

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas

SC Court of Appeals

The Honorable Edward W. Miller, Circuit Court Judge

Appellate Case No. 2015-000162

Pankaj Patel, individually and derivatively on behalf of Nominal Defendant,
VP Enterprises, Inc., ...Appellant,

v.

Krish Patel, Vijay Patel, and P Communications, Inc., ... Respondents.

**MEMORANDUM IN SUPPORT OF
MOTION FOR CERTIFICATION**

Appellant, above-named, pursuant to Rule 204(b) of the South Carolina Appellate Court Rules (SCACR), and S.C. Code Ann. § 14-8-210(b), and in accordance with Rule 240, SCACR, submits this memorandum in support of his motion for certification of the above-captioned appeal for review by this Honorable Court. This case was tried non-jury on July 21 and 22, 2014 in a bifurcated proceeding on liability only, as consented to by the parties. The Lower Court issued its Order denying liability on December 31, 2014. Appellant duly appealed and filed his Initial Brief of Appellant on April 24, 2015.¹ (Ex. A, Appellant Initial Br.).

¹ As of this date Respondents have not filed their Initial Brief but have requested, with Appellant's consent, an extension to file by June 25, 2015.

NATURE OF THE ACTION

This action involves issues arising from three individuals who formed and became officers and promoters of a corporation seeking a new business opportunity. The business opportunity was initially denied to the corporation apparently due to facts known by two of its original promoter/officers and not previously disclosed to the third promoter/officer. Those two promoters/officers, who failed to make a full disclosure to the third promoter/officer, immediately sought and obtained the new business opportunity through another corporation. However, the two promoter/officers who obtained the new business opportunity failed to fully disclose their actions in ultimately obtaining the business opportunity and more importantly never made a full disclosure to their partner of two material facts which undoubtedly resulted in the initial denial to the corporation formed by the three of them.

Appellant Pankaj Patel (“Kaj”) and Respondents Vijay Patel (“Vijay”) and Krish Patel (“Krish”)² jointly agreed to pursue a corporate opportunity through VP Enterprises, Inc. (“VP Enterprises”) to operate a chain of Verizon Wireless stores. (Ex. B, Order p. 4). They were all promoters and officers, and Kaj and Vijay were directors. (*Id.* at 10, ¶ 10; Ex. C, Tr. Transcript pp. 441:24 – 442:5). A license application was made by VP Enterprises to Verizon, but was denied “at this time”. (Ex. D, Pl. Tr. Doc. 145).

At the time of the application, Vijay and Krish failed to disclose two material facts to Kaj which undoubtedly led to the denial by Verizon of VP Enterprises’ application. Undisclosed to Kaj were: (1) the fact that Vijay had a criminal record for shoplifting which he falsely denied on his Verizon application (Ex. B, Order p. 5); and

² Kaj is not related to Vijay or Krish despite the same surname. Vijay is Krish’s father.

(2) the fact that Krish, who was a former Verizon employee with extensive retail experience and was listed as the general manager and contact name on VP Enterprises' application materials to Verizon, had been recently terminated by Verizon for violations of corporate policy involving family accounts. (Id. at 9, ¶ 5; Ex. C, Tr. Transcript pp. 415:10-14 & 442:2-5).

Following Verizon's denial Kaj immediately inquired of Vijay and Krish why VP Enterprises was denied. Krish and Vijay did not reveal Vijay's criminal history or Krish's firing from Verizon even though those facts were the two most likely reasons for the refusal. (Ex. C, Tr. Transcript pp. 73:23 – 74:14). With that information withheld from Kaj, the parties agreed to assign Krish the task of discovering the reasons for the denial. (Id. at 384:22 – 385:4). Krish testified he was unable to find out the reasons for Verizon's rejection. (Id. at 384 – 385:4).³ Verizon never disclosed the reasons for the denial prior to or during trial.⁴

After the application was denied on the first round, Krish within weeks began pursuing a Verizon license by using the name of another individual, who in actuality played almost no role in the application process. (Id. at 221:1-10; Ex. E, Krish dep. p. 44:14-17). Krish assisted his straw man in forming a new corporation, P Communications, Inc. ("P Communications"), which submitted a new license application to Verizon using virtually the same paperwork used by Kaj, Krish and Vijay as promoters

³ Kaj testified Krish told him Verizon would not disclose the reasons for the rejection of VP Enterprises' application. (Ex. C, Tr. Transcript pp. 73:16 – 74:8 and 77:6-15).

