

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

KEN JORDAN, derivatively on behalf of EVOLVER HOLDINGS CORP. and EVOLVER MEDIA PRODUCTIONS LLC, and individually,

Plaintiff,

-against-

LOUIS SAGAR,

Defendant,

-and-

EVOLVER HOLDINGS CORP. and EVOLVER MEDIA PRODUCTIONS LLC,

Nominal Defendants.

Index No.

VERIFIED COMPLAINT

Plaintiff, Ken Jordan ("Jordan" or "Plaintiff"), suing derivatively on behalf of Evolver Holdings Corp. ("Evolver") and Evolver Media Productions, LLC ("EMP"; with Evolver, the "Companies"), and individually, by and through his attorneys, Ganfer Shore Leeds & Zauderer LLP, hereby alleges the following against defendant Louis Sagar ("Sagar" or "Defendant") and nominal defendants Evolver and EMP:

PRELIMINARY STATEMENT

1. Jordan, the Chairman of the Board of Directors and a shareholder of Evolver, and one of three Managers of EMP, brings this action to protect the Companies he founded from being undermined by the unilateral actions of Evolver's rogue CEO, the Defendant Sagar.

2. Evolver is a Delaware corporation that was co-founded by Jordan in 2007 to support ventures in the growing field of "consciousness culture," which includes areas of interest ranging from meditation, yoga, psychedelics, spirituality, plant-based wellness, and alternative

health practices. Evolver set up EMP in early 2019 as a subsidiary in order to consolidate Evolver's various media assets. Evolver owns approximately 90% of the equity interests in EMP. EMP's most important media property is *Reality Sandwich*, a web magazine devoted to publishing the movement's leading voices online.

3. This is a community that expects transparency and is built on trust. From Evolver's inception, Jordan has always emphasized that management decisions should be made with full and open disclosure among the decision-makers. Evolver has always adhered to this management approach even during periodic times of financial difficulty, which helped the company weather storms and continue its growth.

4. That is, until recent events. Early in 2019, the Directors of Evolver (which at this time consisted of Jordan and Sagar) decided to consolidate Evolver's media assets, including *Reality Sandwich*, into a new subsidiary, EMP. Jordan also oversaw a capital raise which brought in \$150,000 from investors at a \$1.5 million valuation to fund an online learning membership program featuring bestselling authors and respected teachers. Those investors were expressly promised that *Reality Sandwich* was and would continue to be a centerpiece of the EMP portfolio.

5. Unfortunately, the funds raised were not sufficient for the new subsidiary's needs. Jordan and Sagar conferred and agreed that Jordan should explore the possibility of selling the entire Evolver/EMP media portfolio for substantial cash proceeds, including the sale of *Reality Sandwich* as the Companies' single most valuable media asset. Jordan openly reported every development to Sagar and Sagar repeatedly offered his encouragement for this portfolio approach.

6. Sagar had once raised with Jordan the possibility of transferring *Reality Sandwich* to a third party start-up entity in exchange for a small stake in the start-up company. Jordan rejected this strategy, in writing, for various independent reasons. Still, Jordan expressly assured Sagar that he was open to any reasonable strategy, even a transaction with an outside start-up

venture, so long as the proposals were properly vetted and all of the Directors and Managers (effectively meaning Jordan and Sagar together) could come to an agreement.

7. Beginning in mid-April 2019, Sagar's actions as Evolver's CEO exacerbated the Companies' problems. Sagar failed and refused to pay EMP's key staffers (causing one of them to lose their apartment), failed to follow through on team decisions, stymied Jordan's efforts to raise money, and never followed through on promises to bring in business advisors when EMP faced a cash shortfall. At the same time, Sagar unilaterally removed Jordan from Evolver's bank account and has refused to pay Jordan compensation owed. Sagar's actions have crippled EMP's operations.

8. Sagar also apparently entered into negotiations with the third-party start-up whose proposal Jordan had already rejected and even transferred some Company assets to it, all without notice to or consent from the management of the Companies. On July 19, 2019, Jordan discovered that Sagar had locked him out of *Reality Sandwich's* website.

9. Sagar has continued down this path even after Jordan was alerted to the unauthorized negotiations and sent out multiple cease and desist letters. When Sagar finally agreed to formally meet with Jordan about these matters, he refused to provide any documents to Jordan and defiantly stated that as Evolver's CEO, he had the power to act in contravention of Evolver's By-laws and EMP's Operating Agreement. Most troubling, Sagar gave indications that he was determined to transfer *Reality Sandwich*, an asset potentially worth in excess of \$1.5 million, in exchange for a potentially worthless minority interest in the start-up, and to close that transaction as soon as the week beginning July 29, 2019.

10. For these reasons, Jordan has been left with no choice but to bring this action on behalf of himself and derivatively on behalf of the Companies.

PARTIES, JURISDICTION, AND VENUE

11. Jordan is an individual residing at 400 Argyle Road, Apt. RH7, Brooklyn, NY 11218.

12. Evolver is a Delaware corporation licensed to do business in the State of New York with a principal place of business located at c/o The Alchemist's Kitchen, 21 East 1st Street, New York, NY 10012.

13. EMP is a New York limited liability corporation with a principal place of business located at c/o The Alchemist's Kitchen, 21 East 1st Street, New York, NY 10012.

14. Upon information and belief, Sagar is a resident of New York County. The Court has personal jurisdiction over Sagar because he is a New York resident and because the conduct described in this Complaint occurred in New York.

15. Venue is proper pursuant to CPLR §§ 503 and 509 because, upon information and belief, Sagar resides in New York County, because the Companies' corporate offices are located in New York County, because each entity transacts business in New York County, and because New York County is the county in which a substantial part of the events or omissions giving rise to the claim occurred.

