

IN THE SUPERIOR COURT OF GWINNETT COUNTY

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CLERK SUPERIOR COURT  
GWINNETT COUNTY, GA

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TOM LAWLER, CLERK

STATE OF GEORGIA

C. BRAD FALLON,

Plaintiff,

v.

SMART MARKETING, INC., DSJB  
HOLDINGS, LLC, DONGJIE MENG,  
SHIRLEY X. WANG, and JENNIFER  
FALLON,

Defendants.

Civil Action File

No. 09A-04910-6

VERIFIED COMPLAINT

Plaintiff, C. Brad Fallon ("Plaintiff"), hereby files his verified complaint for declaratory judgment pursuant to O.C.G.A. § 9-4-1, *et seq.*, fraud, breach of contract, aiding and abetting breach of contract, breach of fiduciary duties and conspiracy to breach fiduciary duties, conversion, promissory estoppel, unjust enrichment, and for a constructive trust against the Defendants as follows:

PARTIES

1.

Defendant Smart Marketing, Inc. ("SMI"), is a Georgia corporation formed and existing under the laws of the State of Georgia, with its principal place of business located at 2400 Chattahoochee Drive, Duluth, Gwinnett County, Georgia 30097. SMI may be served with the summons and complaint through its registered agent, Jennifer Fallon, located at 2400 Chattahoochee Drive, Duluth, Gwinnett County, Georgia 30097.

2.

Defendant DSJB Holdings, LLC (“DSJB”), is a limited liability company organized and existing under the laws of the State of Georgia, with its principal place of business located at 2400 Chattahoochee Drive, Duluth, Gwinnett County, Georgia 30097. DSJB may be served with the summons and complaint through its registered agent, Jennifer Fallon, located at 2400 Chattahoochee Drive, Duluth Gwinnett County, Georgia 30097.

3.

Defendant DongJie Meng also known as DJ Meng (“Meng”) is a resident of Gwinnett County, Georgia, and may be personally served with summons and complaint at his residence address, 811 Moss Creek Plantation, Duluth, Gwinnett County, Georgia 30097.

4.

Defendant Shirley X. Wang (“Wang”) is a resident of Gwinnett County, Georgia, and may be personally served with summons and complaint at her residence address, 811 Moss Creek Plantation, Duluth, Gwinnett County, Georgia 30097.

5.

Defendant Jennifer Fallon (“J. Fallon”), individually, is a resident of DeKalb County, Georgia, and may be personally served with second original summons and complaint at her residence address 3203 Lanier Drive, Atlanta, DeKalb County, Georgia 30319.

#### **JURISDICTION AND VENUE**

6.

This Court has personal jurisdiction over Defendants since the individuals are all Georgia residents, SMI is a Georgia corporation, and DSJB is a Georgia limited liability company.

Venue as to all Defendants is proper pursuant to Ga. Const. Art. VI, § II, Para. IV, O.C.G.A. § 9-10-31(a), and O.C.G.A. § 14-2-510, because they are jointly and severally liable to Plaintiff.

### **FACTS**

#### **A. Plaintiff's Entrepreneurial History**

7.

Plaintiff has been an entrepreneur and business owner his entire career. He started his first business immediately after graduating from high school. From dorm room start-ups to building a business from zero in 2004 to \$30 million in sales in four years, Plaintiff has a successful entrepreneurial track record.

8.

Plaintiff is also highly skilled at internet marketing and Search Engine Optimization ("SEO"). In 2003, Plaintiff wrote and published a book on internet marketing titled *Creating Customers Out Of Thin Air, Secrets of Online Marketing for Offline Businesses*.

9.

SEO is the process of improving the volume or quality of traffic to a web site from internet search engines. An accepted premise of on-line marketing is that the higher up a web site appears in a list of search results, for example on Google, the more likely the person conducting the search is to visit a website. Consequently, a fundamental key to success in on-line sales is to utilize SEO techniques to cause one's web site to appear at the top of the search result list when the desired search terms are used on Google or other search engines.

**B. Formation of SMI**

10.

In or about June 2003, Plaintiff formed a new corporation, Defendant SMI, for a software venture called the Smart Suite that he was working on for the CRM (Customer Relationship Management) industry. The first word in SMI's name, Smart, was used as an acronym for Sales and Marketing Automated Relationship Technology.

11.

When Plaintiff formed SMI, he placed 100% of the stock in his wife's name because he had poor credit as a result of the failure of a prior business venture. J. Fallon's credit rating was very good, and Plaintiff and J. Fallon believed it would be beneficial for the business venture to have the stock solely in her name for several business purposes, including obtaining a business checking account and a merchant account for processing credit card transactions.

**C. Plaintiff and J. Fallon Start My Wedding Favors**

12.

In or about 2003, Defendant J. Fallon informed Plaintiff that she wanted to quit her sales job and work from home. Plaintiff suggested that they start an online store. Plaintiff taught J. Fallon how to conduct keyword research to find out how many people are searching Google or other search engines for various products and product categories, and to quantify the nature and extent of potential competitors.

13.

After researching various product ideas and after substantial discussion and analysis, Plaintiff and J. Fallon decided to start an online store to sell wedding and other party favors. The

business is known as My Wedding Favors and has the internet domain name: www.myweddingfavors.com.

14.