⁴ The Verizon representative testifying at trial stated she did not know why VP Enterprises' application was turned down. (Ex. C, Tr. Transcript p. 307:2-5). Verizon employee and designee Patricia Cook, in her individual and Rule 30(b)(6), SCRCF, depositions, was unable to provide specific reasons for the denial. (Id. at 322:9-11 and 323:3-10; see Ex. E, Pl.'s Responsive Designations from Patricia L. Cook Dep. pp. 2-3).

for VP Enterprises. (Ex. B, Order p. 12, ¶ 28; Ex. C, Tr. Transcript p. 392:1-18; Ex. E, Krish dep. pp. 67:14 – 68:12). Krish admitted he did not inform Kaj that he was giving the VP Enterprises business plan to his straw man or that he was setting up a new company for the purpose of operating a Verizon Wireless store. (Ex. C, Tr. Transcript pp. 411:23 – 413:3; Ex. E, Krish dep. p. 46:11-25). Verizon approved P Communications' application, but neither Kaj nor the board of directors of VP Enterprises was ever made aware of these actions, or even the existence of P Communications. (Ex. C, Tr. Transcript p. 385:11-19). Kaj filed suit after he finally became aware of the details involving the new corporation and the straw man. (Id. at 87:6 – 88:3).

Kaj was never made aware of Vijay's criminal record and Krish's termination from Verizon until after he filed suit. (Id. at 42:12-25 & 68:19 – 69:5).

When P Communications opened its first Verizon Wireless store around October 18, 2008, Vijay and Krish informed Kaj that Krish had just opened a Verizon Wireless retail store. While the testimony varies on what was said between Krish and Kaj, Krish testified: "And what I actually said was that I'd joined up with another individual who obtained a license, and that if there was an opportunity down the road that I'd give him [Kaj] a call." (Id. at 411:19-22). Krish failed to disclose to Kaj the full name of his straw man, the name of the new company, the fact P Communications was created with VP Enterprises' business plan, the fact Krish had no intention of calling Kaj later about new opportunities with the Verizon retail business, and the fact Krish had already laid plans to oust his straw man and make himself the new owner. (Id. at 90:24 – 93:24; Ex. B, Order p. 12, ¶ 28; Ex. E, Krish dep. pp. 114:18 – 115:5; Ex. D, Pl. Tr. Docs. 241-44). Despite these omissions by Respondents, who held positions as officers and director of VP

Enterprises, the Lower Court held the statute of limitations began to run against Kaj at this point. (Ex. B, Order p. 16, ¶ 4).

Within two months of opening the first store, Krish's straw man sold his shares back to P Communications, and Krish shortly thereafter became the sole owner. (Ex. D, Pl. Tr. Docs. 292-93 & 299-300). Respondents did not mention a word to Kaj about the ownership changes, much less offer him an opportunity to participate. (Ex. D, Krish dep. pp. 114:18 – 115:5).

Kaj continued to meet with Krish and Vijay for the next year and a half to discuss business affairs, but Krish and Vijay made no mention of P Communications. (Ex. C, Tr. Transcript p. 394:12-17; Ex. G, Answer Am. Compl. ¶ 37; see Ex. H, Am. Compl. ¶ 37). Krish meanwhile opened at least four more Verizon retail stores during this time without informing Kaj or VP Enterprises of the existence of P Communications. (Ex. C, Tr. Transcript p. 199:19-22).

