "Four", damages and compensation for all of JANIS' tortious acts occurring prior to the date of the Settlement Agreement are being sought from Defendants GT, SCHINDLER and ELINGS.

245. By converting and misappropriating to herself the design credit for MICHELLE's work, Defendant JANIS effectively eviscerated the goodwill associated with MICHELLE's name by causing the jewelry business community and the public to perceive JANIS as the

Supreme Court Records OnLine Library - page 45 of 64

talented designer who was the sole force behind the success of M+J while viewing MICHELLE as an inconsequential designer who merely rode on the coattails of her successful sister JANIS.

246. By virtue of the foregoing, Plaintiff MICHELLE suffered serious and irreparable injuries to be determined at trial but believed to exceed Three Million Dollars ($3,000,000.00), together with reasonable costs and legal fees.

AS FOR THE SEVENTH CAUSE OF ACTION
BY PLAINTIFF M+J AGAINST DEFENDANTS SCHINDLER, ELINGS AND GT
BREACH OF FIDUCIARY DUTIES

247. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 204, 206 through 216, 216 through 220, 222 through 239, and 241 through 246 inclusive, as if more fully set forth herein at length.

248. Defendants ELINGS, SCHINDLER and GT rendered legal advice to M+J and represented its interests in the Prior Action. An attorney-client relationship existed between M+J and Defendants ELINGS, SCHINDLER and GT.

249. As its attorneys, Defendants ELINGS, SCHINDLER and GT owed M+J fiduciary duties.

250. As its attorneys, Defendants ELINGS, SCHINDLER and GT owed M+J the duty of loyalty.

251. As its attorneys, Defendants ELINGS, SCHINDLER and GT were charged with the duty of being M+J's advocates and advancing its interests.

252. Defendants ELINGS, SCHINDLER and GT owed M+J the duty to disclose possible conflicts of interest.

253. Defendants ELINGS, SCHINDLER and GT owed M+J the duty of not undertaking any joint representation where as a result of a conflict of interest said defendants

Supreme Court Records OnLine Library - page 46 of 64

would not be able to properly advance its interests.

254. In representing M+J, said defendants were disloyal to it and at all times during the course of their representation only sought to advance the interests of JANIS.

255. Defendants ELINGS, SCHINDLER and GT intentionally mislead M+J into believing that there were no meritorious claims that it could have asserted against JANIS and her company. This was all done in bad faith and in an effort to advance JANIS's interests in litigation at the expense of M+J.

256. Defendants ELINGS, SCHINDLER and GT, acting in bad faith and having full knowledge that the terms of the Settlement Agreement were against M+J's interests and would result in its waiver of meritorious claims against JANIS and her company, counseled its Board to enter into the Settlement Agreement.

257. By advancing the interests of JANIS and her company over and above and at the expense of M+J interests, Defendants ELINGS, SCHINDLER and GT breached their fiduciary duties, including the duty of loyalty.

258. Defendants ELINGS, SCHINDLER and GT further breached their fiduciary duties by intentionally misleading M+J into believing that there were no meritorious causes of action that it could bring against JANIS and her company.

259. Defendants ELINGS, SCHINDLER and GT breached their fiduciary duties to M+J by failing to disclose to its Board that there was a conflict of interest and that it should seek independent legal counsel.

260. At the time of the November 18, 2008 meeting of the shareholders, Defendants ELINGS, SCHINDER and GT also had actual knowledge that JANIS was a director who was self-interested in the transactions involving the subject matter of the Prior Action and, as counsel

Supreme Court Records OnLine Library - page 47 of 64

to M+J, had a duty to advise its Board that JANIS should not participate with respect to any decisions involving the determination of whether M+J should proceed with its claims as set forth in the Prior Complaint.

261. Defendants ELINGS, SCHINDLER and GT breached their fiduciary duties to M+J by undertaking joint representation of parties to a litigation proceeding whose interests are materially adverse.

262. Throughout the course of their representation, Defendants ELINGS, SCHINDLER and GT acted in bad faith and intentionally betrayed the interests of M+J so that it would not pursue its claims against JANIS and DESIGNS BY JANIS SAVITT, INC. and so that M+J would also become liable for the legal fees for the professional time used to defend JANIS's interests.

263. By virtue of the foregoing, as well as the bad faith and intentional nature of the misconduct involved, M+J was damaged in an amount to be determined at trial but believed to exceed Fifteen Million Dollars ($15,000,000), together with treble and punitive damages of Forty-Five Million Dollars ($45,000,000.00) and reasonable costs and attorney fees.

AS FOR THE EIGHTH CAUSE OF ACTION
BY PLAINTIFF M+J AGAINST DEFENDANTS SCHINDLER, ELINGS AND GT

FRAUD

264. Plaintiffs repeat and reiterate all of the allegations 1 through 162, 164 through 193, 195 through 204, 206 through 216, 216 through 220, 222 through 239, 241 through 246, and 248 through 263 inclusive as if more fully set forth herein at length.

265. On numerous occasions, Defendants ELINGS, SCHINDLER and GT perpetrated actionable fraud against M+J and are liable therefor.

266. On November 18, 2008, Defendants ELINGS and SCHINDLER, acting in

Supreme Court Records OnLine Library - page 48 of 64

concert and in their capacity as representatives of GT, perpetrated a fraud against M+J ("First M+J Fraud") because: (i) they represented to M+J that all of the claims asserted against JANIS and Designs by Janis Savitt, Inc. in the Prior Complaint were devoid of any merit and that there was no need for M+J or any of its shareholders to obtain independent counsel; (ii) said representations were in fact false; (iii) at the time when Defendants made said misrepresentations they were aware of their falsity; (iv) Defendants knowingly made said misrepresentations for the purpose of misleading M+J and its shareholders so that Wynne Weiner Savitt would be removed as an officer and director and so that M+J would not pursue claims against JANIS and her companies; (v) M+J, through its Board and shareholders, relied upon these misrepresentations; (vi) M+J's reliance was reasonable; and (vii) M+J's reliance was to its detriment.

267. Defendants perpetrated other acts of fraud against M+J, including intentionally misleading it into executing the Settlement Agreement (the "Second M+J Fraud"). As part of their ongoing fraudulent scheme, Defendants committed the Second M+J Fraud when on or about the week of July 16, 2008, they: (i) represented to its directors, shareholders and officers that all of the claims asserted against JANIS and Designs by Janis Savitt, Inc. in the Prior Complaint were devoid of any merit and that it is in the interests of M+J to execute the Settlement Agreement; (ii) said representations were in fact false; (iii) at the time when Defendants made said misrepresentations they were aware of their falsity; (iv) Defendants knowingly made said misrepresentations for the purpose of misleading M+J that it would waive all her rights, claims, and causes of action against JANIS and Designs by Janis Savitt, Inc.; (v) M+J relied upon these misrepresentations; (vi) its reliance was reasonable; and (vii) M+J's reliance was to its detriment because as a direct and proximate result of these misrepresentations,

Supreme Court Records OnLine Library - page 49 of 64

it forever waived all of its claims and rights against JANIS and Designs by Janis Savitt, Inc., including its meritorious M+J Causes of Action.

268. As a direct, foreseeable and proximate result of the above acts of fraud, M+J failed to pursue claims and to recover damages and compensation from JANIS and Designs by Janis Savitt, Inc., or to have JANIS and her company enjoined from carrying on its tortious activities, all of which M+J would have otherwise been able to do but for the fraudulent conduct on the part of said Defendants. Further, as a result of the fraud, M+J was caused to become liable to GT for substantial legal fees which were generated by GT's defense of JANIS.

269. By virtue of the foregoing, Defendants ELINGS, SCHINDLER and GT are liable to M+J for fraud and M+J is entitled to recover from them all its damages, including the value of the damages that M+J would have recovered against JANIS and Designs by Janis Savitt, Inc. and the loses that it would not have incurred had JANIS and her company been properly enjoined from carrying on in their tortious acts, which amounts are to be determined at trial but are believed to exceed Fifteen Million ($15,000,000.00).

270. As a result of the bad faith and intentional nature of the misconduct involved in the perpetration of the aforementioned fraud, M+J is entitled to punitive and treble damages of Forty-Five Million Dollars ($45,000,000) together with costs and reasonable attorney fees in connection with the prosecution of this action.

AS FOR THE NINTH CAUSE OF ACTION
BY PLAINTIFF M+J AGAINST DEFENDANTS SCHINDLER, ELINGS AND GT

LEGAL MALPRACTICE

271. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 204, 206 through 216, 216 through 220, 222 through 239, 241

Supreme Court Records OnLine Library - page 50 of 64

through 246, 248 through 263, and 265 through 270 inclusive, as if more fully set forth herein at length.

272. Defendant ELINGS is a specialist in the field of trademark litigation and is therefore held to a more exacting standard than the general practitioner practicing in Manhattan, New York.

273. Defendant GT is a sophisticated large size law firm and its attorneys include highly experienced litigators knowledgeable in the field of commercial litigation, including prosecution and defense of claims based in business and partnership disputes, breach of fiduciary duties, and various business torts, including unfair competition and trademark infringement.

274. Defendants ELINGS, SCHINDLER and GT committed legal malpractice in that they deviated from the accepted standard of care in failing to advise M+J to assert claims against JANIS and DESIGNS and in failing to advise M+J that there were meritorious causes of action for her to assert.

275. A reasonably prudent attorney practicing in Manhattan, New York, and, more particularly, specialists practicing in the fields of trademark and commercial litigation, would have advised M+J to pursue its M+J Causes of Action against JANIS and Designs by Janis Savitt, Inc. and would have at the very least disclosed to M+J that it may have meritorious causes of action to assert.

276. Defendants ELINGS, SCHINDLER and GT committed legal malpractice in that they deviated from the accepted standard of care in counseling M+J to enter into the Settlement Agreement wherein it waived all of its rights and causes of action against JANIS and DESIGNS.

277. A reasonably prudent attorney practicing in Manhattan, New York, and, more particularly, specialists practicing in the fields of trademark and commercial litigation, would

Supreme Court Records OnLine Library - page 51 of 64

have counseled M+J not to enter into the Settlement Agreement.

278. Defendants ELINGS, SCHINDLER and GT deviated from the accepted standard of care when they failed to disclose to M+J that there was a material conflict of interest in them undertaking joint legal representation of all the parties.

279. But for the acts of legal malpractice as complained of above, M+J would have pursued claims against JANIS and Designs by Janis Savitt, Inc. and would have prevailed on its M+J Causes of Action.

280. As a direct and proximate result of the complained of acts of legal malpractice, M+J did not recover from JANIS on its M+J Causes of Action, which it would have otherwise done absent the malpractice.

281. By virtue of the foregoing, M+J is entitled to recover from Defendants ELINGS, SCHINDLER and GT all sums and compensation that it would have recovered from JANIS and Designs by Janis Savitt, Inc. and the loses that it would not have incurred had JANIS and her company been properly enjoined from carrying on in their tortious acts, which amounts are to be determined at trial but are believed to exceed Fifteen Million ($15,000,000.00).

AS FOR THE TENTH CAUSE OF ACTION
BY PLAINTIFF M+J AGAINST DEFENDANTS JANIS SAVITT

BREACH OF FIDUCIARY DUTIES

282. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 204, 206 through 216, 216 through 220, 222 through 239, 241 through 246, 248 through 263, 265 through 270, 272 through 281 inclusive, as if more fully set forth herein at length.

283. As the controlling officer and director of M+J, Defendant JANIS owed and

Supreme Court Records OnLine Library - page 52 of 64

continues to owe M+J fiduciary duties, including the duties of loyalty and not to engage in self-dealings.

284. Since the time of the Settlement Agreement, Defendant JANIS has breached her fiduciary duties by: (a) engaging in self-dealings; (b) converting M+J goodwill, clients and assets; (c) usurping corporate opportunities by, among other things, diverting M+J clients to her own company; (d) ousting MICHELLE from corporate governance; (e) failing to advance the interests of M+J and by deliberately mismanaging M+J; (f) competing directly with M+J; (g) using M+J as a forum to liquidate her own company's clearance items so that her own brand would not be diminished; (h) misappropriating M+J design credits; and (i) other misconduct.

285. By virtue of the foregoing, M+J has been damaged in amount to be determined at trial but believed to exceed Two Million Dollars ($2,000,000.00) and is entitled to receive punitive and treble damages in amount of Six Million Dollars ($6,000,000.00), together with costs and reasonable attorney fees.

AS FOR THE ELEVENTH CAUSE OF ACTION
BY PLAINTIFF M+J AGAINST DEFENDANTS JANIS SAVITT AND DESIGNS BY JANIS SAVITT, INC.
CONVERSION

286. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 204, 206 through 216, 216 through 220, 222 through 239, 241 through 246, 248 through 263, 265 through 270, 272 through 281, and 283 through 285 inclusive, as if more fully set forth herein at length.

287. By taking M+J inventories without paying M+J just and reasonable compensation and without its permission, Defendant JANIS converted and continues to convert M+J

Supreme Court Records OnLine Library - page 53 of 64

inventories.

288. Defendant JANIS is presently in possession of a substantial quantity of M+J inventories.

289. By impermissibly taking M+J inventories and assets for her own pecuniary gain, Defendant JANIS committed an actionable conversion which is ongoing.

290. Defendant DESIGN is controlled by Defendant JANIS and acted and continues to act in concert with JANIS in converting M+J assets and inventories.

291. By virtue of the foregoing, as a result of acts occurring after the date of the Settlement Agreement, M+J suffered losses to be determined at trial but believed to exceed Five Hundred Thousand Dollars ($500,000.00) and is entitled to recover all such damages from Defendant JANIS, together with punitive and treble damages of One and One-Half Million Dollars ($1,500,000.00), costs and reasonable attorney fees.

AS FOR THE TWELTH CAUSE OF ACTION
BY PLAINTIFF M+J AGAINST DEFENDANT JANIS SAVITT
EMEZZLEMENT

292. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 204, 206 through 216, 216 through 220, 222 through 239, 241 through 246, 248 through 263, 265 through 270, 272 through 281, 283 through 285, 287 through 291 inclusive, as if more fully set forth herein at length.

293. While owing fiduciary duties to M+J, Defendant JANIS sold M+J inventories and assets without turning over or paying to M+J the proceeds of said sales.

294. By secreting to herself proceeds of M+J sales, Defendant JANIS embezzled said sums which are believed to exceed Five Hundred Thousand Dollars ($500,000.00).

295. By virtue of the foregoing, as a result of acts occurring after the date of the

Supreme Court Records OnLine Library - page 54 of 64

Settlement Agreement, M+J is entitled to recover from Defendant JANIS a sum to be determined at trial but believed to exceed Five Hundred Thousand Dollars ($500,000.00), together with punitive and treble damages of One and One-Half Million Dollars ($1,500,000.00), costs and reasonable attorney fees.

AS FOR THE THIRTEENTH CAUSE OF ACTION

BY PLAINTIFF M+J AGAINST DEFENDANTS JANIS SAVITT AND DESIGNS BY JANIS SAVITT, INC.
UNJUST ENRICHMENT

296. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 204, 206 through 216, 216 through 220, 222 through 239, 241 through 246, 248 through 263, 265 through 270, 272 through 281, 283 through 285, 287 through 291, and 293 through 295 inclusive, as if more fully set forth herein at length.

297. Defendants JANIS and DESIGNS, acting in concert, wrongfully converted and embezzled M+J assets, inventories and monies, the total sum of which is believed to exceed One Million Dollars ($1,000,000.00).

298. Defendants JANIS and DESIGNS BY JANIS SAVITT, INC. will be unjustly enriched if they are permitted to retain the fruits of their tortious conduct.

299. By virtue of the foregoing, Plaintiff M+J is entitled to recover from Defendants JANIS and DESIGNS BY JANIS SAVITT, INC. all monies, assets and inventories wrongfully obtained by said Defendants, the value of which shall be determined at trial but is believed to exceed One Million Dollars ($1,000,000.00).

Supreme Court Records OnLine Library - page 55 of 64

AS FOR THE FOURTEENTH CAUSE OF ACTION

BY PLAINTIFF M+J AGAINST DEFENDANTS JANIS SAVITT AND DESIGNS BY JANIS SAVITT, INC.
UNFAIR COMPETITION

300. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 204, 206 through 216, 216 through 220, 222 through 239, 241 through 246, 248 through 263, 265 through 270, 272 through 281, 283 through 285, 287 through 291, 293 through 295, and 297 through 299 inclusive, as if more fully set forth herein at length.

301. Since the time of the Settlement Agreement, Defendants JANIS and DESIGNS competed directly with M+J.

302. During said time, Defendant JANIS utilized her position as the controlling officer and director of M+J to obtain unfair competitive advantages which Defendants JANIS and DESIGNS used and continue to use to compete directly with M+J.

303. During said time, Defendants JANIS and DESIGNS continued to convert the goodwill of M+J and to misappropriate its design credits, continued to infringe on the M+J trademarks, continued to divert old M+J clients and accounts, and continued to convert M+J inventories and raw materials.

304. As a result of the foregoing, Defendants JANIS and DESIGNS competed unfairly with M+J and continue to so compete through their ill begotten and unfair competitive advantages.

305. By virtue of the foregoing, M+J is entitled to recover damages for unfair competition which are to be determined at trial but are believed to exceed One Million Dollars ($1,000,000.00).

Supreme Court Records OnLine Library - page 56 of 64

AS FOR THE FIFETEENTH CAUSE OF ACTION

BY PLAINTIFF M+J AGAINST DEFENDANTS JANIS SAVITT AND DESIGNS BY JANIS SAVITT, INC.
INJUNCTION

306. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 204, 206 through 216, 216 through 220, 222 through 239, 241 through 246, 248 through 263, 265 through 270, 272 through 281, 283 through 285, 287 through 291, 293 through 295, 297 through 299, and 301 through 305 inclusive, as if more fully set forth herein at length.

307. The abovementioned misconduct of Defendants JANIS and DESIGNS is continuous and ongoing and M+J will be caused to suffer additional significant and irreparable harm unless said Defendants are enjoined through injunctive relief.

308. By virtue of the foregoing, Plaintiff M+J is entitled to an injunction restraining and enjoining Defendants JANIS and DESIGNS from continuing on with their tortious conduct as provided in the above Causes of Action.

WHEREFORE, Plaintiffs demand judgment against defendants named in their respective causes of action as follows:

BREACH OF FIDUCIAR DUTIES

A. On the First Cause of action in favor of the Plaintiff MICHELLE and against Defendants GT, SCHINDLER and ELINGS, Breach of Fiduciary Duties, Ten Million Dollars ($10,000,000.00) as compensatory damages, Thirty Million

Supreme Court Records OnLine Library - page 57 of 64

Dollars ($30,000,000.00) as punitive and exemplary damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

FRAUD

B. On the Second Cause of action in favor of the Plaintiff MICHELLE and against Defendants GT, SCHINDLER and ELINGS, Ten Million Dollars ($10,000,000.00) as compensatory damages, Thirty Million Dollars ($30,000,000.00) as punitive and exemplary damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

LEGAL MALPRACTICE

C. On the Third Cause of action in favor of the Plaintiff MICHELLE and against Defendants GT, SCHINDLER and ELINGS, Ten Million Dollars ($10,000,000.00) as compensatory damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

PRIMA FACIE TORT

D. On the Fourth Cause of action in favor of the Plaintiff MICHELLE and against Defendants GT, SCHINDLER and ELINGS, Five Million Dollars ($5,000,000.00) as compensatory damages; costs and reasonable attorney fees;

Supreme Court Records OnLine Library - page 58 of 64

interest and any and all other relief that the Court deems just and reasonable.

BREACH OF FIDUCIARY DUTIES

E. On the Fifth Cause of action in favor of the Plaintiff MICHELLE and against Defendant JANIS, One Million Dollars ($1,000,000.00) as compensatory damages; Three Million Dollars ($3,000,000.00) as punitive and exemplary damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

TORTIOUS MISAPPROPRIATION OF CREDIT

F. On the Sixth Cause of action in favor of the Plaintiff MICHELLE and against Defendant JANIS, Three Million Dollars ($3,000,000.00) as compensatory damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

BREACH OF FIDUCIAR DUTIES

G. On the Seventh Cause of action in favor of the Plaintiff M+J and against Defendants GT, SCHINDLER and ELINGS, Fifteen Million Dollars ($15,000,000.00) as compensatory damages, Forty-Five Million Dollars ($45,000,000.00) as punitive and exemplary damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

Supreme Court Records OnLine Library - page 59 of 64

FRAUD

H. On the Eighth Cause of action in favor of the Plaintiff M+J and against Defendants GT, SCHINDLER and ELINGS, Fifteen Million Dollars ($15,000,000.00) as compensatory damages, Forty-Five Million Dollars ($45,000,000.00) as punitive and exemplary damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

LEGAL MALPRACTICE

I. On the Ninth Cause of action in favor of the Plaintiff M+J and against Defendants GT, SCHINDLER and ELINGS, Fifteen Million Dollars ($15,000,000.00) as compensatory damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

BREACH OF FIDUCIARY DUTIES

J. On the Tenth Cause of action in favor of the Plaintiff M+J and against Defendant JANIS, Two Million Dollars ($2,000,000.00) as compensatory damages, Six Million Dollars ($6,000,000.00) as punitive and exemplary damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

CONVERSION

K. On the Eleventh Cause of action in favor of the Plaintiff M+J and against Defendants JANIS and DESIGNS, Five Hundred Thousand Dollars ($500,000.00) as compensatory damages; One Million Five Hundred Thousand Dollars ($1,500,000.00) as punitive and exemplary damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

EMBEZZLEMENT

L. On the Twelfth Cause of action in favor of the Plaintiff M+J and against Defendants JANIS, Five Hundred Thousand Dollars ($500,000.00) as compensatory damages; One Million Five Hundred Thousand Dollars ($1,500,000.00) as punitive and exemplary damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

UNJUST ENRICHMENT

M. On the Thirteenth Cause of action in favor of the Plaintiff M+J and against Defendants JANIS and DESIGNS, One Million Dollars ($1,000,000.00) as compensatory damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

Supreme Court Records OnLine Library - page 61 of 64

UNFAIR COMPETITION

N. On the Fourteenth Cause of action in favor of the Plaintiff M+J and against Defendants JANIS and DESIGNS, One Million Dollars ($1,000,000.00) as compensatory damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

INJUNCTION

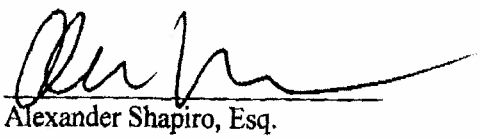
O. On the Fifteenth Cause of action in favor of the Plaintiff M+J and against Defendants JANIS and DESIGNS, injunction restraining and enjoining said defendants from unfairly competing with Plaintiff M+J and from carrying on with its other tortious activities against M+J.

P. Any other relief deemed just and reasonable by the Court.

Dated: New York, New York
January 27, 2012

Yours etc.,

BROOME, PALANT & SHAPIRO, P.C.
Attorney for Plaintiff

By: 

Alexander Shapiro, Esq.
225 Broadway, Suite 630
New York, NY 10007
212-608-1140

Supreme Court Records OnLine Library - page 62 of 64

Certification

Pursuant to 22 NYCRR130-1.1 the undersigned, an attorney admitted to practice in the courts of the State of New York, certifies that upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: New York, New York
January 27, 2012

ALEXANDER SHAPIRO, ESQ.