Prior to meeting the Plaintiff, J. Fallon had never owned or operated a business, and before Plaintiff taught J. Fallon how to use the internet for starting and operating an online business, J. Fallon had no experience with internet marketing or e-commerce. J. Fallon's prior career was in sales, ending as a sales representative for a healthcare software company, a position she held for one year. Before that, she was a sales representative for a legal publisher for one year, and before that, she was in pharmaceutical sales.

15.

When Plaintiff and J. Fallon decided to start My Wedding Favors, Plaintiff bought and registered the domain name, myweddingfavors.com, and chose a local contractor to design and build an e-commerce store.

16.

Plaintiff used their existing corporation, SMI, to operate the My Wedding Favors business. The original purpose for SMI was to create and sell a software product unrelated to My Wedding Favors or the sale of wedding and other party favors. Accordingly, SMI's trade or "doing business as" name became My Wedding Favors.

17.

My Wedding Favors went online and had its first sales in January 2004.

18.

From the outset, Plaintiff devoted substantial time and effort and contributed his intellectual property including his internet marketing and SEO expertise to the endeavor. Plaintiff worked in the business full-time.

19.

My Wedding Favors was an immediate success.

20.

Sales grew exponentially each month after [www.myweddingfavors.com](http://www.myweddingfavors.com) began operating. Operating from the Fallon's basement, the first months' gross sales for My Wedding Favors were approximately: January 2004 - \$11,000; February - \$28,000; March - \$60,000; April - \$83,000; and May (their fourth full month of operations) - \$110,000.

21.

Plaintiff used his SEO expertise to get the [www.myweddingfavors.com](http://www.myweddingfavors.com) website to rank first on the first page of Google for the main search term, "wedding favors." The [www.myweddingfavors.com](http://www.myweddingfavors.com) website has been number one on Google for "wedding favors" searches for a long time, and remains so today.

**D. Meng and Wang Become Involved in My Wedding Favors**

22.

Defendant Meng is a computer programmer who had worked for Plaintiff on the Smart Suite project around the time Plaintiff and J. Fallon started My Wedding Favors.

23.

Meng told Plaintiff that he had contacts in China that could manufacture products to be sold on the [www.myweddingfavors.com](http://www.myweddingfavors.com) website at a reduced cost.

24.

Meng and his wife, Wang, Plaintiff, and J. Fallon formed a corporation called Kate Aspen, Inc. (“Kate Aspen”) to manufacture products they designed in factories in China and import them to the United States. The goal was to create their own product line and become a supplier to their competitors and, eventually, sell to offline bricks-and-mortar stores.

25.

When Kate Aspen was formed in 2005, Meng remained employed full-time as a computer programmer and Wang was a full-time employee of BellSouth, working as an analyst in the finance department. Although Meng did freelance computer programming on the side, as a moonlighter, neither he nor Wang had ever owned or operated a substantial business before meeting Plaintiff.

26.

The stock of Kate Aspen initially was apportioned 25% to Meng, 25% to Wang, and 50% to J. Fallon. Plaintiff was not made a shareholder for the same reasons as with SMI – his credit rating – and the expected need in the near future to obtain lines of credit with banks to finance an expanding line of inventory.

**E. The Merger of Kate Aspen into SMI**

27.

The parties began selling products under Kate Aspen in or about January 2005.

28.

From 2004 sales of \$1.2 million for My Wedding Favors, the two companies, together, sold \$7.8 million in 2005.

29.

From the latter part of 2004, until some time into 2005, all of the Kate Aspen founders had other full-time jobs. Meng maintained his programming jobs during the day and worked on software for Kate Aspen at night. Wang maintained her job at BellSouth and came to the office when she could. J. Fallon was working mostly on Smart Marketing and beginning to transition more toward Kate Aspen, the growing wholesale business. Plaintiff was working mostly on Smart Marketing, which included, in addition to selling wedding favors on MyWeddingFavors.com selling other physical products online, including apparel, consulting and speaking in the area of internet marketing, and creating and marketing information products and “how-to courses” on the subject of internet marketing. The audio recording that he created in 2004 called “Stomping the Search Engines” became one of the best selling courses on the subject of SEO and led to Plaintiff’s international reputation as one of the top experts on internet marketing.

30.

By the end of the first year, Plaintiff determined that operations should be consolidated to achieve operational efficiencies and to build SMI and Kate Aspen as one company. Plaintiff believed that it was inefficient to continue to maintain two shipping departments, two customer service departments, two accounting departments, etc.

31.

Kate Aspen was merged into SMI on or about December 31, 2005.

32.

After the merger, the stock of SMI initially was apportioned 12.5% to Wang, 12.5% to Meng and 75% to J. Fallon.



33.

At the time of the merger, Plaintiff and J. Fallon wanted to change their 75% ownership of SMI stock, which was nominally owned solely by J. Fallon, so that the stock would be formally held equally by both of them, with Plaintiff owning 37.5% and J. Fallon owning 37.5%. This desired formal change in ownership was consistent with the understanding and agreement of all the interested parties, including J. Fallon, Meng, and Wang (the "Individual Defendants"), that after the merger, Plaintiff would forego certain opportunities and would operate SMI, full-time, as CEO, and all four Individual Defendants would be owners (J. Fallon-37.5%, Plaintiff-37.5%, Meng-12.5%, and Wang-12.5%).

34.