THE COMPANIES' CORPORATE STRUCTURE AND SAGAR'S ROLE

A. Evolver's Corporate Structure

16. Evolver formerly was a New York LLC that converted to a Delaware corporation in or about 2012. Evolver's affairs are governed by a set of By-laws, annexed hereto as Exhibit "A".

17. Section 3.01 of the By-laws of Evolver provides as follows:

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may adopt such rules and procedures, not inconsistent with the Certificate of Incorporation,

these By-laws or applicable law, as it may deem proper for the conduct of its meetings and the management of the Corporation.

(Exhibit "A") (emphasis added).

18. Actions of the Board of Directors may be taken only in specifically defined circumstances: at a regular meeting with a quorum present (Section 3.07), at a duly-called special meeting (Section 3.08), or without a meeting upon the unanimous consent of the Directors (Section 3.16). (*Id.*).

19. The By-laws describes the composition of Evolver's Board of Directors. (Ex. "A" § 3.02). Currently, the two Directors are Jordan and Sagar. Jordan also acts as the Chairman of the Board of Directors. (*Id.* § 4.01).

20. Sagar is not and has not claimed to be one of the Officers with the attendant rights and responsibilities described in the By-laws – he is not the President, Vice-President, Secretary, or Treasurer. Even if he had held one of those positions, those officers also do not have the authority to unilaterally make material business decisions without the approval of the Board of Directors. For example, the office of President has only "general supervision over the business of the Corporation and other duties incident to the office of President, and any other duties as may be from time to time assigned to the president by the Board of Directors and **subject to the control of the Board of Directors in each case.**" (Ex. "A" § 4.03) (emphasis added) (*see also* §§ 4.04, 4.05, 4.06).

B. EMP's Corporate Structure

21. EMP is a subsidiary of Evolver, and Evolver owns approximately 90% of the equity interests in EMP, with the remaining interests held by three outside investors. EMP's primary asset is the *Reality Sandwich* magazine.

22. EMP's Operating Agreement (annexed hereto as Exhibit "B") provides that the business of the LLC is to be conducted by its Managers. Section 4.1(A) provides, in pertinent part, as follows:

Subject to the terms of this Agreement and the New York Limited Liability Company Law, **the business and affairs of the Company will be managed by the Board of Managers**, as further described below. . . . The Managers will act under the direction of the Members and may be elected or removed at any time, for any reason or no reason, by the Members holding a majority of the Voting Interest of the Company.

(Ex. "B") (emphasis added).

23. Section 4.1(B) provides that, as a general matter, "all activities or transactions must be approved by a majority of Managers, to constitute the act of the Company or serve to bind the Company. . . ." (Ex. "B"). Further, without an "affirmative vote" of the Members constituting a majority of the equity interests, "no Managers acting alone may bind the Company to any agreement with or obligation to any third party or represent or claim to have the ability to so bind the Company." (*Id.*).

24. The Operating Agreement provides more stringent voting requirements when a material change in the business or a sale of EMP's assets is proposed. In that case, the Operating Agreement requires the **unanimous consent** of the Members **in writing**:

Notwithstanding clause B above, the following matters require unanimous approval of the Members in a consent in writing to constitute an act of the Company:

(i) A material change in the purposes or the nature of the Company's business; . . .

(iii) The merger of the Company with any other entity or the sale of all or substantially all of the Company's assets

(Ex. "B").

C. Sagar's Engagement Agreement with Evolver

25. Sagar entered into an Engagement Agreement with Evolver, effective February 1, 2018, which provides that Sagar is to act as Evolver's Chief Executive Officer. (A copy of the Engagement Agreement is annexed hereto as Exhibit "C").

26. The Engagement Agreement specifically delineates the services that Sagar is to provide Evolver as the CEO. None of these services include the right to transfer a subsidiary's primary asset without notice to or approval of management:

Services. You will provide executive management services to the Company in connection with the Company, which services will include:

Serve the Company as Chief Executive Officer for a period of twenty four months (24) from the Effective Date: with appropriate and agreed staff support, prepare and execute marketing and outreach plans for the Company **for approval of the board of directors**; oversee and coordinate the Company's public-facing activities; supervise staff and operations, manage the Company's e-commerce, trademarks and brands; and consistently grow the Company's users and subscribers. The Parties expect that this responsibility will require a substantial commitment of time, and you hereby agree to commit such time as is needed to perform the role and responsibilities as set forth herein and otherwise agreed between the Parties.

Report to and Serve the Company as a Director on **the Board of Directors, provide strategic and operational updates to the Company's board of directors and shareholders** as needed, including but not limited to, **as reasonably directed by the Company**, the provision of **advice and recommendations to the Company** with respect to: (i) personnel matters, including potential Company hires; (i) the Company's expenditures, especially in relation to budgets and financial plans authorized by the board of directors; and (i) the identification, negotiation and consummation of potential business opportunities, business partners and investors for the Company.

(See Ex. "C") (emphasis added). The description of services in Sagar's own Engagement Agreement make plain that the CEO is an advisor to the Board, not a replacement.

BACKGROUND OF THE COMPANIES AND REALITY SANDWICH MAGAZINE

27. As stated above, Jordan co-founded Evolver in 2007 to catalyze the growing "consciousness culture" movement through publishing, education, events and community building. Evolver's centerpiece was *Reality Sandwich*, which published the movement's leading voices online.

28. From the start, *Reality Sandwich* was embraced by influential members of the community and it grew to become arguably the world's most popular "psychedelic" publication, with 200,000 monthly readers at its peak in 2016.