TO:

Defendant Addresses:

Greenberg Traurig, LLP
200 Park Avenue, New York NY 10166

Paul Schindler, Esq.
200 Park Avenue, New York, NY 10166

G. Roxanne Elings, Esq.
200 Park Avenue, New York, NY 10166

Janis Savitt
200 West 58th Street, Apt. 12B
New York, NY 10019

Designs by Janis Savitt, Inc.
200 West 58th Street, Apt. 12B
New York, NY 10019

Supreme Court Records OnLine Library - page 63 of 64

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MICHELLE SAVITT, being duly sworn, deposes and says, that deponent is a Plaintiff in the within action; that deponent has read the foregoing VERIFIED COMPLAINT and knows the contents thereof; that the same is true to deponent's own personal knowledge, except as to the matters therein states to be alleged on information and belief, and that as to those matters deponent believes them to be true.

Michelle Savitt
MICHELLE SAVITT

Sworn to before me this:

27th day of January 2012

NOTARY PUBLIC

ANDREY I. PLAKSIN
NOTARY PUBLIC-STATE OF NEW YORK
No. 02PL6239350
Qualified in Kings County
My Commission Expires April 18, 2016

Exhibit 6

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

MICHELLE SAVITT and M+J SAVITT, INC. Plaintiffs, -against- GREENBERG TRAURIG, LLP, PAUL D. SCHINDLER, G. ROXANNE ELINGS, JANIS SAVITT and DESIGNS BY JANIS SAVITT, INC., Defendants.	Index No.: 101200/12 **AMENDED VERIFIED COMPLAINT**

Plaintiffs MICHELLE SAVITT ("MICHELLE") and M+J SAVITT, INC. ("M+J"), by their undersigned counsel, BROOME, PALANT& SHAPIRO, P.C., for their Complaint against Defendants GREENBERG TRAURIG, LLP ("GT"), PAUL D. SCHINDLER ("SCHINDLER"), G. ROXANNE ELINGS ("ELINGS"), JANIS SAVITT ("JANIS") and DESIGNS BY JANIS SAVITT, INC. ("DESIGNS"), collectively referred to as "Defendants", allege as follows upon information and belief for all times stated:

INTRODUCTION

1. Plaintiffs bring this action against Defendants GREENBERG TRAURIG, LLP, PAUL SCHINDLER and ROXANNE ELINGS to recover damages for breach of fiduciary duties, fraud, legal malpractice and other malevolent tortious acts. This case presents the outrageous situation where trusted attorneys,acting under the guise of legal representation, wrongfully undertook joint legal representation of parties to a litigation proceeding with materially adverse interests and deliberately, intentionally and willfully breached their fiduciary duties bydefrauding their new clients, Plaintiffs MICHELLE SAVITT and M+J, in order to advance the litigation interests of their old clients, Defendants JANIS and her company,

DESIGNS BY JANIS SAVITT, INC.

2. In furtherance of this fraudulent scheme standing in violation of the fundamental guiding principles of the legal profession, Defendants ELINGS, SCHINDLER and GT deliberately misrepresented to Plaintiffs herein that there were no meritorious causes of action which they could have pursued against Defendants JANIS and DESIGNS and lied that there was no need for MICHELLE and M+J to retain independent counsel and that it is advisable for them and JANIS and DESIGNS to be represented by one firm.

3. In violation of the Code of Professional Responsibility and the time-honored rules of legal ethics, defendants PAUL SCHINDLER and ROXANNE ELINGS undertook this joint legal representation in the case known as Wynne Savitt Weiner v. Janis Savitt et al ("Prior Action"). As fully described below, in the Prior Action the interests of Plaintiffs were materially adverse to those of JANIS SAVITTand her company, DESIGNS BY JANIS SAVITT, INC., in that Plaintiffs could have, and should have, asserted meritorious causes of action against JANIS SAVITT and her company and would have prevailed on their claims.

4. In the Prior Action, plaintiff Wynne Savitt Weiner, who was one of four shareholders of M+J and a director and officer thereof, initially commenced the action against JANIS and DESIGNS for, among other things, infringing on M+J trademarks, breach of contract, diverting clients, commencing a competing venture and otherwise unfairly competing with M+J.

5. Paul Savitt, who was M+J's president and the father of JANIS, MICHELLE and Wynne Savitt Weiner, was also joined in the initial action on the basis that he allegedly aided and permitted JANIS SAVITT in committing her tortious acts. MICHELLE and Mildred Savitt, who was the other shareholder and the mother of Wynne Savitt Weiner, JANIS and MICHELLE,

were subsequently joined in the Prior Action.

6. At the time when GT assumed joint representation, JANIS was already an existing client of GT, ELINGS and SCHINDLER. Throughout this joint representation, the defendant attorneys sought to advance JANIS's interests at the expense and to the detriment of Plaintiffs.

7. Defendants GT, ELINGS and SCHINDLER never disclosed to Plaintiffs that there was a conflict of interest in one firm representing parties with materially adverse interests or that Plaintiffs could have asserted meritorious claims against JANIS and her company, including, as more fully described below, claims based in breach of fiduciary duties, unfair competition, breach of contract and trademark infringement.

8. As part of their dishonest scheme to advance JANIS SAVITT's interests in litigation, Defendants ELINGS, SCHINDLER and GT convinced MICHELLE to accept GT's legal representation and misrepresented to her that there were no meritorious claims that she could have asserted against JANIS SAVITT and her company.

9. Thereafter, Defendants GT, ELINGS and SCHINDLER counseled MICHELLE and M+J to waive all their rights, claims and causes of action against JANIS and the companies that she owned and controlled.

10. Plaintiffs followed Defendants SCHINDLER, ELINGS and GT's advice and entered into a settlement agreement whereby, in addition to releasing Wynne Savitt Weiner, they also released JANIS SAVITT and her company from all liability.

11. Within a week after MICHELLE entered into a settlement agreement with respect to the Prior Action, GT attorneys prepared new wills for Paul Savitt and Mildred Savitt whereby MICHELLE was effectively disinherited and her interests under the wills were to be used to pay

GT's outstanding legal fees and to reimburse JANIS for all the legal fees previously paid to GT. All of the instructions for the preparation of the wills came directly from or through JANIS, who was the real architect of the wills and the one paying for their preparation. A team of GT lawyers and staff arrived at the ailing parents' home to execute and witness the wills under which GT was a *de facto* beneficiary.

12. Present wills are the subject of a will contest pending in the Surrogate's Court of New York County.

13. After the settlement of the Prior Action, JANIS took complete control of M+J, denied and continues to deny MICHELLE all access to corporate books and records, and has deliberately acted against the best interests of M+J by usurping its corporate opportunities while converting its inventories, goodwill and other assets.

14. Since the settlement of the Prior Action, JANIS has also continued to carry on a campaign of calculated and intentional misinformation of the press and the jewelry business community by misappropriating for herself the credit for designs and work done by MICHELLE, thereby significantly impairing the goodwill associated with MICHELLE's name and otherwise causing her great harm.

THE PARTIES

15. Greenberg Traurig, LLP is a New York limited liability partnership engaged in the practice of law with a principal place of business located at200 Park Avenue, New York, New York 10166.

16. PAUL D. SCHINDLER is an attorney duly admitted to practice law before the courts of the State of New York and is a shareholder in GT and a member of the firm. PAUL

SCHINDLER conducts business out of GT's New York office located at 200 Park Avenue, New York, New York 10166. Defendant SCHINDLER is the head of GT's entertainment law department.

17. G. ROXANNE ELINGS is an attorney duly admitted to practice law before the courts of the State of New York and is a shareholder in GT and a member in the firm. ROXANNE ELINGS conducts business out of GT's New York office located at 200 Park Avenue, New York, New York 10166.

18. JANIS SAVITT is a resident of the State of New York and resides at 200 West 58th Street Apt. 12 B, New York, New York 10019.

19. DESIGNS BY JANIS SAVITT, INC. is a New York corporation wholly owned and controlled by JANIS SAVITT with a principal place of business located at 200 West 58th Street Apt. 12 B, New York, New York 10019.

20. MICHELLE SAVITT is a resident of the State of New York and resides at 12 East 86thStreet, Apt. 429, New York, New York 10028.

21. M+J SAVITT, INC. is a New York corporation with a principal place of business at 200 West 58th Street Apt. 12 B, New York, New York 10019.

STATEMENT OF FACTS

22. M+J SAVITT, INC. ("M+J") is a closely held corporation with an illustrious history in the jewelry industry. At the time of the Prior Action, the equity of M+J was owned by Wynne Savitt Weiner, MICHELLE and JANIS, who are three sisters, and their mother, Mildred Savitt. Each of the siblings owned Twenty-Seven (27) percent of the equity with the remaining Nineteen (19) percent being owned by Mildred Savitt.

23. In the almost four decades since its founding in 1972, M+J has become one of the leading names in designing, manufacturing and wholesaling fine and semi-precious designer jewelry. M+J clients included names such as Cartier, Michael Kors and Ralph Lauren, and its own brands were carried by retailers including Nieman Marcus, Bergdorf Goodman, Saks Fifth Avenue, Barneys New York, Henri Bendel's, Bloomingdales and other specialty and high-end retailers.

24. The M+J name reached iconic status – its designs were often subjects of leading fashion magazine articles and their pieces were worn by top celebrities. The success and reputation of M+J is illustrated by its numerous awards and accolades – M+J was awarded the coveted "COTY" award, received twenty-seven (27) DeBeers "Diamond Today" awards, and was inducted to the Diamond International Hall of Fame.

25. MICHELLE and JANIS were the M+J designers and Wynne Savitt Weiner was its business manager.

26. Since its inception, M+J has had a longstanding usage of the trademark "SAVITT", both as a trademark for its products, as part of its trade name and corporate identifier, and within advertisements and promotional materials. To protect its trademark rights, M+J has obtained numerous federal trademark registrations for its trademarks, all of which have been in continuous use for more than five (5) years, which makes them "incontestable" under 15 U.S.C. Sec 115(b).

27. M+J federal trademark registrations include: (i) "SAVITT", U.S. Registration No. 2,941,210, registered on September 15, 2003 for "jewelry" based on first use in commerce in 1984; (ii) "S M+J SAVITT & DESIGN" (all in stylized form), U.S. Registration No. 2,116,162, registered on November 25, 1996 for "jewelry made of precious metals, and jewelry with

precious stones" based on first use in commerce in 1984; and (iii) "M+J SAVITT", U.S. Registration No. 3,022,631, registered on September 15, 2003 for "jewelry" based on first use in commerce in 1984.

28. In addition, for approximately sixteen (16) years M+J had also conducted business under the names of "JANIS SAVITT FOR M + J SAVITT" and "JANIS SAVITT".

29. The inclusion and usage of "JANIS SAVITT" within the branding, marketing and promotion of M+J and its products was done upon the request of Defendant JANIS, who convinced the M+J shareholders, directors and officers that this would be done in the best interests of M+J.

30. The M+J trademarks became uniquely associated with M+J and developed secondary meaning, rendering them "famous" within the meaning of the dilution provisions of the Lanham Act, 15 U.S.C. Sec. 1125(c).

31. In or about 1992, M+J and its shareholders entered into an oral agreement ("Agreement") with Defendant JANIS whereby it was agreed that M+J would identify, market, promote and advertise its various products under the names of "JANIS SAVITT" and "JANIS SAVITT FOR M + J SAVITT" on the condition and in consideration of the following terms, conditions, and covenants: (i) the inclusion of the name "JANIS SAVITT" in the marketing, promotion, advertisement and branding of M+J products would be made for the exclusive benefit of M+J and not for the personal benefit of Defendant JANIS SAVITT, individually; (ii) such usage would be limited for branding purposes to the Gold and Diamond Precious Metal Collection, which is one segment of the company's jewelry collection; (iii) that as a result of M+J investing substantial sums into the marketing, promotion and advertising of the products sold and identified under "JANIS SAVITT" and "JANIS SAVITT FOR M + J SAVITT", all

rights and proprietary interests relating to "JANIS SAVITT" and "JANIS SAVITT FOR M+J SAVITT", including trademark rights, would be the exclusive property of M+J for as long as M+J would be conducting business.

32. Further, it was agreed, understood and implied that in consideration of M+J's extensive efforts and investments in promoting and adding commercial value to the name "JANIS SAVITT", she would not later turn around and use the name "JANIS SAVITT" in a venture directly competing with M+J.

33. Since the Agreement, M+J has invested millions of dollars into marketing, advertising and promoting the trade names "JANIS SAVITT" and "JANIS SAVITT FOR M+J SAVITT". In total, M+J has invested approximately two million dollars ($2,000,000.00) in retailer coop advertising programs and marketing in order to build the fame, reputation and goodwill for its trademarks. As a direct result of M+J's substantial investments, as well as using its own reputation, contacts, relationships and channels to promote "JANIS SAVITT" and "JANIS SAVITT FOR M+J SAVITT", M+J has created substantial value in the name "JANIS SAVITT", which provided Defendant JANIS with a competitive advantage against M+J.

34. On or about October 31, 2006, Defendant JANIS, while an officer, director and shareholder of M+J, applied, in her individual name, for the trademark "JANIS SAVITT" for use with "jewelry" (the "Trademark Application"). This was done without the permission or consent of M+J and at a time when Defendant JANIS owed fiduciary duties to M+J and its stockholders.

35. However, a USPTO Examining Attorney refused the Trademark Application on the basis that the mark sought was likely to be confused with M+J trademarks and would infringe on M+J's vested trademark rights. The USPTO Examining Attorney opined that the commercial impressions conveyed by "JANIS SAVITT" and the M+J trademarks were identical

in light of the prominent use of "SAVITT" and the mark sought being intended for use in the jewelry industry.

36. In addition, as part of her comprehensive plan of deception designed for her to maximize all the advantages she could derive from M+J before revealing her competitive venture, Defendant JANIS registered the website domain of www.Janis-Savitt.com and secreted her public identity as owner/registrant of said domain name through a "Domain Discrete" product service offered by the Register.com registrars.

37. On December 31, 2007, for her own personal benefit and without the consent or permission of M+J, Defendant JANIS started a venture which competed directly with M+J. On that day, Defendant JANIS incorporated "Designs by Janis Savitt, Inc." Additionally, since that time, Defendant JANIS has competed with M+J through "Janis Savitt d/b/a Janis by Janis Savitt, Inc." These actions were undertaken by Defendant JANIS in violation of M+J trademark rights and in breach of her fiduciary duties owed to M+J and its stockholders.

38. In competing with M+J, Defendant JANIS capitalized on the fact that over the period of sixteen (16) years the public, designers, retailers and fashion magazine publishers came to know "JANIS SAVITT" as being one of M+J lines and synonymous therewith. The public, designers, retailers and the press were actually confused and perceived Defendant JANIS's products and works as those of M+J. In fact, on numerous occasions, magazine publications, being under the impression that Designs by Janis Savitt, Inc. was M+J or affiliated therewith, erroneously sent to M+J correspondences intended for Defendant JANIS.

39. After approximately sixteen (16) years of M+J investing heavily into marketing, promoting and advertising "JANIS SAVITT" and "JANIS SAVITT FOR M+J SAVITT", thereby adding substantial commercial value to Defendant JANIS's name, Defendant JANIS

wielded this advantage to unfairly compete with M+J to its detriment.

40. While being an officer and director of M+J and thereafter, Defendant JANIS utilized M+J's contacts and channels to promote her own venture and actively solicited existing M+J clients and valuable business contacts for herself, thereby successfully diverting them from M+J. The M+J clients so diverted included Ralph Lauren, which was one of M+J's top clients. For example, right after Defendant JANIS left M+J, Ralph Lauren faxed in to M+J an order for an M+J design bangle bracelet which Ralph Lauren used to purchase from M+J and which was M+J proven great seller. Shortly thereafter, Ralph Lauren contacted Wynne Weiner Savitt, apologized and indicated that the order was withdrawn from M+J and would be sent to Janis Savitt.

41. As a direct result of Defendant JANIS opening up a competing venture with M+J, infringing on its trademarks and unfairly competing with it through her ill-begotten unfair competitive advantages, M+J suffered substantial damages, including loss of income and the dilution of its very valuable trademarks.

42. In addition, on numerous occasions, Defendant JANIS SAVITT wrongfully misrepresented, in advertisements, M+J products as those of her own. For example, Defendant JANIS: (i) credited herself instead of M+J in numerous advertisements for a variety of products in many publications, including, without limitation, the March 2007 issue of Town & Country Magazine; (ii) incorrectly credited products as "Janis Savitt for Ralph Lauren" instead of "M+J Savitt for Ralph Lauren"; (iii) misrepresented the cost of various M+J jewelry products in various advertisements, including, but not limited to, in a Vogue Magazine 2007 issue for a "Big Time Necklace".

43. Defendant JANIS SAVITT, before and after the Prior Action, on numerous

occasions misappropriated the credit for MICHELLE's designs and work by misrepresenting to the press, retailers, designers and the public at large MICHELLE's designs and work as her own.

44. As a direct result of Defendant JANIS's tortious acts, M+J stockholders, including Plaintiff MICHELLE, suffered serious loss of value to and diminution of their stock.

THE PRIOR ACTION

45. On October 7, 2008, Wynne Savitt Weiner and M+J commenced the Prior Action in the United States District Court for the Southern District of New York. A copy of the initial complaint of the Prior Action (the "Prior Complaint") is annexed hereto as **Exhibit "A"**.

46. Among other things, if MICHELLE and M+J had independent legal counsel who would have advised them about the meritorious causes of action which each could have asserted against JANIS and DESIGNS, the causes of action contained in the Prior Complaint, with the exception of those claims asserted against Paul Savitt, could have been and would have been maintained by MICHELLE and M+J.

GREENBERG TRAURIG REPRESENTATION

47. Defendants ELINGS, SCHINDLER and GT organized a special meeting of the shareholders of M+J, which was held on November 18, 2008 at their Manhattan office. The purpose of this meeting was to remove Wynne Savitt Weiner as a director and officer of M+J and to authorize the discontinuance of the causes of action asserted by M+J in the Prior Complaint.

48. In an effort to effectuate this objective, Defendants GT, ELINGS and SCHINDLER sought to persuade MICHELLE to take their side and to vote in accordance with

their instructions. To induce MICHELLE to side with JANIS, Defendants ELINGS, SCHINDLER and GT, acting in concert, misrepresented to MICHELLE that all of the claims asserted by plaintiffs in the Prior Action lacked merit and "did not have a leg to stand on".

49. MICHELLE was further advised by Defendants GT, ELINGS and SCHINDLER that the case would end up costing M+J significant funds, which will all be spent on a frivolous case.

50. Plaintiff MICHELLE relied upon the misrepresentations of Defendants ELINGS, SCHINDLER and GT, which reliance proved to be to her detriment.

51. Believing that the claims asserted in the Prior Action were devoid of any merit, on November 18, 2008, MICHELLE attended the special meeting of the shareholders of M+J.

52. On November 18, 2008, Defendants ELING and SCHINDLER, both of whom were present during the special meeting of the shareholders of GT, assured MICHELLE that she was doing the right thing and misrepresented that the claims in the Prior Action had no merit.

53. In misrepresenting that the claims asserted in the Prior Action had no merit whatsoever, Defendants ELINGS and SCHINDLER were aware of the falsity of their representations and made said misrepresentation knowingly, willfully and deliberately with the specific intent of misleading Plaintiffs MICHELLE and M+J.

54. At no point in time before, during or after the said special meeting of the shareholders did Defendants ELING, SCHINDLER or any other GT attorney, employee, agent or servant advise MICHELLE to consult with independent legal counsel or of the conflict of interest.

55. At the November 18, 2008 special meeting of the shareholders, GT presented carefully prepared scripts which were handed to the shareholders for the purpose of each

shareholder reading the requisite language verbatim.

56. In light of her debilitating neurological disease, Mildred Savitt was unable to attend the meeting, and, according to Defendants JANIS, ELINGS and SCHINDLER, she purportedly provided a duly executed proxy to Paul Savitt so that he could vote in her place at the meeting.

57. JANIS, MICHELLE and Paul Savitt each read the designated portions of the prepared script, thereby removing Wynne as a director and officer of M+J and determined that M+J should not continue its claims in the Prior Action.

58. In advising the shareholders and directors of M+J to discontinue the M+J's claims, GT rendered legal advice and acted as legal counsel to M+J, at which point an attorney-client relationship existed between GT and M+J.

59. At the November 18, 2008 special meeting of the shareholders, Defendants ELINGS and SCHINDLER wrongly advised and intentionally misrepresented to the M+J shareholders, directors and officers that the claims that were asserted in its name in the Prior Action were devoid of merit.

60. Subsequent to the November 18, 2008 special meeting of the shareholders, Wynne Savitt Weiner interposed an amended complaint, wherein in addition to her individual claims, she sought to institute a derivative action on behalf of M+J and also joined MICHELLE as a co-defendant.

61. Sometime thereafter, Defendants ELINGS and SCHINDLER advised MICHELLE that GT offered to represent her in the federal proceedings. At that time, the defendants consisted of JANIS, Designs by Janis Savitt, Inc., MICHELLE, Mildred Savitt and Paul Savitt, and M+J was a counterclaimant.

62. Defendant ELINGS recommended that all defendants and counterclaimants be represented by same counsel, that there was no need for MICHELLE or for M+J to get independent legal counsel, and that MICHELLE would not be personally liable for any of the legal fees.

63. At the time when Defendants ELINGS, SCHINDLER and GT offered to undertake such joint legal representation of all defendants and counterclaimants, there was a clear conflict of interest because MICHELLE, M+J and Mildred Savitt all had meritorious claims that could have been asserted against JANIS and DESIGNS.

64. At no point in time did Defendants ELINGS, SCHINDLER or any other GT attorney, employee, contractor or agent disclose to MICHELLE, in writing or verbally, that there was any conflict of interest in GT undertaking such joint legal representation.

65. At no point in time did Defendants ELINGS, SCHINDLER or any other GT attorney, employee, contractor or agent disclose to M+J, whether in writing or verbally, that there was any conflict of interest in GT undertaking such joint legal representation.

66. Such disclosure was mandatory under the Code of Professional Responsibility Rule 1.7, its predecessor, and other authority.

67. In reliance on GT's misrepresentations that there were no meritorious claims against JANIS or her company, and, being ignorant of the fact that there was a material conflict of interest, MICHELLE consented to GT becoming her attorney in the Prior Action.

68. If MICHELLE had been advised that there was a material conflict of interest and that she couldhave assertedher own claims against JANIS and her company, she would not have consented to the joint representation and would have sought independent legal counsel.

69. In reliance on GT's misrepresentations that there were no meritorious claims

against JANIS or her company, and, being ignorant of the fact that there was a material conflict of interest, M+J, through its Board, voted to discontinue M+J's claims in the Prior Complaint and consented to GT becoming its attorney in the Prior Action.

70. If M+J had been advised that there was a material conflict of interest and that it had meritorious claims to assert against JANIS and her company, M+J would have sought out independent legal counsel to advise it of its rights, would not have voted to discontinue M+J's claims, and would have proceeded with the claims asserted in the Prior Complaint.