Immediately prior to the signing of the merger documents, J. Fallon specifically told Plaintiff: it will be your stock; we both know that, and you can have it any time you want.

35.

Ultimately, upon advice of corporate counsel and for business continuity reasons related to the merger, Plaintiff and J. Fallon decided to leave the SMI stock in J. Fallon's name until after the merger, and Plaintiff and J. Fallon believed, understood, and agreed that they owned the SMI stock jointly after the merger.

36.

In a 2006 deposition, after the merger of Kate Aspen into SMI which took effect on December 31, 2005, J. Fallon testified under oath that "Brad [Plaintiff] was an owner of the company [SMI]." Accordingly, J. Fallon explicitly and unequivocally recognized Plaintiff's ownership interest in SMI.

37.

All SMI employees, including the Individual Defendants understood and acted consistent with the understanding that SMI had four owners: Plaintiff, J. Fallon, Wang, and Meng. Plaintiff consistently was referred to as an owner by Meng, Wang, and J. Fallon.

38.

At all times after the merger, Plaintiff was either the actual owner or the beneficial owner of 37.5 percent of SMI's stock which was held in J. Fallon's name. To the extent that Plaintiff's stock remained in the name of J. Fallon, she merely served as the trustee of the SMI stock for Plaintiff.

39.

Meng, Wang, J. Fallon, and Plaintiff all agreed and understood that Plaintiff had the right to have the stock put in his name without any reservations or contingencies, and the parties anticipated that the transfer would, in fact, occur at some time in the future.

**F. SMI's Post-Merger Corporate Structure**

40.

At the time of the merger of Kate Aspen and SMI, Plaintiff, Meng, Wang, and J. Fallon agreed that each of them would serve as a member of the board of directors for SMI.

41.

Under the management structure that the parties agreed upon, Plaintiff was the CEO of SMI and was at the top of management structure. Plaintiff ran the day-to-day operations as the top executive and provided strategic direction.

42.

J. Fallon served as president of SMI and was primarily responsible for new product ideas and product development; Wang was primarily responsible for product manufacturing in China; and Meng, a programmer, was primarily responsible for technology and software. J. Fallon, Wang, and Meng all reported to Plaintiff, attended his weekly CEO staff meetings, and like Plaintiff, eventually resigned from their other full-time positions to become full-time employees of SMI.

43.

While Plaintiff was running SMI, its annual sales grew quickly from \$7.8 million at the end of 2005 to \$14 million at the end of 2006, and to \$18.1 million at the end of 2007.

44.

As CEO, Plaintiff was the person who hired all the top managers, including the warehouse manager, controller, CFO, and human resources director. Plaintiff hired and was responsible for working with all of SMI's outside professionals, such as accountants and lawyers, and managed any litigation as it occurred. Plaintiff organized SMI's strategic planning meetings and was principally responsible for leading the formation of the business plan and strategy. Plaintiff held weekly staff meetings of all the top managers in the company, including the Individual Defendants. Plaintiff led the monthly all-employee communication meetings.

45.

As a small, closely held company, SMI had few if any official board meetings. Nevertheless, all four founders met together regularly, often over lunch or dinner or at their respective homes. Whenever the four of them got together to discuss business, it was referred to as an "owners meeting."

46.

After the merger of Kate Aspen and SMI at the end of 2005, at all relevant times, Plaintiff was never referred to as anything other than an owner, in public or private. Though his stock was held by J. Fallon, Plaintiff was the beneficial owner.

47.

Plaintiff, Meng, Wang, and J. Fallon all agreed that they would receive the same salary for their work in the company: \$150,000 per year. These four parties also specifically agreed that none of them had the right to fire any other one of them, including Plaintiff, nor to remove any of the four of them from the board of directors or to reduce or eliminate the salary and benefits of any of them without unanimous agreement.

48.

As the business grew, the owners agreed several times to increase the amount of money that they took in salaries. Although Meng and Wang owned less than Mr. and Mrs. Fallon, the Fallons always agreed all four owners should make the same salary.

**G. Another of Plaintiff's Successful Ventures Loaned Money to SMI**

49.

StomperNet, LLC ("StomperNet"), is a Georgia limited liability company owned 50% by Plaintiff and 50% by Andy Jenkins ("Jenkins"), an individual who has no ownership interest in or relationship to SMI.

50.

In 2007 and 2008, Plaintiff caused StomperNet to make loans to SMI which SMI needed in order to make payroll. The loans were made pursuant to a written loan agreement as a demand note at an interest rate that was higher than what STomperNet was making on its money

in the bank, and lower than SMI's existing line of credit. With an ever expanding product line and growing inventory needs, SMI needed this capital to survive, having reached the limits of its bank lines of credit. Over a period of time, the loans grew to a total indebtedness of approximately \$675,000.

51.

In 2008, SMI paid back exactly one-half of the \$675,000 loan, or \$337,500. After extensive discussions among the owners of SMI, which found it difficult or impossible to pay back all the money it owed in a short period of time, it was understood that StomperNet would be repaid half of the amount owed to it by SMI, and then StomperNet would pay all of that amount (\$337,500) to Andy Jenkins as a distribution. (Jenkins is Plaintiff's 50% co-owner of StomperNet and has no interest in SMI.) ("Andy's half"). This half of the loan which was repaid was referred to as "Andy's half". Plaintiff did not receive any portion of those funds or any benefit from the repayment. To assist SMI, Plaintiff agreed to leave the \$337,500.00 he was owed ("Brad's half") in SMI.

