STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ROSS M. CELLINO, JR., Petitioner, - v - **CELLINO & BARNES, P.C.** and **STEPHEN E. BARNES**, Respondents.	**AFFIDAVIT** Index No.: 806178/2017

STATE OF NEW YORK)
)SS.:
COUNTY OF ERIE)

STEPHEN E. BARNES, being duly sworn, deposes and states as follows:

SUMMARY OF THE CASE

1. Petitioner Ross M. Cellino, Jr.'s ("Ross") petition for dissolution (the "Petition") can be summarized as follows: Cellino & Barnes, P.C. ("C&B" or the "P.C." or the "Firm") is a twenty (20) year-old Professional Corporation that has experienced meteoric growth across every metric of our business. The PC has invested over $100 million in advertising alone to get to where we are today. 2017 has been the most successful year in the history of the firm—record revenues, record profits, more new cases coming into the firm than any year prior, and record high attorney earnings. **Each** shareholder will make $12 million in 2017. If we stay the course, each shareholder is **virtually guaranteed** to continue to make an 8-figure income for the remainder of his career. Ross is 60 years old; I am 59 years old. It has taken us more than twenty (20) years to build the firm to the place where it is today. C&B is clearly one of the most successful personal injury firms

in the United States. Ross **admits** that post-dissolution we will both be reduced from making 8-figure incomes to, in Ross's words, "a **ZERO** cash flow status for a substantial period of time" (Schreck Aff. Ex. 1 (emphasis added)). Ross does not define, nor could he possibly know, what he means by the word "substantial". Given these indisputable facts, one must ask WHY Ross has chosen to go down this road. Exactly what is Ross's powerful ulterior motive for asking the Court to issue an order that will, by his own admission, spell "financial suicide" for both of us?

2. I am an attorney duly licensed to practice law in the State of New York, Respondent in this action, President of Co-Respondent C&B, and an active member of C&B's Management Team. As such, I have personal knowledge of the facts and circumstances in this matter.

3. I make this affidavit in opposition to the Petition to dissolve C&B, in support of Respondents' motion for summary judgment dismissing and denying the Petition, and in opposition to Petitioner's motion for the appointment of a temporary receiver.

4. My sole message and motive remains directed towards protecting and maintaining C&B for its clients, employees, and shareholders. Protecting this firm is my priority.

5. C&B is a fully functioning and efficiently managed law firm that has continued to prosper throughout these proceedings despite Ross's efforts to disrupt and destroy the firm.

INTRODUCTION

6. Ross raises numerous "issues" that have nothing to do with the determination as to whether his Petition for dissolution should be denied and dismissed nor whether his motion for a temporary receiver should be denied—I respectfully request that the Court deny both. The simple fact is that this affidavit, as well as every affidavit submitted in opposition to dissolution and the appointment of a receiver, indisputably rebuts each and every alleged "issue" of "dissension" and "deadlock"—whether pertinent to these proceedings or not.

7. It is of **vital importance** to note that Ross, on multiple occasions, has expressed his desire to "burn C&B to the ground," vindicating and demonstrating what I have been explaining has been his motive in these proceedings from the beginning. (See Kowalik Aff. ¶5; see Davis Aff. ¶9).

8. Specifically, Ross is quoted by Darryl Kowalik—a former C&B employee and current employee of one of C&B's major competitors—as saying:

> I don't give a f***, **I will burn the place to the ground** and start over with one lawyer. I have the resources. F*** it, f*** Steve and f*** Daryl. Let all these f***ing lawyers spend the next 20 years with Steve.

(Kowalik Aff. ¶5 (emphasis added, profanity redacted)). These are the words of a shareholder attempting to dissolve C&B in bad-faith and in order to attain dissolution at any cost for his own motives.

9. However, the demonstrative evidence of Ross's bad-faith does not stop there; he has engaged in acts and made requests of individuals that clearly show his desire to destroy C&B and build his legacy firm at any cost.

10. For instance, now an employee of a major competitor of C&B, Darryl Kowalik was contacted by Ross during the week of October 1, 2017, "for the purpose of stealing proprietary information from the Cellino & Barnes website to be imported into the website of Ross's 'new firm.'" Id. at ¶6.

11. With this in mind, it is important to view all of Ross's conduct and admissions to truly understand the gravity of his willingness to do anything to attain dissolution so that he can create a legacy firm for his family:

- Despite his allegations of dissension and disagreement, on March 4, 2016, Ross admitted: "over the last 10 years I [Ross] have spent the majority of my time **agreeing with choices and decisions you've proposed (or**

otherwise unilaterally made)[.]" (Cellino 10/13/17 Aff. Ex. M (emphasis added));

- Despite his erroneous contention that dissolution will benefit the shareholders, Ross admitted: "I truly understand and appreciate that [filing for dissolution] will be **financial suicide**[.]" (Manske Aff. ¶11 (emphasis added));

- Ross has admitted that dissolution will reduce both of us from earning an 8-figure income to "zero cash flow status" for some undefined and undefinable "significant period of time", but explained that he desires that result because he thinks he can "weather[] the zero cash flow status" and that the same will "crush" me and my operations in California and New York (Schreck Aff. Ex. 1);

- According to Ross: "I [Ross] don't give a f***, **I will burn the place to the ground** and start over with one lawyer. I have the resources. F*** it, f*** Steve and f*** Daryl. Let all these f***ing lawyers spend the next 20 years with Steve." (Kowalik Aff. ¶5 (emphasis added, profanity redacted); see Davis Aff. ¶9);

- Immediately upon filing for dissolution, Ross went on a raid of C&B offices and solicited C&B's attorneys and employees to join his new Cellino firm;

- Ross attempted to shut down all C&B advertising, which would have resulted in a steep decrease in client intake during these proceedings and crippled the firm;

- Ross attempted to sabotage and terminate C&B's line of credit with M&T Bank for disbursements, which he knew would have resulted in the firm failing to meet payroll and cause further harm to the firm;

- Ross disclosed many C&B employees' names and salaries in an attempt to sow discord, discontent, and jealousy within the firm;[1]

- Ross moved to have a receiver appointed despite the fact that many firm attorneys pleaded with him not to do that because of the extreme negative

[1] This point is important for several reasons. C&B personnel were extremely upset with the disclosure of their information where they had not submitted any affidavits or otherwise involved themselves herein. Several of those individuals approached Ross to ask why he divulged their information and he responded that he did not know that information was in his papers. That statement is astonishing. We strove hard to protect the confidentiality and privacy of C&B personnel, providing sufficient information for Petitioner to understand, recognize, and respond to the instances to which we were referring, but not enough so as to disclose private information. We only disclosed personal information to the extent necessary to rebut the allegations in these proceedings. Ross did not do the same.

impact that even the *making* of such a motion and the negative press that followed will have on the firm;

- Ross encouraged C&B employees to anonymously contact The Buffalo News to report false statements in order to belittle me, harm C&B, and create a public aura of success about his false claims in this litigation (Davis Aff. ¶9; see Kowalik Aff. ¶4);

- Ross created advertisements for his new "Cellino & Cellino" firm with his daughter and grandchildren—despite the fact that C&B is still functioning and no determination has been made as to dissolution—focusing on the "Cellino family name" and discussing leaving the firm's legacy to his grandchildren;

- Ross continues to solicit other attorneys at C&B to join Cellino & Cellino by making statements to them such as "nobody calls a Harley Davidson a Davidson";

- Ross has created a website for his new "Cellino firm" despite C&B's continued existence and effective functionality; and

- Ross illicitly solicited an employee of a major competitor of C&B to hack into C&B's website and steal proprietary information and transfer said information to his new "Cellino & Cellino" firm website.

The aforementioned conduct is that of a person focused solely on destroying C&B and obtaining dissolution at all costs—despite the fact that no actual basis exists for him to do so. Ross has acted in bad-faith in an effort to achieve the ulterior, unspoken motive of co-opting C&B so that he may form a "Cellino legacy firm." He completely disregards that dissolution would harm both of C&B's shareholders.

12. Ross's alleged "deadlock" and "dissension," as well as all his efforts to cover up his true motive for this entire episode, including his secret attempts to build Cellino & Cellino during the pendency of these proceedings, and all the claims of "lack of trust" constitute a carefully planned ruse to obtain dissolution through false claims made in bad-faith and by baselessly arguing that there are legitimate grounds for the dissolution of this extraordinarily successful law firm. Ross has worked hard and made many misrepresentations to conceal his true motives.

13. It is telling that nowhere in Ross's affidavit does he mention "Cellino & Cellino," that five (5) of his six (6) children are either attorneys or will soon become attorneys, or that he has been making ads with his children and grandchildren and taking every step necessary to set up a Cellino family law firm.

14. While I am forced to respond to the allegations submitted in support of the Petition, and while I understandably have concerns about Ross and the conduct he has engaged in, I would still welcome continuing as co-shareholders with him and furthering the prosperity of C&B. The important thing is that C&B continue for its clients and employees.

15. The remainder of this affidavit is focused on responding to the allegations contained in the affidavits submitted in opposition to Respondents' motion for summary judgment to dismiss and deny dissolution and in support of Petitioner's motion for the appointment of a temporary receiver. As I previously submitted an affidavit in support of denial and dismissal of dissolution, I hereby incorporate the facts and averments therein and only reiterate certain facts as necessary to respond to the following affidavits:

a. Ross Cellino;
b. Denis Bastible;
c. Sareer Fazili;
d. Scott Carlton;
e. Gregory Pajak;
f. Maureen Napoli; and
g. Karen Byrns.

RESPONSE TO ROSS CELLINO AFFIDAVIT

16. Due to the fact that certain allegations are raised in multiple affidavits, including Ross's, I will address these general, recurring allegations first before discussing allegations occurring specifically in Ross's affidavit.

I. C&B's continued success and effective management.

17. As discussed in full in my affidavit, sworn to July 27, 2017, C&B continues to be an extremely successful law firm and continues to provide exemplary legal services to our clients.

18. Since May 10, 2017, the date that Ross commenced this action by instituting a raid on his own firm (see Ronald Minkoff 6/23/17 Aff.), the firm continues to function effectively and successfully:

a. C&B has hired three (3) new attorneys, which were made upon consensus of both Ross and I;

b. Ross and I agreed to terminate an attorney on consensus;

c. Ross and I agreed to pay an attorney a severance package on consensus;

d. We have agreed to charitable contributions on behalf of the firm;

e. Ross and I agreed to appoint Alex Bouganim as the Managing Attorney for the Manhattan office and pay him a substantial bonus for his work managing that office;

f. We agreed to provide annual bonuses to C&B employees;

g. new client intake calls have continued unabated—indeed new client calls have been trending upward for the past three-plus years;

h. lawyers are working up, settling, and trying cases;

i. C&B's support staff continues to work hard and effectively;

j. the firm achieved a mass torts settlement of $5,000,000;

k. attorney earnings are at a record high thus far in 2017;

l. the projections for 2018 and beyond are slated to be even better years than 2017; and

m. the principals have distributed profits of $10,000,000 EACH since the beginning of 2017, including $5,500,000 EACH since the date that this action was commenced.