29. In or about 2012 and 2013, Jordan recruited two new members to Evolver's management team: Stephanie Wang and Sagar. Including Jordan, these three individuals became Evolver's Directors, with Jordan as the Chairman of the Board and Chief Content Officer, Wang as Chief Marketing and Branding Officer, and Sagar as the company's CEO.

30. Among the things the new management team decided to do was to focus on building a marketplace that serves the large "conscious consumer" drawn to *Reality Sandwich* and Evolver's and Jordan's social media. These efforts eventually resulted in the opening of "The Alchemist's Kitchen", a so-called botanical dispensary for innovative herbal remedies located on the Bowery in downtown New York.

31. The Alchemist's Kitchen marketplace has succeeded in no small measure due to the organic community of users cultivated by *Reality Sandwich* magazine. Jordan in particular was instrumental in organizing a series of successful events at The Alchemist's Kitchen with *Reality Sandwich* authors and other important figures in the community, which brought foot traffic and visibility to the new marketplace.

32. In or about 2018, Wang resigned from her positions with the Companies for reasons unrelated to the present dispute. Thus, from that time on to the present, Jordan and Sagar have been Evolver's only Directors and the Companies' only senior management.

FORMATION OF EMP AND THE \$1.5 MILLION CAPITAL RAISE

33. At around the same period of time, Evolver's Directors (that is, Jordan and Sagar working collaboratively) determined that renewed attention should be focused on Evolver's media properties. Jordan developed a business plan which involved, among other things, placing Evolver's media assets, including *Reality Sandwich* magazine, into a single subsidiary, EMP, which was formed in January 2019. Sagar expressly approved this reorganization and has repeatedly acknowledged in writing that EMP became the owner of the *Reality Sandwich* asset.

34. Jordan also oversaw a capital raise which brought in \$150,000 from investors at a \$1.5 million valuation to fund an online learning membership program featuring bestselling authors and respected teachers. Those investors were expressly promised that *Reality Sandwich* was and would continue to be a centerpiece of the EMP portfolio.

35. All of Jordan's actions relating the EMP reorganization and capital raise were fully disclosed and expressly approved by Evolver's management (particularly by Sagar).

36. Unfortunately, it quickly became clear in the Spring of 2019 that EMP would face a cash shortfall despite the recent capital injection. With his twelve years of experience shepherding Evolver through many financial difficulties, Jordan was prepared for this possibility and immediately set to work creating plans to overcome this latest hurdle, all the while openly and transparently communicating his plans with Sagar.

37. Those ideas included the possibility of selling the entire Evolver/EMP media portfolio for substantial cash proceeds. As Jordan explained to Sagar on multiple occasions, that strategy would obviously have to include the sale of *Reality Sandwich* as the companies' single

most valuable media asset. Sagar repeatedly encouraged Jordan to explore the possibility of such a sale and expressed his support for such a strategy.

**SAGAR UNILATERALLY ENTERS INTO SECRET,
UNAUTHORIZED NEGOTIATIONS TO SELL REALITY SANDWICH**

38. In January 2019, Sagar first broached the possibility of transferring *Reality Sandwich* from EMP to a third-party start-up business ("Delic"), in exchange for a small equity position in Delic. In writing, Jordan promptly and unequivocally rejected Sagar's suggestion for various independent reasons. (See January 24, 2019 e-mail correspondence annexed hereto as Exhibit "D"). Among other things, the Companies' strategy up to that point was to package *Reality Sandwich* with Evolver's other media assets, thereby increasing the value of all of those assets.

39. Still, Jordan expressly assured Sagar that he was open to exploring a constructive collaboration or partnership with Delic so long as the opportunity was properly vetted and accepted by the Companies' management, *i.e.*, by both Sagar **and** Jordan. (See Ex. "D").

40. There are additional reasons why a transfer of *Reality Sandwich* would not make business sense. For example, even on its own, *Reality Sandwich* was a much more valuable asset than a small equity stake in a start-up business run by outsiders. The loss of *Reality Sandwich*, which for so long has been a flagship asset of Evolver, would cause irreparable damage to the Companies and their good will and business reputation. On top of that, a small equity position that would need time to grow in value (under the best of circumstances) would not solve EMP's immediate cash flow problems (as discussed herein).

41. Because Sagar did not follow up on his initial suggestion, Jordan understood that Sagar had abandoned the possibility of transferring *Reality Sandwich* to Delic.

42. Sagar apparently had his own ideas how to manage the Companies and did not want to carry the burden of persuading Jordan of the merits of those ideas. Instead, Sagar has pursued his objectives in secrecy, not transparency, and has tried to manage the Companies unilaterally, not collaboratively.

43. Jordan subsequently discovered that Sagar no longer wanted to work collaboratively with Jordan and wanted to make decisions for the Companies unilaterally. To do so, Sagar actively excluded Jordan from his discussions with the potential transferee, misled Jordan about his plans, and froze Jordan out of communications with Evolver shareholders. Sagar also removed Jordan from Evolver's bank account and has refused to pay Jordan compensation owed.

44. Sagar has also reneged on countless promises to resolve EMP's financial difficulties. Instead, Sagar has failed and refused to pay EMP's key staffers (causing one of them to lose their apartment), failed to follow through on team decisions, stymied Jordan's efforts to raise money, and never followed through on promises to bring in business advisors when EMP faced a cash shortfall. Sagar's actions have crippled EMP's operations.

45. Sagar has apparently taken the position – based on nothing at all – that Jordan is no longer part of the management of Evolver, and that Sagar can make material business decisions for both Companies based only on his say so.

46. In or about May 2019, Jordan learned that Sagar had continued negotiations with Delic to transfer *Reality Sandwich*, despite Jordan's unequivocal disapproval of this strategy in January 2019.