52.

The practical effect of these events was a cash infusion into SMI of approximately \$337,500 from Plaintiff's separate assets.

53.

Additionally, Plaintiff agreed to forego immediate collection of the \$337,500 he otherwise would have received based on the promises of the Individual Defendants to not fire him or to remove him from the board or to reduce or eliminate his salary.

H. The Founding of DSJB

54.

In 2008, Plaintiff and the Individual Defendants formed a new company called DSJB Holdings, LLC.

55.

The name of the company is derived from the first initial for each of the four owners: DJ, Shirley, Jennifer and Brad.

56.

DSJB was formed to purchase and own a building to be used solely for SMI's business. The building was purchased using SMI's assets and resources.

57.

Plaintiff was not made a member of DSJB to facilitate banking relationships and credit availability, but just as with SMI, Plaintiff and the Individual Defendants believed, agreed, and understood that Plaintiff was an owner of DSJB.

58.

Plaintiff was the beneficial owner of 25% of DSJB which was held in J. Fallon's name. J. Fallon merely served as the trustee of the DSJB ownership for Plaintiff.

59.

Plaintiff was substantially involved in the acquisition of the building, including dealing with the lawyers and acquiring the banking relationship that provided financing for DSJB to purchase the building.

**I. The Individual Defendants Begin to Freeze Plaintiff Out of SMI**

60.

After nearly three years of successfully running SMI as its CEO, in or about late 2007 or early 2008, J. Fallon decided that she wanted to take over as CEO of SMI. By the end of 2007, J. Fallon was gaining experience in running a business. As Plaintiff became involved in other complimentary ventures, with the full support of J. Fallon, including teaching internet marketing via StomperNet (the company that provided \$675,000 of much needed cash), J. Fallon took on more of the day-to-day management responsibilities. To placate his wife, Plaintiff agreed. They decided he would take the title of and serve in the capacity of Chairman of SMI's board of directors.

61.

Although Plaintiff no longer held the title of CEO, Plaintiff remained actively involved in SMI as its Chairman. For example, as precursor to recruiting additional board members to help the still-growing company, Plaintiff recruited a former McKinsey consultant and retired former head of North American operations for a large retail chain to conduct monthly "owners meetings." In those meetings, held at the offices of StomperNet, Plaintiff offered insights, asked questions, suggested improvements to the monthly financial reporting package, contributed key marketing ideas, and otherwise made regular strategic contributions. As agreed, Plaintiff continued to draw his annual salary for his continued employment.

62.

In or about September 2008, J. Fallon filed for divorce from Plaintiff. Around this same time, the Individual Defendants began to act in concert systematically excluding Plaintiff from the business of SMI and depriving him the benefits of his ownership.

63.

In direct contravention of their agreement, the Individual Defendants terminated Plaintiff's employment and salary and agreed to pay all of Plaintiff's salary to J. Fallon, despite the fact that Plaintiff was still providing services and intellectual property to SMI and was actively engaged in promoting and furthering SMI's business interests.

64.

Subsequently, the Individual Defendants also purported to remove Plaintiff from SMI's board of directors.

65.

Moreover, Defendant J. Fallon began to assert that she owns all of the 75% stock in SMI that is owned one-half (37.5%) by Plaintiff and one-half (37.5%) by Defendant J. Fallon. Additionally, after demand, J. Fallon has refused to transfer Plaintiff's 37.5% ownership interest to him to allow him to put the stock in his name, or even to acknowledge his ownership interest.

66.

Despite repeated demands from Plaintiff, J. Fallon has violated her duties as a fiduciary by refusing to transfer Plaintiff's stock in SMI or his membership interest in DSJB to Plaintiff.

67.

Upon information and belief, J. Fallon has promised to transfer to Wang and Meng an additional 5% of SMI stock if she defeats Plaintiff's claim to ownership of 37.5% of SMI stock.

#### **COUNT I — DECLARATORY JUDGMENT**

68.

Plaintiff restates and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 67 above.



69.

Plaintiff and Defendants J. Fallon, Meng, and Wang believed, understood, and agreed that after the merger on December 31, 2005, Plaintiff was the owner of 37.5% of the stock of SMI. Additionally, Plaintiff and Defendants J. Fallon, Meng, and Wang believed, understood, and agreed that Plaintiff was the owner of a 25% membership interest in DSJB.

70.

The parties are uncertain as to their duties, rights, and relations and an actual controversy exists. Plaintiff is entitled to relief from uncertainty and insecurity with respect to his rights, status and other legal relations regarding his ownership interests in SMI and DSJB, and, therefore, files this declaratory judgment action to resolve questions of law pursuant to O.C.G.A. § 9-4-1, *et seq.*

71.

A ripe and justiciable controversy exists between Plaintiff and Defendants as described herein.

72.

All conditions precedent to the filing of this action have been satisfied and/or waived.

73.

This dispute and controversy is a justiciable, non-speculative matter, and resolution by this Court will determine the rights and interests of the parties and potentially terminate and/or render litigation more efficient.

74.

A declaratory judgment would relieve Plaintiff from uncertainty and insecurity with regard to his rights relating to SMI and DSJB as well as his legal relations with the Individual Defendants.

75.