71. At the time GT undertook said joint representation, JANIS had already been its old client.

72. At all times during the pendency of the Prior Action, its settlement and at all times prior and after thereof, Defendants ELINGS, SCHINDLER and GT protected and sought to advance only the interests of JANIS and her company to the exclusion of, and against the interests of, MICHELLE and M+J.

73. GT proceeded to represent MICHELLE in the Prior Action without any retainer agreement between her and GT.

74. On numerous occasions GT promised Plaintiff MICHELLE and her husband, Sepp Donahower, that a retainer agreement would be sent to them for review, but none was ever provided or signed.

75. At all times, Defendants ELINGS, SCHINDLER and GT were loyal only to JANIS and DESIGNS and had no loyalty to their other clients, including MICHELLE and M+J.

76. At all times, Defendants ELINGS, SCHINDLER and GT agreed to the joint representation and in fact strongly encouraged it solely for strategic reasons, all for the benefit of JANIS in that they sought to control MICHELLE: a) so that M+J's claims in the Prior Complaint

would not be pursued, and (b) so that MICHELLE would not retain independent counsel who would advise her to proceed with filing claims against JANIS and DESIGNS.

77. Prior to the commencement of the Prior Action, JANIS was indebted to GT for outstanding legal fees and her potentially losing the Prior Action could have rendered her insolvent and unable to pay these outstanding fees.

78. In defending the Prior Action, GT's outstanding legal fees escalated to a sum of approximately nine hundred thousand dollars ($900,000.00), of which approximately six hundred thousand dollars ($600,000.00) remained unpaid at the conclusion of the Prior Action.

79. Most if not virtually all of the time expended by GT in connection with the Prior Action was in defending and promoting the interests of JANIS and her company and any time spent on attending depositions and performing other services for Paul Savitt and Mildred Savitt was merely ancillary and incidental to GT's serving of JANIS's interests.

80. However, the amounts paid towards the outstanding bill were primarily generated from Paul and Mildred Savitt's retirement savings, which they needed for custodial and medical care.

81. According to statements made by JANIS to MICHELLE during the pendency of the Prior Action, Defendant SCHINDLER personally loaned to JANIS the sum of approximately forty thousand dollars ($40,000.00) so that she could pay down the outstanding bill to help him keep face with the other partners.

82. Defendant SCHINDLER also received from JANIS an M+J necklace which was the property of M+J and worth more than $100,000.00, all without paying M+J any compensation therefor.

THE SETTLEMENT AGREEMENT AND CONCLUSION OF THE PRIOR ACTION

83. After the November 18, 2008 shareholder meeting, Wynne, no longer being a member of the board of directors or an officer of M+J, could only seek redress for M+J's injuries through a derivative action.

84. Since MICHELLE and all other directors other than JANIS had no pecuniary interest in the competing venture of JANIS, nor received any pecuniary benefit from her acts of trademark infringement, the Honorable Denise Cote opined that plaintiffs had failed to establish futility of demand on the board of directors, and, therefore, failure to make demand was not excused.

85. As a result, the federal court indicated that it would dismiss all derivative claims, which, according to the court, encompassed all of the plaintiffs' causes of action except Wynne's defamation claims. The dismissal was purely on procedural grounds and not on the merits of the causes of action asserted.

86. On July 16, 2009, all the parties to the Prior Action entered into a settlement agreement resolving all the claims (the "Settlement Agreement"). A copy of the Settlement Agreement is annexed hereto as **Exhibit "B"**.

87. MICHELLE's husband, Sepp Donahower, and his company, were also parties to the Settlement Agreement although there were no pending claims against either of them at that time.

88. Under the terms of the Settlement Agreement, each party released every other party from any and all liability for anything whatsoever, whether known or unknown.

89. By signing the Settlement Agreement, MICHELLE and M+J released all rights and claims against JANIS and DESIGNS.

90. At the time the Settlement Agreement was reached, MICHELLE and her husband were residents of the State of California.

91. As further proof of the fact that the Defendant attorneys were protecting the interests of JANIS only and were seeking to protect her from possible claims of MICHELLE and M+J, GT attorneys, on their own initiative and not on the request of opposing counsel, inserted into the Settlement Agreement a provision whereby MICHELLE, her husband and his company waived all the protective provisions of Section 1542 of the California Civil Code, which provides that: "[a] general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

92. In including said provision on its own initiative, GT breached their duty of loyalty to MICHELLE and caused her to waive valuable rights and protections of Section 1542.

93. Since January of 2009 and as of the date of the Settlement Agreement, GT was in possession or control of various M+J jewelry, inventories, raw materials and other assets which GT was supposed to deliver to M+J after the settlement.

94. GT released all of the M+J assets in its possession or control to Defendant JANIS without any restrictions or consent of MICHELLE or of M+J Board. However, when MICHELLE sought to sell some of M+J inventories to pay M+J expenses, Defendant ELINGS sent MICHELLE a letter demanding the return of all inventories she intended to sell on behalf of M+J.

95. Defendant JANIS converted most of the M+J assets previously held or controlled by GT and used them for her own personal benefit to the exclusion of M+J.

96. Since the Settlement Agreement, MICHELLE, as a director and shareholder of

M+J, on numerous occasions requested Defendant JANIS to provide her access to M+J's corporate books and records.

97. However, JANIS repeatedly denied MICHELLE all such access and usurped to herself all of the management powers and corporate assets.

EXECUTION OF THE WILLS

98. At about the time GT was finalizing the terms of the Settlement Agreement, its attorneys were preparing new wills for Paul and Mildred Savitt ("New Wills").

99. At or about that time, Defendant JANIS was significantly delinquent in paying her outstanding legal fees to GT, with the total amount outstanding being approximately six hundred thousand dollars ($600,000.00).

100. Defendants ELINGS, SCHINDLER and GT conspired and reached an agreement with JANIS that they would all act in concert to take all necessary steps, including exercising undue influence, to make sure that the outstanding legal fees would be paid out of the estates of Paul and Mildred Savitt and that GT would prepare such wills and arrange for their execution.

101. In connection with the drafting and the preparation of the New Wills, virtually all of the instructions as to testamentary dispositions were received by GT exclusively through JANIS.

102. On July 22, 2009, the New Wills were executed by Paul Savitt and Mildred Savitt at their home residence.

103. On July 22, 2009, a team of GT personnel arrived at the residence of Paul Savitt and Mildred Savitt to supervise the execution of New Wills.

104. All of the witnesses to the New Wills were either GT attorneys, employees,

contractors or agents.

105. The New Wills revoked the prior wills of Paul and Mildred Savitt which were executed in 2005 ("Old Wills").

106. Under the Old Wills, which were essentially mirror image wills, in event that there was no surviving spouse, MICHELLE was to act as the executrix and each of the three daughters would receive an equal share of the estate.

107. Under the New Wills, which are also essentially mirror image wills, in event that there is no surviving spouse, virtually the entirety of the estates goes to JANIS, who is also named as the executrix.

108. Under the New Wills, MICHELLE's interest is limited to one half of the net proceeds from the sales of Mildred's West Hampton property, after the payment of all outstanding mortgages and encumbrances, real estate commissions, and all outstanding legal fees and reimbursement to JANIS of all of the legal fees paid by her.

109. The fair market value of this West Hampton property is believed, based on comparable sales, to be about one million three hundred thousand dollars ($1,300,000.00), and the equity therein is not believed to exceed eight hundred and fifty thousand dollars ($850,000.00).

110. However, Defendant JANIS sold the West Hampton property for Nine Hundred Thousand Dollars ($900,000.00), which sum is about Four Hundred Thousand Dollars ($400,000.00) below fair market value.

111. In essence, MICHELLE has been effectively disinherited with her portion of the inheritance going to paying GT for its legal fees and reimbursing JANIS for her legal fees.

112. In drafting the New Wills, GT has made itself a de facto beneficiary.

113. GT is presently representing the Estate of Paul Savitt and the Estate of Mildred Savitt in connection with probate proceedings filed by JANIS in the Surrogate Court, New York County.

M+J POST-SETTLEMENT AGREEMENT

114. Since the time of the Settlement Agreement, M+J has been managed and controlled by JANIS.

115. M+J closed its office location and all of its records are in the possession of JANIS

116. Presently, M+J has two directors: MICHELLE and JANIS.

117. Presently, M+J has three shareholders: MICHELLE, JANIS and the Estate of Mildred Savitt.

118. JANIS is the Preliminary Executor of the Estate of Mildred Savitt.

119. JANIS received from GT all of the inventories, raw materials, models, expensive jewelry, costly office furniture and equipment, and other assets of M+J which were in GT's possessionor control("GT Inventories").

120. Defendant JANIS never transferred the GT Inventories to M+J.

121. Defendant JANIS converted the GT Inventories for her own personal use, benefit and enrichment, all of which was to the exclusion of M+J.

122. After taking control of M+J, JANIS has converted and continues to convert for her personal use and benefit M+J inventories and other assets.

123. After the Settlement Agreement, JANIS has been selling and continues to sell old M+J inventories under the names of Defendant DESIGNS., with all revenues and profits therefrom going to JANIS and Defendant DESIGNS.

124. After the Settlement Agreement, JANIS has been using M+J as a venue for liquidating undesirable inventory of Defendant DESIGNS at highly discounted prices, which serves to undermine the four decades of segment, market and price positioning of M+J.

125. All the revenues and profits from these sales inure to the exclusive benefit of JANIS and her company.

126. MICHELLE at no point in time approved, consented to, excused or ratified these actions by JANIS.

127. On numerous occasions after the Settlement Agreement, MICHELLE demanded JANIS to account for her actions and to provide her access to corporate books and records. On June 7, 2011, MICHELLE sent JANIS a correspondence once again demanding access to the corporate books and records. A copy of said correspondence is annexed hereto as **Exhibit C**.

128. As of the time of this Complaint, JANIS never produced any of the requested information and failed to grant MICHELLE access to the corporate books and records.

129. Despite MICHELLE's repeated demands for access to information, books and records of M+J, JANIS never complied with such demands and to date MICHELLE, being a shareholder and director of M+J, has been denied such access.

130. In a pattern of ongoing misconduct starting approximately in January of 2007 and continuing until the present time, Defendant JANIS has been making false, disparaging and defamatory statements about M+J and MICHELLE, which statements were made for JANIS's personal pecuniary gain.

131. As a result of MICHELLE and M+J waiving any and all claims against JANIS when they signed the Settlement Agreement, with respect to JANIS and Defendant DESIGNS, the present Complaint seeks relief for acts occurring after the date of the Settlement Agreement.

Conversion of Goodwill and Misappropriation of Design Credits

132. Since the time of the Settlement Agreement, JANIS has provided false, fabricated and misleading information about M+J and its designs to various publications, distributors and retailers.

133. JANIS repeatedly stated and misrepresented to the press and others that she was "the" designer for M+J and that the sole design credit for M+J products, including for its award winning designs, belongs to JANIS and not to MICHELLE.

134. These statements were false because MICHELLE, who is one of the company's founders, was one of its primary designers and the credit for a substantial percentage of M+J designs, including many of its best-selling designs, belonged to MICHELLE.

135. In representing to the press, jewelry business community and consumers that she was '"the designer" for M+J, Defendant JANIS took credit for MICHELLE's designs, including many designs which represented M+J's leading products and best-selling items.

136. As a result of JANIS's repeated false statements wherein she misappropriated all of the credit for the designs of M+J and of MICHELLE, the public formed the perception that the involvement of MICHELLE and Wynne Weiner Savitt was inconsequential and immaterial to M+J's success and that JANIS was essentially M+J. This facilitated and enabled JANIS to convert M+J clients, accounts and goodwill for her own individual gain.

137. By virtue of the abovementioned pattern of deceptive conduct aimed at converting MICHELLE's design credits and to wrongfully minimize her contributions to the success of M+J, MICHELLE was seriously and irreparably injured in her profit making abilities, was caused to suffer serious emotional harm and was otherwise damaged and caused to suffer harm.

138. By virtue of the abovementioned pattern of deceptive conduct aimed at converting

M+J design credits and goodwill, M+J has suffered serious and irreparable injuryto itsgoodwill, has lost business opportunities and has been otherwise damaged and caused to suffer harm.

Conversion of Raw Materials, Inventories and other Assets belonging to M+J

139. After taking control of M+J subsequent to the Settlement Agreement, JANIS converted its raw materials, inventories and other assets for use by her and by Defendant DESIGNS BY JANIS SAVITT, INC. The basis for the forgoing claims is that numerous items which have been sold and are being sold by JANIS through DESIGNS BY JANIS SAVITT, INC. use or contain raw materials or represent inventories that were the property of M+J.

140. Defendants SCHINDLER, ELINGS and GT denied MICHELLE any access to the GT Inventories and aided and abetted JANIS in converting said inventories for her own pecuniary gain so that she could pay off her legal bills.

141. Only a minor portion of the sales proceeds are believed to have gone for the payment of legitimate expenses of M+J.

142. At no point in time did M+J receive any compensation from JANIS or from DESIGNS for the M+J inventories and raw materials sold by JANIS or by Defendant DESIGNS for the benefit of Defendants JANIS and DESIGNS.

143. The approximate total value of these raw materials so converted by JANIS is believed to exceed Five Hundred Thousand Dollars ($500,000.00).

Wrongful Use of M+J for Designs by Janis Savitt, Inc.'s Purposes and Pecuniary Gain

144. JANIS has used and still uses the M+J name for the purpose of liquidating closeout items of Defendant DESIGNS so as not to damage or detract from the trade name of DESIGNS BY JANIS SAVITT, INC., Janis by Janis Savitt or JANIS SAVITT.

145. Despite the fact that Defendant DESIGNS BY JANIS SAVITT, INC. sells its closeout items under the M+J brand, neither JANIS nor her company ever provided any of the

sales proceeds to M+J, with all sales proceeds inuring to JANIS and to DESIGNS BY JANIS SAVITT, INC.

Conversion of corporate opportunities, breach of fiduciary duties and mismanagement

146. Since the Settlement Agreement, JANIS has taken absolute control of M+J. Defendant JANIS has unilaterally moved the corporate office to her own residence and from the time of the Settlement Agreement took possession of all corporate books and records, all to the exclusion of the other M+J officers and directors.

147. Despite the fact that for the past two (2) years MICHELLE has repeatedly requested JANIS for access to all corporate books and records, JANIS has refused to provide any access whatsoever. JANIS has effectively ousted MICHELLE, who is presently the only other remaining director, from the control and management of M+J.

148. Since her taking over the control and management of M+J, JANIS has at all times used M+J as a vehicle for wrongfully enriching and benefiting herself and Defendant DESIGNS BY JANIS SAVITT, INC.

149. During this period, JANIShas not sought nor does she presently seek to promote the interests of M+J and has acted and still acts against its best interests.

150. In managing and controlling M+J, JANIS has undertaken no action whatsoever to: (i) market or promote M+J and its products; (ii) design or develop new products for M+J; (iii) secure new distribution channels for M+J or expand existing ones; (iv) preserve M+J's existing clients, vendors and distribution channels; or (v) preserve M+J assets, including inventories and goodwill.

151. On the contrary, during the same time, JANIS has used her position as the managing officer and director to divert: (i) all of M+J's marketing, promotion, sales and

distribution channels; (ii) M+J clients, accounts and vendors; (iii) M+J goodwill; and (iv) business opportunities.

152. In large part, the foregoing diversion was facilitated: (i) by the similarity between the names "Janis Savitt" and "Designs by Janis Savitt, Inc." with "M+J Savitt, Inc."; (ii) by the fact that for sixteen (16) years M+J was actively marketing and promoting the name "Janis Savitt" in connection with its product lines; (iii) Janis Savitt's pervasive ongoing scheme of publicly spreading false information in order to misappropriate design credits for M+J designs and products; and (iv) by Janis Savitt utilizing M+J's contacts and channels to promote her own company.

153. This misconduct on the part of JANIS is tortious and amounts to breach of fiduciary duties and the diversion of corporate opportunities.

154. By virtue of the above, M+J has been seriously damaged in that it no longer has any material revenues, assets, clients, distribution and sales channels and its goodwill has been effectively wiped out and converted to Defendants JANIS and DESIGNS.

155. Among other things, M+J has been damaged in that it has lost its stream of revenues which it had prior to JANIS taking its control and engaging in persistent and repeated acts of stripping it of its assets and usurping all of its opportunities.

156. Based on the diminution in the fair market value of the M+J goodwill, of its intellectual property rights and the reduction in its revenue streams, M+J has been damaged in amount believed to exceed Ten Million Dollars ($10,000,000.00).

157. In addition, without injunctive relief enjoining JANIS and DESIGNS from continuously raiding M+J assets and engaging in the multitude of tortious conduct as abovementioned, M+J will suffer irreparable harm and may never recover.

THE DEMAND LETTER

158. On September 20, 2011, MICHELLE, in her capacity as shareholder of M+J, sent a demand letter to the M+J Board (the "Demand Letter") requesting that the Board commence litigation proceedings against Defendants GT, ELINGS, SCHINDLER and JANIS. A copy of the Demand Letter, together with all exhibits illustrating misappropriation of design credit, conversion of raw materials and inventories, using M+J as a platform for liquidating DESIGN's closeout items and other things is annexed hereto as **Exhibit "D"**.

159. As of the date of this Complaint, no action was taken by the M+J Board with respect to the Demand Letter and none is expected to be undertaken since JANIS, who is one of the only two Directors of M+J, is self-interested in the transactions involved.

160. Although demand on the board should be excused as futile because JANIS, being self-interested, would not authorize commencement of litigation proceedings against herself and against her GT attorneys who are alleged to have aided and abetted her in perpetrating the torts as set forth in this Complaint, Plaintiff MICHELLE made the demand on the Board to give it a chance to consider the Demand Letter.

161. Approximately four months passed since the Demand Letter was served yet the Board has failed to undertake any action.

162. The Court should permit Plaintiff MICHELLE to maintain the derivative claims asserted in this Complaint because: (a) the Board failed to act on the Demand Letter for nearly four months; (b) in any event demand on the Board should be excused as futile because of the fact that one-half of the Board is clearly self-interested in the transactions alleged, which means that no board resolution of action will be taken; and (c) the derivative claims are in the best interests of the corporation.

AS FOR THE FIRST CAUSE OF ACTION
BY PLAINTIFF MICHELLE SAVITT AGAINST DEFENDANTS SCHINDLER, ELINGS AND GT

BREACH OF FIDUCIARY DUTIES

163. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162 as if more fully set forth herein at length.

164. An attorney-client relationship existed between MICHELLE and Defendants ELINGS, SCHINDLER and GT, and Defendants ELINGS, SCHINDLER and GT continuously represented MICHELLE until after the date of the Settlement Agreement.

165. As attorneys, Defendants ELINGS, SCHINDLER and GT owed MICHELLE fiduciary duties.

166. As attorneys, Defendants ELINGS, SCHINDLER and GT owed MICHELLE the duty of loyalty.

167. As her attorneys, Defendants ELINGS, SCHINDLER and GT were charged with the duty of being MICHELLE's advocates and advancing her interests.

168. Defendants ELINGS, SCHINDLER and GT owed MICHELLE the duty to disclose possible conflicts of interest.

169. Defendants ELINGS, SCHINDLER and GT owed MICHELLE the duty of not undertaking any joint representation where as a result of a conflict of interest said defendants would not be able to properly advance or protect MICHELLE's interests.

170. In representing MICHELLE, said defendants breached their fiduciary duties, were disloyal to her, and during the course of their representation advanced the interests of JANIS to the detriment of MICHELLE.

171. Defendants ELINGS, SCHINDLER and GT intentionally mislead MICHELLE into believing that there were no meritorious claims that she could have asserted against JANIS. All of the above was done in bad faith and in an effort to advance JANIS's interests in litigation at the expense of MICHELLE.

172. Defendants ELINGS, SCHINDLER and GT, acting in bad faith and having full knowledge that the terms of the Settlement Agreement were against MICHELLE's interests and would result in her waiver of all her claims against JANIS, intentionally counseled and convinced MICHELLE to enter into the Settlement Agreement.

173. In an effort to further protect JANIS from MICHELLE, Defendants ELINGS, SCHINDLER and GTintentionally inserted into the Settlement Agreement additional language, not requested by the opposing counsel, causing MICHELLE, her husband and his company to waive all benefits of Section 1542 of the California Civil Code.

174. By advancing the interests of JANIS and her company over and above and at the expense of MICHELLE's interests, Defendants ELINGS, SCHINDLER and GT breached their fiduciary duties, including the duty of loyalty.

175. Defendants ELINGS, SCHINDLER and GT further breached their fiduciary duties by intentionally misleading MICHELLE into believing that there were no meritorious causes of action that she could bring against JANIS and her company.

176. Defendants ELINGS, SCHINDLER and GT breached their fiduciary duties to MICHELLE byintentionally failing to disclose to her that there was a conflict of interest.

177. Defendants ELINGS, SCHINDLER and GT breached their fiduciary duties to MICHELLE by undertaking joint representation of parties to a litigation proceeding whose interests were materially adverse.

178. Throughout the course of their representation, Defendants ELINGS, SCHINDLER and GT acted in bad faith and intentionally betrayed the interests of MICHELLE in order to achieve an advantageous outcome for their client, JANIS and DESIGNS.

179. Prior to undertaking formal representation of MICHELLE, Defendants ELINGS, SCHINDLER and GT consulted her about the merits of the causes of actions asserted in the Prior Action by Wynne, and, for the purpose of obtaining MICHELLE's cooperation in participating in the November 18, 2008 meeting of the M+J shareholders, intentionally misrepresented to her that Wynne's action had no merit whatsoever.

180. Defendants ELINGS, SCHINDLER and GT owed fiduciary duties to MICHELLE at the time when she was a prospective client and breached said duties by intentionally misleading her, advising her that there was no need for her to consult with independent legal counsel and intentionally misrepresenting that there were no meritorious causes of action that could be asserted against JANIS.

181. But for Defendants ELINGS, SCHINDLER and GT purposefully advising MICHELLE that there were no meritorious causes of action that could be asserted against JANIS and that there was no need for MICHELLE to seek independent legal counsel, MICHELLE would have sought out independent legal counsel and would have initiated claims against JANIS and Designs by Janis Savitt, Inc.

182. But for Defendants ELINGS, SCHINDLER and GTintentionally misrepresenting to MICHELLE that there were no meritorious causes of action that could be asserted against JANIS and her company, MICHELLE would not have entered into the Settlement Agreement.

183. But for Defendants ELINGS, SCHINDLER and GT's intentional misrepresentations, MICHELLE would not have agreed to the joint legal representation and

would not have voted in favor of not continuing M+J's claims in the Prior Action and would have voted differently at the November 18, 2008 meeting of the M+J shareholders.

184. At all times relevant hereto, MICHELLE perceived Defendants ELINGS, SCHINDLER and GT as being amongst the best, most knowledgeable, highly experienced, reputable and trustworthy lawyers. As a result, MICHELLE trusted them and believed all of their misrepresentations and legal advice.

185. If MICHELLE had retained independent legal counsel, such counsel would have advised MICHELLE that she and M+J had various meritorious causes of action that could be asserted against JANIS and Designs by Janis Savitt, Inc., including, without limitation, breach of fiduciary duties, trademark infringement, unfair competition, tortious interference with contractual interests, tortious interference with economic advantage,breach of contract, tortious misappropriation of credit, injury to and diminution of shareholder equity as well as the other causes of action identified in the Prior Action. ("Prior Causes of Action").