47. In retrospect, it is evident that Sagar's intention all along has been to transfer *Reality Sandwich* with or without Jordan's knowledge or consent.

48. When Jordan discovered in May 2019 that Sagar's negotiations with Delic were taking place, he wrote an e-mail on May 31, 2019 directly advising the third party that, *inter alia*, Sagar did not have the requisite authority to negotiate or effectuate a transfer of *Reality Sandwich* magazine to Delic. Jordan demanded that the parties cease and desist from any transaction involving *Reality Sandwich*, and advised that any purported agreement between EMP and Delic involving *Reality Sandwich* would be null and void. (A copy of the "Cease and Desist Letter" is annexed hereto as Exhibit "E").

49. After Jordan sent the Cease and Desist Letter, Sagar specifically represented to Jordan that he was no longer actively pursuing the *Reality Sandwich* transfer. However, in recent days, Jordan learned that Sagar's assurances were unfounded.

**SAGAR OPENLY REPUDIATED HIS FIDUCIARY
OBLIGATIONS AT THE JULY 24, 2019 MEETING**

50. On or about July 19, 2019, Jordan discovered that he had been surreptitiously removed as an administrator on the *Reality Sandwich* website, as had the site's longtime managing editor of the site. Jordan had also been removed as an administrator on the *Reality Sandwich* Facebook page. This was done without any notice to, much less approval from, the Managers of EMP or the Board of Directors of Evolver. That is, Sagar had deliberately not informed Jordan that this removal had taken place.

51. Jordan also learned that a representative of Delic had been installed as a site administrator on the *Reality Sandwich* website, again without prior notice or authority from the Companies.

52. Jordan also learned that the *Reality Sandwich* website had been inaccessible for several days over the last eight weeks, thereby reducing traffic and advertising revenues, which outages may be explained in whole or in part by Sagar's clandestine activities with Delic.

53. Jordan was greatly concerned by this turn of events, especially by the possibility that Sagar was trying to effect a *fait accompli*, and retained counsel, who sent a letter to Delic's representatives, copying Sagar, notifying them that any transaction involving *Reality Sandwich* did not have the requisite corporate authority and that Sagar was not authorized to enter into any agreements on the Companies' behalf. (A copy of counsel's July 22, 2019 letter is annexed hereto as Exhibit "F").

54. At the same time, Jordan called for an emergency meeting of the Managers of EMP and the Directors of Evolver. Jordan wrote to Sagar:

Lou:

Attached are meeting notices for a meeting of the Board of Evolver Holdings and the Managers of EMP I have scheduled for Wednesday morning [July 24, 2019] at the offices of my attorneys who I have retained to advise me in these matters. The notices were prepared in accordance with the By-laws and Operating Agreement, respectively, and your attendance is required.

I am greatly concerned about the recent actions to remove me as an administrator on the *Reality Sandwich* site and the appointment of Jackee Stang [from Delic] as an administrator. I assume, but do not know, that you are responsible for both actions. I need to understand at Wednesday's meeting what communications you've had with Delic, what representations you've made on behalf of Holdings and EMP, and what the status of *Reality Sandwich* is.

Whatever the specifics, it is clear that you have not secured the requisite authority to act, because there has been no such authority provided by the Board of [Evolver] or the Managers of EMP. In fact, there have been no meetings at all of either. The current situation is untenable and must be addressed and corrected immediately.

We also have a duty to advise the shareholders of these developments, which is why I have included a notice to the shareholders in the meeting agenda.

Please bring all communications with Delic with you to the meeting Wednesday morning and any documents you are relying on to act on behalf of EMP and/or [Evolver].

Ken

(Jordan's July 22, 2019 e-mail enclosing the meeting notices and agendas is annexed hereto as Exhibit "G").

55. That meeting was held on Wednesday, July 24, 2019. In addition to Jordan and Sagar, the meeting was also attended by Evolver's Board Secretary, Carmel Kooros. With the parties' consent, the meeting was recorded.

56. Jordan opened the meeting by explaining that he was being kept in the dark about Sagar's activities involving *Reality Sandwich* and needed to understand what Sagar was up to so that Jordan could make informed decisions as a fiduciary to the Companies.

57. Sagar expressly refused to provide Jordan any documents relating to the *Reality Sandwich* matter or to any other matter involving the Companies, even though Sagar is the custodian of all of the records relating to the purported *Reality Sandwich* transfer as well as of many other corporate records.

58. When asked how he could justify his secret negotiations with Delic, Sagar was defiant. He admitted to acting unilaterally, and insisted he had the right to do so even in defiance of EMP's Operating Agreement:

JORDAN: So, you were saying that you felt that you had the authority to take unilateral actions regarding Evolver Media Productions including making a deal to give away a key central asset of the company--

SAGAR: I feel like I have the authority to make a decision on all the assets, not just with *Reality Sandwich*.

JORDAN: All right. But in the operating agreement for Evolver Media Productions, it says, specifically, 4.1C, "The following matters require unanimous approval of the members --

SAGAR: Mm hmm.

JORDAN: --in a consent, in writing, to constitute an act of the company". . . . **So, that does clearly violate the operating agreement.**

SAGAR: **Yes. I, it sounds like it.**

(Emphasis added).

59. Sagar asserted that his authority was based on his being the CEO and a Director of Evolver and also a Manager of EMP:

JORDAN: So, let's go back to your, your assertion that as CEO of Evolver Holdings, that you're able to make decisions of Evolver Media--

SAGAR: And a director of, and a 90%, representing 90% of the interest in EMP and being a member director [*sic*] of EMP. So, all of those give me the authority.