19. The firm is functioning in all respects. Indeed, contrary to Ross's allegations, we have actually worked together and mutually consented on firm business since the Petition was filed. These are not circumstances warranting dissolution.

20. In response to these undisputed facts, Ross argues that the financial success of C&B is irrelevant and that my purported "seizure of control has prevented the firm from being more financially successful." (Cellino 10/13/17 Aff. ¶¶ 10-11).

21. C&B's financial success is not irrelevant, as discussed in the accompanying memorandum of law, and demonstrates the clear fact that C&B continues to function extremely effectively. This fact is supported by more than mere financial success, as seen above.

22. As for Ross's contention that if I had "listened to his views and suggestions, the firm would be, and would have been more financially successful[,]" it is pure speculation and erroneous.

23. First, I disagree that I did not listen to his views and suggestions. While Ross withdrew from the management of C&B and largely absented from firm decisions—as discussed later herein (see infra)—what input he did offer I certainly listened to and took into consideration. Some ideas were implemented, others were agreed to not be beneficial, by both Ross and I.

24. Second, there is absolutely no evidence whatsoever, even if I had failed to listen to Ross's views and suggestions, that C&B would be more successful. He has submitted nothing to support this speculation. On the other hand, I have submitted undisputable evidence that C&B is extraordinarily successful and an effectively managed, fully functioning law firm.

25. It is also impossible for Ross to reconcile these facts with another baseless and speculative statement that "Cellino & Barnes, PC will inevitably suffer significant harm." On the

contrary, all projections demonstrate a clear continuation and growth of the firm's success. Indeed, the report conducted by FreedMaxick, submitted herewith, expressly states:

> The potential total Personal Injury (PI) and Mass Tort revenue was provided for 2017 through 2019. Firm revenue (PI and Mass Tort) was projected to grow from approximately $60.9 million in 2017 to $73.8 million in 2019.
> Per our review of the first six months of activity for 2017, it would appear that **revenue is ahead of projections ($35.81 million)** so based on a valuation date of December 31, 2016, **projected amounts appear reasonable**.

(McPoland Aff. Ex. 2, p. 4 (emphasis added)).

26. However, in an attempt to substantiate his claim, Ross has submitted, along with a few attorneys on his behalf, allegations that C&B was suffering from a drought of client intake calls in the Rochester office.

27. This is false. Client intake throughout the firm has been on the rise over the past three (3) years. The actual statistics on a per-office average belie the claims:

1 year:

(10-17-16 to 10-9-17)	19.66 cases/wk avg.	Total 4,090	(increase in the last year of 157 cases)
(10-19-15 to 10-17-16)	18.90 cases/wk avg.	Total 3,933	

2 years:

(10-19-15 to 10-9-17)	19.20 cases/wk avg.	Total 8,023	(increase 122 cases over the preceding 2 years)
(10-21-13 to 10-19-15)	18.99 cases/wk avg.	Total 7,901	

3 years:

(10-24-14 to 10-9 -17)	19.00 cases/wk avg.	Total 11,872	(increase 210 cases over the preceding 3 years)
(10-24-11 to 10-24-14)	18.68 cases/wk avg.	Total 11,662	

28. These statistics directly contradict any claim that the Rochester office was suffering from decreased client intake. (See Ciambella Aff. ¶¶ 40, 48). From January 1, 2016, until the week

of May 10, 2016 (the first 19 weeks of the year), Rochester opened 10.1 cases per week. During the same period in 2017—January 1, 2017, until Ross commenced his petition on May 10, 2017—Rochester opened 15.4 cases per week. This represents a **fifty percent (50%) increase** over the previous year.

29. As such, any argument that client intake was on the decline is utterly and undisputedly false. Therefore, Ross cannot substantiate any argument that C&B (a) is not successful, (b) will not continue to be successful, (c) could have been more successful, or (d) will suffer inevitable harm.

II. Ross's voluntary withdrawal from C&B's management.

30. The affidavits of the Management Team—Messrs. Brennan, Schreck, Ciambella, and myself—all make clear that Ross has been largely disengaged from the firm's practice and management since Ross's return from suspension in 2007. Ross's disengagement was wholly voluntary and no usurpation occurred as Ross has wrongfully argued.

31. Importantly, Ross has not and cannot rebut the affidavits of the Management Team. Simply put, nothing exists to rebut the facts we attest to. Indeed, Ross's disengagement is corroborated and confirmed by the dozens of staff and attorney affidavits that were submitted in support of Respondents' motion to dismiss and detail each individual's personal experiences and observations of Ross's withdrawal.

32. On the other hand, the affidavits Ross has submitted in rebuttal are overwhelmingly outnumbered and, most importantly, contain averments to which the affiants cannot swear because they lack personal knowledge. Submitted herewith are supplemental affidavits of the Management Team which, when combined with this affidavit, expressly set forth the fact that none of Ross's affiants have personal knowledge of the instances in which Ross withdrew from firm management

and voluntarily disengaged from C&B's practice. The Management Team are the individuals with actual personal knowledge to these events.

33. As previously discussed in these proceedings, Ross has been disengaged from the firm's practice since he returned from his nineteen (19) month suspension in 2007. I was forced to take full control of the firm during Ross's suspension, and forced to retain that control following his return because Ross disengaged from the practice and management of C&B.

34. I have been the principal driving force behind the management and success of the firm for many years, but only because of Ross's voluntary disengagement. Ross never asked for management meetings—either regular or unscheduled. If Ross had asked for management meetings, regular or otherwise, I would not have turned down any such request. My mindset on this issue remains unchanged. It is my hope that post-lawsuit Ross will return as an active co-shareholder and manager, and that Ross and I will be able to collaborate productively as we had for many years.

35. Admittedly, in 2015, Ross did approach me and sought to take over my longstanding "settlement authority" duties for the firm's Rochester office. I had concerns about this request because I have been the shareholder who has been responsible for "settlement authority" duties firm-wide for at least the past fifteen (15) years. Ross had not been involved in this firm function at all.

36. I have developed a unique expertise in my ability to place reasonable values on personal injury cases by virtue of the fact that I have reviewed more than 35,000 cases during this time. This is often a complex process that involves multi-faceted considerations including analyses of liability, damages, venue, client, insurance coverage, opposing counsel, insurance companies involved, and many other factors.

37. I was deeply concerned that, because of Ross's disengagement from the practice for many years, he would not have been in a position to simply step in and take over my duties in this regard with the same level of expertise.

38. When Ross approached me with this idea about Rochester, I explained all of the above to him, and he seemed to understand. Believing that Ross wanted to re-involve himself in the firm, I told Ross that there were many other things that he could do to advance the practice and the clients' cases, including discussions with lawyers, discussions with clients, review and comment upon papers filed in Supreme Court and briefs at the Appellate Divisions, and evaluation of attorney production and case handling. These were but a few of the suggestions that I made to Ross.

39. C&B's Head Managing Attorney Robert Schreck and Chief Operations Officer Daryl Ciambella—both of whom were and are members of the Management Team and intimately involved in C&B's practice and daily management—also often times attempted to suggest things to Ross that he could do to advance our firm's practice. These entreaties either fell on deaf ears or Ross simply refused to want to do the work necessary for "getting involved in the practice."

40. Ross was not interested in doing what was best for the firm, but rather was set on doing whatever he desired with no regard to firm management, procedures, or prior practice. All of my decisions have been made with the best interests of the firm and the firm's clients in mind. I never had, and still do not have, any desire to exclude Ross.

41. Ross's desire to take over settlement authority for the Rochester office was not for the good of the firm or the good of the Rochester clients. Ross apparently did not desire to perform the work that would help C&B.

42. Ross has also always been free to involve himself in case management responsibilities at any time and to whatever extent he would like to be involved. Ross has voluntarily chosen to disengage himself from these duties.

43. I have **never** told Ross that he could not involve himself in case management duties. The only thing that I ever asked of Ross in this regard is to allow me to continue to do the areas of work in the disciplines of case and settlement management that I have done proficiently for many years.

44. Again, this is a non-issue, operational matter that Ross is raising in an effort to create dissent. Ross knows full well that he has been voluntarily disengaged from the practice for many years and he admitted the same to Ciambella and I at a 2014 meeting when he stated that he "has done nothing for the past 10 years" and that he was consequently "bored." It is disingenuous in the extreme for Ross to now claim that I am somehow responsible for his disengagement from the practice. Ross has been occupied with personal ventures for many years.

45. Neither I nor any other member of the Management Team have ever refused to permit Ross to exercise control over the firm. Ross is a 50% shareholder of a multi-million dollar law firm. It is up to Ross to take productive initiatives to do things that will advance the interests of the firm and of the firm's clients. It is my hope that going forward Ross will decide to get more productively involved, instead of continuing to pursue this destructive course.

III. Issues relating to the California LC.

46. As the Court is aware, the California Law Corporation ("LC") is now an entirely separate business that will soon be entirely autonomous and will no longer use any C&B facilities and cross-charge for the use of the same. The Barnes Firm, L.C. in California uses a separate telephone number and website.

47. Ross's rendition of the history of the LC is incorrect.

48. Ross, Daryl, and I had been discussing and planning the possibility of opening an office in Los Angeles for at least three (3) years before the Fall of 2013. During this time, as had been the case with every expansion that the firm had ever made, I assumed that Ross and I would be 50-50 shareholders. During the planning period, Ross had never expressed a lack of interest in the L.A. expansion.

49. Indeed, in planning for the L.A. expansion, Ross and I met with John Sheehan, Esq., an attorney who at that time had been working for C&B in Buffalo for eleven (11) years, and was admitted in New York and California, with the intent of asking him to be the managing attorney for the L.A. office. Sheehan had previously expressed an interest in moving to California and opening the L.A. office. During meetings with Sheehan, Ross, and I, we discussed many issues pertaining to the expansion including Sheehan's compensation and paying for his move to L.A.

50. It was not until shortly before Sheehan was to move to L.A. that Ross approached me and advised me that he would not participate in the expansion. Realizing that this would be a major departure from the way that Ross and I had done business together for our entire business relationship, I tried to talk Ross out of his decision to back out of the expansion at the last minute. Daryl Ciambella also spoke to Ross on at least two occasions to try to get Ross to change his mind about backing out of the expansion. Ross refused to change his mind.

51. For three (3) years before Ross's voluntary decision to back out of the L.A. expansion, Ross was fully in support of the expansion and was a participant in several meetings where projections and other details of the expansion were discussed. The firm had already expanded to Rochester, Long Island, and to New York City, the nation's largest city. The expansion to L.A. was a natural expansion as L.A. is the nation's second largest city, and California

has generally favorable tort laws. It was also a big benefit that Sheehan wanted to spearhead the L.A. expansion because both Ross and I knew Sheehan well and trusted him.

52. On a personal level, I realized that without Ross both the risk of going forward with the L.A. expansion and my personal investment would be twice as great. Nonetheless, with Ross's consent, I made the decision to go forward with the expansion.