A declaratory judgment would guide and protect Plaintiff from uncertainty and insecurity with regard to the propriety of future actions regarding SMI and DSJB which are properly incident to his rights and which if taken without direction might reasonably jeopardize that interest.

76.

All parties have an interest in this matter. A determination that Plaintiff is the owner of 37.5% of the stock of SMI and a 25% membership interest in DSJB will allow Plaintiff to eliminate any uncertainty and clarify the ownership of SMI and DSJB.

77.

Therefore, Plaintiff is entitled to a declaration that:

- (1) He is the owner of 37.5% of the stock of SMI; and
- (2) He is the owner of a 25% membership interest in DSJB.

**COUNT II — FRAUD**

**Against Defendant J. Fallon**

78.

Plaintiff restates and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 77 above.

79.

Around the time of the merger of Kate Aspen into SMI on or about December 31, 2005, Defendant J. Fallon specifically told Plaintiff: it will be your stock, we both know that, and you can have it any time you want.

80.

Defendant J. Fallon fraudulently represented to Plaintiff that he could have his 37.5% of the SMI stock any time he wanted. Defendant J. Fallon knew this information to be false because she never intended to transfer Plaintiff's stock to him. Defendant J. Fallon made this representation without the present intent to perform.

81.

Plaintiff reasonably and justifiably relied upon the representation of his wife.

82.

Defendant J. Fallon intended to and did cause Plaintiff to justifiably rely upon her representations regarding his SMI stock. In particular, Plaintiff relied upon these representations by allowing his 37.5% ownership of SMI stock to be maintained in J. Fallon's name after the merger.

83.

J. Fallon's actions and omissions were malicious and reckless. By engaging in the foregoing fraudulent communications, representations and omissions, Defendant J. Fallon intended to and did cause substantial harm to Plaintiff.

84.

J. Fallon made these fraudulent communications, representations and omissions with the specific intent to cause harm to Plaintiff, and Defendant J. Fallon did in fact cause harm to Plaintiff.

85.

As a direct and proximate cause of J. Fallon's fraudulent misrepresentations, Plaintiff has suffered damages in an amount to be determined at trial.

86.

J. Fallon acted with the specific intent to cause harm to Plaintiff or acted with conscious indifference to the consequences of her actions and omissions to justify an award of punitive damages to punish, penalize, or deter J. Fallon from committing similar actions in the future. Plaintiff should be awarded punitive damages from J. Fallon in an amount to be determined at trial according to the enlightened conscience of the jury.

87.

J. Fallon has been stubbornly litigious and has caused Plaintiff unnecessary trouble and expense in violation of O.C.G.A. § 13-6-11 such that Plaintiff is also entitled to recover his reasonable attorneys' fees from Defendant J. Fallon.

### **COUNT III — BREACH OF CONTRACT**

#### **Against Defendant J. Fallon**

88.

Plaintiff restates and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 87 above.

89.

After Kate Aspen was merged into SMI on or about December 31, 2005, the stock of SMI initially was apportioned 12.5% to Wang, 12.5% to Meng and 75% to J. Fallon.

90.

At the time of the merger, Plaintiff and J. Fallon considered titling J. Fallon's 75% of the SMI stock in both of their names with Plaintiff owning 37.5% and J. Fallon owning 37.5%. Based upon the advice of corporate counsel who explained the business continuity rules relating to mergers, Plaintiff and J. Fallon agreed that she would keep the stock in her name until after the merger.

91.

Immediately prior to the merger documents being signed, J. Fallon specifically told Plaintiff that it will be your stock, we both know that, and you can have it any time you want.

92.

The parties all agreed and understood that after the merger, Plaintiff had the right to have the SMI stock put in his name whenever he determined it was appropriate without any reservations or contingencies, and the parties anticipated that the transfer would, in fact, occur at some time in the future.

93.

Plaintiff and J. Fallon entered into a valid and enforceable contract.

94.

The agreement between Plaintiff and J. Fallon relating to the transfer of his 37.5% ownership in SMI is a binding contract that was made for good and valuable consideration.

Plaintiff provided valuable property, knowledge, skills, and services in exchange for his ownership interest.

95.

Plaintiff has complied with all terms of the agreement and has performed all acts necessary to have his 37.5% ownership in SMI transferred to his name. J. Fallon accepted Plaintiff's performance in accordance with their agreement.

96.

J. Fallon has breached the agreement with Plaintiff by deliberately and intentionally refusing to transfer Plaintiff's 37.5% ownership interest in SMI to him.

97.

As a result of J. Fallon's breach of the agreement and by depriving Plaintiff his 37.5% ownership interest in SMI, Plaintiff has been damaged in an amount to be determined at trial. Alternatively, Plaintiff is entitled to specific performance of J. Fallon's obligation to provide him with such an ownership interest in SMI.

98.

J. Fallon has been stubbornly litigious and has caused Plaintiff unnecessary trouble and expense in violation of O.C.G.A. § 13-6-11. Therefore, Plaintiff is entitled to his reasonable attorneys' fees and expenses of litigation pursuant to O.C.G.A. § 13-6-11.

**COUNT IV — AIDING AND ABETTING BREACH OF CONTRACT**

**Against Defendants Meng and Wang**

99.

Plaintiff restates and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 98 above.

100.