* * *

SAGAR: I take a position today--I'm just saying. I take a position today that is a fiduciary of holdings, okay? I have taken actions to what I believe are in the best interest of holding shareholders to protect the assets as a consequence of developments within Evolver Media Productions that can be discussed today or on another day, in order to move those assets to a safe place and manage those assets. That's a decision I've made. So, whether that decision is--conforms with the operating agreement or whether there are legal issues with that, that's to be determined later. But I take full responsibility for the decision, I'm not--

JORDAN: You understand that you and I are both managers of the LLC, of Evolver Media?

SAGAR: Yes.

JORDAN: And you understand that according to the operating agreement of Evolver Media Productions, LLC that critical decisions have to be made by the managers together?

SAGAR: Mm hmm. Yes.

JORDAN: That there has to be a vote. There has to be a meeting and a vote.

SAGAR: Yes.

JORDAN: And that--did that meeting and vote ever take place?

SAGAR: No, it has not taken place.

JORDAN: **So, you've decided to act unilaterally?**

SAGAR: **Correct.**

(Emphasis added).

60. Suffice it to say, and as more fully explained herein, Sagar's position is contrary to the plain language of the Company's governing documents.

61. During the meeting, the Directors agreed to call a Special Meeting of the Evolver shareholders scheduled for August 8. (*See Ex. "G"*). The Managers also considered a resolution approving the transfer of *Reality Sandwich* to Delic. That resolution failed, meaning that EMP is now formally on record disapproving a transfer of *Reality Sandwich*. Jordan later sent a second letter through counsel advising Delic of EMP's disapproval of the proposed transaction. (*See letter dated July 26, 2019 annexed as Exhibit "H" hereto*).

62. In the face of these developments, one might believe that Sagar would be deterred from any precipitous action relating to the proposed transfer. If anything, however, Sagar appeared more determined to go through with it.

63. Sagar refused to confirm the timing of his proposed transaction with Delic, only to say that he expected to be able to finalize the transfer imminently. Based on Sagar's words and actions, it appears likely that Sagar will attempt to finalize the transfer of *Reality Sandwich* to Delic in the interim period before the August 8 Shareholder Meeting, and at that time present the deal to the shareholders as a *fait accompli*. Under the circumstances, Jordan has no choice but to bring this action now to preserve the status quo and to prevent irreparable harm to Evolver, EMP, and Jordan.

SAGAR CANNOT UNILATERALLY TRANSFER REALITY SANDWICH

64. Sagar's unilateral approach is antithetical to the management ethos of the Companies, established over the course of many years. Evolver has historically fostered transparency and consensus in the management of company affairs.

65. As explained above, the governing documents also require disclosure and broad consensus. In this case, however, there has never been formal approval by the Board of Directors

of any sale of *Reality Sandwich* to Delic or any transaction with Delic at all. Indeed, there has never been any **informal** approval of **any** transaction with Delic by the Board of Directors. Moreover, Sagar's unilateral actions effectively denies Jordan his own management rights and fiduciary responsibilities as the Chairman of the Board of Evolver and as a Manager of EMP.

66. With respect to EMP, there has been no "affirmative vote" of a majority of the Managers or Members to undertake any transaction with Delic or with any other entity, for that matter. And as there has not even been majority approval given by the Members, *a fortiori* there has not been unanimous written consent of the Members to a transaction with Delic.

67. With respect to Sagar's own Engagement Agreement, the description of services in such Agreement make plain that the CEO is an advisor to the Board, not a replacement. Indeed, such an arrangement would not be lawful even if it was in Sagar's agreement, given that the Companies cannot delegate (and have not delegated) their essential management functions.

68. In short, Sagar cannot manage the Companies except through Evolver's Board of Directors and EMP's Managers, both of which include Jordan. Sagar cannot exclude Jordan from decision-making just because Sagar cannot convince Jordan of the wisdom of his preferred course of action.

DEMAND FUTILITY ALLEGATIONS

69. Jordan brings these claims derivatively on behalf of the Companies (and, as to certain causes of action so designated, individually) to seek injunctive relief and recover damages incurred by the Companies as a direct result of breaches of fiduciary and other duties by Sagar.

70. The reason that Jordan has brought this derivative action without formal authorization by Evolver's Board of Directors or EMP's Managers is that, as discussed above, Jordan is the only other individual Director or Manager. Thus, any action instituted by the Companies would require Sagar's consent and thus Sagar would be the party charged with

determining whether the Companies should bring suit against himself for the wrongs complained of herein. Because Sagar would have the ability to veto the commencement of litigation in the name of the Companies, it would be futile to make such a demand upon the Companies.

71. In light of the foregoing, Jordan is excused from making a demand upon the Companies prior to initiating this Action.

AS AND FOR A FIRST CAUSE OF ACTION

(An Individual Claim for Declaratory Judgment)

72. Jordan repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

73. As set forth above, a dispute has arisen as to whether Sagar, as the CEO and a Director of Evolver and a Manager of EMP, has the unilateral authority to enter into a transaction to transfer *Reality Sandwich*, EMP's primary asset, to a third party, without notice to or consent from EMP's Managers or Members or Evolver's Board of Directors or Shareholders. Further, through the Cease and Desist Letter and subsequent correspondence (*see* Exs. "E", "F", and "H"), both Sagar and the third party have been on notice for months that Sagar's actions in this regard were not properly authorized by the Companies.

74. Sagar contends, as set forth above, that all of his actions are proper, even if they are contrary to the Companies' governing documents.

75. As such, an actual and justiciable controversy has arisen and now exists between Jordan and Sagar concerning the scope of Sagar's powers and the validity of his purported actions, which requires the intervention of this Court to declare the rights of the parties. Such declaratory relief would clarify and stabilize the disputed relationship between the parties as to their respective rights and obligations.