53. Ross stated that he had no objection to my undertaking the expansion myself. Ross agreed to become a 0.1% shareholder in the LC and that the California entity could, as planned, use the brand C&B along with the 800 telephone number and the facilities of the PC. Ross and I agreed that the PC would be reimbursed for the use of certain shared PC facilities and that this reimbursement would be made by annual "cross-charges."

54. Until July 12, 2017, the LC indisputably had Ross's express permission to use the PC's assets.

55. However, on July 12, 2017, Cellino withdrew his minimal interest in the LC and, on July 13, 2017, through counsel Kenneth P. Friedman, Esq., attempted to revoke his consent.

56. Annexed hereto as **Exhibit 1** is a copy of Ross Cellino's July 12, 2017, Withdrawal Letter.

57. Annexed hereto as **Exhibit 2** is a copy of Ken Friedman, Esq.'s July 13, 2017, letter.

58. While I expressly contest whether Ross has/had authority to make such a revocation, in an effort to be cooperative, I agreed to change the LC name to "The Barnes Firm, L.C." and to "fully separate and segregate the LC from the New York PC[.]"

59. Annexed hereto as **Exhibit 3** is a copy of Robert Bencini, Esq.'s response to Ken Friedman's July 13, 2017, letter.

60. Since receiving Ross's demand, the LC began, and has nearly completed, the separation process, including, but not limited to, switching the use of their phone number away from the "888" number. By the end of 2017, the separation will be mostly complete and Cellino's baseless allegations, which are the basis for his seeking the appointment of a receiver, even if they could have been deemed valid, will cease to exist.

61. Any LC use of PC resources during the transition period can be assigned a monetary value (if established through an accounting), has a definite end date, and can be remedied by the LC paying said monetary value if need be.

62. The use of PC resources is not an issue. Ross merely is attempting to make it one.

63. Ross is also attempting to make issues out of the value of the cross charges the LC paid the PC because (a) he contends that the value was insufficient and (b) he fails to recognize the benefits the PC gained from the LC. These are also not issues for a dissolution proceeding, however, I will address them nonetheless.

A. The value of the cross-charges was reasonable.

64. Daryl Ciambella provided Ross with accountings for the LC/PC cross-charges, and these accountings did not take into consideration the large benefits that the PC received from the LC during the three-and-a-half years that the entity on the west coast was called "Cellino & Barnes" and used the 800-888-8888 telephone number. I asked Ross for a counter-accounting, but he failed and refused to produce one.

65. Instead, Ross had the office manager go from employee to employee to ask what percentage of their time they spend on the LC. This was in December of 2016. This was a very inaccurate way of determining employee time spent on the LC because if an employee was spending 20% of his or her time on the LC in December, he or she might have been spending

differing percentages of time during different times of the year. It simply made no sense to do it on a "snap-shot self-reporting" basis. It also makes no sense whatsoever to ignore the value that the New York PC enjoyed by virtue of the massive spending that I did on the west coast while that entity was named "Cellino & Barnes."

66. Timothy McPoland has expressly opined in his expert opinion that the amount the LC reimbursed the PC was reasonable, and that, actually, the PC owes the LC for amounts not taken into account in the cross-charge allocation. (McPoland Aff. ¶¶ 16, 51).

67. Ross also erroneously argues that the LC did not provide the PC reimbursement until after he threatened me with dissolution. This argument is carefully crafted to mislead the Court and draw attention away from the circumstances as a whole. Daryl Ciambella and I were attempting to obtain a counter-accounting from Ross so that we could work on a mutually agreeable value, which, as discussed above, he never provided. (Instead, he continued to provide an arbitrary and unsupported value he contended was owed). The reason we provided the reimbursement when we did is because Ross had refused to cooperate with us and then used the resulting hold-up to claim that we were not reimbursing the PC. As such, at that point we reimbursed the PC an amount we had calculated as reasonable based on our own accounting. However, Ross again twists the facts to try to support his narrative.

B. The LC provided substantial benefits to the PC.

68. As Ross is a one-half owner of the Cellino & Barnes brand, Ross has greatly benefitted from my large investment on the west coast without having invested any money in the same. C&B primarily deals with national vendors in purchasing media including TV, radio, and billboards. Because C&B greatly increased its overall spending on various media since the firm

has been investing on the west coast, these national vendors are in a position to give the PC pricing breaks that would not otherwise be available absent the west coast media spending.

69. My spending on the west coast began to, and would have continued to, increase the overall fees obtained by C&B as a result of the greater volume of mass torts cases that were gathered by C&B as a whole. Ross did not contribute to the investment that was necessary to achieve this greater volume of mass torts cases. Yet, the PC has signed many mass torts cases in jurisdictions where the PC practices as a direct result of national advertising spends paid for by the California LC. Ross is a direct beneficiary of this.

70. One benefit the PC received from the LC was with respect to Daryl Ciambella, Robert Schreck, Thomas Balthasar, Karen Byrns, Maureen Napoli, and other employees. The PC was paying these employees set salaries for work that they did for the PC. Because they all did some work for the LC in 2016, the PC was reimbursed $250,000 for that work/time. Thus, the PC received $250,000 during 2016 that never would have been paid but for the existence of the California LC.

71. Another clear benefit was increased client intake and profit as a result of the LC's national advertising, and the national image that expanding to California created.

72. Ross and I had hoped that the expansion to California would bolster the "national image" that both of us had sought to create for the firm with the expansion to downstate New York—Ross's new claim that he was not in favor of the creating of a national footprint and image for the firm is belied by the fact that for many years we ran advertising campaigns on consensus focused on our selection by *US News & World Report* as one of the nation's top personal injury firms, and our selection by Woodward/White's peer selection to *Best Lawyers in America*. We ran

these campaigns for many years with Ross's enthusiastic approval. This creation and expansion of a "national image" was a subject that was discussed during L.A. expansion planning meetings.

73. Shortly after opening the L.A. office, Ross and I agreed to the production of a "coast-to-coast" advertising campaign for C&B. Ross was fully supportive of this "coast-to-coast" advertising campaign. The coast-to-coast campaign would not have been possible but for my sole large investment in the L.A. expansion, without any participation from Ross. The PC benefitted from my sole investment—including C&B's national image, Google's brand recognition, and C&B's improvement in Google rankings—with no cost to the PC or Ross.

74. In the three-and-a-half years since the California expansion began, and while the California entity was still known as Cellino & Barnes, I had invested approximately $20 million in the promotion of the name "Cellino & Barnes" and the 800-888-8888 telephone number. This investment has directly benefitted the overall image and value of the "Cellino & Barnes" brand.

75. The huge investment I made on the brand and number in California that happened during the three-and-a-half years that the California firm was called "Cellino & Barnes" was a predominant factor in the significant jump in intakes in New York State during that time period.

76. Ross chooses to blind himself to this fact because it does not fit his narrative.

77. The addition of offices in Los Angeles, Oakland/San Francisco, and San Diego also added prestige and cache to the C&B brand.

78. The LC also provided a significant benefit to the PC in regards to the firm's mass torts practice. Ross acknowledges in paragraph 69 that I sent an email directing that any mass torts case from New York State or Northern New Jersey would be PC (not LC) cases, irrespective of whether the PC retained the case as a result of the LC's national advertising. The PC has not advertised for Mass Torts outside of New York State in almost a decade—and even when it did, it

was extremely limited in areas. Therefore, the PC benefitted directly from LC national advertising on Sirius radio and other national media buys because, despite the fact that many new clients called after hearing ads paid for by the LC, the PC was given the cases.

79. Additionally, because the PC and LC both have mass torts practices, had Ross not demanded that the LC change its name to the Barnes Firm, the mass torts cases added to the LC case portfolio would have directly benefited the PC when the time comes for settlement of the various matters. C&B has been involved with mass torts litigation for more than sixteen (16) years. It is well known in mass torts practice that the plaintiff's firms with a greater number of cases in a given litigation will fare far better at settlement time than firms that have fewer cases. Ross is well aware of this fact.

80. Ross also ignored the benefits resulting from collaboration between the PC and LC. Ross either does not want to acknowledge or is apparently so uninvolved that he is not even aware of the fact that asbestos attorneys in NYC and Rochester regularly collaborate with California attorneys on the PC's mesothelioma and lung cancer issues. Asbestos litigation has been one of our up-and-coming and most lucrative areas of practice for the past several years. Joe Vazquez (NYC) and Brett Manske (Rochester) collaborate with the four California attorneys who handle asbestos litigation, and the PC's practice certainly benefits from that collaboration. In addition, the firm benefits from other collaborative LC/PC efforts including exploding eCig cases and even some general tort collaboration. Again, Ross chooses to turn a blind eye to these benefits of a national practice because they do not fit his narrative.

81. The above demonstrates only some of the benefits that the PC gained because of the LC's existence. However, Ross refuses to acknowledge any benefits. He ignores that the cross-charges the LC paid the PC should take those benefits into account.

82. In any event, the important fact is that the cross-charges are not an issue necessary for the determination of these proceedings. I am, and always have been, willing to pay the reasonable amounts of the cross-charges so long as it was done by a proper accounting. Ross's first attempt to provide said accounting, despite multiple requests for the same, was in the instant lawsuit by retaining Kelly Besaw.

83. While the FreedMaxick report clearly establishes that the cross-charges were reasonable, and while it is clear that the LC provided substantial benefits to the PC, the point remains that the true remedy here is for an accounting to be done to establish the true amount of cross-charges owed—the remedy I asked Ross to engage in months ago. Again, neither dissolution nor a temporary receiver are necessary to perform said accounting.

IV. The harm the appointment of a receiver will cause.

84. Respondents retained multiple experts in support of their motion for summary judgment and in opposition to Cellino's motion for a temporary receiver. Both Ronald C. Minkoff, Esq. and Timothy McPoland, CPA, CVA, CFE, ABV opined that C&B would suffer substantial harm if a receiver is appointed. (McPoland Aff. ¶52; Photiadis Aff. Ex. 1 [Minkoff Report] ¶¶ 2, 22-26).

85. Minkoff set forth in detail three types of harm that C&B will likely suffer if a receiver is appointed: (1) C&B's reputation will be harmed in the eyes of the public—including in the eyes of clients—because the appointment of a receiver implies mismanagement (or worse) even though mismanagement may not, and in the instant case does not, exist; (2) appointing an independent receiver would threaten the confidentiality of client information because the receiver would be privy to the Firm's most sensitive information; and (3) C&B's employee morale will be damaged by questioning the validity of the Firm management over the past several years and

moving forward. (Photiadis Aff. Ex. 1 [Minkoff Report] ¶2). Indeed, Mr. Minkoff explained that his research and experience indicates that a receiver has only been appointed for a still-functioning law firm once, and that was because the firm was "on the brink of disaster." Id. At ¶20. Those circumstances are not present here.

V. Response to Ross's various additional allegations

86. Ross begins his affidavit with the continued pursuit of his false allegation that I have run the firm as a "dictatorship." He also persists with the meritless and false claim that I have "bullied" him. These allegations are fabricated for the purpose of attempting to gain an advantage in this litigation.