Plaintiff and J. Fallon had an agreement that Plaintiff was an owner of 37.5% of SMI, and Defendants Meng and Wang had knowledge of the agreement that Plaintiff had the right to have the SMI stock put in his name whenever he determined it was appropriate without any reservations or contingencies. The parties anticipated that the transfer would occur at some time in the future.

101.

Defendants Meng and Wang willfully induced, aided and abetted J. Fallon to breach her contract with Plaintiff by assisting her in deliberately and intentionally refusing to transfer Plaintiff's 37.5% ownership interest in SMI to him so, Meng and Wang could receive an additional 5% of SMI stock from J. Fallon.

102.

As a result of J. Fallon's breach of the agreement, and by intentionally aiding and abetting J. Fallon to breach the agreement, and by depriving Plaintiff his 37.5% ownership interest in SMI, Plaintiff has been damaged in an amount to be determined at trial.

103.

Defendants Meng and Wang have been stubbornly litigious and have caused Plaintiff unnecessary trouble and expense in violation of O.C.G.A. § 13-6-11. Therefore, Plaintiff is entitled to his reasonable attorneys' fees and expenses of litigation pursuant to O.C.G.A. § 13-6-11.

**COUNT V — BREACH OF CONTRACT**

**Against Defendant SMI**

104.

Plaintiff restates and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 103 above.

105.

Plaintiff and SMI entered into a valid and enforceable contract whereby SMI employed Plaintiff as the Chairman of SMI's board of directors and paid him an annual salary of \$150,000 plus benefits. This position and compensation could only be changed by the unanimous consent of all four owners.

106.

This agreement is a binding contract that was made for good and valuable consideration. Plaintiff provided valuable property, knowledge, skills, and services in exchange for his employment agreement.

107.

Plaintiff complied with all terms and performed all acts necessary to recover under this agreement. SMI accepted Plaintiff's performance in accordance with their agreement.

108.

SMI has breached the agreement with Plaintiff by deliberately and intentionally terminating Plaintiff's employment, removing Plaintiff as Chairman of SMI's board of directors, and terminating Plaintiff's salary.

109.

As a result of SMI's breach of this agreement, Plaintiff has been damaged in an amount to be determined at trial.



110.

Defendant SMI has been stubbornly litigious and has caused Plaintiff unnecessary trouble and expense in violation of O.C.G.A. § 13-6-11. Therefore, Plaintiff is entitled to his reasonable attorneys' fees and expenses of litigation pursuant to O.C.G.A. § 13-6-11.

**COUNT VI – AIDING AND ABETTING BREACH OF CONTRACT**

**Against Meng, Wang and J. Fallon**

111.

Plaintiff restates and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 110 above.

112.

The Individual Defendants together with SMI and Plaintiff agreed that each would be an employee and director of the company earning \$150,000 per year plus benefits, that Plaintiff would be Chairman of the board of directors, and that none of them would be terminated or have their salary and benefits terminated.

113.

At the instigation of J. Fallon, the Individual Defendants willfully caused SMI to terminate Plaintiff and cut off his salary and remove him from the board of directors.

114.

The Individual Defendants aided and abetted SMI's breach of its contract with Plaintiff.

115.

As the direct and proximate cause of the wrongful conduct of the Individual Defendants, Plaintiff has sustained substantial harm.

116.

Defendants, Meng, Wang and J. Fallon have been stubbornly litigious and have caused Plaintiff unnecessary trouble and expense in violation of O.C.G.A. § 13-6-11. Therefore, Plaintiff is entitled to his reasonable attorneys' fees and expenses of litigation pursuant to O.C.G.A. § 13-6-11.

**COUNT VII – BREACH OF CONTRACT**

**Against Defendants J. Fallon, Meng, and Wang**

117.

Plaintiff restates and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 116 above.

118.

DSJB was formed by Plaintiff and the Individual Defendants to purchase and own a building to be used for SMI's business. SMI's assets were used to purchase the building.

119.

Plaintiff initially was not made a member of DSJB, but Plaintiff and the Individual Defendants believed, agreed, and understood that Plaintiff was an equal owner of DSJB. Plaintiff was a beneficial owner of a 25 percent interest in DSJB. Plaintiff's beneficial ownership interest was held by J. Fallon as trustee.

120.

The parties all agreed and understood that Plaintiff was a 25% owner of DSJB, that Plaintiff had the right to have his ownership interest in DSJB put in his name whenever he determined it was appropriate without any reservations or contingencies, and the parties anticipated that the transfer would, in fact, occur at some time in the future.

121.

Plaintiff and Defendants J. Fallon, Meng, and Wang entered into a valid and enforceable contract.

122.

The agreement between Plaintiff and J. Fallon Defendants J. Fallon, Meng, and Wang relating to the transfer of his 25% ownership in DSJB is a binding contract that was made for good and valuable consideration.

123.

Plaintiff has complied with all terms of the agreement and has performed all acts necessary to have his 25% ownership in DSJB transferred to his name. The Individual Defendants accepted Plaintiff's performance in accordance with their agreement.

124.

Defendants J. Fallon, Meng, and Wang have breached the agreement with Plaintiff by deliberately and intentionally refusing to transfer Plaintiff's 25% ownership interest in DSJB to him.

125.

As a result of the Individual Defendants' breach of the agreement and by depriving Plaintiff of his 25% ownership interest in DSJB, Plaintiff has been damaged in an amount to be determined at trial. Alternatively, Plaintiff is entitled to specific performance of the Defendants' obligation to provide him with a 25% interest in DSJB.