76. Accordingly, Jordan requests a judicial declaration that (a) Sagar does not have the unilateral authority to transfer any tangible or intangible assets of the Companies relating to *Reality Sandwich* magazine to Delic or to any other third parties without the express prior approval of the Companies in accordance with their respective governing documents, and (b) any purported action undertaken unilaterally by Sagar to transfer any corporate assets, including but not limited to *Reality Sandwich*, to any third party (including to Delic), be declared void *ab initio* and without force and effect.

77. Jordan has no adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION

(An Individual Claim for Injunctive Relief)

78. Jordan repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

79. In light of Sagar's misconduct, including but not limited to his wrongful acts as set forth herein, Evolver will be irreparably harmed if Sagar is permitted to represent to third parties that he has the corporate authority to transfer material assets of the Companies or to purport to take any action on behalf of the Companies in that regard.

80. Accordingly, the Court should grant Evolver injunctive relief, temporarily, preliminarily, and permanently enjoining defendant Sagar, and his agents, employees, attorneys, and all persons acting on his behalf or in concert with him, from transferring any tangible or intangible assets of the Companies relating to *Reality Sandwich* magazine to Delic or any third parties without the express prior approval of the Companies in accordance with their respective governing documents.

81. Sagar has stated that he rejects any such limitation on his ability to alienate Company assets. A lengthy period of uncertainty concerning whether Sagar has the requisite

corporate authority to transfer material assets of the Companies or to purport to take any action on behalf of the Companies in that regard without the express approval of said entities in accordance with their governing documents would be damaging to Evolver, EMP, Jordan, and to potential third-party investors in the Companies.

82. Jordan has no adequate remedy at law.

AS AND FOR A THIRD CAUSE OF ACTION

(A Derivative Claim On Behalf Of Evolver for Injunctive Relief)

83. Jordan repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

84. In light of Sagar's misconduct, including but not limited to his wrongful acts as set forth herein, Evolver will be irreparably harmed if Sagar is permitted to represent to third parties that he has the corporate authority to transfer material assets of the Companies or to purport to take any action on behalf of the Companies in that regard.

85. Accordingly, the Court should grant Evolver injunctive relief, temporarily, preliminarily, and permanently enjoining defendant Sagar, and his agents, employees, attorneys, and all persons acting on his behalf or in concert with him, from transferring any tangible or intangible assets of the Companies relating to *Reality Sandwich* magazine to Delic or any third parties without the express prior approval of the Companies in accordance with their respective governing documents.

86. Sagar has stated that he rejects any such limitation on his ability to alienate Company assets. A lengthy period of uncertainty concerning whether Sagar has the requisite corporate authority to transfer material assets of the Companies or to purport to take any action on behalf of the Companies in that regard without the express approval of said entities in accordance

with their governing documents would be damaging to Evolver, EMP, Jordan, and to potential third-party investors in the Companies.

87. Jordan on behalf of Evolver has no adequate remedy at law.

AS AND FOR A FOURTH CAUSE OF ACTION

(A Derivative Claim On Behalf Of EMP for Injunctive Relief)

88. Jordan repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

89. In light of Sagar's misconduct, including but not limited to his wrongful acts as set forth herein, EMP will be irreparably harmed if Sagar is permitted to represent to third parties that he has the corporate authority to transfer material assets of the Companies or to purport to take any action on behalf of the Companies in that regard.

90. Accordingly, the Court should grant EMP injunctive relief, temporarily, preliminarily, and permanently enjoining defendant Sagar, and his agents, employees, attorneys, and all persons acting on his behalf or in concert with him, from transferring any tangible or intangible assets of the Companies relating to *Reality Sandwich* magazine to Delic or any third parties without the express prior approval of the Companies in accordance with their respective governing documents.

91. Sagar has stated that he rejects any such limitation on his ability to alienate Company assets. A lengthy period of uncertainty concerning whether Sagar has the requisite corporate authority to transfer material assets of the Companies or to purport to take any action on behalf of the Companies in that regard without the express approval of said entities in accordance with their governing documents would be damaging to Evolver, EMP, Jordan, and to potential third-party investors in the Companies.

92. Jordan on behalf of EMP has no adequate remedy at law.

AS AND FOR A FIFTH CAUSE OF ACTION

(A Derivative Claim On Behalf Of Evolver for an Accounting)

93. Jordan repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

94. As set forth above, Sagar has had sole and exclusive possession and control of the books and records of Evolver relating to any purported transfer of assets to any third party, particularly with Delic. Sagar has also had sole and exclusive possession and control at all relevant times over Evolver's funds and assets. Sagar has denied Jordan his contractual, and statutory rights to inspect Evolver's books and records.

95. Sagar has prevented Jordan on behalf of Evolver from evaluating the propriety of Evolver transactions, including those challenged herein, and absent judicial relief, Jordan will not be able to assess the propriety of such transactions or the accuracy of Evolver's books and records related to this matter.

96. On behalf of Evolver, Jordan is entitled to a judgment directing Sagar to account to Jordan for all transactions and activities entered into in connection with the *Reality Sandwich* purported transfer and for any funds received.

97. Jordan on behalf of Evolver has no adequate remedy at law.

AS AND FOR A SIXTH CAUSE OF ACTION

(A Derivative Claim On Behalf Of EMP for an Accounting)

98. Jordan repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

99. As set forth above, Sagar has had sole and exclusive possession and control of the books and records of EMP relating to any purported transfer of assets to any third party, particularly with Delic. Sagar has also had sole and exclusive possession and control at all

relevant times over EMP's funds and assets. Sagar has denied Jordan his contractual, and statutory rights to inspect EMP's books and records.