87. As I have previously averred, since Ross's return from suspension in 2007, he has chosen to voluntarily disengage himself from the firm's management and practice. After Ross returned from his suspension in 2007, he refused even to become a signatory on the firm's escrow accounts. At that time Ross told me that he refused to take any risk associated with signing escrow checks (the firm issues hundreds of escrow checks a month) because it was the signing of an escrow check that resulted in the Fourth Department suspending Ross in 2005 for "dishonesty." Ross was more than happy at that time to foist all of the risk associated with signing escrow checks upon me, and to assume none of that risk himself. For ten (10) years he has never offered to become a signatory on the firm's accounts.

88. Dissolution would not be beneficial to C&B's shareholders. Indeed, by Ross's own written admission, dissolution would catastrophically injure the firm's shareholders. Cellino has admitted at paragraph 242 of his Amended Petition that dissolution would not "benefit the shareholders", as is mandated for dissolution to be ordered pursuant to BCL 1111(b)(2), but rather that dissolution would "**result in short-term financial loss to himself and Respondent**." Indeed,

Ross has admitted that it would be "financial suicide" for the shareholders if C&B were to be dissolved (see Manske Aff.). Moreover, Ross's November 10, 2017, e-mail detailing that he and I will suffer "zero cash flow" as a result of dissolution—as well as his desire that I be "crushed" by the same (Schreck Aff. Ex. 1)—clearly demonstrates that dissolution does not benefit either shareholder let alone both of us. Ross focuses solely on the purported benefit he will gain from dissolution—which I vehemently contest—but, in any event, ignores the clear and admitted harm dissolution will cause me.

89. Additionally, C&B is not a partnership but a professional corporation subject to New York corporate law. Ross's oft-stated and obviously incorrect reference to the relationship between he and I as a "partnership" is an attempt to mislead the Court—and to shoehorn this case into a partnership case—because Ross knows full well that we are not "partners." We are corporate shareholders. Annexed hereto as **Exhibit 4** is a copy of an e-mail sent by Ross expressly indicating his recognition of C&B's corporate structure.

90. Self-inflicted angst and manufactured "deadlocks" are not grounds for dissolution under the BCL. Ross has acknowledged in writing that if the Court rules against dissolution he would be able to "work things out." (See Barnes 7/27/17 Aff. Exhibit 13). Ross cannot reconcile this written admission with the claim that he is now making that there "is simply no viable alternative to dissolution."

91. Ross's claims that the alleged disagreements between "the two 'partners'" (again Ross and I are NOT partners) are "compounding the harm to the firm in both the short and long-term." These claims ring hollow; especially where, in an e-mail dated March 4, 2016, Ross admits: "over the last 10 years I [Ross] **have spent the majority of my time agreeing with choices and decisions you've proposed (or otherwise unilaterally made)**[.]" (Cellino 10/13/17 Aff. Ex. M).

92. Ross admits that he agreed with my management for ten years and then turns around in the Petition and claims that I usurped control and inefficiently manage C&B. His claims are contradicted by his own admissions.

93. To achieve his ends, Ross has violated his ethical obligations as an attorney and his fiduciary duties as an officer, director, and shareholder of C&B. His bad-faith motives are further demonstrated by his conduct, as described previously herein.

94. In short, Ross has done everything in his power to achieve his personal desires of obtaining a legacy firm, including attempting to "burn the firm to the ground" and "crush" me with dissolution.

95. Ross's claim in paragraph 49 that I made a "conscious decision" to not allow him to be involved in significant cases is not only false, but it is indicative of Ross's extreme insecurity as an attorney. No one ever "blocked" Ross's involvement in working with attorneys on significant cases. He has always been and remains free to involve himself in these and any other cases in whatever capacity he chooses. He has simply rarely chosen to so involve himself.

96. Ross was involved in other personal pursuits, like building his golf course, building his mansion, running a tree farm business, and running a heavy equipment business. He knew that I was very capable, and for years he was more than happy to allow me to do the labor. (See Cellino 10/13/17 Aff. Ex. M). It was not until his children began entering and graduating from law school that he started to connive that he could use this claim as a "ground" for dissension to further his plot to co-opt the firm for his family.

97. It is true that for a brief period of time Ross took it upon himself to follow Robert Schreck around and sit in on Schreck's very valuable attorney reviews. But it was soon obvious that Ross had little serious interest in this work as he was literally falling asleep during these

meetings or playing on his i-phone. Rather than productively assisting in the reviews, Ross's presence at the reviews became a distraction. However, nobody stopped Ross from continuing to tag along for the Schreck reviews, and certainly nobody stopped Ross from conducting reviews of his own. In fact, this was suggested to him by Schreck and myself, but our suggestions fell on deaf ears.

98. Ross was never willing to acknowledge that there was and is an enormous number of tasks at a firm of our size that he could have done and can still do that would benefit the firm and our clients. Instead, once Ross started to say anything at all about involving himself in the firm, he insisted on doing the things that I had been doing very proficiently for many years. There was and is no need to divide the labor that I do, as there were and are so many other things that Ross could have done and can do himself—without getting any "permission" from me. He chose not to do any of the myriad other tasks because his narrative was only fulfilled by artificially creating "dissension" and "deadlock" so as to enable him in ultimately bringing this dissolution petition.

99. As to Ross's single trial earlier this year, the case in question should never have been tried and turned out to be a colossal waste of time and firm resources. If Ross had consulted with me before trying this case, I would have advised him to settle the case for the good of the firm and the good of the client.

100. Contrary to Ross's statement in his affidavit, our job as attorneys is <u>not</u> to plow headlong and unthinking into a sure loser of a trial for the sole purpose of giving a client his or her "day in court." Our job is to analyze the best possible course of conduct so that we may give clients sound advice based upon our experience. Many times that advice must be to tell a client that a trial is not the way to go.

101. I have been involved in every million dollar (or more) case that the firm has ever resolved and give advice to attorneys and clients on settlement and trial strategies in all types of cases large and small. I have also been involved as lead counsel in many large cases, including a current large products liability case pending in New York County that has involved hundreds of hours of work and an appeal that I recently briefed and argued in the First Department. Indeed, the First Department has awarded us summary judgment in favor of our profoundly injured client as to liability. See M.H. v. Bed Bath & Beyond Inc., 2017 N.Y. Slip Op. 07790 (1st Dept. 2017). The damages case will be tried in March of 2018.

102. Regarding pages 32 and 33 of Ross's affidavit, any suggestion I "take California" and Ross "take New York" is an absurd proposal as I already own the California entity and I own one-half of the New York entity. Thus, Ross's idea of an equitable resolution was to give me what I already own, and then keep the entirety of the entity of which I am a one-half owner.

103. It is true that Ross and I did have one heated discussion behind closed doors in December of 2015 where both of us raised our voices. However, to suggest that we were close to coming to blows is ridiculous. This is literally the only time that an argument of this kind has happened in twenty-five (25) years of our business relationship together, which I would suggest is a rather remarkable record of friendship and cooperation. I suspect that an occasional heated discussion between shareholders is not the most unusual thing in the world. Neither of us exchanged any threats to the other, and the conversation ended with a hand shake and a mutual statement that we would have further discussions later.

104. In paragraph 63 Ross quotes from his own email where he stated that "we should be counterpunching Mattar." As described at Paragraphs 147 and 237, infra, Ross's proposal was not "counterpunching" but consisted of content that was ethically impermissible.

105. On pages 20-21 of his affidavit, Ross chooses to blind himself to the value the PC received from the national prestige and Google strength brought about as a result of the California expansion of C&B. It is Ross's narrative that the California LC was a "drag" on the New York PC, but the facts and statistics rebut that narrative. During the three-and-a-half years that the California LC was called "Cellino & Barnes" and was using the 800-888-8888 telephone number, I—without any contribution from Ross—spent over $20 million on the promotion of the C&B brand and telephone number on the west coast. With Ross's consent, the New York PC based an entire advertising campaign on a "coast-to-coast" concept.

106. I respectfully refer the Court to the intake statistics chart set forth at Paragraph 27 (supra). As can be seen, the New York PC took in 210 more cases during the last three years than it had taken in during the three (3) preceding years. This time period coincided with the time that I was spending money promoting the brand and phone number on the west coast, and while we were using the "coast-to-coast" advertising campaign in New York and California. Historically, each case is worth an average of $60,000. Therefore, those 210 additional cases will mean more than $10 million extra in settlements or roughly $4,000,000 in fees for the New York PC.

107. Regarding Google, it really doesn't matter whether Ross and I discussed Google enhancement as a result of the California spending during the California planning stage—although we did. What matters is that it simply cannot be denied that C&B would never have achieved its coveted "brand status" with Google but for the huge west coast investments. Ross may ignore this benefit, again because it does not fit into his narrative, but the "brand status" with Google was only achieved after C&B had a substantial west coast presence. This helped the New York PC enormously, and it would still be helping the New York PC if Ross had used better business judgment and refrained from spitefully forcing the name and number change on the west coast.

108. Why would any businessperson who was doing business without obsessively pursuing a hidden personal agenda, stop someone from spending millions of dollars promoting a brand that the businessperson owned half of? This is a textbook case of cutting off one's nose to spite one's face. Moreover, Ross tries to use the fact that the LC changed its name to The Barnes Firm against me and in support of his positions as though it were not he who forced the issue in the first place.

109. Ross erroneously claims that I am unfairly competing with C&B because the California LC changed its name to The Barnes Firm, L.C. Ross fails to mention that the only reason said change was made was because he forced it to happen. My goal from the beginning was, and remains, to keep all of C&B together and functioning as it has for so long.

110. Ross also alleges issues with certain C&B attorneys. In his effort to divide, cause dissension, achieve his oft-stated objective to "burn the firm to the ground", and detract from the actual relevant issues, Ross is fond of complaining about Ellen Sturm and Richard Barnes. As such, I am forced to respond, although I reiterate this topic's irrelevance to the ultimate issues.

111. Ellen and Richard are extremely qualified and competent attorneys who earn every dime of their compensation. This is confirmed by Denis Bastible's supplemental affidavit.

112. Richard has been with the firm for 18 years. Richard's affidavit explains the rationale behind his compensation package, but Ross has a very short memory because Ross was certainly very happy to have Richard around in 2005 and during the 19 months of Ross's suspension between 2005 and 2007. Richard is a highly respected trial attorney in Western New York and has achieved many multi-million dollar settlements for the firm. The allegation that Richard is a "slacker" is absolute garbage and Ross has no basis in fact for making this claim.

113. As for Ellen, she has one of the best resumes of any attorney in the firm. She is an outstanding appellate advocate and the first attorney at C&B to have ever successfully argued a case before the Court of Appeals. Ellen also holds the record at C&B for the firm's largest out-of-state multi-million-dollar settlement. Ellen has been with the firm for the past nine (9) years, and she has acted as mentor to many of the firm's younger attorneys including and especially the firm's outstanding cadre of six female attorneys. Ross's suggestion that Ellen is "handed" quality cases because of her relationship with me is not grounded in fact and it ignores who Ellen is as an attorney.