126.

Defendants Meng, Wang, and J. Fallon have been stubbornly litigious and have caused Plaintiff unnecessary trouble and expense in violation of O.C.G.A. § 13-6-11. Therefore,

Plaintiff is entitled to his reasonable attorneys' fees and expenses of litigation pursuant to O.C.G.A. § 13-6-11.

**COUNT VIII — CONVERSION**

**Against Defendant J. Fallon**

127.

Plaintiff restates and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 126 above.

128.

Plaintiff has title and immediate right to possession of his property, including, but not limited to 37.5% of the stock of SMI and 25% of the membership interests in DSJB.

129.

J. Fallon has wrongfully exercised dominion, control, and retention over Plaintiff's property. J. Fallon's wrongful retention of Plaintiff's property is inconsistent with Plaintiff's legal rights, and is a conversion of the property.

130.

J. Fallon's wrongful retention of Plaintiff's property constitutes actual conversion which has caused Plaintiff substantial harm.

131.

Despite demand by Plaintiff, J. Fallon has refused to return Plaintiff's property.

132.

J. Fallon has violated O.C.G.A. § 13-6-11 and has been stubbornly litigious and has caused Plaintiff unnecessary trouble and expense. Pursuant to O.C.G.A. § 13-6-11, Plaintiff is entitled to recover its expenses of litigation including, but not limited to, his attorneys' fees.

133.

J. Fallon has acted willfully, recklessly, and/or maliciously to cause Plaintiff to sustain substantial harm. J. Fallon has acted with the specific intent to cause harm, thereby entitling Plaintiff to punitive damages.

**COUNT IX — BREACH OF FIDUCIARY DUTIES AND CONSPIRACY TO BREACH FIDUCIARY DUTIES**

**Against Defendants J. Fallon, Meng, and Wang**

134.

Plaintiff restates and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 133 above.

135.

Defendants J. Fallon, Meng, and Wang collectively own 62.5% of the stock of Defendant SMI and have purported to exercise dominion and control over 100% of SMI's stock. The Individual Defendants also control the board of directors.

136.

By virtue of their majority ownership and control of the stock of SMI and board of directors, Defendants J. Fallon, Meng, and Wang, as well as their positions within SMI, and because of their ability to control the business and corporate affairs of SMI, Defendants J. Fallon, Meng, and Wang owed Plaintiff the highest fiduciary duties of due care, loyalty, honesty, good faith, and fair dealing. Additionally, a confidential relationship exists between the Individual Defendants and Plaintiff because representations were made that Plaintiff's ownership was equal to J. Fallon's, and that the Individual Defendants were co-owners and partners.

137.

Defendants J. Fallon, Meng, and Wang were required to use their abilities to control and manage SMI in a fair, just, and equitable manner, to act in furtherance of the best interests of SMI and Plaintiff, to refrain from abusing their positions of trust and control, and to not favor their own interests or personal concerns or those of their fellow officers, and/or directors, and/or shareholders at the expense and to the detriment of Plaintiff.

138.

Defendants J. Fallon, Meng, and Wang have breached their fiduciary duties to Plaintiff by:

- (a) conspiring to obtain Plaintiff's services and intellectual and personal property without just compensation;
- (b) removing Plaintiff from SMI's board of directors;
- (c) removing Plaintiff as Chairman of the board;
- (d) systematically excluding and cutting Plaintiff off from the business of SMI and terminating his operational responsibilities;
- (e) terminating Plaintiff's compensation and benefits;
- (f) paying J. Fallon Plaintiff's salary; and
- (g) denying Plaintiff the ability to fulfill his role as an officer and director of SMI.

139.

Defendants J. Fallon, Meng, and Wang, acting in concert, entered into a common design and agreement to breach their fiduciary duties to Plaintiff.

140.

J. Fallon also owes fiduciary duties to Plaintiff as the trustee holding Plaintiff's beneficial ownership of Plaintiff's SMI stock and the DSJB interest.

141.

J. Fallon has breached her fiduciary duties by depriving Plaintiff of the benefits of his ownership of SMI stock and DSJB.

142.

The above-referenced conduct was not due to an honest error of judgment, but was due to the Individual Defendants' reckless disregard of the rights and interests of Plaintiff and their failure to act openly, fairly, and honestly, and without taking advantage of Plaintiff.

143.

Plaintiff has sustained substantial harm as a direct and proximate cause of the Individual Defendants' breach of their fiduciary duties to Plaintiff. The Individual Defendants are jointly and severally liable for the damages they caused Plaintiff.

144.

Defendants J. Fallon, Meng, and Wang have acted willfully, recklessly, and/or maliciously to cause Plaintiff to sustain substantial harm. Defendants J. Fallon, Meng, and Wang acted with the specific intent to cause harm, thereby entitling Plaintiff to punitive damages. Plaintiff is also are entitled to recover his attorneys' fees for the successful prosecution of his claims.

**COUNT X — PROMISSORY ESTOPPEL /DETRIMENTAL RELIANCE**

**Against Defendant SMI**

145.

Plaintiff restates and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 144 above.

145.

Plaintiff relied on the individual Defendants' representations regarding their promise to provide Plaintiff with 37.5% stock ownership of SMI and a 25% ownership interest in DSJB, as well as their promises not to fire him, remove him from the board of directors, or reduce or eliminate his salary.