100. Sagar has prevented Jordan on behalf of EMP from evaluating the propriety of EMP transactions, including those challenged herein, and absent judicial relief, Jordan will not be able to assess the propriety of such transactions or the accuracy of EMP's books and records related to this matter.

101. On behalf of EMP, Jordan is entitled to a judgment directing Sagar to account to Jordan for all transactions and activities entered into in connection with the *Reality Sandwich* purported transfer.

102. Jordan on behalf of EMP has no adequate remedy at law.

AS AND FOR AN SEVENTH CAUSE OF ACTION

(A Derivative Claim On Behalf Of Evolver for Breach of Fiduciary Duty)

103. Jordan repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

104. Sagar owes the highest fiduciary duties of care, loyalty, good faith and fair dealing to Evolver and to Jordan.

105. These duties require Sagar to act at all times in the best interests of Evolver and not to abuse his position of trust and authority to benefit himself.

106. As set forth above, in committing multiple acts of corporate misconduct, Sagar breached his fiduciary duties to Evolver and to Jordan.

107. Sagar participated in the acts of mismanagement, or acted in reckless disregard of the facts known to him and failed to exercise due care to prevent the imprudent and unlawful transactions described herein. His breaches of fiduciary duty and negligence resulted in the misuse and waste of corporate assets.

108. Evolver has suffered actual injury as a direct, foreseeable and proximate result of Sagar's breaches of his fiduciary duties.

109. Jordan, on behalf of Evolver, is entitled to recover compensatory damages for Sagar's breaches of fiduciary duties in an amount to be determined at trial, but believed to be in excess of the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000).

110. In addition, because Sagar's conduct was undertaken willfully and with a high degree of moral culpability, he should be ordered to pay to Jordan on behalf of Evolver punitive or exemplary damages, in an amount to be determined at trial.

AS AND FOR AN EIGHTH CAUSE OF ACTION

(A Derivative Claim On Behalf Of EMP for Breach of Fiduciary Duty)

111. Jordan repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

112. Sagar owes the highest fiduciary duties of care, loyalty, good faith and fair dealing to EMP and to Jordan.

113. These duties require Jordan to act at all times in the best interests of EMP and not to abuse his position of trust and authority to benefit himself.

114. As set forth above, in committing multiple acts of corporate misconduct, Sagar breached his fiduciary duties to EMP and to Jordan.

115. Sagar participated in the acts of mismanagement, or acted in reckless disregard of the facts known to him and failed to exercise due care to prevent the imprudent and unlawful transactions described herein. His breaches of fiduciary duty and negligence resulted in the misuse and waste of corporate assets.

116. EMP has suffered actual injury as a direct, foreseeable and proximate result of Sagar's breaches of his fiduciary duties.

117. Jordan, on behalf of EMP, is entitled to recover compensatory damages for Sagar's breaches of fiduciary duties in an amount to be determined at trial, but believed to be in excess of the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000).

118. In addition, because Sagar's conduct was undertaken willfully and with a high degree of moral culpability, he should be ordered to pay to Jordan on behalf of EMP punitive or exemplary damages, in an amount to be determined at trial.

AS AND FOR A NINTH CAUSE OF ACTION

(A Derivative Claim on behalf of Evolver for Corporate Waste and Mismanagement)

119. Jordan repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

120. Sagar owes the highest fiduciary duties of care, loyalty, good faith and fair dealing to Evolver and to Jordan.

121. These duties require Sagar to act at all times in the best interests of Evolver and not to abuse his position of trust and authority to benefit himself.

122. As set forth above, in committing multiple acts of corporate misconduct, Sagar breached his fiduciary duties to Evolver and to Jordan.

123. Sagar participated in the acts of mismanagement, or acted in reckless disregard of the facts known to him and failed to exercise due care to prevent the imprudent and unlawful transactions described herein. His breaches of fiduciary duty and negligence resulted in the misuse and waste of corporate assets.

124. Evolver has suffered actual injury as a direct, foreseeable and proximate result of Sagar's breaches of his fiduciary duties.

125. Jordan, on behalf of Evolver, is entitled to recover compensatory damages for Sagar's corporate waste and mismanagement in an amount to be determined at trial, but believed to be in excess of the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000).

126. In addition, because Sagar's conduct was undertaken willfully and with a high degree of moral culpability, he should be ordered to pay to Jordan on behalf of Evolver punitive or exemplary damages, in an amount to be determined at trial.

AS AND FOR A TENTH CAUSE OF ACTION

(A Derivative Claim on behalf of EMP for Corporate Waste and Mismanagement)

127. Jordan repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

128. Sagar owes the highest fiduciary duties of care, loyalty, good faith and fair dealing to EMP and to Jordan.

129. These duties require Sagar to act at all times in the best interests of EMP and not to abuse his position of trust and authority to benefit himself.

130. As set forth above, in committing multiple acts of corporate misconduct, Sagar breached his fiduciary duties to EMP and to Jordan.

131. Sagar participated in the acts of mismanagement, or acted in reckless disregard of the facts known to him and failed to exercise due care to prevent the imprudent and unlawful transactions described herein. His breaches of fiduciary duty and negligence resulted in the misuse and waste of corporate assets.

132. EMP has suffered actual injury as a direct, foreseeable and proximate result of Sagar's breaches of his fiduciary duties.

133. Jordan, on behalf of EMP, is entitled to recover compensatory damages for Sagar's corporate waste and mismanagement in an amount to be determined at trial, but believed to be in excess of the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000).

134. In addition, because Sagar's conduct was undertaken willfully and with a high degree of moral culpability, he should be ordered to pay to Jordan on behalf of EMP punitive or exemplary damages, in an amount to be determined at trial.