114. An income comparison of Ross's brother-in-law, Denis Bastible, Richard Barnes and Ellen Sturm reveals that there is no basis for Ross to claim that there is any favoritism in the firm. Denis's income over the past five years has been largely comparable to Richard's and nearly twice as much as Ellen's. Yet, I have never attempted to go to Ross and lessen Denis's compensation because it was too high. He earned it, just as Richard and Ellen have earned theirs.

115. As for the large products liability case in Manhattan that is being handled by Ellen, Richard, Dylan Brennan, and myself, Ross has no concept of this as he has never been involved in a case of this complexity and significance, nor has he lifted a finger to offer any help on this case. This is easily a four attorney case. Each of us has dedicated hundreds of hours to this case.

116. Regarding Ross's proposed opening of an independent office in Syracuse, he is correct that I initially expressed that I would not have a problem with the general idea of him opening an independent office. However, the idea was that he would not compete with or take away cases from C&B. When we looked at our case intakes for Rochester we saw that about twenty percent (20%) of the cases being handled by the attorneys in Rochester involved clients who lived in Syracuse's 315 area code. C&B's Rochester attorneys expressed hesitation and opposition to

the competing office opening in Syracuse. As such, it was untenable for Ross to open an office in Syracuse that would directly compete with our office in Rochester. I did not end all discussions of him opening an independent office, but rather, remained open to the idea. In fact, I suggested that if Ross wanted to pursue this idea he should look at some location where C&B does not compete, like Albany.

117. As for Ross's claims regarding his desires/plans for our mass torts practice, Ross euphemistically uses the terms "co-counsel relationships" or "partnering with Mr. Girardi" so as to avoid the fact that Ross was really proposing that C&B should become a "referring mill" for mass torts. A "referring mill"—as the term is commonly understood in this industry—is a firm that advertises for mass torts or other cases with no intention of handling the cases itself, but rather with every intention of referring those cases out to national counsel in exchange for a portion of the proceeds. C&B has never operated a "referring mill." All cases that we have ever attracted through advertising or otherwise have been handled by our firm's attorneys.

118. Becoming a "referring mill" for mass torts, as suggested by Ross following his meeting with a national counsel for mass torts, would have been a sea change against the way that C&B has done business for twenty-five (25) years. Brian A. Goldstein, Esq. (an MD/JD) has been the attorney at C&B who has been primarily responsible for our mass torts practice since we began handling mass torts sixteen (16) years ago. Goldstein is a brilliant attorney and is highly proficient at what he does. Since the time that the firm has been handling mass torts cases, the firm has recovered more than $140,000,000 in mass torts settlements for our clients (including $5,000,000 since the petition was filed).

119. When Ross broached the idea of establishing a "co-counsel" relationship with national counsel for mass torts, Goldstein and I reminded Ross that the firm has had an

extraordinarily successful run in the mass torts arena, and that there is much blue sky ahead if the firm stays the course. Ross was not aware of the C&B financials and intake resulting from our mass torts practice. When Ross saw the numbers for mass torts he agreed to keep the mass torts cases in-house as the firm has done for the past sixteen (16) years.

120. Regarding Ross's claims set forth in paragraph 187 of his affidavit, I never unilaterally or otherwise appointed Dylan Brennan as the managing attorney of the Manhattan office, nor did I unilaterally approve of any draw for Brennan. Christian Oliver had been the Managing Attorney for Manhattan for several years, and Brennan had been, and remains, in charge of all downstate operations. I have always liked and respected Alex Bouganim and have never had any objection to Bouganim replacing Oliver after Oliver moved to California. My feelings along those lines have not changed. Indeed, recently Ross and I both agreed to appoint Bouganim as the Managing Attorney for the Manhattan office. Annexed hereto as **Exhibit 5** is a copy of the e-mail correspondence reflecting the same.

121. In regards to Ross's claims regarding disagreements over hiring and firing of C&B personnel, Ross consented to the firing of all three of the attorneys that he mentions in paragraph 199. With the exception of my termination of Maureen Napoli—detailed later herein (infra)—every C&B hiring and firing occurred on consensus of both Ross and I.

122. Regarding Jody Weinke, Ross consented to her firing as well. I do not contest or disagree that Ross sent an e-mail on the morning of September 20, 2014, expressing hesitancy about terminating Ms. Weinke. What Ross fails to address—again in an attempt to ignore any fact that does not fit into his narrative—is that he and I spoke after I received his email and he agreed that Weinke should be fired because of the terrible attitude that she had displayed.

123. As C&B's Head Managing Attorney Robert Schreck discussed in paragraph 33 of his July 27th affidavit, Ms. Weinke, once an exemplary receptionist, had demonstrated a declining attitude over a period of time, not just in one instance. It was ridiculous to have a receptionist with such a bad attitude acting as the face of the firm—she was the receptionist in Buffalo. Ross was well aware of Ms. Weinke's deficiencies in this regard. Schreck fired Weinke, and Ross called Schreck after Schreck had fired Weinke to see how things went. (See Schreck 7/27/17 Aff. ¶¶ 33-35).

124. Regarding Daryl Ciambella, I acknowledge that I did not agree to Ross's idea to fire him. As indicated earlier, in the firm's entire twenty-five (25) year history, all hiring and firing decisions have been made on the consensus of both Ross and I.

125. Mr. Ciambella has been employed by the firm for almost eighteen (18) years and Ross and I have been working with him on firm issues for twenty-one (21) years. Mr. Ciambella has been a crucial employee and, along with Dylan Brennan and Robert Schreck, has been a long-standing member of the firm's Management Team. Mr. Ciambella's strategic vision, dogged work ethic, and loyalty have been of critical importance to the firm's growth and success.

126. Mr. Ciambella has gained a unique knowledge and perspective on the management and growth of a personal injury practice such as C&B. Ross never explained to me why he sought the termination of Mr. Ciambella, however I was and am of the opinion that terminating Mr. Ciambella would be a terrible business decision for the PC.

127. Moreover, Ross's demand to fire Mr. Ciambella was e-mailed to me on April 23, 2017. Seeing as Ross filed for dissolution and conducted his unethical corporate raid on May 10, 2017, Ross had already made the decision to file for dissolution and try to steal the firm in the process, irrespective of whatever happened to Mr. Ciambella.

128. Regarding Ross's claims set forth in paragraphs 216 and 217, as Ross indicated, we have our ads vetted by ethics counsel before airing. Nothing ever became of the attorney complaint from NYC as this was just a competitor attorney with an ax to grind. Because we already had ethics counsel vet these ads, there was no reason to change them simply because some competitor made a complaint. We have used spokespersons in many other sets of ads over the years and we have never included a "spoken disclaimer" for the simple reason that a "spoken disclaimer" is not necessary under the rules. Ross is well aware of this because he has read the ethics vetting letters that our counsel has written for our ads and never once did counsel ever advise us that a "spoken disclaimer" was necessary. In any event, the complaint against C&B was recently summarily dismissed by the grievance authorities of the First Department.

129. Since Ross raised the issue of severance that we paid to Sean Kelley's widow, I am forced to respond. I had no problem with paying Mrs. Kelley anything that Ross wanted to pay to her. She is a fine woman and Sean was a friend of mine who died tragically and way too young. The only thing that I objected to was Ross's idea that the Rochester attorneys should use a piece of their fees to compensate Mrs. Kelley. I did not think that it was the obligation of the Rochester attorneys to share their fee with Mrs. Kelley. I thought that the right way to handle this was for the firm to pay Mrs. Kelley. Again, I had no objection to paying Mrs. Kelley any amount that Ross was comfortable with, but from the firm, not from the Rochester lawyers. The amount was never an issue.

130. Annexed hereto as **Exhibit 6** is a copy of the **full** e-mail chain regarding Ross and my discussions on this issue, clearly demonstrating the above. Ross only submitted the portion of the e-mail chain that fit his narrative.

131. Regarding interest on disbursements, this was Ross's idea to enable the firm to recover large sums of money that were stuck in the system that the firm had paid out after-tax. (See Barnes 7/27/17 Aff. ¶¶ 128-37). The firm does not make a dime on the interest system; Ross knows this but his affidavit does not mention it. The bank interest payments were thoroughly vetted by multiple ethics attorneys, and the system of doing business is very common among plaintiff's attorneys across the nation. With Ross's full knowledge and consent, the firm and M&T Bank worked together for more than two years to develop software to enable the bank to seamlessly make loans for disbursements.

132. Paragraph 261 of Ross's affidavit is a lie. No such text message was sent. This is a lie of Pajak's that Ross chose to believe.

133. Ross did propose an upstate/downstate split in the firm—i.e. that I would control downstate and he would control upstate. I analyzed the merits of the idea and concluded it was risky, unfeasible, and not in the firm's best interest. C&B would have benefited more from Ross and I both being involved in each office, something I encouraged and desired. I still do. There were/are plenty of areas in the Firm that would benefit immensely from one of its co-shareholders taking a proactive role. On a personal level, I was also hesitant to split the firm along those lines because I was intimately involved in building this Firm, and each of its offices, from the ground up—including every attorney hire, every advertisement, handling and/or consulting on issues on every major case, and being involved in every strategic decision. I have lived and practiced in Buffalo my entire legal career and thoroughly enjoy working with the attorneys in each office in my current capacity. I did not think either of us should be excluded from involvement in any office. Thus, I refused the proposal and again suggested that Ross become more involved in C&B as it existed and as it still exists.

RESPONSE TO DENIS BASTIBLE AFFIDAVIT

134. Denis Bastible is Ross's brother-in-law. Denis has worked for us since 2000 and has been a friend of mine since that time, so I was very surprised and saddened to see the misrepresentations that Denis put into his first affidavit, dated October 10, 2017. After he filed his first affidavit he has told lawyers at the firm that he received extreme pressure to submit an affidavit. Only very recently I spoke to Denis in his office and he expressed great reservations about the chaos that Ross has created by filing the petition and many of the destructive actions that Ross has taken during the past six months. Perhaps this explains, in part, the reason that Denis signed a second affidavit, dated October 25, 2017, submitted herewith, wherein he essentially repudiates his first affidavit.

135. Specifically, Denis admits to his total lack of involvement in the management of C&B and states that his "opinions" about my alleged lack of involvement in the various offices of the PC are based not on any actual observations of what I do, but rather on his "impressions."

136. To the extent that Denis's original affidavit is considered, the allegations therein are addressed below.

137. Many of Denis's averments are irrelevant to the instant matter. For example, the "team ups" on bigger cases that are likely going to trial is something that we have consistently done for many years. Most lawyers embrace this idea, as trials are obviously very laborious and time consuming, and having two lawyers on a significant case is a great benefit to the attorneys and the client. Ross has certainly always embraced the "team up" concept. Indeed, Denis has embraced it as well, and he certainly embraced it with respect to the 2009 case to which Denis makes reference that Denis tried with Ellen Sturm in Wayne County. In any event, the firm's

longstanding practice of teaming attorneys for large trials—a concept that Ross always approved of—is irrelevant to dissolution.