146.

In reliance upon these representations, Plaintiff agreed to maintain his ownership position of record in the name of J. Fallon, after the merger of SMI and Kate Aspen and in DSJB, and further agreed that SMI initially would pay back only one-half of the \$675,000 loan from StomperNet to SMI, or \$337,500, thereby agreeing to forego immediate payment of the \$337,500 Plaintiff would otherwise be entitled to as a distribution to Plaintiff in his capacity as a 50% shareholder in StomperNet.

147.

The Individual Defendants made the foregoing representations on behalf of themselves as well as SMI and DSJB.

148.

Plaintiff's reliance on the Individual Defendants' representations was reasonable under the circumstances.



149.

Plaintiff's reliance on the Individual Defendants' representations was to his detriment, and Plaintiff has sustained damage as a direct and proximate result of his reliance on these representations. Plaintiff is entitled to recover compensatory damages in an amount to be determined at trial as well as an ownership interest in SMI and DSJB.

**COUNT XI — UNJUST ENRICHMENT**

**Against Defendant J. Fallon**

150.

Plaintiff restates and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 149 above.

151.

Plaintiff conferred a financial benefit upon J. Fallon as a result of maintaining his ownership interests in SMI and DSJB in J. Fallon's name.

152.

Plaintiff's 37.5% ownership interest in SMI and 25% membership interest in DSJB are valuable to J. Fallon.

153.

J. Fallon's receipt of said ownership interests without fully compensating Plaintiff for the value of said ownership interests would be unjust.

154.

J. Fallon has been unjustly enriched by keeping the benefits of Plaintiff's ownership interests in SMI and DSJB without paying the fair value for Plaintiff's ownership interest.

155.

Plaintiff expected full ownership interests in SMI and DSJB at the time he agreed to allow title of those interests to be placed in J. Fallon's name, or he expected full compensation for the value of said ownership interests at that time.

156.

To remedy J. Fallon's unjust enrichment, Plaintiff is entitled to full ownership of 37.5% of SMI's stock and a 25% membership interest in DSJB, or the fair market value of said ownership interests, together with prejudgment and post-judgment interest as allowed by law and its costs of litigation, including reasonable attorneys' fees.

**COUNT XII — CONSTRUCTIVE TRUST**

**Against Defendants SMI And DSJB**

157.

Plaintiff restates and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 156 above.

158.

By virtue of the wrongful conduct of the Individual Defendants, J. Fallon improperly holds 75% of the stock of Defendant SMI and 50% of the membership interests of Defendant DSJB.

159.

Plaintiff has suffered irreparable harm for which he may have no adequate remedy at law.

160.

A constructive trust should be imposed on 37.5% of the stock of SMI, and 25% of the membership interests of DSJB to prevent irreparable harm to Plaintiff.

WHEREFORE, Plaintiff prays:

(a) The Court declare Plaintiff to be the owner of 37.5 % of the stock of SMI and that Defendant J. Fallon transfer ownership immediately to Plaintiff;

(b) The Court declare Plaintiff to be the owner of a 25% interest in DSJB and that Defendant J. Fallon transfer ownership immediately to Plaintiff;

(c) A constructive trust be imposed on 37.5% of the stock of SMI and 25% ownership interest in DSJB;

(d) A court order issue:

(1) Requiring the reorganization of SMI to reflect Plaintiff's 37.5% ownership interest in SMI and the reorganization of DSJB to reflect Plaintiff's 25% membership interest in DSJB;

(2) Requiring that Plaintiff's employment by SMI be reinstated and that Plaintiff be reinstated as the Chairman of SMI's board of directors;

(3) Requiring that Plaintiff's salary be reinstated retroactive to the date on which Defendants ceased to pay Plaintiff for his services, that J. Fallon's salary be reduced by an amount equal to that paid to Plaintiff and that J. Fallon be required to disgorge her salary in excess of \$150,000 annualized; and

(4) Requiring SMI to repay \$337,500 to Plaintiff.

(f) That Plaintiff be awarded compensatory damages;

(g) That Plaintiff be awarded punitive damages;

(h) That Plaintiff be awarded his attorney's fees; and

(i) For such other and further relief as this Court deems just and equitable.

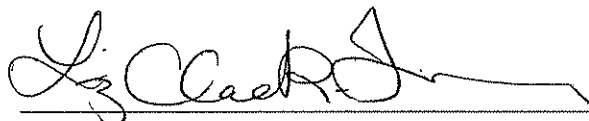
PLAINTIFF DEMANDS A TRIAL BY JURY.

This \_\_\_ day of May, 2009.



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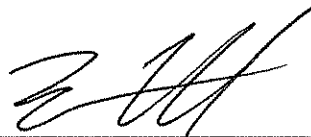
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### VERIFICATION

Personally appeared before the undersigned attesting officer, duly authorized by law to administer oaths, C. Brad Fallon, the Plaintiff in this action, who, after being duly sworn, deposes that the facts and information contained in the within and foregoing Verified Complaint are true and accurate so far as they are based upon personal knowledge, and so far as they are based upon information obtained from others, are believed in good faith to be reliable, true, and correct.



\_\_\_\_\_  
C. BRAD FALLON

Sworn to and subscribed before me,  
this the 26<sup>th</sup> day of May, 2009.



\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

(SEAL)