186. Out of the Prior Causes of Action, MICHELLE could have asserted, in her individual capacity, among other things, claims arising out of JANIS's breaching her fiduciary duties to M+J stockholders, breach of contract, tortious misappropriation of credit for MICHELLE's designs, and diminution of stockholder equity ("Individual Causes of Action").

187. M+J could have asserted causes of action for JANIS breaching her fiduciary duties to the corporation, trademark infringement, unfair competition, tortious interference with contracts, tortious interference with economic advantage, breach of contract, including the 1992 Agreement, misappropriation of credit for M+J work and the other causes of action identified in the Prior Action ("M+J Causes of Action").

188. But for Defendants' breaching their fiduciary duties to MICHELLE, she would

have commenced legal proceedings against JANIS and Designs by Janis Savitt, Inc. and would have prevailed on the Individual Claims.

189. As a direct and proximate result of JANIS's tortious acts and breach of the Agreement, MICHELLE suffered substantial damages, including significant diminution in the value of her M+J stock.

190. Prior to JANIS's tortious acts diminishing the value of M+J stockholder equity, on several occasions during the ten years preceding the Prior Action, reputable companies and investors expressed interest in purchasing M+J and its equity for top market rates. No sales transactions were consummated because MICHELLE, JANIS and Wynne were not ready to sell the company at those times.

191. Since JANIS commenced her competing venture, no parties expressed any interest in purchasing M+J or its equity. As a direct result of JANIS's various tortious acts, M+J's market value has plummeted to the point that the company is not marketable, particularly since its intellectual property rights, client accounts and good will, which were its primary assets, have been converted and diluted by JANIS to the point that no reasonable investor would consider purchasing the company.

192. By virtue of Defendants ELINGS, SCHINDLER and GT breaching their fiduciary duties to MICHELLE through intentional, deliberate and deceitful conduct; MICHELLE was damaged in amount to be determined at trial but believed to exceed ten million dollars ($10,000,000.00).

193. As a result of the bad faith and intentional nature of the misconduct involved herein, MICHELLE is entitled to treble damages in amount of Thirty Million Dollars ($30,000,000) and costs, including reasonable attorney fees in connection with the prosecution of

this action.

AS FOR THE SECOND CAUSE OF ACTION BY PLAINTIFF MICHELLE SAVITT AGAINST DEFENDANTS SCHINDLER, ELINGS AND GT

FRAUD

194. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162 and 164 through 193, inclusive, as if more fully set forth herein at length.

195. On numerous occasions, Defendants ELINGS, SCHINDLER and GT perpetrated actionable actual and constructive fraud against MICHELLE and are liable therefor.

196. More specifically, on November 18, 2008, Defendants ELINGS and SCHINDLER, acting in concert and in their capacity as representatives of GT, perpetrated a fraud against MICHELLE ("First Fraud") because: (i) they represented to MICHELLE that all of the claims asserted against JANIS and Designs by Janis Savitt, Inc. in the Prior Complaint were devoid of any merit; (ii) said representations were in fact false; (iii) at the time when Defendants made said misrepresentations they were aware of their falsity; (iv) Defendants knowingly made said misrepresentations for the purpose of misleading MICHELLE so that she would not join sides with Wynne, would not assert claims against JANIS and her company, and would follow all of Defendants' instructions with respect to the November 18, 2008 meeting of the M+J shareholders; (v) MICHELLE relied upon these misrepresentations; (vi) MICHELLE's reliance was reasonable; and (vii) MICHELLE's reliance was to her detriment because as a direct and proximate result of these misrepresentations, she failed to assert any claims against JANIS and her company and at the November 18, 2008 meeting agreed to follow Defendants' instructions, read verbatim from the scripts provided by Defendants, and voted for the discontinuance of

M+J's claims against JANIS and Designs by Janis Savitt, Inc.

197. In addition, on November 18, 2008, Defendants ELINGS and SCHINDLER, acting in concert and in their capacity as representatives of GT, perpetrated another act of fraud against MICHELLE ("Second Fraud") because: (i) they represented to MICHELLE that there was no need for her to consult with independent legal counsel; (ii) said representation was in fact false; (iii) at the time when Defendants made said misrepresentation they were aware of its falsity; (iv) Defendants knowingly made said misrepresentation for the purpose of keeping MICHELLE in the dark and misleading her so that she would not join sides with Wynne, would not assert claims against JANIS and her company, and would follow all of Defendants' instructions with respect to the November 18, 2008 meeting of the M+J shareholders; (v) MICHELLE relied upon these misrepresentations; (vi) MICHELLE's reliance was reasonable; and (vii) MICHELLE's reliance was to her detriment because as a direct and proximate result of these misrepresentations, she was not advised of the fact that she and M+J had meritorious causes of action against JANIS and her company, and at the November 18, 2008 meeting agreed to follow Defendants' instructions, read verbatim from the scripts provided by Defendants, and voted for the discontinuance of M+J's claims against JANIS and Designs by Janis Savitt, Inc.

198. Immediately after MICHELLE learned of the fact that she was joined in the Prior Action, MICHELLE and her husband, Sepp Donahower, who was at all times acting as agent for MICHELLE, spoke and communicated with Defendants ELINGS and SCHINDLER about GT's legal representation of her interests. During the course of said discussions, Defendants ELINGS and SCHINDLER, acting in concert and in their capacity as representatives of GT, perpetrated twomore acts of fraud against MICHELLE ("Third Fraud" and "Fourth Fraud", respectively).

199. With respect to the Third Fraud, said Defendants: (i) represented to MICHELLE

that there was no need for her to consult with or retain independent legal counsel and that it was in everyone's best interests to have all legal representation done "under one roof"; (ii) said representation was in fact false; (iii) at the time when Defendants made said misrepresentation they were aware of its falsity; (iv) Defendants knowingly made said misrepresentation for the purpose of keeping MICHELLE in the dark and misleading her so that she would not join sides with Wynne and would not assert claims against JANIS; (v) MICHELLE relied upon these misrepresentations; (vi) MICHELLE's reliance was reasonable; and (vii) MICHELLE's reliance was to her detriment because as a direct and proximate result of these misrepresentations, she was not advised by independent legal counsel of the fact that she and M+J had meritorious causes of action against JANIS and her company.

200. With respect to the Fourth Fraud, said Defendants:(i) again represented to MICHELLE that all of the claims asserted against JANIS and Designs by Janis Savitt, Inc. in the Prior Complaint were devoid of any merit, that the causes of action in the Prior Complaint "did not have a leg to stand on", and that no meritorious claims otherwise existed against JANIS and her company; (ii) said representations were in fact false; (iii) at the time when Defendants made said misrepresentations they were aware of their falsity; (iv) Defendants knowingly made said misrepresentations for the purpose of misleading MICHELLE so that she would not join sides with Wynne, so that Defendants could control her to advance JANIS's litigation interests, and so that she would not assert claims against JANIS and her company; (v) MICHELLE relied upon these misrepresentations; (vi) MICHELLE's reliance was reasonable; and (vii) MICHELLE's reliance was to her detriment because as a direct and proximate result of these misrepresentations, she failed to assert any claims against JANIS and her company.

201. Further, said Defendants perpetrated another act of fraud against MICHELLE

when they intentionally mislead her into executing the Settlement Agreement (the "Fifth Fraud"). As part of their ongoing fraudulent scheme, Defendants committed the Fifth Fraud when on or about the week of July 16, 2008, they: (i) again represented to MICHELLE and assured her that all of the claims asserted against JANIS and Designs by Janis Savitt, Inc. in the Prior Complaint were devoid of any merit and that it is in her interests to execute the Settlement Agreement; (ii) said representations were in fact false; (iii) at the time when Defendants made said misrepresentations they were aware of their falsity; (iv) Defendants knowingly made said misrepresentations for the purpose of misleading MICHELLE so that she would waive all her rights, claims, and causes of action against JANIS and Designs by Janis Savitt, Inc.; (v) MICHELLE relied upon these misrepresentations; (vi) MICHELLE's reliance was reasonable; and (vii) MICHELLE's reliance was to her detriment because as a direct and proximate result of these misrepresentations, she forever waived all of her claims and rights against JANIS and Designs by Janis Savitt, Inc., including her meritorious Individual Causes of Action.

202. Said Defendants acted intentionally, maliciously and willfully in deceiving MICHELLE for the purposes of securing JANIS's favor and future business for legal services to be rendered to JANIS and her companies.

203. As a direct, foreseeable and proximate result of the First, Second, Third, Fourth and Fifth Frauds that were perpetrated against MICHELLE, she did not recover damages and compensation from JANIS and DESIGNS which would have otherwise been recovered by her but for the fraudulent acts on the part of said Defendants.

204. By virtue of the foregoing, Defendants ELINGS, SCHINDLER and GT are liable to MICHELLE for fraud and she is entitled to recover from them all her damages, including the value of the damages that she would have recovered against JANIS and Designs by Janis Savitt,

Inc. had she not been defrauded as above, which damages shall be determined at trial but whose value is believed to exceed ten million dollars ($10,000,000.00).

205. By virtue of the foregoing and the relationship of trust between an attorney and client, Defendants ELINGS, SCHINDLER and GT are liable to MICHELLE for constructive fraud and she is entitled to recover from them all her damages, including the value of the damages that she would have recovered against JANIS and Designs by Janis Savitt, Inc. had she not been defrauded as above , which damages shall be determined at trial but whose value is believed to exceed ten million dollars ($10,000,000.00).

206. As a result of the bad faith and intentional nature of the misconduct involved in the perpetration of the aforementioned fraud, MICHELLE is entitled to treble damages in amount of Thirty Million Dollars ($30,000,000) and costs, including reasonable attorney fees in connection with the prosecution of this action.

AS FOR THE THIRD CAUSE OF ACTION
BY PLAINTIFF MICHELLE SAVITT AGAINST DEFENDANTS SCHINDLER, ELINGS AND GT

LEGAL MALPRACTICE

207. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, and 195 through 206, inclusive, as if more fully set forth herein at length.

208. Defendant ELINGS is a specialist in the field of trademark litigation and is therefore held to a more exacting standard than the general practitioner practicing in Manhattan, New York.

209. Defendant GT is a sophisticated large-size law firm and its attorneys include highly experienced litigators knowledgeable in the field of commercial litigation, including

prosecution and defense of claims based in business and partnership disputes, breach of fiduciary duties, and various business torts, including unfair competition and trademark infringement.

210. Defendants ELINGS, SCHINDLER and GT committed legal malpractice in that they deviated from the accepted standard of care in failing to advise MICHELLE to assert claims against JANIS and DESIGNS and in failing to advise MICHELLE that there were meritorious causes of action for her to assert.

211. A reasonably prudent attorney practicing in Manhattan, New York, and, more particularly, specialists practicing in the fields of trademark and commercial litigation, would have advised MICHELLE to file her Individual Causes of Action against JANIS and DESIGNSand would have disclosed to MICHELLE that she had meritorious causes of action to assert.

212. Defendants ELINGS, SCHINDLER and GT committed legal malpractice in that they deviated from the accepted standard of care in counseling MICHELLE to enter into the Settlement Agreement wherein she waived all of her rights and causes of action against JANIS and DESIGNS.

213. A reasonably prudent attorney practicing in Manhattan, New York, and, more particularly, specialists practicing in the fields of trademark and commercial litigation, would not have included terms in the Settlement Agreement whereby MICHELLE waived all her claims and rights against JANIS and DESIGNS.

214. Defendants ELINGS, SCHINDLER and GT deviated from the accepted standard of care when they failed to disclose to MICHELLE that there was a material conflict of interest in their undertaking joint legal representation of MICHELLE, JANIS and DESIGNS.

215. A reasonably prudent attorney practicing in New York would have disclosed to

MICHELLE that there was a material conflict of interest in such joint legal representation and would not have undertaken such representation unless MICHELLE would have been provided with an appropriate written disclosure of the conflict of interest, would have given her written waiver thereof, and the attorney would have believed that he or she may faithfully represent both clients.

216. But for the acts of legal malpractice as complained of above, MICHELLE would have initiated claims against JANIS and DESIGNS and would have prevailed on her Individual Causes of Action.

217. As a direct andproximate result of the complained of acts of legal malpractice, MICHELLE did not recover from JANIS for her Individual Causes of Action, which she would have otherwise done absent the malpractice.

218. By virtue of the foregoing, MICHELLE is entitled to recover from Defendants ELINGS, SCHINDLER and GT all sums and compensation that she would have recovered from JANIS and DESIGNS if it were not for the malpractice, which amounts are to be determined at trial but are believed to exceed ten million dollars ($10,000,000.00).

AS FOR THE FOURTH CAUSE OF ACTION
BY PLAINTIFF MICHELLE SAVITT AGAINST DEFENDANT JANIS SAVITT

BREACH OF FIDUCIARY DUTIES AND OUSTER

219. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, and 195 through 206, and 208 through 218, inclusive, as if more fully set forth herein at length.

220. As the controlling shareholder of a close corporation, Defendant JANIS owes

fiduciary duties to MICHELLE.

221. As a shareholder of a close corporation and as its officer and director, MICHELLE is entitled to access to all of the corporate books, records and to participate in the management of M+J.

222. MICHELLE utilized her own personal credit cards for the benefit of M+J with the express agreement that M+J would repay said debts and incurred indebtedness. JANIS also incurred personal indebtedness for the benefit of M+J.

223. While being in control of M+J and ousting MICHELLE from all corporate matters and affairs, JANIS utilized M+J funds and assets to repay herself for her personal debts incurred for the benefit of M+J but deliberately failed to reimburse MICHELLE for her personal debts incurred for the benefit of M+J or to pay said debts off.

224. JANIS's deliberate failure to reimburse MICHELLE for her personal debts incurred for the benefit of M+J caused MICHELLE to suffer injury to her credit rating, her credit score, and her creditworthiness, thereby substantially impeding business opportunities

225. By wrongfully denying MICHELLE all access to the corporation, Defendant JANIS has effectively and wrongfully ousted MICHELLE and in so doing breached her fiduciary duties owed to MICHELLE.

226. By deliberately converting for herself M+J assets, by intentionally failing to advance its interests, and by failing to pay M+J's debts to MICHELLE, Defendant JANIS breached her fiduciary duties not only to M+J, but also to MICHELLE.

227. By virtue of the foregoing, Plaintiff MICHELLE is entitled to recover from Defendant JANIS damages as a result of Defendant JANIS breaching her fiduciary duties by virtue of acts occurring after the Settlement Agreement, with the sum of the damages to be

determined at trial but believed to exceed One Million Dollars ($1,000,000.00), including treble and punitive damages in amount of Three Million Dollars ($3,000,000.00) together with reasonable costs and attorney fees.

AS FOR THE FIFTH CAUSE OF ACTION
BY PLAINTIFF MICHELLE SAVITT AGAINST DEFENDANT JANIS SAVITT

TORTIOUS MISAPPROPRIATION OF DESIGN CREDIT

228. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 206, 208 through 218, and 220 through 227, inclusive, as if more fully set forth herein at length.

229. Over a period of almost four decades, Plaintiff MICHELLE, through hard work, dedication, talent and experience, has acquired a reputation as an outstanding, talented and prominent designer of fine jewelry.

230. Since the establishment of M+J and before, Plaintiff MICHELLE produced thousands of designs, many of which were the subject of prestigious awards and accolades.

231. On numerous occasions, Defendant JANIS usurped and converted to herself the credit for MICHELLE's designs and continues to do so in press articles and information provided to fine jewelry retailers and to others. This is an ongoing occurrence that has damaged MICHELLE's ability to earn a livelihood and presently continues to materially inhibit her employability and the ability to market her own name and products.

232. Defendant JANIS misappropriated, stole, and misrepresented designs and credit from MICHELLE. JANIS represented MICHELLE's designs as her own to consumers and M+J customers such as: Nieman Marcus, Bergdorf Goodman, and other high-end and specialty retailers. JANIS's misrepresentation is visible in catalogues and other various marketing devices

that are still being utilized by fine jewelry merchants.

233. JANIS intentionally misrepresented, stole and transferred accomplishments from MICHELLE and is still receiving the benefits of her wrongdoing.

234. JANIS is unjustly enriched by still maintaining and keeping credit that belongs to MICHELLE.

235. JANIS's misappropriation of credit was and still is being effectuated and realized through a comprehensive scheme involving dissemination to fine retailers and industry press of information wrongfully stealing for herself the credit for MICHELLE's designs and work.

236. JANIS owes a duty to rectify the ongoing misappropriation of credit and to disclose to companies that credit belongs to MICHELLE.

237. As a result of the fact that Plaintiff MICHELLE, by signing the Settlement Agreement, waived all her claims against JANIS that had existed or accrued by the time of the Settlement Agreement, in the present Complaint MICHELLE seeks to recover from Defendant JANIS compensation for acts that occurred and are continuing to occur after the date of the Settlement Agreement. As alleged in the foregoing Causes of Action numbered "One" through "Four",damages and compensation for all of JANIS'tortious acts occurring prior to the date of the Settlement Agreement are being sought from Defendants GT, SCHINDLER and ELINGS.

238. By converting and misappropriating to herself the design credit for MICHELLE's work, Defendant JANIS effectively eviscerated the goodwill associated with MICHELLE's name by causing the jewelry business community and the public to perceive JANIS as the talented designer who was the sole force behind the success of M+J while viewing MICHELLE as an inconsequential designer who merely rode on the coattails of her successful sister JANIS.

239. By virtue of the foregoing, Plaintiff MICHELLE suffered serious and irreparable

injuries, including her ability to earn a livelihood, to market her name and products and to obtain contracts and business opportunities, which damages shall be determined at trial but believed to exceed Three Million Dollars ($3,000,000.00), together with reasonable costs and legal fees.

AS FOR THE SIXTH CAUSE OF ACTION
BY PLAINTIFF M+J AGAINST DEFENDANTS SCHINDLER, ELINGS AND GT

BREACH OF FIDUCIARY DUTIES

240. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 206, 208 through 218, 220 through 227, and 229 through 239, inclusive, as if more fully set forth herein at length.

241. Defendants ELINGS, SCHINDLER and GT rendered legal advice to M+J and represented its interests in the Prior Action. An attorney-client relationship existed between M+J and Defendants ELINGS, SCHINDLER and GT.

242. As its attorneys, Defendants ELINGS, SCHINDLER and GT owed M+J fiduciary duties.

243. As its attorneys, Defendants ELINGS, SCHINDLER and GT owed M+J the duty of loyalty.

244. As its attorneys, Defendants ELINGS, SCHINDLER and GT were charged with the duty of being M+J's advocates and advancing its interests.

245. Defendants ELINGS, SCHINDLER and GT owed M+J the duty to disclose possible conflicts of interest.

246. Defendants ELINGS, SCHINDLER and GT owed M+J the duty of not undertaking any joint representation where as a result of a conflict of interest said defendants would not be able to properly advance its interests.

247. In representing M+J, said defendants were disloyal to it and at all times during the course of their representation only sought to advance the interests of JANIS.

248. Defendants ELINGS, SCHINDLER and GT intentionally mislead M+J into believing that there were no meritorious claims that it could have asserted against JANIS and her company. This was all done in bad faith and in an effort to advance JANIS's interests in litigation at the expense of M+J.

249. Defendants ELINGS, SCHINDLER and GT, acting in bad faith and having full knowledge that the terms of the Settlement Agreement were against M+J's interests and would result in its waiver of meritorious claims against JANIS and her company, intentionally counseled and convinced its Board to enter into the Settlement Agreement.

250. By advancing the interests of JANIS and her company over and above and at the expense of M+J interests, Defendants ELINGS, SCHINDLER and GT breached their fiduciary duties, including the duty of loyalty.

251. Defendants ELINGS, SCHINDLER and GT further breached their fiduciary duties by intentionally misleading M+J into believing that there were no meritorious causes of action that it could bring against JANIS and her company.

252. Defendants ELINGS, SCHINDLER and GT breached their fiduciary duties to M+J by intentionally failing to disclose to its Board that there was a conflict of interest and that it should seek independent legal counsel.

253. At the time of the November 18, 2008 meeting of the shareholders, Defendants ELINGS, SCHINDER and GT also had actual knowledge that JANIS was a director who was self-interested in the transactions involving the subject matter of the Prior Action and, as counsel to M+J, had a duty to advise its Board that JANIS should not participate with respect to any

decisions involving the determination of whether M+J should proceed with its claims as set forth in the Prior Complaint.

254. Defendants ELINGS, SCHINDLER and GT breached their fiduciary duties to M+J by undertaking joint representation of parties to a litigation proceeding whose interests are materially adverse.

255. Throughout the course of their representation, Defendants ELINGS, SCHINDLER and GT acted in bad faith and intentionally betrayed the interests of M+J so that it would not pursue its claims against JANIS and DESIGNS BY JANIS SAVITT, INC. and so that M+J would also become liable for the legal fees for the professional time used to defend JANIS's interests.

256. By virtue of the foregoing, as well as the bad faith and intentional nature of the misconduct involved, M+J was damaged in an amount to be determined at trial but believed to exceed Fifteen Million Dollars ($15,000,000), together with treble and punitive damages of Forty-Five Million Dollars ($45,000,000.00) and reasonable costs and attorney fees.

AS FOR THE SEVENTH CAUSE OF ACTION
BY PLAINTIFF M+J AGAINST DEFENDANTS SCHINDLER, ELINGS AND GT

FRAUD

257. Plaintiffs repeat and reiterate all of the allegations 1 through 162, 164 through 193, 195 through 206, 208 through 218, 220 through 227, 229 through 239, and 241 through 256, inclusive as if more fully set forth herein at length.

258. On numerous occasions, Defendants ELINGS, SCHINDLER and GT perpetrated actionable actual and constructive fraud against M+J and are liable therefor.

259. On November 18, 2008, Defendants ELINGS and SCHINDLER, acting in

concert and in their capacity as representatives of GT, perpetrated a fraud against M+J ("First M+J Fraud") because: (i) they represented to M+J that all of the claims asserted against JANIS and Designs by Janis Savitt, Inc. in the Prior Complaint were devoid of any merit and that there was no need for M+J or any of its shareholders to obtain independent counsel; (ii) said representations were in fact false; (iii) at the time when Defendants made said misrepresentations they were aware of their falsity; (iv) Defendants knowingly made said misrepresentations for the purpose of misleading M+J and its shareholders so that Wynne Weiner Savitt would be removed as an officer and director and so that M+J would not pursue claims against JANIS and her companies; (v) M+J, through its Board and shareholders, relied upon these misrepresentations; (vi) M+J's reliance was reasonable; and (vii) M+J's reliance was to its detriment.

260. Defendants perpetrated other acts of fraud against M+J, including intentionally misleading it into executing the Settlement Agreement (the "SecondM+J Fraud"). As part of their ongoing fraudulent scheme, Defendants committed the Second M+J Fraud when on or about the week of July 16, 2008, they: (i) represented to its directors, shareholders and officers that all of the claims asserted against JANIS and Designs by Janis Savitt, Inc. in the Prior Complaint were devoid of any merit and that it is in the interests of M+J to execute the Settlement Agreement; (ii) said representations were in fact false; (iii) at the time when Defendants made said misrepresentations they were aware of their falsity; (iv) Defendants knowingly made said misrepresentations for the purpose of misleading M+J that it would waive all her rights, claims, and causes of action against JANIS and Designs by Janis Savitt, Inc.; (v) M+J relied upon these misrepresentations; (vi) its reliance was reasonable; and (vii) M+J's reliance was to its detriment because as a direct and proximate result of these misrepresentations,

it forever waived all of its claims and rights against JANIS and Designs by Janis Savitt, Inc., including its meritorious M+J Causes of Action.