138. Regarding "cherry picking," I find it ironic in the extreme that Denis would raise this issue. Ross has certainly "cherry picked" cases for Denis, including a case that settled for $6,000,000 in 2015, on which Denis made a large fee for himself. I have also picked cases for Denis, including a personal referral to me that I gave to him earlier this year that will settle for a minimum of $250,000—the distinction between his characterization of "cherry picking" and the truth is that attorneys are selected for cases based on whether we feel they will do a good job on that particular case. It is merit based. Cherry picking does not happen; intake attorneys receive the cases for which the firm receives calls on their intake days.

139. It seems strange that Denis would now so bitterly complain about the practice where he has been one of the most successful and highly-compensated attorneys at C&B. While Denis may disagree with certain firm policies, he is not on the Management Team and does not have the responsibility, nor accept the risk, of running a successful law firm.

140. At paragraph 10 of his affidavit, Denis states that "a number of the attorneys who have submitted affidavits in support of Steve are regular beneficiaries of the 'cherry picking system.'" Denis fails to state which of the thirty (30) attorneys, who submitted affidavits in support of the firm, he is referring to. Denis's allegations leave naught but speculation and, in any event, the fact is that this is another false allegation.

141. At paragraph 11 Denis states "I believe that my relationship with Ross had (sic) caused me not to be 'favored' in the last few years . . . ." This is not true. The $6,000,000 case referred to above, his significant compensation over the years, and the many other high-value cases that have been given to Denis over the years belie his claim.

142. Denis and my brother Richard did handle a case that settled for $3,250,000. But Denis's claim that he performed "virtually all the work" on the case is false, as is the claim that his legal fee was "cut in half." Denis received a larger percentage of the attorney's fee than Richard did. Furthermore, this was a complicated case that benefitted from the work of two experienced lawyers. Denis also totally ignores that but for Richard's presence in the case the firm probably would not have secured the representation of the client in the first place. The case was not tried and Denis received a large fee for the work he did thereon.

143. Regarding paragraph 15, the case that Denis refers to was tried nine (9) years ago. Ellen Sturm has a resume that is more impressive than any attorney at our firm: she graduated first in her law school class, served as Confidential Law Clerk to the Hon. Eugene F. Pigott when Judge Pigott was the Presiding Justice of the Fourth Department, and worked at Skadden, Arps, Slate Meager & Flom—the world's largest and most competitive law firm. Denis was not teamed up with some unqualified attorney picked as a result of "favoritism." Ellen performed a lot of work on the case in question and participated in the trial; yet, she was only paid two-and-a-half percent (2.5%) of the fee compared to Denis's seventeen-and-a-half (17.5%) fee. Denis has no basis to complain about Ellen's involvement in the case, nor the amount of compensation she received.

144. The claim at paragraph 17 that I have "refused to acknowledge the growth of our WNY competition to the diminishment in the amount of quality cases coming into the firm in WNY" is false. This is one of Ross's talking-points parroted by Denis. Competition is simply a fact of life, and Denis has never asked to participate in marketing decisions, nor has this ever been part of his job description. I have always sought to maximize case intakes in WNY and all of the other markets where we practice. In his subsequent affidavit, Denis acknowledges that he has no factual basis for this opinion.

145. Regarding paragraph 19, Denis has no basis to claim: "Based on my observation, Steve Barnes has become less focused on Cellino & Barnes' WNY offices, instead focusing his attention on his offices in California." Denis admits as much in his supplemental affidavit.

146. I see Denis about once every six weeks when we pass in the halls and exchange pleasantries. I have never discussed California with Denis. I have never discussed marketing with Denis. This is an utter fabrication as Denis has certainly never had any opportunity to make any "observation" of what I do with my time.

147. Regarding the "national advertising" campaign that Denis refers to in paragraph 20, I can only assume that Denis is referring to the "coast-to-coast" campaign that we launched in 2014 and 2015. Denis admittedly was and is not privy to our advertising success statistics and has no personal knowledge to support his claims. It so happens that this was a very successful campaign and netted many cases and quality cases in all jurisdictions.

148. Regarding paragraph 21, I am at a loss to understand what Ross's alleged support of "advertising that is specifically directed at prospective WNY clients" has to do with the instant Petition. Denis probably isn't aware of Ross's ill-considered and unethical scheme to produce "attack ads" and "combat" against William Mattar. Furthermore, he has no personal knowledge to rebut that every marketing decision was made on consensus of both Ross and I.

149. Regarding paragraph 24, the claim that I have somehow used Denis to "exert pressure on Ross" is nonsensical and pure speculation.

150. The allegation in paragraph 27 that I have "gone around the office 'demanding loyalty'" is false.

151. Denis's unsubstantiated belief that client intake has "dropped dramatically both before and after the filing of the petition" is simply wrong. (See supra, ¶27 (describing the facts and details demonstrating that Denis is incorrect)).

152. Respectfully, Denis's opinions as to the outcome of this litigation are wholly irrelevant and should be accorded no weight by this Court.

RESPONSE TO SAREER FAZILI AFFIDAVIT

153. In response to paragraph 5, prior to May 10, 2017, Ross had never expressed any desire to change the firm's policies regarding accepting clients who may have had prior counsel. The firm does not have an "aggressive stance" on "taking" files from other firms. The right of a client to change counsel if he or she so chooses is absolute under New York law. It is not uncommon for clients represented by other attorneys to call the firm because they are unhappy with their current representation. This happens many times every week. The policy of the firm is to handle these inquiries on a case-by-case basis.

154. Often times the attorneys at the firm (not myself or the Management Team) will decide to sign a case where the client wants to discharge former counsel. Often times the attorneys will decide to decline to get involved in such cases. Other times the attorneys will decline to represent the prospect but will instead advise the prospect that it is likely in their best interests to remain with their current attorney. All of these decisions are made by the firm's attorneys on a case-by-case basis. It should be noted that C&B never reaches out to clients represented by counsel, rather C&B only receives such cases if the client contacts the Firm.

155. Although I am always available to provide advice and guidance to attorneys regarding this and any other issue, I have never directed attorneys to take an "aggressive" approach to these inquiries.

156. For all new cases the attorney prepares a Preliminary Evaluation Memorandum ("PEM"). Ross and members of the Management Team are emailed a copy of the PEM the following day. In every case where there is prior counsel involved, the attorney will dictate that fact into the first paragraph of the PEM. Ross has never responded to any such PEM with any objection to the case having come into C&B because there was a prior attorney involved. Ross has certainly never refused to take profits from cases that were resolved by C&B where there was a prior attorney involved.

157. Sareer has also handled scores of cases where there was prior counsel involved and never complained about making money off of those cases. Moreover, Sareer has not been privy to my interactions with Ross and cannot rebut that Ross never raised issues with this practice.

158. Sareer also states that he has "heard about numerous arguments between Ross and Steve." Sareer goes on to talk about "an especially notable argument" that he "heard about" occurring at a firm Christmas party. The allegations about "numerous arguments" and the "especially notable" alleged argument at a Christmas party are flat out lies. I have no idea where Sareer got this from, but Ross certainly has an ethical obligation to read and correct these falsehoods before filing Fazili's affidavit with the Court. Ross certainly knows that he and I never had an argument—"especially notable" or otherwise—at any Christmas party.

159. Further bunk is that Ross "objects to charging clients interest on disbursements." **This was Ross's idea in the first place**. Further, it was fully vetted by ethics counsel with Ross's consent, and has been in place for more than two years. In fact, C&B does not charge interest on disbursements, the bank charges the interest. Ross obviously knows this and has an ethical obligation to ensure that he does not submit false and misleading information to the Court.

160. Sareer is wrong again, in paragraph 6, when he states that intake volume has been down. Sareer is not privy to firm statistics regarding case intakes and firm profits; he never has been. Any "feelings" that Fazili has are purely anecdotal and irrelevant. These areas are simply beyond the scope of Fazili's job description, and contradicted by documented facts.

161. Not only are firm profits up significantly over the past several years, new client intakes have **increased**. Id. The Rochester office experienced a **fifty percent (50%) increase** from January 1, 2017, through May 10, 2017, compared to the same time period the previous year. Id.

162. Sareer's claim in paragraph 7 that I have "demanded loyalty" is false.

163. Importantly, Sareer fails to point to any conduct I engaged in that made him believe that his job was in jeopardy. Indeed, he explains that it was Ross's spreading of fear mongering messages and baselessly claiming that people's jobs were in jeopardy that caused him to fear for his job. (Fazili Aff. ¶10). It was nothing that I had done, but Ross's own conduct that spread fear and concern. Ross was and is trying to create the so-called "toxic environment" that he wants in order to support his claims.

164. Sareer did not raise any of the "issues" detailed in his affidavit prior to being requested to submit an affidavit by Ross and prior to Ross spreading fear and discord through the office.

RESPONSE TO SCOTT CARLTON AFFIDAVIT

165. Scott was hired in 2011 during a difficult time in the firm's history. We had just lost Scott Rohring, who died unexpectedly at the age of 42. Scott Carlton took over Scott Rohring's case portfolio, so Carlton was immediately able to settle cases and make money based on work that was done by Scott Rohring. This is unusual as most new attorneys need to start from scratch. C&B has provided a very lucrative platform for Scott.

166. Scott states that he has put his home on the market, suggesting that it is somehow the fault of the firm. This topic is completely irrelevant to this case. The income C&B has paid Scott over the years certainly enables him to live a good lifestyle, and any claim to the contrary is absurd. The managing or mismanaging of ones' personal finances is not pertinent to a petition for dissolution.

167. In paragraph 4 Scott states: "On certain cases, however, Steve Barnes has, at the conclusion or during the pendency of a specific case, refused to provide me with my negotiated percentage." This is false. It is interesting that Scott does not provide the names of any such cases so that his allegation could be cross-referenced and fact checked. Instead Scott simply makes this false assertion with no detail in an effort to sully me. Any specific allegation can be rebutted by hard evidence.

168. Scott's allegation that I "cap" an attorney's compensation or decrease an attorney's percentage when a case has become "especially valuable" is utterly false and meritless. Again, this false allegation is offered without any detail or specificity so as to preclude any fact checking.

169. Regarding "team-ups," as I indicated earlier with respect to Denis Bastible, putting two attorneys on a significant case that will likely be tried is standard operating procedure at our firm and at most plaintiff's firms. This benefits the client in that it makes perfect sense to divide the trial preparation and trial workload between two attorneys. Of course, our first goal is always to maximize recovery for the client. It often makes sense to put two lawyers on a case to make sure that we have the best opportunity to do just that. Scott acknowledges the soundness of this policy in the first sentence of paragraph 8.

170. Scott Carlton has never been teamed up with either my brother or with Ellen Sturm. However, Scott did recently settle a case for $650,000, which was originally dismissed when

Scott's motion practice failed before the trial court. Ellen briefed and successfully argued that case before the Court of Appeals, reviving the case and allowing the settlement to occur. But for Ellen's appellate advocacy the $650,000 settlement would not have been possible. Ellen received no additional compensation, nor any portion of the attorney fee, for her case-saving work on this file. As an aside, this was the first case in the firm's history where an attorney from our firm successfully restored a case by appellate advocacy in the Court of Appeals.