In April 2010 Kaj contacted Krish about a possible venue in North Carolina for a Verizon retail store. (Ex. D, Pl. Tr. Doc. 304A). The two met in Krish's P Communications' office during May and early June 2010 to discuss the Verizon venture. (Ex. C, Tr. Transcript pp. 101:25 – 104:3 & 199:15 – 201:13). For the first time, Krish revealed to Kaj the names of his company P Communications and his straw man, the involvement of Vijay in the company, and the opening of multiple stores. From that information, Kaj's research uncovered Respondents' wrongful appropriation of VP Enterprises' Verizon business opportunity. (Id. at 104:5 – 106:15). Kaj filed suit on November 4, 2011. (Ex. B, Order p. 16, ¶ 4)

A central issue in this appeal is whether fiduciaries can disclose partial truths and limited amounts of information while withholding significant and material information about their misconduct and then seek protection under the statute of limitations from the date of partial disclosure. A corollary issue before the Court is whether the duties owed by a director and officer not to usurp a corporate opportunity continue after a corporation receives an initial denial of a prospective business opportunity from a third party.

Since the firmness of a refusal to deal by a third party, such as Verizon here, cannot be adequately tested by the diverting corporate officer alone, other jurisdictions have required the reasons for the refusal to deal be fully disclosed to the corporation along with pertinent facts about the new opportunity the diverting officer seeks. Without full disclosure there will be a temptation to officers to refrain from exerting their strongest efforts on behalf of the corporation since, if the deal does not come to fruition, an opportunity of profit will be open to the officers personally.⁵ As a result, Respondents' omissions and misrepresentations make Kaj's claims timely and render Respondents liable for the opportunity they misappropriated.

STANDARD

This Court may, in its discretion, certify for its review any case pending before the Court of Appeals prior to its determination. Rule 204(b), SCACR; S.C. Code Ann. §14-8-210(b). Certification of an appeal for review by the Court is appropriate where a case involves an issue of significant public interest or a legal principle of major importance. Id. The Court may also certify a case where it otherwise considers certification to be appropriate. Id.

⁵ Kelly v. 74 & 76 W. Tremont Ave. Corp., 4 Misc. 2d 533, 536, 151 N.Y.S.2d 900 (Sup. Ct. 1956).

ARGUMENT

Kaj submits the issues presented by this appeal are of significant public interest and contain legal principles of major importance. This appeal presents appropriate circumstances for the Court to exercise its discretion to certify the case for review.

A. Respondents' fraudulent concealment prevents running of the statute of limitations pursuant to S.C. Code Ann. §§ 33-8-300(e) and -420(e).

South Carolina has expressly codified the fraudulent concealment principle for tolling the statute of limitations in breach of fiduciary claims against corporate directors and officers as follows:

(e) An action against an officer [or director] for failure to perform the duties imposed by this section must be commenced within three years after the cause of action has accrued, or within two years after the time when the cause of action is discovered, or should reasonably have been discovered, whichever sooner occurs. This limitations period does not apply to breaches of duty which have been concealed fraudulently.

S.C. Code Ann. § 33-8-420(e) (“[or director]” and underline added) (see also S.C. Code Ann. § 33-8-300(e) for mirror director liability statute of limitations).

A plaintiff may thus bring an action more than three years after the wrongs have been committed if the defendants fraudulently concealed their wrongdoing and the plaintiff brings his action within two years after discovery of that breach. See Clearwater Trust v. Bunting, 367 S.C. 340, 352, 626 S.E.2d 334, 340 (2006) (holding when breach of duty has been fraudulently concealed, three year outer limit does not apply and two year discovery rule governs).

A director and manager are liable as trustees to a corporation and its stockholders. Black v. Simpson, 94 S.C. 312, 77 S.E. 1023 (1913). This Court has held “that officers and directors of a corporation stand in a fiduciary relationship to the individual stockholders and in every instance must make a full disclosure of all relevant facts...”

when addressing matters of shareholder interests. Jacobson v. Yaschik, 249 S.C. 577, 584-85, 155 S.E.2d 601, 605 (1967) (holding director/manager of corporation violated his fiduciary duty to shareholder by failing to disclose third party's purchase offer of corporate stock).