261. Said Defendants acted intentionally and deceitfully when perpetrating both actual and constructive fraud. These instances of fraud are based on the Defendants' desires to promote JANIS's interests at the expense of M+J's interests by defrauding M+J into waiving any claims against JANIS and DESIGNS. Also, Defendants' goal was to defraud M+J into acquiring them as legal counsel, while knowing that there was a clear conflict of interest, in order to assure the payment of their legal fees though corporate funds and to effectively promote the interest of JANIS and her company. The acts perpetrated by Defendants were more than mere errors of professional judgments; they were intentional and deceitful.

262. Defendants ELINGS, SCHINDLER and GT committed constructive fraud when they took advantage of their attorney-client relationship with M+J and recklessly and heedlessly made false assertions in order to promote their own personal interests and the interests of their client, JANIS and DESIGNS.

263. As a direct, foreseeable and proximate result of the above acts of fraud, M+J failed topursue claims and to recover damages and compensation from JANIS and Designs by Janis Savitt, Inc., or to have JANIS and her company enjoined from carrying on its tortious activities, all of which M+J would have otherwise been able to do but for the fraudulent conduct on the part of said Defendants. Further, as a result of the fraud, M+J was caused to become liable to GT for substantial legal fees which were generated by GT's defense of JANIS.

264. By virtue of the foregoing, Defendants ELINGS, SCHINDLER and GT are liable to M+J for fraud and M+J is entitled to recover from them all its damages, including the value of the damages that M+J would have recovered against JANIS and Designs by Janis Savitt,

Inc.and the loses that it would not have incurred had JANIS and her company been properly enjoined from carrying on in their tortious acts, which amounts are to be determined at trial but are believed to exceed Fifteen Million ($15,000,000.00).

265. As a result of the bad faith and intentional nature of the misconduct involved in the perpetration of the aforementioned fraud, M+J is entitled to punitive and treble damages of Forty-Five Million Dollars ($45,000,000) together with costs and reasonable attorney fees in connection with the prosecution of this action.

AS FOR THE EIGHT CAUSE OF ACTION
BY PLAINTIFF M+J AGAINST DEFENDANTS SCHINDLER, ELINGS AND GT

LEGAL MALPRACTICE

266. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 206, 208 through 218, 220 through 227, 229 through 239, 241 through 256, and 258 through 265, inclusive, as if more fully set forth herein at length.

267. Defendant ELINGS is a specialist in the field of trademark litigation and is therefore held to a more exacting standard than the general practitioner practicing in Manhattan, New York.

268. Defendant GT is a sophisticated large size law firm and its attorneys include highly experienced litigators knowledgeable in the field of commercial litigation, including prosecution and defense of claims based in business and partnership disputes, breach of fiduciary duties, and various business torts, including unfair competition and trademark infringement.

269. Defendants ELINGS, SCHINDLER and GT committed legal malpractice in that they deviated from the accepted standard of care in failing to advise M+J to assert claims against

JANIS and DESIGNS and in failing to advise M+J that there were meritorious causes of action for her to assert.

270. A reasonably prudent attorney practicing in Manhattan, New York, and, more particularly, specialists practicing in the fields of trademark and commercial litigation, would have advised M+J to pursue its M+J Causes of Action against JANIS and Designs by Janis Savitt, Inc. and would have at the very least disclosed to M+J that it may have meritorious causes of action to assert.

271. Defendants ELINGS, SCHINDLER and GT committed legal malpractice in that they deviated from the accepted standard of care in counseling M+J to enter into the Settlement Agreement wherein it waived all of its rights and causes of action against JANIS and DESIGNS.

272. A reasonably prudent attorney practicing in Manhattan, New York, and, more particularly, specialists practicing in the fields of trademark and commercial litigation, would have counseled M+J not to enter into the Settlement Agreement.

273. Defendants ELINGS, SCHINDLER and GT deviated from the accepted standard of care when they failed to disclose to M+J that there was a material conflict of interest in them undertaking joint legal representation of all the parties.

274. But for the acts of legal malpractice as complained of above, M+J would have pursued claims against JANIS and Designs by Janis Savitt, Inc. and would have prevailed on its M+J Causes of Action.

275. As a direct and proximate result of the complained of acts of legal malpractice, M+J did not recover from JANIS on its M+J Causes of Action, which it would have otherwise done absent the malpractice.

276. By virtue of the foregoing, M+J is entitled to recover from Defendants ELINGS,

SCHINDLER and GT all sums and compensation that it would have recovered from JANIS and Designs by Janis Savitt, Inc. and the loses that it would not have incurred had JANIS and her company been properly enjoined from carrying on in their tortious acts, which amounts are to be determined at trial but are believed to exceed Fifteen Million ($15,000,000.00).

AS FOR THE NINTH CAUSE OF ACTION
BY PLAINTIFF M+J AGAINST DEFENDANTS JANIS SAVITT

BREACH OF FIDUCIARY DUTIES

277. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 206, 208 through 218, 220 through 227, 229 through 239, 241 through 256, 258 through 265, and 267 through 276, inclusive, as if more fully set forth herein at length.

278. As the controlling officer and director of M+J, Defendant JANIS owed and continues to owe M+J fiduciary duties, including the duties of loyalty and not to engage in self-dealings.

279. Since the time of the Settlement Agreement, Defendant JANIS has breached her fiduciary duties by: (a) engaging in self-dealings; (b) converting M+J goodwill, clients and assets; (c) usurping corporate opportunities by, among other things, diverting M+J clients to her own company; (d) ousting MICHELLE from corporate governance; (e) failing to advance the interests of M+J and by deliberately mismanaging M+J; (f) competing directly with M+J; (g) using M+J as a forum to liquidate her own company's clearance items so that her own brand would not be diminished; (h) misappropriating M+J design credits; and (i) other misconduct.

280. By virtue of the foregoing, M+J has been damaged in amount to be determined at trial but believed to exceed Two Million Dollars ($2,000,000.00) and is entitled to receive punitive and treble damages in amount of Six Million Dollars ($6,000,000.00), together with

costs and reasonable attorney fees.

AS FOR THE TENTH CAUSE OF ACTION
BY PLAINTIFF M+J AGAINST DEFENDANTS JANIS SAVITT AND DESIGNS BY JANIS SAVITT, INC.

CONVERSION

281. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 206, 208 through 218, 220 through 227, 229 through 239, 241 through 256, 258 through 265, 267 through 276, and 278 through 280, inclusive, as if more fully set forth herein at length.

282. By taking M+J inventories without paying M+J just and reasonable compensation and without its permission, Defendant JANIS converted and continues to convert M+J inventories.

283. Defendant JANIS is presently in possession of a substantial quantity of M+J inventories.

284. By impermissibly taking M+J inventories and assets for her own pecuniary gain, Defendant JANIS committed an actionable conversion which is ongoing.

285. Defendant DESIGN is controlled by Defendant JANIS and acted and continues to act in concert with JANIS in converting M+J assets and inventories.

286. By virtue of the foregoing, as a result of acts occurring after the date of the Settlement Agreement, M+J suffered losses to be determined at trial but believed to exceed Five Hundred Thousand Dollars ($500,000.00) and is entitled to recover all such damages from Defendant JANIS, together with punitive and treble damages of One and One-Half Million Dollars ($1,500,000.00), costs and reasonable attorney fees.

AS FOR THE ELEVENTH CAUSE OF ACTION BY PLAINTIFF M+J AGAINST DEFENDANT JANIS SAVITT

EMEZZLEMENT

287. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 206, 208 through 218, 220 through 227, 229 through 239, 241 through 256, 258 through 265, 267 through 276, 278 through 280, and 282 through 286, inclusive, as if more fully set forth herein at length.

288. While owing fiduciary duties to M+J, Defendant JANIS sold M+J inventories and assets without turning over or paying to M+J the proceeds of said sales.

289. By secreting to herself proceeds of M+J sales, Defendant JANIS embezzled said sums which are believed to exceed Five Hundred Thousand Dollars ($500,000.00).

290. By virtue of the foregoing, as a result of acts occurring after the date of the Settlement Agreement, M+J is entitled to recover from Defendant JANIS a sum to be determined at trial but believed to exceed Five Hundred Thousand Dollars ($500,000.00), together with punitive and treble damages of One and One-Half Million Dollars ($1,500,000.00), costs and reasonable attorney fees.

AS FOR THE TWELTH CAUSE OF ACTION BY PLAINTIFF M+J AGAINST DEFENDANTS JANIS SAVITT AND DESIGNS BY JANIS SAVITT, INC.

UNJUST ENRICHMENT

291. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 206, 208 through 218, 220 through 227, 229 through 239, 241 through 256, 258 through 265, 267 through 276, 278 through 280, 282 through 286, and 288 through 290, inclusive, as if more fully set forth herein at length.

292. Defendants JANIS and DESIGNS, acting in concert, wrongfully converted and embezzled M+J assets, inventories and monies, the total sum of which is believed to exceed One Million Dollars ($1,000,000.00).

293. Defendants JANIS and DESIGNS BY JANIS SAVITT, INC. will be unjustly enriched if they are permitted to retain the fruits of their tortious conduct.

294. By virtue of the foregoing, Plaintiff M+J is entitled to recover from Defendants JANIS and DESIGNS BY JANIS SAVITT, INC. all monies, assets and inventories wrongfully obtained by said Defendants, the value of which shall be determined at trial but is believed to exceed One Million Dollars ($1,000,000.00).

AS FOR THE THIRTEENTH CAUSE OF ACTION

BY PLAINTIFF M+J AGAINST DEFENDANTS JANIS SAVITT AND DESIGNS BY JANIS SAVITT, INC.

UNFAIR COMPETITION

295. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 206, 208 through 218, 220 through 227, 229 through 239, 241 through 256, 258 through 265, 267 through 276, 278 through 280, 282 through 286, 288 through 290, and 292 through 294, inclusive, as if more fully set forth herein at length.

296. Since the time of the Settlement Agreement, Defendants JANIS and DESIGNScompeted directly with M+J.

297. During said time, Defendant JANIS utilized her position as the controlling officer and director of M+J to obtain unfair competitive advantages which Defendants JANIS and DESIGNS used and continue to use to compete directly with M+J.

298. During said time, Defendants JANIS and DESIGNS continued to convert the

goodwill of M+J and to misappropriate its design credits, continued to infringe on the M+J trademarks, continued to divert old M+J clients and accounts, and continued to convert M+J inventories and raw materials.

299. As a result of the foregoing, Defendants JANIS and DESIGNS competed unfairly with M+J and continue to so compete through their ill begotten and unfair competitive advantages.

300. By virtue of the foregoing, M+J is entitled to recover damages for unfair competition which are to be determined at trial but are believed to exceed One Million Dollars ($1,000,000.00).

AS FOR THE FOURTEENTH CAUSE OF ACTION BY PLAINTIFF M+J AGAINST DEFENDANTS JANIS SAVITT AND DESIGNS BY JANIS SAVITT, INC.

INJUNCTION

301. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 206, 208 through 218, 220 through 227, 229 through 239, 241 through 256, 258 through 265, 267 through 276, 278 through 280, 282 through 286, 288 through 290, 292 through 294, and 295 through 300, inclusive, as if more fully set forth herein at length.

302. The abovementioned misconduct of Defendants JANIS and DESIGNS is continuous and ongoing and M+J will be caused to suffer additional significant and irreparable harm unless said Defendants are enjoined through injunctive relief.

303. By virtue of the foregoing, Plaintiff M+J is entitled to an injunction restraining and enjoining Defendants JANIS and DESIGNS from continuing on with their tortious conduct as provided in the above Causes of Action.

AS FOR THE FIFTEENTH CAUSE OF ACTION

BY PLAINTIFF MICHELLE SAVITT AGAINST DEFENDANTS SCHINDLER, ELINGS AND GT

JUDCIARY ACT § 487

304. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 206, 208 through 218, 220 through 227, 229 through 239, 241 through 256, 258 through 265, 267 through 276, 278 through 280, 282 through 286, 288 through 290, 292 through 294, 295 through 300, and 302 through 303, inclusive, as if more fully set forth herein at length.

305. An attorney-client relationship existed between MICHELLE and Defendants ELINGS, SCHINDLER and GT, and Defendants ELINGS, SCHINDLER and GT continuously represented MICHELLE until after the date of the Settlement Agreement.

306. Defendants ELINGS, SCHINDLER and GT represented MICHELLE in the Prior Action filed in the United States District Court for the Southern District of New York.

307. Defendants ELINGS and SCHINDLER, acting in their capacity as representatives of GT violated Judiciary Law § 487 when they intentionally and knowingly misled MICHELLE to believe she had no meritorious claims against JANIS and her company.

308. Defendants ELINGS, SCHINDLER and GT violated Judiciary Law § 487 when they intentionally and knowingly misled MICHELLE to believe that there was no need for her to consult with independent legal counsel and that it is in everyone's best interest to have all legal representation done under "one roof". Additionally, Defendants failed to inform MICHELLE that GT had a clear conflict of interest by representing both JANIS and MICHELLE in the prior action.

309. Further, said Defendants violated Judiciary Law § 487 when they intentionally and knowingly misled MICHELLE into executing the Settlement Agreement. Defendants assured MICHELLE that all of the claims asserted against JANIS and Designs by Janis Savitt, Inc. in the Prior Complaint were devoid of any merit and that it is in MICHELLE's interests to execute the Settlement Agreement. Defendants once against only had JANIS's interest in mind, as evidenced by Defendants forcing MICHELLE and her husband to sign a settlement agreement, which includes a waiver of the protective provisions under Section 1542 of the California Civil Code.

310. Defendants ELINGS, SCHINDLER and GT have deliberately deceived MICHELLE in the course of litigation proceedings.

311. Defendants ELINGS, SCHINDLER and GT utilized their trusted position as attorneys to deceive MICHELLE.

312. Defendants ELINGS, SCHINDLER and GT deceived MICHELLE for the purpose of benefiting the interests of JANIS, a client from whom they received business and expected to continue to receive future business and in order to maximize their legal fees to better ensure the chances of collectability on outstanding legal fee balances.

313. By virtue of Defendants ELINGS, SCHINDLER and GT violating Judiciary Act § 487 through intentionally and knowingly misleading MICHELLE; she was damaged in amount to be determined at trial but believed to exceed Fifteen Million Dollars ($15,000,000).

314. As a result of the intentional nature of the misconduct involved herein, MICHELLE is entitled to treble damages in amount of Forty-Five Million Dollars ($45,000,000) and costs, including reasonable attorney fees in connection with the prosecution of this action.

AS FOR THE SIXTEENTH CAUSE OF ACTION

BY PLAINTIFF M+J AGAINST DEFENDANTS SCHINDLER, ELINGS AND GT

JUDCIARY ACT § 487

315. Plaintiffs repeat and reiterate all of the allegations numbered 1 through 162, 164 through 193, 195 through 206, 208 through 218, 220 through 227, 229 through 239, 241 through 256, 258 through 265, 267 through 276, 278 through 280, 282 through 286, 288 through 290, 292 through 294, 295 through 300, 302 through 303, and 305 through 314, inclusive, as if more fully set forth herein at length.

316. An attorney-client relationship existed between M+J and Defendants ELINGS, SCHINDLER and GT, and Defendants ELINGS, SCHINDLER and GT continuously represented M+J until after the date of the Settlement Agreement.

317. Defendants ELINGS, SCHINDLER and GT represented M+J in the Prior Action filed in the United States District Court for the Southern District of New York.

318. Defendants ELINGS and SCHINDLER, acting in their capacity as representatives of GT violated Judiciary Law § 487 when they intentionally and knowingly misled M+J to believe they had no meritorious claims against JANIS and her company.

319. Defendants ELINGS and SCHINDLER violated Judiciary Law § 487 when they intentionally and knowingly failed to notify M+J's board that JANIS should not participate with respect to any decisions involving the determination of whether M+J should proceed with its claims as set forth in the Prior Complaint. Additionally, Defendants failed to inform M+J's board that GT had a clear conflict of interest by representing both JANIS and MICHELLE in the prior action.

320. Further, said Defendants violated Judiciary Law § 487 when they intentionally and knowingly misled M+J's directors, shareholders and officers to believe that all of the claims asserted against JANIS and Designs by Janis Savitt, Inc. in the Prior Complaint were devoid of any merit and that it is in the interests of M+J to execute the Settlement Agreement. Defendants once against only had JANIS's interest in mind, as evidenced by Defendants inserting language waiving M+J's protection under Section 1542 of the California Civil Code.

321. Defendants ELINGS, SCHINDLER and GT have deliberately deceived M+J in the course of litigation proceedings.

322. Defendants ELINGS, SCHINDLER and GT utilized their trusted position as attorneys to deceive M+J.

323. Defendants ELINGS, SCHINDLER and GT deceived M+J for the purpose of benefiting the interests of JANIS, a client from whom they received business and expected to continue to receive future business and in order to maximize their legal fees to better ensure the chances of collectability on outstanding legal fee balances.

324. By virtue of Defendants ELINGS, SCHINDLER and GT violating Judiciary Act § 487 through intentionally and knowingly misleading M+J; she was damaged in amount to be determined at trial but believed to exceed Fifteen Million Dollars ($15,000,000).

325. As a result of the intentional nature of the misconduct involved herein, M+J is entitled to treble damages in amount of Forty-Five Million Dollars ($45,000,000) and costs, including reasonable attorney fees in connection with the prosecution of this action.

WHEREFORE, Plaintiffs demand judgment against defendants named in their respective causes of action as follows:

BREACH OF FIDUCIAR DUTIES

A. On the First Cause of action in favor of the Plaintiff MICHELLE and against Defendants GT, SCHINDLER and ELINGS, Breach of Fiduciary Duties, Ten Million Dollars ($10,000,000.00) as compensatory damages, Thirty Million Dollars ($30,000,000.00) as punitive and exemplary damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

FRAUD

B. On the Second Cause of action in favor of the Plaintiff MICHELLE and against Defendants GT, SCHINDLER and ELINGS, Ten Million Dollars ($10,000,000.00) as compensatory damages, Thirty Million Dollars ($30,000,000.00) as punitive and exemplary damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

LEGAL MALPRACTICE

C. On the Third Cause of action in favor of the Plaintiff MICHELLE and against Defendants GT, SCHINDLER and ELINGS, Ten Million Dollars

($10,000,000.00) as compensatory damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

BREACH OF FIDUCIARY DUTIES

D. On the Fourth Cause of action in favor of the Plaintiff MICHELLE and against Defendant JANIS, One Million Dollars ($1,000,000.00) as compensatory damages; Three Million Dollars ($3,000,000.00) as punitive and exemplary damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

TORTIOUS MISAPPROPRIATION OF CREDIT

E. On the Fifth Cause of action in favor of the Plaintiff MICHELLE and against Defendant JANIS, Three Million Dollars ($3,000,000.00) as compensatory damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

BREACH OF FIDUCIAR DUTIES

F. On the Sixth Cause of action in favor of the Plaintiff M+J and against Defendants GT, SCHINDLER and ELINGS, Fifteen Million Dollars ($15,000,000.00) as compensatory damages, Forty-Five Million Dollars ($45,000,000.00) as punitive and exemplary damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and

CONVERSION

J. On the Tenth Cause of action in favor of the Plaintiff M+J and against Defendants JANIS and DESIGNS, Five Hundred Thousand Dollars ($500,000.00) as compensatory damages; One Million Five Hundred Thousand Dollars ($1,500,000.00) as punitive and exemplary damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

EMBEZZLEMENT

K. On the Eleventh Cause of action in favor of the Plaintiff M+J and against Defendants JANIS, Five Hundred Thousand Dollars ($500,000.00) as compensatory damages; One Million Five Hundred Thousand Dollars ($1,500,000.00) as punitive and exemplary damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

UNJUST ENRICHMENT

L. On the Twelfth Cause of action in favor of the Plaintiff M+J and against Defendants JANIS and DESIGNS, One Million Dollars ($1,000,000.00) as compensatory damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

UNFAIR COMPETITION

M. On the Thirteenth Cause of action in favor of the Plaintiff M+J and against Defendants JANIS and DESIGNS, One Million Dollars ($1,000,000.00) as compensatory damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

INJUNCTION

N. On the Fourteenth Cause of action in favor of the Plaintiff M+J and against Defendants JANIS and DESIGNS, injunction restraining and enjoining said defendants from unfairly competing with Plaintiff M+J and from carrying on with its other tortious activities against M+J.

VIOLATION OF JUDICIARY ACT § 487

O. On the Fifteenth Cause of action in favor of the Plaintiff MICHELLE and against Defendants GT, SCHINDLER and ELINGS, Violation of Judiciary Act § 487, Fifteen Million Dollars ($15,000,000.00) as compensatory damages, Forty-Five Million Dollars ($45,000,000.00) as punitive and exemplary damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable.

VIOLATION OF JUDICIARY ACT § 487

P. On the Sixteenth Cause of action in favor of the Plaintiff M+J and against Defendants GT, SCHINDLER and ELINGS, Violation of Judiciary Act § 487, Fifteen Million Dollars ($15,000,000.00) as compensatory damages, Forty-Five Million Dollars ($45,000,000.00) as punitive and exemplary damages; costs and reasonable attorney fees; interest and any and all other relief that the Court deems just and reasonable

Q. Any other relief deemed just and reasonable by the Court.

Dated: New York, New York
July 6, 2012

Yours etc.,

BROOME, PALANT & SHAPIRO, P.C.
Attorney for Plaintiff

By: _____

Alexander Shapiro, Esq.
225 Broadway, Suite 630
New York, NY 10007
212-608-1140

Certification

Pursuant to 22 NYCRR130-1.1 the undersigned, an attorney admitted to practice in the courts of the State of New York, certifies that upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: New York, New York
July 6, 2012

ALEXANDER SHAPIRO, ESQ.

TO:

Defendant Addresses:

Greenberg Traurig, LLP
200 Park Avenue, New York NY 10166

Paul Schindler, Esq.
200 Park Avenue, New York, NY 10166

G. Roxanne Elings, Esq.
200 Park Avenue, New York, NY 10166

Janis Savitt
200 West 58th Street, Apt. 12B
New York, NY 10019

Designs by Janis Savitt, Inc.
200 West 58th Street, Apt. 12B
New York, NY 10019

VERIFICATION

MICHELLE SAVITT, under the penalties of perjury, deposes and says:

I am one of the Plaintiffs in this case. I have read the attached Amended Complaint herein and all the contents hereof are true to my knowledge, except as to matters stated to be alleged on information and belief, and as to those matters, I believe them to be true. The grounds of my information and the sources of my belief are my personal dealings with the matters which are the subject of the complaint.

Michelle Savitt
MICHELLE SAVITT

STATE OF NEW YORK, COUNTY OF NEW YORK, ss.