171. Regarding paragraph 9, Scott states: "I am also aware of multiple occasions during which Steve Barnes has acted aggressively toward other staff and attorneys, using profanity, yelling, berating and otherwise belittling his employees. This is not new behavior and has been part of Steve's personality for years." Here, again, Scott does not claim to have witnessed any such behavior, only that he is generally "aware" of it. Scott provides no details whatsoever and merely supplies inflammatory allegations without giving anyone the opportunity to fact check. Scott does not state exactly how he is "aware" of these alleged incidents, the names of the people who were allegedly involved in these incidents, when the incidents happened, what was said, or anything else about the circumstances.

172. The reason that Scott frames his allegations in this vague, conclusory manner is that the allegations are false. Regarding the use of "profanity", this is a laugh-producing allegation as anyone who knows Scott Carlton is aware of the fact that he liberally laces his speech with profanities. I am not criticizing Scott (I was in the Marines for 7 years), it is just a fact.

173. In paragraph 10, Scott talks about a meeting at which he was not present and of which he has no personal knowledge. Firm intake statistics demonstrate rising firm intakes. (See supra at ¶27).

174. Paragraph 11 is interesting in that Scott acknowledges that he was not present at the firm meeting to which he makes reference, and the language that he attributes to me is different than that which the other attorneys who have submitted affidavits for Ross have alleged. In any event, I deny berating any attorney in the manner that is alleged.

175. Scott Carlton has had no role in management of the firm, and cannot rebut the fact that no attorney has ever been fired in our twenty-five (25) year history without the consensus of both Ross and I.

176. Regarding paragraph 14, Scott's assertion of a toxic environment is rebutted by the numerous attorney and staff affidavits submitted herewith.

177. Regarding paragraph 15, Scott has no knowledge whatsoever of the California law firm so there is no basis for this allegation.

178. Regarding paragraph 16, I see Scott Carlton about twice a year so he certainly has no knowledge of where my business focus is or what resources I put toward any of the law offices.

179. Scott also alleges that I have called lawyers "lazy" and criticized their work ethic. His allegation is entirely false.

180. With regard to paragraph 17, Scott Carlton states that he "disagrees" that the Rochester office of C&B is profitable. The facts are the facts. The Rochester office has been extremely profitable for many years and in 2017 is enjoying its most profitable year ever. Scott is not privy to the firm's financial information and has no basis to make his claim.

181. Paragraph 18 is incorrect. (See supra at ¶27). Before May 10, 2017, Rochester was enjoying a 50% surge in case intakes.

182. Irrespective of Scott's baseless "beliefs" and speculation, Rochester is slated to enjoy another record year of profits in 2018 and beyond.

183. The majority of Scott's assertions are pure speculation because he lacks personal knowledge as to that of which he swears. Furthermore, the allegations are largely irrelevant to the issues necessary for the determination to deny dissolution and/or deny the appointment of a temporary receiver. As such, Scott's affidavit should be afforded, little, if any, weight.

RESPONSE TO GREGORY PAJAK AFFIDAVIT

184. Greg Pajak states at paragraph 4 of his affidavit that "Neither [Ross nor Steve] has promised me a specific future position in any firm that either may head up going forward" (emphasis added). This is carefully parsed language because it is quite clear that Ross has made promises to Greg Pajak, and that Greg submitted his affidavit for the express purpose of helping Ross achieve Ross's goals in this litigation. Upon information and belief, Ross has promised Greg money and the position of "managing attorney" for Ross's new firm.

185. Greg strives hard to paint himself as a "neutral observer" in this matter, but he is not.

186. Greg neglects to mention that he has been actively assisting Ross in the machinations that Ross has been up to since the petition was filed. For example, On July 31, 2017, an article appeared in The Buffalo News that discussed the thirty (30) attorney affidavits that were submitted on behalf of the firm, all of which described in detail the extent of Ross's non-involvement in the firm's management and practice for the past ten (10) years. When Ross saw this article he became very upset. (See Kowalik Aff. ¶5; Davis Aff. ¶9). He immediately began contacting lawyers at the firm and asked them to anonymously contact The Buffalo News to tell lies about me. Id.

187. Ross contacted Scott Carlton, Greg Pajak, Nick Davis, and possibly other attorneys for this reason. After Ross contacted Carlton, Carlton called Davis and told Davis that Ross was

going to call him and ask him to place this dishonest, anonymous call to The News. Ross did in fact call Nick Davis, who told Ross that he did not feel comfortable calling The News to say untrue things about me. Shortly thereafter, **Greg Pajak** called Nick Davis and told Davis that Greg has a friend at The Buffalo News who Davis should call and who would protect Davis's confidentiality. Davis repeated to Pajak that he was not going to call The News.

188. These are not the actions of a neutral observer. Clearly Pajak was acting to assist Ross.

189. In his affidavit, Greg Pajak fails to advise the Court that he has been actively assisting Ross, although he spends the first two pages of his affidavit attempting to demonstrate that he is not biased in favor of either side. Therefore, it is entirely disingenuous for Pajak to now claim that he is some kind of a "disinterested" player instead of one of the very few lawyers supporting Ross's goals and actively trying to bring about dissolution.

190. I respectfully submit that Pajak's attempt to cover up the fact that he is a complete partisan in favor of Ross, and instead to try to paint himself as a "neutral observer", is clearly a falsehood that entirely undercuts his credibility and the entirety of what he swears to in his affidavit.

191. Greg's claim, set forth in paragraph 6, that the affidavits of the thirty (30) attorneys who submitted their affidavits in support of the firm were "obviously prepared by an attorney for Steve or a surrogate" is false. Greg has no basis or knowledge to make such a claim, and only does so because he is biased towards Ross and is aiding him in his machinations. Every attorney who submitted affidavits for the firm did so on their own accord and swore to the truth of their allegations. Not only did all of these attorneys write their affidavits themselves, but following Ross's accusation that I "coerced" or "bullied" them to write their affidavits they submitted

subsequent affidavits stating that no such "coercion" ever happened, and that at no time has there been any "toxic environment" at the firm.

192. Regarding paragraph 16, I deny making the statement that Greg Pajak places in quotes. Greg Pajak has never had any input into firm marketing or any of the firm's management decisions or operations.

193. Regarding paragraph 17, Ross's interest in "combatting one of the firm's major competitors" included Ross's making a request of an advertising agency to prepare and produce "attack ads" against that competitor. Ross took this action without my knowledge. Ross, Daryl Ciambella, and I attended a meeting to see what the agency had come up with in response to prior advertising requests. At the meeting, unbeknownst to me, the agency began to roll out exemplars of the "attack ads" for us to review.

194. After seeing about three exemplars, I realized that these "attack ads" were completely improper and would never pass muster under the disciplinary rules. I explained this to Ross at the meeting—as non-lawyers the agency would not know of our ethical obligations, so I did not blame them—and I told Ross that this was not like a political campaign where (non-judicial) politicians smear each other with all manner of vitriol. I explained that as lawyers we are not permitted to run "attack ads" against competitors.

195. At first, Ross questioned my thinking as to why we could not run "attack ads", but when I continued to explain how these ads would be completely improper and would certainly subject us to a disciplinary complaint, Ross reluctantly gave up on the idea, or so I thought. At least at that time, a short time after he had returned from suspension, Ross was hyper-sensitive about ethics and attorney discipline.

196. As to Greg Pajak's claim that call volume and case intakes have "dropped significantly," this has been definitively demonstrated as a false allegation made in ignorance by Pajak. (See supra at ¶27).

197. The allegations in paragraph 18 are similarly rebutted by herein. See supra.

198. Regarding fee disputes, it is true that Greg has been entrusted with handling the majority (not all) of the upstate disputes (Dylan Brennan handles the majority of the downstate fee disputes). In appointing Greg to this position, Ross and I agreed that Greg would earn a substantial supplement to his income by handling fee disputes. In 2016 he earned an extra $18,170.65 and in 2015 he earned an extra $23,691.71 for his handling of fee disputes. Greg's income from fee disputes is directly related to the amount of money that he successfully recovers for the firm. Greg is of course fully aware of this, and he therefore strives to recover as much as possible in every one of these cases.

199. I have never told Greg to pursue an "aggressive" approach to fee disputes. I have never had to tell Greg this. Greg is quite capable of pursuing an aggressive approach without any coaxing from me because it is in his interest to do so based on the compensation agreement to which Ross and I agreed. Greg has certainly never told me that he wishes to pursue these cases "passively" or "timidly", nor has he ever told me that Ross has told him that Ross wants to pursue fee disputes in some manner that is different than how Greg has been handling these cases for many years.

200. Fee disputes are a part of any large personal injury practice. Usually prior and subsequent attorneys are able to come to an amicable arrangement for the determination of a fee division upon the settlement of a case. However, there are occasions where prior and subsequent attorneys will not be able to agree on the proper division of the fee. It is unclear if Ross is now

claiming that where attorneys cannot agree on a fee division that C&B should simply "give up" and allow the other attorney to have his or her way notwithstanding the reasonableness of the other attorney's position.

201. I can state unequivocally that I know of no practitioners in New York State who take this approach to fee disputes. Greg Pajak has certainly never wanted to take such an unorthodox approach. Again, in the majority of cases, the attorneys are able to agree on a fee division. But where attorneys cannot agree, sometimes litigation or ADR is the appropriate way to resolve a fee dispute.

202. Ross is well aware of all of these facts. This is yet another manufactured argument.

203. Except to the extent that Greg states that "Ross was seemingly reticent to become more involved in the firm once he came back [from his 19 month long suspension in 2007]," the allegations that Greg makes in paragraph 20 are not true. Greg's job description has never had anything to do with the management of the firm. He is not now and never has been a member of the firm's Management Team. He is also not privy to firm statistics. He has never been involved in firm marketing, financial matters, hiring decisions, nor any other facet of the firm's management.

204. Any claim by Greg Pajak that I confided in him regarding matters pertaining to the management of the firm, including the things that Greg claims that I said to him regarding Ross's involvement in the firm, are contrived. As indicated, Greg has never been involved in the management of the firm and since he is not now and never has been a member of the Management Team, I would have no reason to confide in him pertaining to management issues.

205. Regarding alleged "fee reductions", Greg Pajak states at paragraph 27 that in "several instances" he was subjected to arbitrary fee percentage reductions. Greg states this

without saying which cases he is referring to nor the circumstances involved in the alleged fee reductions. Greg purposely avoids mention of any detail so that his claims are impossible to fact check. Greg provides no written evidence of any such alleged fee reductions.

206. It has never been the policy of the firm to reduce a lawyer's fee percentage. As aforesaid, there are occasions when more than one lawyer works on a case; in those cases a fee division occurs. Otherwise, the attorney handling a case gets the usual percentage that he or she is entitled to receive pursuant to a pre-arranged agreement. Greg cites this as a factor creating a "toxic" environment, but any such allegation must be entirely rejected because neither Ross nor Greg provide any facts to support this allegation.