In Jacobson, this Court explained that a corporate executive's "nondisclosure becomes fraudulent when... the very... transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties." Jacobson v. Yaschik, 249 S.C. at 585, 155 S.E.2d at 605 (underline added).

"Parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material, and when this duty to disclose is triggered, silence may constitute fraud." Anthony v. Padmar, Inc., 320 S.C. 436, 449, 465 S.E.2d 745, 752 (Ct.App.1995). The Court of Appeals has stated a fiduciary's duty of disclosure imposes the "...obligation of *refraining from taking any advantage of one another by the slightest misrepresentation or concealment.*" Moore v. Moore, 360 S.C. 241, 252, 599 S.E.2d 467, 473 (Ct. App. 2004) (emphasis in original).

The general rule that nondisclosure by a fiduciary constitutes fraudulent concealment tolling the statute of limitations has been summarized as follows:

A duty to disclose, for purposes of the affirmative claim of fraudulent concealment which defers the accrual of a cause of action, can arise in several situations, such as, when there is a fiduciary or confidential relationship; [and] when one voluntarily discloses information, the whole truth must be disclosed; ...

51 Am. Jur. 2d Limitation of Actions § 166 (emphasis added).⁶

⁶ Other courts have applied the foregoing principle in the context of the statute of limitations, holding that a fiduciary's partial disclosure, as distinguished from the duty of

The appellate courts of this State have addressed the duty of fiduciaries, including corporate directors and officers, to disclose significant and material information to their beneficiaries for purposes of supporting a substantive cause of action for fraudulent concealment. However, our appellate courts have not opined on whether the discovery rule requirement of reasonable diligence by a plaintiff allows a fiduciary committing fraudulent concealment to provide far less than full disclosure and still obtain protection under the corporate statute of limitations tolling acts of fraudulent concealment. This case presents that question for decision.

B. Corporate directors and officers must provide to a shareholder actual knowledge of their breaches of duty under S.C. Code Ann. §§ 33-8-300(e) and -420(e) to start the statute of limitations.

The standard of discovery necessary to commence running of the statute of limitations for breaches of duties by directors and officers is set forth in S.C. Code Ann. §§ 33-8-300(e) and -420(e). The first sentence of each of those subsections addressing breaches of duty not accompanied by fraudulent concealment provides an action must be commenced within two years after a cause of action “should reasonably have been discovered”. In contrast, the language “should reasonably have been discovered” is omitted from the fraudulent concealment limitation period (the last sentence of §§ 33-8-300(e) and -420(e)). In cases of fraudulent concealment, S.C. Code Ann. §§ 33-8-300, -

full disclosure, is not sufficient to start the running of the statute of limitations. See Conservatorship Estate of K.H. v. Cont’l Ins. Co., 73 P.3d 588 (Alaska 2003); Amtower v. Photon Dynamics, Inc., 71 Cal Rptr. 3d 361 (Ct.App. 2008); Stark v. Advanced Magnetics, Inc., 736 N.E.2d 434 (Mass.App.Ct. 2000); Estate of Watkins v. Hedman, Hileman & Lacosta, 91 P.3d 1264 (Mont. 2004); Sw. Energy Prod. Co. v. Berry Helfand, 411 S.W.3d 581 (Tex.App. 2013); Valdez v. Hollenbeck, 410 S.W.3d 1 (Tex.App. 2013), review granted (Jan. 30, 2015).

420 and this Court in Clearwater Trust, supra, have not expressly imposed on a plaintiff the duty of reasonable diligence in discovery of a director or officer's breach of duties.