On the 6th day of July, 2012, before me, the undersigned notary public, personally appeared MICHELLE SAVITT, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public
My commission expires on

ALEXANDER T SHAPIRO
NOTARY PUBLIC STATE OF NEW YORK
RICHMOND COUNTY LIC. #02SH6243458
COMM. EXP. 6/20/20

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

MICHELLE SAVITT and M+J SAVITT, INC. Plaintiffs, -against- GREENBERG TRAURIG, LLP, PAUL SCHINDLER, ROXANNE ELINGS, JANIS SAVITT and DESIGNS BY JANIS SAVITT, INC., Defendants.	Index No.: 101200/12

AMENDED VERIFIED COMPLAINT

BROOME, PALANT & SHAPIRO, P.C.
Attorneys for Plaintiffs
225 Broadway, Suite 630
New York, New York 10007
(212) 608-1140

Exhibit 7

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: **PART: 53**

----------X

MICHELLE SAVITT and M + J SAVITT,

Plaintiffs,

-against-

INDEX NO.
101200/12

GREENBERG TRAURIG, LLP, PAUL D. SCHINDLER, G. ROXANNE ELINGS, JANIS SAVITT and DESIGNS BY JANIS SAVITT, INC.

Defendant.

----------X

60 Centre Street
New York, New York 10007
February 21, 2013

B E F O R E:

THE HONORABLE CHARLES E. RAMOS,
J U S T I C E

A P P E A R A N C E S:

PALANT & SHAPIRO, P.C.
Attorneys for Plaintiffs
225 Broadway - Suite 630
New York, New York 10007
BY: ALEXANDER SHAPIRO, ESQ.

STEPTOE & JOHNSON, LLP
Attorneys for Defendants Greenberg Traurig, Paul Schindler and G. Roxanne Elings
1114 Avenue of The Americas
New York, New York 10036
BY: JUSTIN Y.K. CHU, ESQ.

LITMAN, ASCHE & GIOIELLA, LLP
Attorneys for Defendants Janis Savitt and Designs By Janis Savitt
140 Broadway
New York, New York 10005
BY: RICHARD M. ASCHE, ESQ.

THE COURT: Good afternoon, everyone.

We are going to start with whose Motion to Dismiss first?

MR. CHU: It's both defendants' Motion to Dismiss and, if I may, if your Honor allows, I will go first.

THE COURT: Please.

You represent?

MR. CHU: Good afternoon, your Honor. My name is Justin Chu. I am from the law firm of Steptoe & Johnson. We are counsel to Greenberg Traurig and Paul Schindler and Roxanne Elings, the two attorneys handling this.

This is an action for legal malpractice and for other claims related to Greenberg Traurig's representation of plaintiff in the trademark action that was litigated before Judge Cote in the Southern District of New York right next door.

We have before your Honor defendant Greenberg Traurig's Motion to Dismiss the nonlegal malpractice claims and they are breach of fiduciary duty claim, fraud claim and a claim for breach of violation of Section 487 of the judiciary law.

We are moving on the grounds that those claims are duplicative of the malpractice claim, number one,

and, number two, that they are otherwise insufficient as a matter of law. And we'll discuss that in a bit of detail.

But, I want to just give your Honor the background of the underlying case.

The infringement action involves a dispute between plaintiff's sister and other members of their family concerning the family's jewelry business, manufacturing business.

Plaintiff's sister, whose name is Wynne Savitt, filed the infringement action initially against plaintiff's other sister, Janis, who is a defendant here, and their father for trademark infringement and other claims.

The action was filed on Wynne's personal behalf as well as purportedly on the behalf of the family's business, company, whose name is M + J Savitt.

In that action, plaintiff here gave an affidavit that she did not approve of the underlying infringement action. She also gave deposition testimony that she did not support the lawsuit.

She further testified that she refused to support the lawsuit when she was offered by Wynne the opportunity to make millions of dollars in that lawsuit.

THE COURT: So this is what I didn't understand when I read the file. This plaintiff was not the plaintiff before Judge Cote?

MR. CHU: That is correct.

The plaintiff here was not a defendant -- was not a plaintiff in the case before Judge Cote. She was not a party initially but subsequently she became a defendant.

THE COURT: So Greenberg Traurig was representing her sister?

MR. CHU: Correct. Their father, and as well as the plaintiff here today against Wynne on the other side.

THE COURT: Wynne was the plaintiff before Judge Cote. The defendants before Judge Cote were this plaintiff --

MR. CHU: Correct.

THE COURT: -- and the other defendants here?

MR. CHU: Say that again.

THE COURT: The defendants before Judge Cote constituted this plaintiff and the other members of the family?

MR. CHU: Yes. Against the other sister, Wynne.

THE COURT: Right, Wynne.

MR. CHU: Wynne was the plaintiff in that action

against --

THE COURT: And the plaintiff and those other defendants won before Judge Cote; correct?

MR. CHU: Yes.

THE COURT: Okay.

MR. CHU: So what happened before Judge Cote was that after some intense months of litigation, on an expedited basis, Judge Cote, in March 2009, dismissed all of the derivative claims on the ground that neither demand on the board of directors nor the futility of demand was shown.

THE COURT: There were only derivative claims in that action?

MR. CHU: There were other claims, as well. There were also individual claims for fraud, for breach of contract, for unjust enrichment and also for defamation.

Judge Cote also dismissed all but one of the individual claims filed by Wynne., that is, the defamation claim. So, by Judge Cote's order of March 2009, all that is left, all that was left in that action was the individual claim for defamation.

THE COURT: I see.

And that is the claim that was settled?

MR. CHU: The case was subsequently settled in

its entirety. And I'll go into that. But let me just say one more thing about what Judge Cote did.

Subsequent to her March 2009 order, the Judge issued a later order and found that plaintiff, in the infringement action, that is Wynne, engaged in abusive litigation and in order to win a financial settlement from the defendants.

THE COURT: I read the decision.

MR. CHU: So I won't go further then.

So, subsequent to those two orders, the case collapsed and was settled for no money exchanged.

What did happen in the settlement was that Wynne was required to return her shares in the company to the treasury of the company.

THE COURT: M + J.

MR. CHU: M + J.

THE COURT: M + J was the defendant?

MR. CHU: Well, M + J was a purported derivative plaintiff.

THE COURT: So she was suing on behalf of M + J --

MR. CHU: Correct.

THE COURT: -- when she sued the rest of the family.

MR. CHU: Correct.

THE COURT: Now she has withdrawn from M + J. She has given up her stock.

MR. CHU: That is correct.

THE COURT: I understand.

So Wynne now is out of the picture.

MR. CHU: Wynne now is out of the picture as far as M + J is concerned. And by the way, there is really no more M + J because it exists as an entity but is no longer functioning as a business since Janis, who is represented by counsel here, left the company some time in 2007.

THE COURT: Okay.

MR. CHU: Now, plaintiff here today, Michelle, is seeking to reverse the field and now says, well, had I been properly advised, I would have joined Wynne in that action to sue the other members of the family; contrary to her sworn testimony.

THE COURT: Well, there was a bit of a family fight going on because the mother passed away and there is a probate fight. Now, where is that probate going on? Here in New York?

MR. CHU: The probate action, I believe counsel is also representing the plaintiff in the probate action. We are not involved in that.

THE COURT: Is that here in Manhattan?

MR. SHAPIRO: Yes, your Honor, in Surrogate's Court, New York County.

MR. CHU: We do not represent any parties in that action. The three sisters are the litigants in that case in the probate action and Greenberg Traurig does not represent any of those sisters in that proceeding.

THE COURT: All right, so plaintiff's claim here, Michelle's claim here is that she should have been a plaintiff in Wynne's action, okay.

MR. CHU: Correct, correct. And she says that, well, I would have been the plaintiff had Greenberg Traurig told me that the underlying action had merit instead of telling me that the underlying action had no merit.

She also contends that Greenberg Traurig misadvised her when Greenberg Traurig said to her, yes, we can represent you jointly with the other members of the family.

And she also contends that Greenberg Traurig did not advise her of the conflict of interest which I believe, whatever facts giving rise to that, are obvious to the family.

So, I will go into the legal arguments.

THE COURT: Yes.

MR. CHU: So, there are -- let me just back up one bit.

Michelle here also, in addition to her personal claims, purports to sue on behalf of M + J, as well. And the claims are the same so I am just going to speak as if there is one claim rather than two of the same claims.

All of the claims are based on the same allegations that we just talked about; that is, Greenberg said the infringement action had no merit and that we could represent you jointly.

THE COURT: What are the Causes of Action being brought against the law firm?

MR. CHU: For legal malpractice, number one. We are not moving on that.

Breach of fiduciary duty, fraud and for violation of Judiciary Law Section 487.

THE COURT: 487 is making false statements in court?

MR. CHU: That is exactly right. And we are not -- it's about misstatements to the court, it's about deceit. That is not the kind of action we are talking about in this case.

Now, they label our action as intentional act, as intentional deceit but, your Honor, those are just

labels. The facts are what matter.

THE COURT: All right, so your argument is that these are repetitive, redundant.

MR. CHU: They are duplicative and your Honor knows that when the different Causes of Action are based on the same fact, seeking the same damages, they are --

THE COURT: What would keep this out of the rule that this would just be a malpractice claim and not have these other --

MR. SHAPIRO: There are various differences in the present situation. Here you have Greenberg Traurig and its attorneys representing Janis Savitt for years prior to this litigation being commenced. Thereafter, Greenberg Traurig needed to get a strategic advantage in order to get the case dismissed on procedural grounds; namely futility of demand or the demand should be excused. So, in so doing, on November 18th, 2008, when they were hosting a meeting of the shareholders, at that meeting they misrepresented to my clients that there were no meritorious Causes of Action that could possibly be asserted against Janis Savitt or her company; that her --

THE COURT: I am a little confused now.

Are you saying that there was a demand made?

MR. SHAPIRO: Previously, Wynne started the lawsuit only against Janis and against -- against Janis Savitt, Designs by Janis Savitt, which is a company solely owned by Janis, and against Paul Savitt who was in his 80s and their father. My client, Michelle Savitt, did not want to take sides at the time. She didn't want to sue her father. She was invited then by Greenberg Traurig, by Roxanne Elings, by Paul Schindler, the partners of that firm, to attend a shareholders meeting on November 18th, 2008. During this meeting, the complaint alleges specifically, express misrepresentations were made to the M + J board and to Michelle Savitt to the fact that there were no meritorious Causes of Action that could be asserted against Janis; that the Causes of Action --

THE COURT: Judge Cote dismissed the derivative Cause of Action on a technical ground; that there had been no proof of a demand or of demand futility.

MR. SHAPIRO: Correct. But that was after.

THE COURT: How did what happened at this meeting with Greenberg Traurig affect that?

MR. SHAPIRO: Very simple; because the case was commenced before this November 18th meeting. At that point in time, the board constituted different members, so Greenberg Traurig wanted to switch the constituency

of the board, so at that point the plaintiff could no longer claim that the majority of the board was self interested so they added Michelle Savitt to the board of directors at that time and they removed Wynne from the board of directors.

THE COURT: This was done after the lawsuit was started.

MR. SHAPIRO: The first lawsuit. There was -- the first lawsuit. There was a complaint, then they filed an amended complaint. Thereafter, plaintiffs' lawyers sought leave of the court to file, I believe, a second amended complaint in that case. So, after the very first complaint was filed --

THE COURT: When Judge Cote decided her motion, was she dismissing based upon the lack-of-futility allegation at the filing of the initial complaint or the amended complaint?

MR. SHAPIRO: Amended complaint. The court held --

THE COURT: So you are saying between the time of the original complaint and the amended complaint, Greenberg Traurig manipulated the board of directors so that any demand on the board would be futile.

MR. SHAPIRO: Would not be deemed futile.

THE COURT: Would not be deemed futile.

MR. SHAPIRO: Correct, precisely. It was a litigation strategy.

And this is where the --

THE COURT: And how did they change the board so it would not become futile? By putting Michelle on the board?

MR. SHAPIRO: Correct. And because the original complaint did not allege that Michelle had any pecuniary interest in the alleged misconduct of Janis, that kind of reversed the status quo as it existed at the time when the original complaint was filed and, hence, procedurally, the complaint was defective and the amended complaint was defective and for this reason the case was settled purely on the technical grounds, never reaching the merits of the underlying claims --

THE COURT: It wasn't settled. It was dismissed. You have no interest in the defamation claim, I take it.

MR. SHAPIRO: No, no. There were a lot of claims included in the prior complaint which, if I may say the word --

THE COURT: Again, what you are saying is that you're accusing Greenberg Traurig of malpractice, of failing -- you are saying we have an existing attorney-client relationship that went back apparently

for years.

MR. SHAPIRO: With only Janis. Not with M + J.

THE COURT: With Janis, yes.

With Michelle or no?

MR. SHAPIRO: No, with Janis, who -- not with Michelle. Never with my client.

THE COURT: So Michelle was not an existing client.

MR. SHAPIRO: No. Janis was. And Greenberg Traurig was representing Janis --

THE COURT: When did Michelle become a client of Greenberg Traurig?

MR. SHAPIRO: After this November 18th, 2008 meeting -- and this is where it gets kind of interesting. This case is very factually interesting.

After the November 18th meeting --

THE COURT: This is before the second amended complaint?

MR. SHAPIRO: Before the amended complaint because the amended complaint, which is filed after this meeting, my client, Michelle, was now joined in that lawsuit as a defendant.

THE COURT: When did Michelle first become a client of Greenberg Traurig?

MR. SHAPIRO: Whether she was served with the papers, Greenberg Traurig advised her, Michelle, there is no need for you to get independent counsel. It's good to have all the representation under one roof. We will represent you. We will also represent M + J, we will also represent your sister, Janis, and we will also represent your father.

They never disclosed, as required by the rules of disciplinary conduct, that there is a conflict of interest --

THE COURT: All you are talking about is malpractice then. They didn't act as a trustee, they didn't act as a director of the corporation; did they?

MR. SHAPIRO: No, at that point they did not, no.

THE COURT: But isn't the claim for malpractice sufficient?

MR. SHAPIRO: Well, if I may, your Honor -- I don't know if counsel is still going to finish his argument before I can fully respond or --

THE COURT: Fully respond; because right now you are not doing too well, believe me.

MR. SHAPIRO: Okay, can I just start going through all of the claims in order? Because we have in this case the fraud claims, the breach of fiduciary

duties claims --

THE COURT: What fraud? Your client, Michelle, was not a client of Greenberg Traurig until after --

MR. SHAPIRO: -- she was enjoined in the lawsuit.

THE COURT: Correct. So what communication was there between the law firm and Michelle that wasn't in the context of an attorney-client relationship?

MR. SHAPIRO: Well, on February 18th -- on November 18th when they had this shareholder meeting, this is when Michelle first started communications with Greenberg Traurig. This is where the partners of Greenberg Traurig did everything they could to persuade Michelle not to proceed on her own with any claims. At that point, they indicated to her, they expressly represented, as the complaint alleges, there are no meritorious Causes of Action that are certain in the --

THE COURT: They are giving legal advice. I'm not saying it's not actionable because how many categories are we going to put this in? You can only recover once, you know.

MR. SHAPIRO: At the time, when the legal advice was suppose-- this supposed legal advice was made, our position was it wasn't legal advice. It was an intentional misstatement, they knew it was false

because, in fact, there were meritorious Causes of Action that could have been asserted and, hence, there is the intentional misrepresentation made to my clients. That's number one.

Number two --

THE COURT: Hang on. Hang on.

She is a shareholder at the time; right?

MR. SHAPIRO: Correct.

THE COURT: What is the fact that you say -- that you say was knowingly misrepresented to Michelle?

MR. SHAPIRO: Two things. Number one, that there is no viable or meritorious cause of action which Michelle or M + J could maintain against Janis or her company. That's the first --

THE COURT: But now they are stepping into the shoes of being an attorney.

MR. SHAPIRO: This is before that.

THE COURT: No, no, no. Trust me. What you're telling me was said to Michelle falls into the context of legal malpractice. An attorney cannot give legal advice to someone even if there is no retainer agreement and say, oh, there was no attorney-client privilege -- relationship, rather. No; by making a statement like that, that implicates that person's status as an attorney.

MR. SHAPIRO: Even if that is the case --

THE COURT: I'm not suggesting that what went on there is not actionable, because that's not before me right now, but only whether or not it falls into the category of fraud or if it's subsumed in legal malpractice.

MR. SHAPIRO: Correct, your Honor. Maybe I am getting too technical here and --

THE COURT: This is a very technical issue.

MR. SHAPIRO: It is.

So here -- we can distinguish two situations: When an attorney renders legal advice and that advice happens to be wrong, negligence, unreasonableness, legal malpractice.

What if you have a lawyer that makes a statement to a prospective client and when making that statement the intent is not to render legal advice; it's legal advice in disguise.

THE COURT: But that is the issue that always comes up in these cases and the courts from here to the Court of Appeals have always said it's legal malpractice.

MR. SHAPIRO: There is one case, though, from the 1st Department, which upheld --

THE COURT: Fraud that is independent entirely

of any legal advice.

MR. SHAPIRO: In that case, there was a failure to disclose a certain inability of the firm to fully represent the clients to begin with. When the firm -- it's ability to render the representation from the get go --

THE COURT: But that didn't happen here.

MR. SHAPIRO: Again, they also represented that there was no need for them to get independent legal counsel for the purpose of Michelle and M + J not getting legal counsel so that they could be controlled by Greenberg Traurig so they could win that case.

This is an unusual case in this regard, your Honor.

THE COURT: You're still talking malpractice.

MR. SHAPIRO: Okay, if I may move away from the --

THE COURT: Sure.

MR. SHAPIRO: -- fraud, and I would like to go to Section 487 because Section 487 I can see is the most applicable one. And I understand that the defendants' position with respect to fraud because on the one hand, misconduct here is egregious as alleged, and intentional, but there are fine, technical ways to distinguish it, but maybe it's not even important to

get into it.

Section 487, it's a very old section. It is quasi criminal in nature. It was specifically reserved for situations where there is misconduct of attorneys. And this is fully independent of legal malpractice, meaning that under this section, you could have legal malpractice and still a Cause of Action under Section 487.

And it's stated on Page 7 of plaintiff's brief in opposition to defendant Greenberg Traurig's motion.

Section 487 provides, "An attorney or counselor who, number one, is guilty of any deceit or collusion or consents to any deceit or collusion with intent to deceive the court or any party or, number two, willfully delays his client's suit with a view towards his own gain, or willfully receives any money or allowance for or on account of any money which he has not laid out or becomes answerable for, is guilty of a misdemeanor and, in addition to the punishment prescribed therefore by the penal law, he forfeits, to the party injured, treble damages to be recovered in a civil action." And this has goals from protecting the public from the attorneys --

THE COURT: Don't preach to me. Let's talk about how the case law follows that section, because I

don't think it's applicable here.

MR. SHAPIRO: This complaint alleges that Greenberg Traurig, with specific knowledge --

THE COURT: Doesn't a 487 claim have to be in the representation of a party?

MR. SHAPIRO: Any party in the lawsuit, actually, but they were represented by Greenberg Traurig.

Case law provides, your Honor, that any party, even the opposing party or the party being represented --

THE COURT: Where in the complaint do you describe that Cause of Action?

MR. SHAPIRO: The complaint makes very, very -- a high number of references to the misconduct. And I have a section in the plaintiff's brief, and I am just going to get it, which references all the sections describing the misconduct.

Just as one example, Paragraph 53 of the amended complaint provides, "In misrepresenting that the claims asserted in the prior action --

THE COURT: You don't even have a demand on this Cause of Action; do you?

MR. SHAPIRO: Yes, I do. It's the last one or one of the last ones. But the allegations on which it

is based --

THE COURT: The last one is unjust enrichment or an injunction.

MR. SHAPIRO: One second. Let me just get it, your Honor.

(Brief pause.)

THE COURT: Is there an amended complaint?

MR. SHAPIRO: Yes, there is an amended complaint.

THE COURT: I am looking at the complaint. That's only 60 pages long. Where is the amended complaint?

MR. SHAPIRO: It's on Page 55 of the complaint.

THE COURT: You say Paragraph 53?

MR. SHAPIRO: Paragraph 53 is one of the paragraphs where the complaint begins discussing --

THE COURT: "In misrepresenting that the claims asserted in the prior action had no merit whatsoever, defendants were aware of the falsity of the representations and made misrepresentations knowingly, willfully and deliberately with the specific intent of misleading plaintiff, Michelle and M + J." That's what you say rises to the level of a misdemeanor?

MR. SHAPIRO: This is what rises to the level of deceit. This is a misrepresentation.

You have here, your Honor, a situation where there is a conflict of interest. The attorneys --

THE COURT: You are not talking here about conflict of interest. You are saying here that there was a misrepresentation that the claims had no merit.

MR. SHAPIRO: What I am trying to describe, your Honor, is in totality. This is one critical element. One critical element.

But what I am also saying is that, in total, you have a situation where the lawyers should not --

THE COURT: Do you also have a Motion to Dismiss?

MR. ASCHE: Yes, your Honor. It's different legal issues entirely.

THE COURT: Come back at 2:15. We are going to have to -- we are going to spend the rest of the day on this.

MR. ASCHE: Would it be possible to make it a little bit later? I have a conference call with an attorney --

THE COURT: 3 o'clock.

(Whereupon, a luncheon recess was declared and taken.)

* * *

(AFTERNOON SESSION)

MR. CHU: Before we left, your Honor expressed skepticism on the 487 claim that the alleged conduct rises to a level of Judiciary Law 487 claim and your Honor was giving counsel the opportunity to present facts to the court that would, in their opinion, give rise to their claim.

THE COURT: I am looking at the allegations of the complaint. I have done some research over the lunch break. I don't see the kind of pattern that the appellate courts have been speaking of with regard to this kind of behavior. This simply seems to be an opinion of counsel.

MR. SHAPIRO: Well, two things, your Honor.

The Section 487 claims fall into two categories. One is the chronic delinquency --

THE COURT: And the other problem is I believe the allegations that you have made in the complaint relate to a time before there was a lawsuit pending.

MR. SHAPIRO: That is incorrect, your Honor. The allegations already pertain to the prior federal court proceedings and, in substance --

THE COURT: Oh, the federal court proceeding.

MR. SHAPIRO: The federal court proceedings, yes.

THE COURT: Was Michelle a party there?

MR. SHAPIRO: Yes, she was. And Greenberg Traurig represented parties with conflicting interests.

THE COURT: But wait a minute.

The allegations that form the basis of your claim is that Michelle was told, before she was a party, that there was no merit to Wynne's claim and to oppose it at meeting.

MR. SHAPIRO: That was part of it in relation to the fraud claims.

The allegations go on to state, with specificity, that the defendants deceived -- after Michelle was already being represented by Greenberg Traurig --

THE COURT: The allegations in the complaint allege that before Michelle was a party to the action and before there was an action, these misrepresentations -- sorry. Before she was a party to the action, these misrepresentations were made; right?

MR. SHAPIRO: Correct. That's part of it only.

The allegations go on to say that after Greenberg Traurig officially represented Michelle and M + J, made formal appearances on their behalf in court, conducted depositions and so forth, they intentionally deceived M + J and Michelle into entering

a stipulation of settlement, which was against their interest, and they did so by intentionally misrepresenting and concealing the fact that there were no meritorious Causes of Action --

THE COURT: What was the meritorious Cause of Action?