207. The allegations set forth in paragraphs 44 and 45 of Greg Pajak's affidavit are false. Greg Pajak is not telling the truth when he alleges that he saw the texts that he claims he saw on the attorney's phone. The actual text that the attorney referred to by Greg Pajak texted to me on May 11, 2017, at 8:14 a.m., the day after Ross's surprise attack corporate raid, reads as follows:

> I've got to get this off my chest:
>
> After a second night with no sleep I remain completely disgusted that Ross would disregard and disrespect 300 loyal employees, 12,000 clients, countless former clients, assets, leases and the livelihood of the attorneys chasing what will amount to a fart in the wind. His conduct is reckless and irresponsible and abhorrent behavior for a grown man.

Annexed hereto as **Exhibit 7** are copies of the actual text messages. A related fact, in response to Ross's allegations that I berate C&B personnel, this attorney was the subject of repeated browbeating by Ross on many occasions over the years.

208. As a non-shareholder, Greg Pajak's "opinion" as to the ultimate issue of dissolution should be given zero weight. In any event, I deny his allegations. Since the petition was filed on May 10, 2017, the firm is moving forward on all metrics (i.e., multiple favorable jury verdicts and

settlements; the firm has hired three (3) new lawyers on consensus; a lawyer was terminated on consensus; Ross and I have agreed to pay an attorney a severance package; Ross and I have agreed to charitable contributions and to pay health insurance for C&B employees; attorney compensation is up; profits are soaring; case intakes are up, etc.). (See supra).

209. Annexed hereto as **Exhibit 8** are e-mails demonstrating agreement between Ross and I regarding the management of C&B since the Petition was filed. There is no "complete breakdown of trust," and this claim is an attempt by Ross to manufacture dissent for purposes of obtaining advantage in the instant lawsuit.

210. Any allegation set forth that the relationship between Cellino and Barnes is a "marriage" is likewise false. The relationship is that of co-equal shareholders in a multi-million dollar professional corporation that was formed in 1998. It is a business relationship. As is explained in Respondents' Memorandum of Law filed in support of Respondents' Motion to Dismiss, dissolution would cause catastrophic harm to the shareholders, not the "benefit to the shareholders" (which is of "paramount" importance pursuant to BCL § 1111 (b)(2)). Indeed, Ross has admitted in writing that dissolution would be "financial suicide." (See Manske Aff. ¶11). In fact, Ross recently sent an e-mail to Robert Schreck explaining that dissolution would result in both Ross and I, as shareholders, being relegated from eight (8) figure annual incomes to "zero cash flow status" for some undetermined "significant period of time".

211. It is further denied that dissolution would in any way benefit the firm's 230+ employees, the vast majority of whom are opposed to dissolution. Respondents further deny that dissolution would in any way benefit the firm's 12,000+ clients, and Respondents state affirmatively that dissolution would cause chaos and irreparable harm to the firm's clients. Ross's papers are silent as to the folly of destroying the "Cellino & Barnes" brand—a brand that Ross and

I have spent over $100 million dollars to promote, and which has now been valued at $42 million. However, Ross has admitted in writing that destruction of the brand would be "financial suicide." Apparently, Ross's obsession to create his "family legacy firm" is so great that he is willing to compulsively pursue it even in the face of admitted financial suicide.

RESPONSE TO MAUREEN NAPOLI AFFIDAVIT

212. Maureen Napoli is perhaps the most biased of any of the few employees who have submitted affidavits in this case, and her affidavit reflects this. Maureen is the employee who personally accompanied Ross on his meticulously planned two-day raid on the firm on May 10 and 11. She obviously knew about Ross's unethical scheme ahead of time and agreed to participate.

213. During the meetings that Ross had with the lawyers on May 10 and 11, Maureen actively participated and expressed how great it would be to work for Ross's Cellino Firm. Moreover, her affidavit is essentially a collection of Ross's key talking-points.

214. Regarding paragraph 6 and 7 in Maureen's affidavit, Ross and I have been working with Daryl Ciambella for twenty-three (23) years and he has been our COO for the past nineteen (19) years. The suggestion that "after Daryl Ciambella was hired Daryl and Steve began taking action to the exclusion of Ross, disregarding or otherwise rejecting Ross's views" is false and Maureen has no personal knowledge to support such a ridiculous claim. This is an obvious Ross talking-point, laced throughout every affidavit submitted by Ross.

215. Maureen was never part of meetings between either (a) Ross, Daryl, and I or (b) Daryl and I. As such, she has no basis whatsoever for making this statement. Further, Maureen provides no explanation as to when Daryl and I purportedly began to exclude Ross; 23 years ago? 19 years ago? Her claim is bare of any facts and false.

216. Another absurd contention is that Daryl and I have had "closed door meetings," as if there is something unusual or nefarious about closed door meetings taking place at a law firm. Let me be clear, **Daryl and I have never had any meeting, closed door or otherwise, from which we excluded Ross or in which Ross was not welcome**. There is nothing before this Court, or indeed in existence, to demonstrate anything to the contrary.

217. Regarding paragraph 8, Maureen has no basis to state that I "rejected Ross's views" on anything. She simply would not know because she was never part of the meetings or the management of the firm. It appears Maureen simply signed an affidavit that was stuck under her nose with a bunch of party line talking-points despite her lack of personal knowledge.

218. Paragraph 9 is false. Ross never advocated for 401(k) match.

219. Paragraph 11 is false—although I assume that Maureen Napoli means "disbursements" not "distribution fees"; if my assumption is incorrect, then I am at a loss for what a "distribution fee" is. Regarding this issue, please see Paragraph 131 (supra).

220. With respect to the allegations regarding the disbursement line of credit in paragraph 11, about three months ago Ross asked M&T bank to sweep our attorney account to pay off the $5,000,000 line of credit. I objected for many reasons.

221. First, his attempt violated the Court's status quo order.

222. Second, the line of credit did not cost the firm anything and was established for the management of disbursements only, not for firm operating expenses. Much time, effort, software development, and legal work went into developing the systems that enabled this account. Paying off this account would have impacted negatively upon our critical twenty-five (25) year relationship with M&T Bank.

223. Third, C&B has come to rely on that line of credit. If the bank had complied with Ross's request to sweep the attorney account to pay off the line of credit, the firm could have missed payroll for the first time in our twenty-five (25) year history.

224. Ultimately, it was M&T Bank that told Ross that they would not honor his request because Ross is not a signatory on that firm accounts, so he therefore has no authority to order the bank to do anything with our account. As discussed earlier, when Ross returned from suspension he refused to become a signatory on the firm's accounts and he has never been a signatory since.

225. Ross knew full well that if the bank had honored his request and swept the firm's attorney account, the firm could have missed payroll. This was exactly what Ross wanted—it was part of his oft-stated plan to sow dissension and to "burn the firm to the ground." Nothing would have created dissension and ruin like not paying our employees.

226. Paragraph 12 is false. As I discussed earlier and at length, with the single exception of my unilaterally firing Maureen herself when she participated in Ross's corporate raid on May 10, no employee has ever been hired or fired without the consensus of both Ross and I.

227. Paragraph 13 is just ridiculous. We have never "solicited clients from other area attorneys." Ross knows this to be a completely false statement, and it was unethical of Ross to permit this statement to be filed with the Court. I discussed the issue of cases with prior attorneys at length earlier.

228. Paragraph 14 is true regarding Syracuse, but I refer to Paragraph 116 herein (supra). Ross wanted to open an office for himself, not an expansion of C&B. If Ross wanted to expand C&B to Syracuse I probably would have agreed. But he wanted to open a firm in Syracuse that would have been in competition with our Rochester office, and that just made no sense at all.

229. Paragraph 15 regarding fee disputes is another parroted talking-point. The second sentence—"I have heard Steve state that the firm's attorneys should 'get all you can' from such fee disputes, and have heard Steve yelling at attorneys for not collecting enough"—is just a flat out lie. Maureen provides no detail to fact check this false claim.

230. Regarding paragraph 16, I only rejected Ross's idea to run "attack ads" to "combat" William Mattar. Every other advertising campaign in our entire history was done with Ross's participation and consent. It must be remembered that we appear personally in the majority of our ads. Ross cannot reasonably argue that he does not support an ad in which he appears.

231. Paragraph 17 is false. Ross did hire an outside agency to produce "attack ads." We also have used many outside agencies over the years with the agreement of both of us. I do not even know what Maureen is talking about here. Plus, Maureen would have no knowledge of any of this.

232. Paragraph 18 is false to the extent that it refers to any objections prior to Ross's decision to dissolve C&B. Maureen would have no knowledge of any of this as she has no role in these discussions or decisions.

233. Regarding Paragraph 19, Maureen had no authority to pay anything out of any California account.

234. Regarding Paragraph 20, The Barnes Firm, L.C. (the former Cellino & Barnes, L.C.) are proceeding pursuant to this Court's status quo order. Many of The Barnes Firm facilities have already been implemented. All will be implemented in the very near future.

235. Paragraph 21 is false. The quote that Maureen attributes to me is a lie.

236. As to paragraph 22, Maureen does not have personal knowledge of what goes on in upper levels of management as her duties have always been limited. She was not and is not in a

position to observe Ross's withdrawal from and refusal to engage in the management of the firm—including, but not limited to the discussions between Ross and the Management Team.

237. Maureen lacks personal knowledge as to the allegations in paragraph 23.

238. With respect to paragraph 25, Maureen speaks in broad generalities so as to preclude fact checking. In twenty (20) years, the only time that I ever had harsh words with Maureen was following her participation in Ross's corporate raid of May 10, 2017.

239. With respect to paragraph 27, I acknowledge that I fired Maureen because she was actively assisting Ross in his unethical corporate raid and gross breaches of fiduciary duty that Ross perpetrated on May 10 and 11. She has continued for almost six (6) months since then.

240. In regards to paragraph 28, I fired Maureen because she participated in soliciting C&B personnel to join a new firm (a) while employed by C&B, (b) on C&B property, (c) while on duty for C&B, and (d) while C&B was still a functioning firm.

RESPONSE TO KAREN BYRNS AFFIDAVIT

241. Due to the fact that Karen's affidavit is substantially the same as Maureen's, I will not address every point again. I will, however, aver that her affidavit is largely false and that, like Maureen's affidavit, Karen's affidavit lacks personal knowledge to swear to the following collection of Ross talking-points:

- falsely referring to C&B as a "partnership";
- statements of opinion as to what is "irreparable";
- many statements about my relationship with Daryl Ciambella that Karen would have no knowledge of;
- statements about how Daryl and I have "disregarded" Ross's views despite never being privy to any pertinent interaction;

- phony claims about interest on disbursements and Ross's alleged views on the same; and
- claims as to things that I have allegedly said made with no context so as to preclude fact checking.

242. For the foregoing reasons, Respondents respectfully request that their motion to dismiss and deny the Petition be granted in its entirety and Petitioner's motion for the appointment of a temporary receiver be denied.

Stephen E. Barnes

Sworn to before me this
21st day of November, 2017

Diana A. Lang
Notary Public

DIANA A. LANG
No. 01LA4626017
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires 01/31/2019