The Lower Court incorrectly cited the general discovery rule requirement that a shareholder plaintiff, such as Kaj, is tasked with "the exercise of reasonable diligence" in discovering a defendant's misconduct. (Ex. B, Order pp. 15-16, ¶¶ 2 and 6). However, directors and officers as fiduciaries are held to a higher disclosure standard of providing actual knowledge to their shareholders since shareholders are not required to make an independent investigation of their own fiduciaries. See Demoulas v. Demoulas Super Mkts, Inc., 677 N.E.2d 159, 173-74 (Mass. 1997). A holding by this Court requiring a director or officer to provide actual knowledge to a shareholder to start the statute of limitations in cases where a fiduciary duty is owed would promote the duties of candor and good faith of directors and officers. This requirement would also be consistent with this State's substantive obligations required of directors and officers.⁷

C. South Carolina law prohibiting usurpation of a corporate opportunity should require a director or officer to fully and fairly disclose the reasons for a third party's refusal to deal with the corporation and the director/officer's plan to take the business opportunity for himself.

South Carolina has codified three broad duties owed by corporate directors and officers to the corporation and its shareholders: namely, the duties of good faith, due care and loyalty. S.C. Code Ann. § 33-8-300.⁸ These broad duties mandate that directors and

⁷ Such a holding would resolve the statute of limitations issue in this case in favor of Kaj. However, a ruling on this issue against Kaj would not be dispositive on the statute of limitations question since Kaj maintains he also met the reasonable diligence standard based on the lack of disclosures by Respondents on October 18, 2008 and the due diligence Kaj pursued following Respondents' disclosures in May/June 2010.

⁸ See S.C. Code Ann. § 33-8-420, cmt. ("non-director officer with discretionary authority must meet the same standards of conduct required of directors under...Section 33-8-300").

officers act with “fidelity, honesty, good faith, and fair dealing to the corporation” and its shareholders. S.C. Code Ann. §300-8-420, cmt.

1. **The duties of “fidelity, honesty, good faith, and fair dealing to the corporation” prohibit the usurpation of corporate opportunities by directors and officers and require them to abide by the standards set forth in Meinhard v. Salmon.**

The prohibition on a fiduciary’s usurpation of business opportunities stems from the well-known case of Meinhard v. Salmon, 249 N.Y. 458, 164 N.E. 545 (1928) where Justice Cardozo famously stated:

Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the “disintegrating erosion” of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court.

Meinhard, 249 N.Y. at 464, 164 N.E. at 546 (citations omitted) (emphasis added).

The Lower Court completely ignored Meinhard in its Order. Similar to this case, Meinhard involved a third party (the landlord) who refused to carry on business with the parties’ business entity, in that case a partnership. Id. at 475, 164 N.E. at 551. Because of Meinhard’s remarkable similarities to the case *subjudice*, Kaj’s counsel presented an in-depth comparison of this case to Meinhard in post-hearing briefing and also orally argued Meinhard’s applicability before the Lower Court. (Ex. I, Pl.’s Resp. to Def.’s Mot. Involuntary Non-Suit pp. 19-24; Ex. C, Tr. Transcript pp. 27:6-24 and 253:12-22). Kaj

has also briefed the case in his Initial Brief. (Ex. A, Appellant Initial Br. pp. 36-38 & 44-45).

While Meinhard has been cited five times by our state's Court of Appeals⁹, this Court has not explicitly addressed its applicability. This case would allow the Court to determine the parameters of a claim for usurpation of a corporate opportunity and the relevance of Meinhard v. Salmon, *supra*, to South Carolina corporations.

2. An initial refusal to deal by a third party does not permit a director of officer to secretly usurp a corporate opportunity for his or her own benefit.

This case involves the situation where a third party initially refused to deal with the corporation on a new business opportunity. The issue arising for the Court is whether a director or officer must make an unambiguous disclosure to the corporation of (1) the third party's refusal to deal; (2) the known or likely reasons for a third party's refusal; and (3) the director/officer's plan to take the business opportunity for himself, before doing so. If advance disclosure is not required, then a director or officer may simply proceed with the diversion in silence.