AS AND FOR AN ELEVENTH CAUSE OF ACTION

(A Derivative Claim on behalf of Evolver for Breach of Contract)

135. Jordan repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

136. As a party to the Engagement Agreement, Sagar is bound by the provisions of the Engagement Agreement as well as by the covenant of good faith and fair dealing implied into the Engagement Agreement as a matter of law.

137. Sagar has materially breached the Engagement Agreement by taking actions as the CEO that far exceed the scope of actions authorized in the Engagement Agreement's Statement of Work, causing damages to Evolver.

138. Evolver has fully complied with its obligations under the Engagement Agreement.

139. Jordan, on behalf of Evolver, is entitled to recover compensatory damages for Sagar's breach of contract in an amount to be determined at trial, but believed to be in excess of the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that judgment be entered as follows:

- (a) On the First Cause of Action, an individual claim for declaratory judgment, declaring or determining that (a) Sagar does not have the unilateral authority to transfer any tangible or intangible assets of the Companies relating to *Reality Sandwich* magazine to Delic or to any other third parties without the express prior approval of the Companies in accordance with their respective governing documents, and (b) any purported action undertaken unilaterally by Sagar to transfer any corporate assets, including but not limited to *Reality Sandwich*, to any third party (including Delic), be declared void *ab initio* and without force and effect;
- (b) On the Second Cause of Action, an individual claim for injunctive relief, temporarily, preliminarily, and permanently enjoining and restraining Defendant and his agents, attorneys, employees, representatives, affiliates, and any other person acting on his behalf or in concert with them, from transferring any tangible or intangible assets of the Companies relating to *Reality Sandwich* magazine to Delic or any third parties without the express prior approval of the Companies in accordance with their respective governing documents;
- (c) On the Third Cause of Action, a derivative claim on behalf of Evolver for injunctive relief, temporarily, preliminarily, and permanently enjoining and restraining Defendant and his agents, attorneys, employees, representatives, affiliates, and any other person acting on his behalf or in concert with them, from transferring any tangible or intangible assets of the Companies relating to *Reality Sandwich* magazine to Delic or any third parties without the express prior approval of the Companies in accordance with their respective governing documents;
- (d) On the Fourth Cause of Action, a derivative claim on behalf of EMP for injunctive relief, temporarily, preliminarily, and permanently enjoining and restraining Defendant and his agents, attorneys, employees, representatives, affiliates, and any other person acting on his behalf or in concert with them, from transferring any tangible or intangible assets of the Companies relating to *Reality Sandwich* magazine to Delic Corp. or any third parties without the express prior approval of the Companies in accordance with their respective governing documents;
- (e) On the Fifth Cause of Action, a derivative claim on behalf of Evolver for an accounting, directing Sagar to account to Jordan for all transactions and activities entered into in connection with the *Reality Sandwich* purported transfer and for any funds received;
- (f) On the Sixth Cause of Action, a derivative claim on behalf of EMP for an accounting, directing Sagar to account to Jordan for all transactions and activities entered into in connection with the *Reality Sandwich* purported transfer;

- (g) On the Seventh Cause of Action, a derivative claim on behalf of Evolver for breach of fiduciary duty, in an amount to be determined at trial, but believed to be in excess of the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000) in compensatory damages, plus interest, together with punitive or exemplary damages in an amount to be determined at trial;
- (h) On the Eighth Cause of Action, a derivative claim on behalf of EMP for breach of fiduciary duty, in an amount to be determined at trial, but believed to be in excess of the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000) in compensatory damages, plus interest, together with punitive or exemplary damages in an amount to be determined at trial;
- (i) On the Ninth Cause of Action, a derivative claim on behalf of Evolver for waste of corporate assets, in an amount to be determined at trial, but believed to be in excess of the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000) in compensatory damages, plus interest, together with punitive or exemplary damages in an amount to be determined at trial;
- (j) On the Tenth Cause of Action, a derivative claim on behalf of EMP for waste of corporate assets, in an amount to be determined at trial, but believed to be in excess of the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000) in compensatory damages, plus interest, together with punitive or exemplary damages in an amount to be determined at trial;
- (k) On the Eleventh Cause of Action, a derivative claim on behalf of Evolver for breach of contract, in an amount to be determined at trial, but believed to be in excess of the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000) in compensatory damages, plus interest;
- (l) With respect to the claims asserted herein derivatively on behalf of Evolver, awarding Evolver its attorneys' fees, costs and disbursements incurred in this action and/or awarding Jordan reimbursement of all said fees expended by him on behalf of Evolver;
- (m) With respect to the claims asserted herein derivatively on behalf of EMP, awarding EMP its attorneys' fees, costs and disbursements incurred in this action and/or awarding Jordan reimbursement of all said fees expended by him on behalf of EMP;
- (n) With respect to the claims asserted herein individually on behalf of Jordan, awarding Jordan his attorneys' fees, costs and disbursements incurred in this action; and
- (o) Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
July 29, 2019

GANFER SHORE LEEDS & ZAUDERER LLP

By: 

William D. McCracken
360 Lexington Avenue
New York, New York 10017
(212) 922-9250
Attorneys for Plaintiff

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)


KEN JORDAN, being duly sworn, deposes and says:

I am the Plaintiff in this action. I have read the foregoing Verified Complaint and know the contents thereof. The same are true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief; and as to those matters, I believe them to be true.



KEN JORDAN

Sworn to before me this
29th day of July, 2019



NOTARY PUBLIC
WILLIAM D. McCracken
Notary Public, State of New York
No. 02MC6117452
Qualified in New York County
Commission Expires October 25, 20*20*