MR. SHAPIRO: If your Honor had a chance to look at the prior complaint from the prior action, you had essentially a family business. It is a family context; family drama, of course, but that doesn't take away from what happened.

It was formed in 1972. The business grew to a certain level of prominence. It was essentially owned by three sisters. M + J essentially stands for Michelle and Janis. Wynne, the eldest sister, she was like the business manager. Back in 2007 or so -- this is based on the prior allegations -- Janis started -- she opened up a competing venture, started to divert M + J's clients, including Ralph Lauren and big accounts, started infringing on its trademarks --

THE COURT: Wait a minute. What trademark? That was her name.

MR. SHAPIRO: There was actually a ruling by the United States Trademarks Office refusing Janis Savitt the right --

THE COURT: What trademark did M + J have?

MR. SHAPIRO: They had at least three trademarks at a point in time.

THE COURT: But not Janis Savitt's name as a trademark.

MR. SHAPIRO: They actually had, for 16 years, permitted Janis Savitt to use her own name --

THE COURT: Permitted Janis Savitt to use her own name? This is ludicrous.

MR. SHAPIRO: Your Honor, in connection with the M + J marking. It was Janis Savitt for M + J.

THE COURT: Was there a written agreement between Janis Savitt and M + J with regard to giving her name to M + J?

MR. SHAPIRO: I'm sorry, your Honor?

THE COURT: Pursuant to what right did M + J have to appropriate to itself Janis' name?

MR. SHAPIRO: M + J didn't appropriate to itself Janis' name. What ended up happening, because the name "Savitt" had been used --

THE COURT: But she is her name. She is entitled to use it. You can't trademark her name.

MR. SHAPIRO: Your Honor, I'm not an expert on trademark law and I'm not prepared to discuss the details of the trademark law right now, except suffice

to say that when I reviewed the file, there were determinations made by the United States trademark office --

THE COURT: That's nonsense. Please, I read that. That's nonsense already. Don't try to confuse me with that kind of nonsense. That really is.

What is the basis of the claim that you say now is meritorious that Wynne had against M + J?

MR. SHAPIRO: For one, unfair competition with the company by directly accessing the company's client base; by transferring those clients --

THE COURT: What obligation -- who were the defendants in the federal action?

MR. SHAPIRO: Janis Savitt, Designs by Janis Savitt, Inc.

THE COURT: That's her company.

MR. SHAPIRO: Paul Savitt.

THE COURT: Her father.

MR. SHAPIRO: Mildred Savitt.

THE COURT: Her mother. This is ludicrous.

MR. SHAPIRO: It is, your Honor.

THE COURT: No, I'm talking about your complaint, but go ahead.

MR. SHAPIRO: But it was not my -- I did not represent --

THE COURT: You are the one that is saying this has merit.

MR. SHAPIRO: I'm not expressing any opinion as to whether or not there is any merit against defendants Paul Savitt or Mildred Savitt.

THE COURT: No, no, you are. You are saying that is the meritorious case. That is the very basis of the malpractice claim against Greenberg.

MR. SHAPIRO: Yes, it is. As against Janis Savitt and her company.

The allegations in the prior complaint were very detailed --

THE COURT: What kind of restrictive covenant was there between Janis Savitt and her family company that prevented her from going into business?

MR. SHAPIRO: First of all, at the time she was --

THE COURT: Answer my question. Was there?

MR. SHAPIRO: In writing, not that I am aware of. In writing, there was nothing like that that I am aware of.

THE COURT: Are you suggesting there was an oral agreement?

MR. SHAPIRO: There was an oral agreement with respect to Janis not using her name in a separate

venture in competition with M + J for 16 years.

THE COURT: You have got to be kidding.

MR. SHAPIRO: But that is a small part of it.

THE COURT: Small part of it? That's nonsense. Did you ever hear of the Statute of Frauds?

MR. SHAPIRO: But the contract was carried out, it was performed.

THE COURT: It has to be conduct that was only attributable to this alleged oral agreement. Did Janis ever say there was an oral agreement?

MR. SHAPIRO: Not -- I haven't conducted depositions of Janis. In the prior case, as far as I understand --

THE COURT: Who were the parties to the oral agreement? The mother, the father and Janis; right?

MR. SHAPIRO: No, it was M + J and Janis Savitt.

THE COURT: Who owned M + J when it was formed? The parents; right?

MR. SHAPIRO: No. My understanding was Michelle, Janis and then Wynne joined the company later. Mildred, the mother, owned a minority interest only because --

THE COURT: So the company was not formed by the parents?

MR. SHAPIRO: No, it was not. It was formed by

Michelle, it was formed by Janis. That is my understanding. It was not formed by the parents.

And Janis Savitt was a director of the company, an officer of the company at the time. She started to divert its clients and compete with its business operations. She owed fiduciary duties to M + J at that time not to injure it by competing with it, by diverting its clients, its accounts and other things.

So, this was far more than the trademark issues and any restrictive covenants.

THE COURT: So you are saying that there was -- there is no writing between Janis and M + J?

MR. SHAPIRO: Maybe in the course of discovery I could find out. As of now, I do not have anything in my possession.

And to my understanding, in the prior case discovery did not extend that far. That is my understanding right now, but I could be wrong about that because issues in the prior case primarily involved futility of demand --

THE COURT: When did Janis leave M + J?

MR. SHAPIRO: She never really left M + J. She still remains as director and officer. She never really left M + J.

THE COURT: Michelle lives in California; right?

MR. SHAPIRO: No, she lives in New York.

THE COURT: Who lives in California?

MR. SHAPIRO: Her husband. She lives here. She lived in California herself maybe a brief period of time, but then she moved back to New York.

THE COURT: When did Janis allegedly start to compete with M + J?

MR. SHAPIRO: According to court records, 2006.

THE COURT: And the percentage ownership?

MR. SHAPIRO: I believe it was 27 percent for each sister and the remainder was owned by the mother.

THE COURT: So you are saying majority interest was not inclined to bring the lawsuit and Judge Cote ruled that there was no -- there were no interested directors other than Janis?

MR. SHAPIRO: Correct, your Honor. And this was only possible after Michelle joined the board.

THE COURT: And what was the nature of the misrepresentation -- you said it a number of times that there was no merit to the case. What specifically was said?

MR. SHAPIRO: Specifically, it was said that the allegations in the Wynne Savitt action cannot be proven and that essentially if M + J would pursue its own remedies against Janis, they would lose. Essentially,

this would be a big waste for the company. And I am essentially paraphrasing from the complaint.

And then subsequently, Greenberg Traurig advised --

THE COURT: Those, I suppose, were factual allegations. Didn't Michelle have any information about the company? She is a director.

MR. SHAPIRO: She was director after she joined. She understood that the company was in financial trouble, but she deferred to these attorneys. She never consulted with her own attorney prior to Greenberg Traurig.

THE COURT: The attorneys aren't going to know anything about what was happening factually.

She was a shareholder; right?

MR. SHAPIRO: Correct.

THE COURT: Always?

MR. SHAPIRO: She was always a shareholder.

Prior to the November 18th shareholder meeting, Michelle was not an officer of the company.

THE COURT: So she knew nothing about what was going on?

MR. SHAPIRO: She knew certain things. I can't represent --

THE COURT: Did she work in the company?

MR. SHAPIRO: During that period of time, she actually moved to California to stay with her husband for about a one- or two-year period, then she moved back to New York.

THE COURT: Did she ever work at the company beforehand?

MR. SHAPIRO: Yes, she did. She did --

THE COURT: Was she there when Janis was supposedly competing?

MR. SHAPIRO: She was there for about 30-something years and she did understand that there were -- your Honor, she understood -- she knew that she wasn't happy with Janis's conduct, but she was a lay person and she could not attribute --

THE COURT: I hope you have adequately advised your client as to what the sanctions are for bringing frivolous litigation. I am getting a really bad feeling about this case. I know there is a will contest going on and if you think you are going to use litigation in the commercial division to get an advantage in the surrogate's proceeding, you're sadly mistaken. If you don't have meritorious Causes of Action and a good basis for meritorious Causes of Action, I will entertain a motion for sanctions. This does not sound good at all.

MR. SHAPIRO: This case has nothing to do with the will contest. Initially, only after the will contest, Michelle --

THE COURT: Counselor, I may have been born at night but I wasn't born last night. This has everything to do with the family. You know it and I know it.

Your action under 487 doesn't make the grade. Not under these allegations. There has to be a pattern of egregious conduct to sustain these --

MR. SHAPIRO: If I may just reference a few cases?

THE COURT: No, we're not going to go through that.

The motion is granted to the extent of dismissing the repetitive Causes of Action; everything except the malpractice and the 487 claim.

Now, you had a motion.

MR. ASCHE: Yes, your Honor.

THE COURT: You represent?

MR. ASCHE: Janis and her company.

THE COURT: Okay.

MR. SHAPIRO: I'm sorry, your Honor, if I may inquire, will the court render a written decision?

THE COURT: You'll find out if I do. You will

be the first to know.

MR. ASCHE: Your Honor, as I say in my motion papers, the case is really two cases.

THE COURT: Yes.

MR. ASCHE: And it's divided temporally as well as by legal theory.

Everything prior to the settlement of the federal action is alleged against Greenberg Traurig but not against Janis or her company because Michelle and Janis exchanged releases. So, what is being alleged against Janis is allegedly what happened after that case was settled.

She alleges, essentially, two Causes of Action in her own individual capacity.

THE COURT: Not derivatively.

MR. ASCHE: And several derivatively.

I will address each of the two individual claims separately because they are different. The derivative claims, I think, stand or fall together.

The fourth Cause of Action is an individual claim alleging a breach of fiduciary duty.

In our motion papers, we assert that she didn't allege any individual harm; that all of the harm she alleged was to the company and, under the classic case law, she had no individual claim for breach of

fiduciary duty.

In his responsive papers, counsel -- we made that motion originally addressed to the first complaint.

THE COURT: First complaint, right.

MR. ASCHE: The day before the motion was -- before his motion papers were due, he filed an amended complaint which mooted the first complaint and he added a factual -- the only factual claim that he added was a claim that at some point unstated, in some amount unstated, on some credit card unstated, for some purpose unstated, the plaintiff charged expenses of the company --

THE COURT: The defendant charged.

MR. ASCHE: The plaintiff charged.

THE COURT: The plaintiff charged?

MR. ASCHE: The plaintiff charged expenses of the company to her personal credit card; in other words, paid company expenses personally.

THE COURT: Oh, with her credit card.

MR. ASCHE: Yes.

THE COURT: Paid company expenses.

MR. ASCHE: Now, this is in the amended complaint; not in the original complaint.

THE COURT: This is against Janis?

MR. ASCHE: Yes.

And her claim against Janis, your Honor -- and this is the only breach of fiduciary duty claim that he tries to defend in his responsive papers -- is that Janis did not pay off this -- did not pay Michelle for this credit card debt from the company while, at the same time, reimbursing herself for credit card debt that she incurred.

There is no specification of any kind in the amended complaint and none in the responsive papers explaining what this stuff was. And a fiduciary duty claim --

THE COURT: Hang on.

What obligation does the plaintiff claim Janis had to do anything?

MR. ASCHE: She claims that Janis was running M + J.

THE COURT: Okay.

MR. ASCHE: And that Janis had control over the checkbook of M + J and should have reimbursed her for her credit card expenses.

THE COURT: So she is seeking to hold Janis responsible for M + J's obligation.

MR. ASCHE: It gets worse.

She is not even claiming in this case to be

reimbursed for those credit card expenses. She is claiming that Janis's failure to reimburse her for credit card expenses has ruined her credit and she is seeking, like, $2 million worth of damages for that.

MR. SHAPIRO: That's not accurate.

THE COURT: All right, let's make sure we are talking about the right thing.

What is the claim?

MR. SHAPIRO: Okay, the claim is that while Janis is presently controlling the company as its officer, director, she deprived all access to corporate records to my client -- and we have her letters essentially confirming it. And Janis and my client both had credit card expenses, debts they incurred on behalf of the company. So while Janis --

THE COURT: So they would go out and use a product or take an airplane trip or whatever and then the company would reimburse them?

MR. SHAPIRO: Correct.

So what Janis did is she reimbursed herself for her own expenses but not for Michelle's. And under the case law, there is a fiduciary duty owed by those in control to at least treat the shareholders equally, and this was disparaging treatment --

THE COURT: But that is treatment as a

shareholder.

MR. SHAPIRO: Correct.

THE COURT: This is not treatment as a shareholder. This is treatment as an officer and employee of the company. It's the company obligation. It's is not Janis's obligation to repay. We all know that. It is a company obligation.

MR. SHAPIRO: Correct.

THE COURT: You are saying there is some wrongful activity going on stopping the company from reimbursing -- if she needs to be reimbursed, bring a lawsuit against M + J Savitt, Inc.?

MR. SHAPIRO: Because Janis took the money out of M + J herself and she is not presently in possession.

THE COURT: All you need is a judgment against M + J and you can pursue whatever you want to pursue.

MR. SHAPIRO: With respect to the credit card claim, I expect to withdraw the claim to simplify things because I know this complaint has a lot of things in it and I want to simplify things.

THE COURT: It's one of the longest complaints I have ever seen.

MR. SHAPIRO: So we can dispense with the issue of the individual claims.

THE COURT: That's out.

What else is --

MR. ASCHE: You are withdrawing all the individual claims?

MR. SHAPIRO: The one relating to the credit card.

MR. ASCHE: Your Honor, there is no other claim that she has standing to raise individually that I am aware of. The only other thing that he has mentioned is denial of access to the books and records.

First of all, Michelle resigned as an officer and director of the company, so she is not entitled to participate in the management. She is a shareholder and she could bring a claim under the business corporation law --

THE COURT: Is it a New York corporation or Delaware?

MR. ASCHE: I think it's New York.

MR. SHAPIRO: I believe it is New York.

MR. ASCHE: She could bring a claim under the business corporation law to examine the books and records of the company. In 64 pages, that's the one claim that's not there. She is not -- she doesn't have a claim under that section in this case.

MR. SHAPIRO: Your Honor, if I may also respect

your standing, as a director at the present time, as an officer, she did send an e-mail resigning but thereafter she withdrew it and thereafter, as acting as a director and as an officer -- there were corporate resolutions signed by her and by Janis and Michelle being the director after the resignation.

All I'm saying, your Honor, is a question of fact as to whether she resigned or whether she is presently a director.

THE COURT: Have you made a claim in this action to see the books and records? What counsel is saying is you haven't made that claim and I am asking you: Have you made the claim?

MR. SHAPIRO: We did not specifically reference that section of the business corporation law.

THE COURT: What is left in the case as against Janis then?

MR. SHAPIRO: Okay, as against Janis, the complaint alleges that after the settlement of the prior action -- M + J was already not as good of a company as it was before because its goodwill, assets were compromised, but it still had substantial amounts of inventories. For example, Greenberg Traurig was holding onto substantial sums. Everything was released to Janis. And while depriving Michelle access and

while she is running the show, she is transferring these inventories to her own companies, Designs By Janis Savitt, she is selling M + J goods online as her own and at the same time using M + J as a forum --

THE COURT: So this is a derivative claim.

MR. SHAPIRO: Yes, the substance of the claim is really derivative.

THE COURT: So you are saying this is M + J's property.

MR. SHAPIRO: Correct.

And the only arguments on the Motion to Dismiss is that my client allegedly has unclean hands; a very factually specific argument.

THE COURT: I agree. The sisters are going to point fingers at each other for the rest of their lives, most likely.

How do you dismiss the derivative claim, then?

MR. ASCHE: Your Honor, the derivative claim, the defense is that she had unclean hands.

THE COURT: That's the defense.

MR. ASCHE: Yes. But the papers -- we're asking you to treat it as a summary judgment motion. In our motion papers, we cite chapter and verse. We have exhibits which show hundreds of M + J items being sold on eBay by her husband and her. She has a store in

California -- I don't know how she manages it living in New York, but she has a store in California with photographs of M + J jewelry on display in that store.

In her reply papers, she refutes -- we have several allegations, very detailed allegations in motion papers with exhibits. She refutes one of them, I think, accurately. She did return that jewelry, although I am sure she took it with the intent not to, but she did return it.

The others, she admits having sold M + J jewelry, herself or her husband, on eBay or through her store and she claims, as a defense, that she is holding it in trust for M + J and against her credit card debt which she claims she incurred, but she admits having done this.

There are, in addition, about 275 items which she doesn't admit that she took from M + J but she admits she has.

THE COURT: Is the derivative claim an equitable claim that can be defeated by unclean hands?

MR. ASCHE: Well, we cite cases, your Honor, that say that it is. It's an -- I don't know -- the cases we cite say that it's a derivative claim. They have been treated as derivative claims. It is a version, I suppose, of the general doctrine that if

somebody comes into court and, you know, has done the same thing the plaintiff has done, the court is not going to get involved and referee a dispute between two people who have done a wrong thing.

By the way, Judge, I have to say this, even though it's not relevant to the motion: My client -- there is nothing in the complaint -- compared to the detail that I have in my motion, there is nothing in the complaint that shows any basis for her belief that my client has done anything wrong with this company. It's 64 pages of basically repetitious stuff. But if you parse it out, there is zippo, nothing at all, no facts which, in any way, would lead anybody to believe that my client has taken anything from this company; and, in fact, she hasn't.

In contrast, we cite chapter and verse -- we have pictures of jewelry which this person, this plaintiff put on eBay and tried to sell for her own account. I think, your Honor, that you have the power to dismiss the derivative claims because the plaintiff does not have clean hands, doesn't come into court with clean hands.

THE COURT: What authority do you have for that? That's a defense -- an affirmative defense I am not aware of.

MR. SHAPIRO: May I respond?

THE COURT: Well, I am asking what his authority is. It's an interesting idea. I just don't know if it works.

MR. ASCHE: Thank you.

THE COURT: There are a lot of interesting ideas in this case. I don't know if any of them work.

MR. ASCHE: Well, we cite cases -- they are not recent -- well, one of them is. Corral v. Savory, for the proposition a shareholder's derivative claim is an equitable claim; Sakow versus 633 --

THE COURT: When was that decided?

MR. ASCHE: The Court of Appeals case was 1937. The New York 1st Department is 2006.

Gardner v. Leitgeb and Vitelli, 34 Misc.3d --

THE COURT: What is the cite of the Appellate Division?

MR. ASCHE: It's in our brief, but I can give you the -- 25 AD3d 418.

THE COURT: One moment.

(Brief pause.)

THE COURT: You're right. Derivative claims are equitable in nature.

Plaintiff, what are we going to do with this now?

MR. ASCHE: The question, your Honor, really is this --

THE COURT: I asked him a question.

Your client has admitted doing what she is complaining --

MR. SHAPIRO: Absolutely not. And if your Honor looks at the affidavit of my client, it will explain everything much better than I can since we are dealing with questions of fact.

THE COURT: Where is Michelle's affidavit, since you said that she will explain it better?

MR. SHAPIRO: I have a copy here, your Honor.

THE COURT: I should have a copy right here.

MR. ASCHE: I have a copy.

THE COURT: Where do I look?

MR. SHAPIRO: Well, the affidavit explains all of these allegations about stealing things, not returning things to M + J and clearly all of defendant Janis' allegations and claims are rebutted by my client.

At the very least, there is a question of fact; not on a Motion to Dismiss without any discovery being done. This isn't the time and place for this.

THE COURT: Well, in her affidavit, she says she returned all this stuff.

MR. ASCHE: Your Honor, if you look at Paragraphs 34 and 35.

THE COURT: Okay. I wasn't that far along.

MR. SHAPIRO: Your Honor, sorry to interrupt, but Paragraph 34 is to be read together with the preceding paragraphs to set the foundation.

THE COURT: Motion granted. It's dismissed.

MR. SHAPIRO: Your Honor, if I may --

THE COURT: -- on the basis of the admissions in her own affidavit.

MR. SHAPIRO: Your Honor, before this, in the affidavit, it provides that the company, after the prior lawsuit, each party, Janis gave Michelle certain items to sell. Michelle is selling them, she is holding them in trust. She is telling Janis let's have the meeting. Janis refuses.

On top of that, we cited case law saying that even if somebody has unclean hands but somebody else is alleged to have unclean hands to a greater extent, then this remedy cannot be invoked.

(PLEASE CONTINUE ON FOLLOWING PAGE)

THE COURT: Thank you very much, gentlemen. We are done.

MR. SHAPIRO: I just want to note my exceptions on the record for both motions.

THE COURT: You don't have to put anything on the record. That is my ruling.

****

CERTIFIED THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL STENOGRAPHIC MINUTES IN THIS CASE.

ERIC ALLEN
SENIOR COURT REPORTER

Exhibit 8

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

CHARLES E. RAMOS

PRESENT: _____ PART 53
Justice

SAVITT

-v-

GREENBERG TRAUIG

INDEX NO. 101200/12

MOTION DATE _____

MOTION SEQ. NO. 002

The following papers, numbered 1 to ____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

Motion is decided in accordance with accompanying Memorandum Decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 6/27/13

_____, J.S.C.
CHARLES E. RAMOS

1. CHECK ONE: ..... ☐ CASE DISPOSED ☑ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☑ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DECISION

----------x

Michelle Savitt and M+J Savitt, Inc.,

Plaintiffs, Index no. 101200/2012

- against -

Greenberg Traurig, LLP, Paul D. Schindler, G. Roxanne Elings, Janis Savitt and Designs by Janis Savitt, Inc.,

Defendants.

----------x

CHARLES E. RAMOS, J.S.C.

Motion sequence 002 and 003 are consolidated for disposition.

In motion sequence 002, defendant Greenberg Traurig ("GT") moves to dismiss the first, second, sixth, seventh, fifteenth, and sixteenth causes of action. In motion sequence 003, defendant Janis Savitt ("Janis") and Designs by Janis Savitt ("Designs") seeks to dismiss the fourth, fifth, and ninth through fourteenth causes of action pursuant to 3211(a)(7). For the reasons stated herein, both motions are granted and both causes of action are dismissed.

Background[1]

Plaintiff Michelle Savitt ("Michelle"), defendant Janis, and Wynne Savitt ("Wynn") are sisters, and were at one time part owners of the family-run jewelry business, M+J Savitt ("M+J").

[1] The facts are taken from the pleadings, and affidavit of Michelle Savitt in opposition dated 8/31/12, and presumed to be true for purposes of disposition.

The business was owned twenty-seven percent by each sister, with their mother Mildred Savitt owning the remaining nineteen percent. In 2006, Janis began to take steps toward establishing her own business, eventually formed in December 2007 as Designs by Janis Savitt ("Designs").

In October 2008, Wynne, a director and shareholder of M+J, instituted an action in federal court against Janis, both individually and derivatively on behalf of M+J (the "prior action"). At that point, GT, who was already counsel for Janis, advised Michelle that Wynne's claims were without merit and frivolous. At GT's advice, Michelle joined Janis in an M+J shareholders meeting where Wynne was voted out as a director of the corporation.

Following the meeting, Wynne requested Michelle join her in the action against Janis. When Michelle refused, Wynne joined her as a defendant. GT offered to represent Michelle in the suit, advising her that there was no need for independent legal counsel, and that it would be in everyone's best interest to have all defendants under the same representation. GT did not advise Michelle or M+J that potential conflicts of interest existed, or that Michelle's interests may be adverse to that of its client Janis. At that time, Janis was already heavily indebted to GT for legal fees.