Courts in other jurisdictions have mandated full disclosure, following the lead taken by the Massachusetts Court of Appeals in Energy Res. Corp. v. Porter, 14 Mass.App.Ct. 296, 302, 438 N.E.2d 391, 395 (1982) (requiring director or officer to unambiguously disclose refusal to deal and a fair statement of the reasons for the refusal before invoking refusal to deal as a defense to diverting a corporate opportunity); also Production Finishing Corp. v. Shields, 158 Mich.App. 479, 405 N.W.2d 171, 175 (1987)

⁹ See Ramage v. Ramage, 283 S.C. 239, 246, 322 S.E.2d 22, 27 (Ct.App. 1984); McCarter v. Willis, 299 S.C. 198, 200, 383 S.E.2d 252, 253 (Ct.App. 1989); Kiriakides v. Atlas Food Sys. & Servs., Inc., 338 S.C. 572, 588, 527 S.E.2d 371, 379 (Ct.App. 2000); Kuznik v. Bees Ferry Assocs., 342 S.C. 579, 597, 538 S.E.2d 15, 24 (Ct.App. 2000); and Redwend Ltd. P'ship v. Edwards, 354 S.C. 459, 478, 581 S.E.2d 496, 506 (Ct.App. 2003).

(same); also Regal-Beloit Corp. v. Drecol, 955 F. Supp. 849, 863 (N.D. Ill. 1996) (same applying Wisconsin law); 18B Am. Jur. 2d Corporations § 1551 (2014) (same).

In this case the Lower Court excused Respondents' failure to disclose to VP Enterprises Respondents' diversion based on the finding that Verizon's initial refusal to deal was inalterable (Ex. B, Order p. 11, ¶¶ 20-21). Other courts, though, have rejected the defense of inalterability when combined with a defendant's non-disclosure. This Court should require proper disclosure by a director or officer to the corporation before permitting the executive to corral a corporate opportunity for the executive's own benefit.

D. Corporate opportunity does not have to be unique as long as it fits into prospective field of business.

The Lower Court held that, in order for a corporate opportunity to be the subject of usurpation, the opportunity must be unique. (Ex. B, Order p. 24, ¶30). While an opportunity may certainly be a unique venture, there is no requirement that it be so. "...[I]n an action for usurpation of corporate opportunity, the dominant inquiry in determining if [a] corporate opportunity exists is whether [the] opportunity at issue falls within the corporation's avowed business purpose." 18B Am. Jur. 2d Corporations § 1544 (citing Ostrowski v. Avery, 243 Conn. 355, 703 A.2d 117 (1997)). A usurpation of an opportunity can involve a myriad of goods and services. Cent. Ry. Signal Co. v. Longden, 194 F.2d 310 (7th Cir. 1952) (liability found for usurpation of dock loading services); Se. Consultants, Inc. v. McCrary Eng'g, 246 Ga. 503, 273 S.E.2d 112 (1980) (liability for usurping water and sewer services); Hill v. Se. Floor Covering Co., 596 So. 2d 874 (Miss. 1992) (appropriation of flooring business held to be usurpation of corporate opportunity).

South Carolina appellate courts have not defined what constitutes a corporate opportunity. Allowing to stand the Lower Court's requirement that an opportunity be unique would greatly encourage the infidelity and disloyalty of directors and officers in non-unique industries. Corporations and shareholders in those industries should not be denied the fiduciary protections set forth in the South Carolina Business Corporation Act and the case law of this State.

CONCLUSION

For the reasons discussed above and set forth in the accompanying motion, Pankaj Patel, individually and derivatively on behalf of VP Enterprises, Inc., respectfully requests this Court to exercise its discretion under Rule 204(b), SCACR and S.C. Code Ann. § 14-8-210(b) and certify this appeal.

Respectfully submitted,

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June 5, 2015
Greenville, South Carolina.

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

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v.