Judge Cote of the Southern District of New York dismissed the derivative claims for failure to make a demand on M+J's board, and demand futility could not be shown. Judge Cote further dismissed all but one of the individual claims, and sanctioned Wynne and her attorneys for bringing on abusive litigation. The final claim was settled in an agreement under which all parties waived their rights to bring further claims against any other party.

Following settlement, Janis has retained control over M+J, liquidating the corporation's assets, selling a large portion of the inventory and raw materials, and has continued to utilize whatever opportunities have come to M+J in her own name and through Designs. In response, Michelle has retained and sold certain assets of the corporation. Neither Michelle nor Janis has operated with formal approval of the board of directors of M+J. Furthermore, the sisters are currently engaged in litigation over the estate of their parents.

Michelle, individually, and derivatively on behalf of M+J, commenced this action in January 2012, followed by an amended complaint in July 2012. Michelle and M+J allege claims against GT for breach of fiduciary duty, fraud, malpractice, and a violation of Judiciary Law § 487. Michelle alleges that GT misrepresented to her that Janis' claims lacked merit, misrepresented to her that there were no meritorious claims she could have asserted

against Janis, and never informed her that a conflict of interest existed in one firm representing parties with adverse interests. Michelle further alleges that GT used this misrepresentation to defraud Michelle and M+J in order to advance the interests of its client, Janis. Michelle also asserts a claim, individually and derivatively, for violation of Judiciary Law § 487 against GT.

In addition, Michelle asserts claims against Janis for breach of fiduciary duty and ouster, and tortious misappropriation of design credit. M+J asserts claims against Janis for breach of fiduciary duty, conversion, embezzlement, unjust enrichment, unfair competition, and seeks an injunction enjoining Janis and Designs from competing and carrying on tortious activity against M+J.

Michelle alleges that following the settlement of the prior action, Janis has usurped control of M+J and denied Michelle access to corporate books and materials, while taking advantage of M+J's corporate opportunities and converting its inventories, goodwill and other assets.

Standard of Review

"On a motion to dismiss pursuant to CPLR § 3211, the pleading is to be afforded a liberal construction" (*ABN AMRO Bank, N.V. v MBIA, Inc.*, 17 NY3d 208 [2011], quoting *Leon v Martinez*, 84 NY2d 83 [1994]). The court "must accept as true the facts as alleged in the complaint and submissions in opposition

to the motion, accord plaintiffs the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory" (*Whitebox Concentrated Convertible Arbitrage Partners, L.P. v Superiro Well Services, Inc.*, 20 NY3d 59 [2012], citing *Sokoloff v. Harriman Estates Dev. Corp.*, 96 NY2d 409 [2001]).

GT's Motion to Dismiss

GT moves to dismiss the first, second, sixth, and seventh causes of action on the basis that they are duplicative of Michelle's malpractice claims (the third and eighth causes of action). The first and second causes of action allege breach of fiduciary duty and fraud, respectively, on behalf of Michelle individually. The sixth and seventh causes of action are premised upon the same allegations on behalf of M+J. GT also argues that Michelle's Judiciary Act § 487 claim fails to allege the requisite conduct.

In opposition, Michelle argues that the amended complaint clearly states distinct tortious conduct sufficient to support a claim of breach of fiduciary duty and fraud, both independently and derivatively.

A. First, Second, Sixth and Seventh Causes of Action

This Court has consistently held that in a case alleging claims for legal malpractice, claims of breach of fiduciary duty and fraud will be regarded as duplicative of the malpractice

claim unless based on independent tortious acts. Thus, where the facts pled on each claim are the same, the claims will be dismissed as duplicative (*Cosmetics Plus Group, Ltd. v Traub*, 105 AD3d 134 [1st Dept 2013] ["the cause of action for breach of fiduciary duty was properly dismissed as duplicative of the legal malpractice claim. It arose out of the same facts as the legal malpractice claim and did not involve any damages that were separate and distinct from those generated by the alleged malpractice"], citing *Bernard v Proskauer Rose, LLP*, 87 AD3d 412 [1st Dept 2011]; *Dinhofer v Medical Liability Mut. Ins. Co.*, 92 AD3d 480 [1st Dept 2012] ["fraud claim is duplicative of his legal malpractice claim since it arose from the same underlying facts and alleged similar damages"]).

The facts upon which Michelle attempts to establish claims for breach of fiduciary duty and fraud are based upon the same facts as the claim of malpractice. All of the facts alleged under the breach of fiduciary duty claim and the fraud claim are realleged and incorporated for the malpractice claim (*compare* Savitt Complaint ¶163 and 194 *with* Savitt Complaint ¶207, and *compare* Savitt Complaint ¶240 and 257 *with* Savitt Complaint ¶266). Furthermore, Michelle does not allege that GT committed tortious acts independent of the alleged malpractice.

As to the claim for breach of fiduciary duty, prior to GT's representation of Michelle, GT owed her no fiduciary duties upon

which a claim of breach separate from the malpractice claim could be premised. After GT began legal representation of Michelle, any further tortious conduct became actionable as malpractice (See *Cosmetics Plus Group,* 105 AD3d at 143).

Michelle's fraud claim is similarly premised on allegations that (1) GT misrepresented to her that Wynne's claims in the prior action were devoid of merit, (2) GT misrepresented that there was no need for Michelle to obtain independent counsel, and (3) GT misled her into signing the settlement agreement (Savitt complaint at ¶196-201). The giving of this advice by GT to Michelle occurred in the context of an attorney-client relationship, and thus is actionable as malpractice. By making the alleged misrepresentations to Michelle, GT was "stepping into the shoes of being an attorney" (2/21/13 Tr 17:16-17). The very conduct which Michelle alleges is independent of the acts upon which the malpractice claim is based "implicates [GT's] status as an attorney" (*Id.* at 17:25-26).

This line of reasoning applies equally to Michelle's individual and derivative claims. Accordingly, Michelle has failed to state claims for breach of fiduciary duty or fraud.

B. Fifteenth and Sixteenth Cause of Action

In order to succeed on a Judiciary Law § 487 claim, a plaintiff must show a "chronic and extreme pattern of legal delinquency" (*Solow v Seltzer,* 18 AD3d 399 [1st Dept 2005]). A

"[c]omplaint that set[s] forth but one arguable misrepresentation by defendant [does] not [a] allege cognizable claim under Judiciary Law § 487" (*Id.*). Courts have sustained a section 487 claim where the conduct against a party or the court has been deemed egregious, and has caused damage to a party, such as where an attorney forged a letter from the Taxi and Limousine Commissioner and submitted it to the court as evidence, "causing specific damages that could not have occurred in the absence of defendant's conduct" (*Kurman v Schnapp*, 73 AD3d 435 [1st Dept 2010]).

Michelle's amended complaint fails to show either a deceit that reaches the level of egregious conduct, or a chronic and extreme pattern of behavior on the part of GT. According to Michelle's amended complaint, the behavior giving rise to the section 487 claim was (1) the misrepresentation to Michelle that she had no meritorious claim against Janis, (2) the misrepresentation that she did not need independent legal counsel, (3) the failure to inform Michelle that there was a conflict of interest, (4) the advice to Michelle to sign the settlement agreement, and (5) that GT's behavior was allegedly an intentional deception designed to benefit Janis (Savitt complaint at ¶307-312).

While Michelle's complaint spends a great number of words in an attempt to establish a section 487 claim, these allegations

give rise to only one act on the part of GT, as all of the allegations arise, and are indistinguishable from GT's representation that Michelle had no meritorious claims to assert against Janis.

While on a CPLR § 3211(a)(7) motion to dismiss a plaintiff's allegations must be taken as true, statements alleging only a bare legal conclusion that defendant intended to deceive the plaintiff are not entitled to the presumption of truth (*Simkin v Blank*, 19 NY3d 46 [2012], citing *Maas v Cornell University*, 94 NY2d 87 [1999]]). In her amended complaint, Michelle alleges no more than bare legal conclusions that GT's advice to her constituted an intentional deception (Savitt complaint at ¶311-312). Rather, the facts support the presumption that GT's representations to Michelle were the advice of counsel.

Additionally, as Michelle fails to show any way in which GT's representation damaged her, "the inability to demonstrate consequential damages renders the claim deficient as a matter of law" (*Kaminsky v Herrick, Feinstein LLP*, 59 AD3d 1 [1st Dept 2008]). At oral argument, Michelle claimed GT's misrepresentations damaged her in causing her not to assert meritorious claims against Janis. However, Michelle alleges no facts supporting such a claim. In fact, when queried, counsel for Michelle was unable to articulate any claims she could have brought individually against Janis (2/21/13 Tr 26-34).

Additionally, Judge Cote dismissed all but one claim against Janis in the prior lawsuit, which was settled without monetary compensation, belying the assertion that GT intended to deceive in advising Michelle that she had no meritorious claims to assert against Janis.

Janis' Motion to Dismiss

Janis moves to dismiss the fourth cause of action for breach of fiduciary duty and ouster on the basis that the complaint fails to state a claim on which relief may be granted. Janis moves to dismiss the fifth cause of action for tortious misrepresentation of design credit on the basis that the claim is merely a way of disguising a time barred defamation claim. For the reasons set forth below, the Court does not reach the issue of defamation, as Michelle lacks standing to bring the claim individually. Janis further seeks to dismiss the ninth through fourteenth causes of action on the basis of Michelle's unclean hands.

A. Fourth Cause of Action

The fourth cause of action alleges that Janis as a controlling shareholder owed fiduciary duties to Michelle who is also a shareholder of the corporation. The complaint also alleges that as an officer and director of the corporation Michelle is entitled to access all of the corporate books and records of M+J and to participate in the management of the business.

First, a question exists as to whether Michelle was a director of M+J at the time she filed this action. Janis has provided emails in which Michelle formally resigned from M+J as a director and officer. At oral argument, counsel for Michelle claimed that the email was rescinded, though no evidence supporting that assertion has been presented (2/21/13 Tr 42:3-4). Nevertheless, whether Michelle is a director of M+J has no bearing on the resolution of this motion.

With regard to the claim that Janis has denied her access to the books and records of the corporation, if Michelle is only a shareholder of M+J she has not made a proper demand in compliance with § 624 of the Business Corporation Law ("BCL"). Michelle's complaint alleges that she made several attempts to inspect the books and records of M+J (Savitt complaint at ¶96). However BCL § 624(d) requires that,

> Upon refusal by the corporation or by an officer or agent of the corporation to permit an inspection of the minutes of the proceedings of its shareholders or of the record of shareholders as herein provided, the person making the demand for inspection may apply to the supreme court in the judicial district where the office of the corporation is located, upon such notice as the court may direct, for an order directing the corporation, its officer or agent to show cause why an order should not be granted.

At no point prior to or during this action has Michelle made any application to this Court or any other requesting such an order.

Furthermore, as to Michelle's claim that Janis has prevented her from participating in the management of the business, BCL §

701 states that the "business of a corporation shall be managed under the direction of its board of directors." Michelle alleges no facts supporting her assertion that she is entitled to participate in the management or direction of the business as a shareholder.

Even if Michelle retained her status as a director of the corporation, her amended complaint alleges no facts stating in what way she was kept from participating in the management of the business, except that she has been denied access to the corporate books and records.

In her affidavit of August 31, 2012, Michelle claimed Janis had refused meetings, and provides as evidence one email from June 2011, in which she makes a large request for information from Janis (Savitt aff, exhibit J).

If Michelle and Janis are the last remaining directors of M+J, the situation at hand appears to be one of director deadlock as parties are unable to agree on management of the business. Under New York law, Michelle may take judicial action to resolve the dispute, including filing a petition for dissolution under § 1104 of the BCL. However, Michelle has not petitioned any court for aid in resolving the management issues relating to M+J. In fact, Michelle has taken no steps to resolve the disagreement in management prior to requesting monetary damages in this action.

Whether as a shareholder or a director, Michelle's fourth cause of action states no claim upon which relief may be granted.

B. Fifth Cause of Action

Michelle's fifth cause of action fails to state a claim on which individual relief may be based. Michelle's amended complaint states that Janis has "converted to herself credit for Michelle's designs" and has misrepresented Michelle's designs as her own. At oral argument, counsel for Michelle conceded that "while depriving Michelle access and while she [Janis] is running the show, she is transferring these inventories to her own companies, Designs By Janis Savitt, she is selling M+J goods online as her own..." (2/21/13 Tr 42:26, 43:1-5).

Based on these allegations, Michelle's claim is derivative in nature, as she alleges no facts showing individual harm. The harm suffered appears to be borne by the corporation, as those designs which Janis has allegedly converted, even if created by Michelle, were created for, and are owned by, M+J. "Allegations of mismanagement or diversion of assets by officers or directors to their own enrichment, without more, plead a wrong to the corporation only, for which a shareholder may sue derivatively but not individually" (*Abrams v Donati*, 66 NY2d 951 [1985]).

C. Ninth through Fourteenth Causes of Action

The ninth through fourteenth causes of actions are asserted by Michelle derivatively on behalf of M+J. In opposition, Janis

raises the equitable defense of unclean hands (see *Horizon Asset Management, LLC v Duffy*, 106 AD3d 594 [1st Dept 2013] [stating that derivative actions are equitable in nature], citing *Sakow v 633 Seafood Restaurant, Inc.*, 25 AD3d 418 [1st Dept 2006]).

Where a plaintiff has committed the same acts as a defendant, "the doctrine of unclean hands applies to bar such plaintiff from seeking relief on his or her equitable claims" (*Ross v Moyer*, 286 AD2d 610 [1st Dept 2001]. Here, there is no dispute as to Michelle's purported unclean hands. Michelle alleges that Janis has converted to herself assets of the corporation including raw materials, merchandise, and corporate funds. However, by Michelle's own admission in her affidavit of August 31, 2012, Michelle is committing the same acts of which she accuses Janis.

Michelle admits to selling $6,316.25 of M+J goods through her California store, and through the online auction site eBay (7/31/12 Affidavit of Michelle Savitt in opposition [herein "Savitt aff"] at ¶34). Michelle further admits to possessing $11,436-$17,751 (depending on method of valuation) of M+J goods (Savitt aff at ¶34).

Michelle offers no reason why she is entitled to possession of M+J's corporate assets, stating

> The reason why I did not turn over the sales proceeds and the remaining items to Janis is because she ousted me from the corporation and I firmly believed, as I continue to

believe today, that Janis was dissipating corporate assets and converting them for her own personal benefit (Savitt aff at ¶35).

Essentially Michelle argues she is entitled to convert corporate assets because her sister did the same, though she now sues her sister for the very conduct she has committed. This is a classic case of unclean hands, in which two sisters are committing the same conduct against a corporation, and one will not be heard to complain of the other's equally guilty behavior. Accordingly, it is

ORDERED that defendants' motion to dismiss is granted in its entirety and that the plaintiff's first, second, fourth though seventh, and ninth through sixteenth causes of action are severed and dismissed;

ORDERED that Defendants shall serve an answer to the complaint within twenty days of service of a copy of notice of entry.

Dated: June 27, 2013

ENTER:

J.S.C.

CHARLES E. RAMOS

Exhibit 9

In re Petition of:

REGISTRANT:	M + J SAVITT, INC.
MARK:	M + J SAVITT
SER. NO.:	76606395
REGISTRATION DATE:	12/06/2005

Director of the United States Patent and Trademark Office
P. O. Box 1451
Arlington, VA 22313-1451

PETITION FOR REVIVAL OF CANCELLED REGISTRATION

Registrant petitions the Director to revive registration of the Mark *M + J Savitt* (hereinafter, "the Mark") under 37 C.F.R. 2.146(a).

Registrant respectfully submits the following facts:

1. The Mark has been continually in use since 1972.
2. The Mark was duly registered in 2005.
3. Aside from the Mark, Registrant owned two other marks: *Savitt* and *S M + J Savitt*.
4. The law firm of Stephen E. Feldman, P.C. had been retained to file Declarations of Use under Section 8 and Declarations of Incontestability under Section 15 for all three marks.
5. Said law firm of Stephen E. Feldman, P.C. failed to duly file said Declarations by filing an improper specimen in all three cases and not correcting said error.
6. As a result of said error, the marks *Savitt* and *S M + J Savitt* were cancelled.
7. Said law firm of Stephen E. Feldman, P.C. failed to notify Registrant of the requirements of the USPTO regarding said Declarations pertaining to the Mark.
8. Said law firm of Stephen E. Feldman, P.C. was duly discharged for allowing the marks *Savitt* and *S M + J Savitt* to be cancelled.
9. Since December 2010 through January 2013, Registrant diligently checked the USPTO website for the status of the Mark every three or four months. Every time the Mark's status was shown as LIVE.
10. On January 28, 2013, Registrant's representative made a telephone call to the USPTO to verify " LIVE" status as shown on USPTO website. Registrant's representative was told the Mark should be cancelled.
11. The Mark was cancelled on January 29, 2013.
12. This Petition is filed within two months from cancellation of the Mark.

Registrant petitions the Director to revive registration of the Mark *M + J Savitt* and allow Registrant to file Declarations of Use under Section 8 and Declarations of Incontestability under Section 15 with a proper specimen. Registrant further states that said decision by the Director will not harm any other person's rights.

The following materials are submitted in support of this Petition:

1. A screen shot of the trademark search results showing that as of January 26, 2013 the USPTO website listed the Mark as LIVE.
2. A screen shot of the trademark search results showing that as of January 26, 2013 the USPTO website listed the Mark as LIVE
3. Copy of correct specimen for the Mark.

02-14-2013
U.S. Patent and Trademark Office #72

FEE: $100.

Respectfully submitted on 2/13/2013

Michelle Savitt

Michelle Savitt,
Officer and Director of Registrant
M & J Savitt, Inc.
12 East 86th Street # 429
New York, NY 10028
(310) 986-0015

Enclosure

Our Ref.:

Cert. of Mailing/Transmission or Express Mail Label Number

United States Patent and Trademark Office

Home Site Index Search FAQ Glossary Guides Contacts eBusiness eBiz alerts News Help

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Sat Jan 26 05:02:46 EST 2013

TESS Home | New User | Structured | Free Form | Browse Dict | SEARCH OG | Prev List | Next List | Image List | Bottom | Help

Logout *Please logout when you are done to release system resources allocated for you.*

Start List At: OR Jump to record: **7 Records(s) found (This page: 1 ~ 7)**

Refine Search (savitt)[COMB] Submit

Current Search: **(savitt)[COMB]** docs: 7 occ: 19

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	85721117		JANIS BY JANIS SAVITT	TSDR	LIVE
2	77033657		JANIS SAVITT	TSDR	DEAD
3	76548233	2941210	SAVITT	TSDR	DEAD
4	76606395	3022631	M+J SAVITT	TSDR	LIVE
5	75532194	2295631	MWW/SAVITT	TSDR	DEAD
6	75203756	2116162	S M+J SAVITT	TSDR	DEAD
7	73691475	1494169	S M+J SAVITT	TSDR	DEAD

TESS Home | New User | Structured | Free Form | Browse Dict | SEARCH OG | Prev List | Next List | Image List | Top | Help

United States Patent and Trademark Office

Home Site Index Search FAQ Glossary Guides Contacts eBusiness eBiz alerts News Help

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Sat Jan 26 05:02:46 EST 2013

TESS Home | New User | Structured | Free Form | Browse Dict | Search OG | Bottom | Help | Prev List | Curr List | Next List | First Doc | Prev Doc | Next Doc | Last Doc

Logout Please logout when you are done to release system resources allocated for you.

Start List At: OR Jump to record: **Record 4 out of 7**

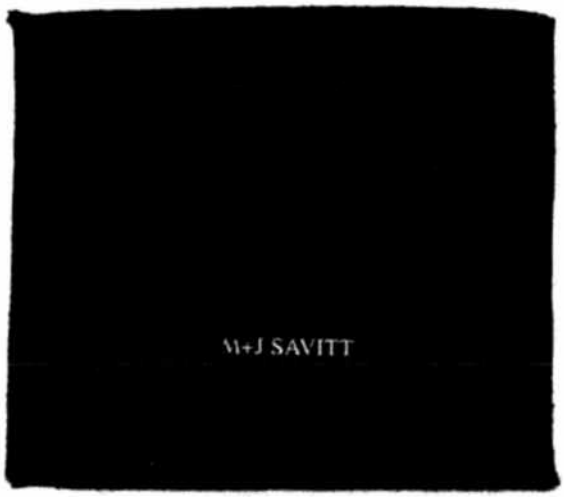
TSDR | ASSIGN Status | TTAB Status *(Use the "Back" button of the Internet Browser to return to TESS)*

M+J SAVITT

Word Mark	M+J **SAVITT**
Goods and Services	IC 014. US 002 027 028 050. G & S: jewelry. FIRST USE: 19721000. FIRST USE IN COMMERCE: 19721000
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	76606395
Filing Date	August 9, 2004
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	September 13, 2005
Change In Registration	CHANGE IN REGISTRATION HAS OCCURRED
Registration Number	3022631
Registration Date	December 6, 2005
Owner	(REGISTRANT) M+J SAVITT, INC. CORPORATION NEW YORK 475 Fifth Avenue New York NEW YORK 10017
Attorney of Record	Stephen E. Feldman, P.C.
Prior Registrations	2116162
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

TESS Home | New User | Structured | Free Form | Browse Dict | Search OG | Top | Help | Prev List | Curr List | Next List

M&J SAVITT


M+J SAVITT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application Serial No. 85721117
Filed September 5, 2012
For the Mark JANIS BY JANIS SAVITT
Published in the Official Gazette (Trademarks) on February 26, 2013

MICHELLE SAVITT, Opposer, v. JANIS SAVITT, Applicant.	**Opposition No. 91210400**

DECLARATION OF JANIS SAVITT IN OPPOSITION TO PETITION TO DISQUALIFY

I, JANIS SAVITT, declare as follows:

1. I am the Applicant in the above-captioned proceeding. I am also the owner of Designs by Janis Savitt, Inc. I make this Declaration in Opposition to the Petition to Disqualify.

2. On October 31, 2006, I applied for the trademark JANIS SAVITT (the "Mark").

3. In 2007, after I received an Office Action concerning the Mark, I retained an attorney, Dennis H. Cavanaugh of D H Cavanaugh Associates, who assisted me with responding to the Office Action. The Mark was subsequently abandoned.

4. G. Roxanne Elings was not involved with the application for the Mark or the response to the Office Action. Ms. Elings became my attorney in 2008 in connection with a lawsuit filed in the Southern District of New York by my sister Wynne Savitt.

5. Ms. Elings is the attorney of record on the application for JANIS BY JANIS SAVITT, the subject of the instant proceeding and has advised me in connection with this application and the opposition filed by my sister Michelle Savitt.

6. If Ms. Elings were to be disqualified from representing me in the instant proceeding, I would be negatively impacted.

7. I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 2, 2013 at New York, New York

/Janis Savitt/

Janis Savitt

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **DECLARATION OF JANIS SAVITT IN OPPOSITION TO PETITION TO DISQUALIFY** was duly served upon Opposer at the below address:

Michelle Savitt
12 East 86th Street #429
New York, NY 10028

by mailing a copy thereof via the U.S. Postal Service in a sealed envelope via First Class Mail with postage thereupon fully prepaid on the 2nd day of July, 2013.

Date: July 2, 2013 /Lisa D. Keith/