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NATURE OF THE ACTION

This action involves issues arising from three individuals who formed and became officers and promoters of a corporation seeking a new business opportunity. The business opportunity was initially denied to the corporation apparently due to facts known by two of its original promoter/officers and not previously disclosed to the third promoter/officer. Those two promoters/officers, who failed to make a full disclosure to the third promoter/officer, immediately sought and obtained the new business opportunity through another corporation. However the two promoter/officers who obtained the new business opportunity failed to ever fully disclose their actions in ultimately obtaining the business opportunity and more importantly never made a full disclosure to their partner of two material facts which undoubtedly resulted in the initial denial to the corporation formed by the three of them.

Appellant Pankaj Patel (“Kaj”) and Respondents Vijay Patel (“Vijay”) and Krish Patel (“Krish”)¹ jointly agreed to pursue a corporate opportunity through VP Enterprises, Inc. (“VP Enterprises”) to operate a chain of Verizon Wireless stores. They were all promoters and officers and Kaj and Vijay were directors. A license application was made by VP Enterprises to Verizon, but was denied “at this time”. At the time of the application, Vijay and Krish failed to disclose two material facts to Kaj which undoubtedly led to the denial by Verizon of VP’s application. Undisclosed to Kaj were: (1) the fact that Vijay had a criminal record for shoplifting which he falsely denied on his Verizon application; and (2) the fact that Krish, who had extensive retail experience with Verizon and was listed as the general manager and contact name on the Verizon

¹ Kaj is not related to Vijay or Krish despite the same surname. Vijay is Krish’s father.

application materials, had been recently terminated by Verizon for violations of corporate policy involving family accounts.

Following Verizon's denial Kaj immediately inquired of Vijay and Krish why VP Enterprises was denied. Krish and Vijay did not reveal Vijay's criminal history or Krish's firing from Verizon even though those facts were the two most likely reasons for the refusal. With that information withheld from Kaj, the parties agreed to assign Krish the task of discovering the reasons for the denial.

After the application was denied on the first round, Krish within weeks began pursuing a Verizon license by using the name of another individual, who in actuality played almost no role in the application process. Krish assisted his straw man in forming a new corporation, P Communications, Inc. ("P Communications"), which submitted a new license application to Verizon using virtually the same paperwork used by Kaj, Krish and Vijay as promoters for VP Enterprises. Verizon approved P Communications' application, but neither Kaj nor the board of directors of VP Enterprises was ever made aware of these actions, or even the existence of P Communications. Kaj filed suit after he finally became aware of the details involving the new corporation and the straw man. Kaj was never made aware of Vijay's criminal record and Krish's termination from Verizon until after he filed suit.

When P Communications opened its first Verizon Wireless store, Vijay and Krish informed Kaj that Krish had just opened a Verizon Wireless retail store. While the testimony varies on what was said between Krish and Kaj, Krish testified: "And what I actually said was that I'd joined up with another individual who obtained a license, and that if there was an opportunity down the road that I'd give him [Kaj] a call." Krish

failed to disclose to Kaj the full name of his straw man, the name of the new company, the fact P Communications was created with VP Enterprises' business plan, the fact Krish had no intention of calling Kaj later about new opportunities with the Verizon retail business, and the fact Krish had already laid plans to oust his straw man and make himself the new owner. Despite these omissions by Respondents, who held positions as officers and director of VP Enterprises, the Lower Court held the statute of limitations began to run against Kaj at this point.

Within two months of the opening of the first store, Krish's straw man sold his shares back to P Communications, and Krish brought in a new partner to be a co-owner with him in P Communications. Within several months the new co-owner also transferred his shares to Krish, leaving Krish as the sole owner. Respondents did not mention a word to Kaj about these ownership changes, much less offer him an opportunity to participate.

Kaj continued to meet with Krish and Vijay for the next year and a half to discuss business affairs, but Krish and Vijay made no mention of P Communications. Krish meanwhile opened at least four more Verizon retail stores during this time without informing Kaj or VP Enterprises of the existence of P Communications.

In April 2010 Kaj contacted Krish about a possible venue in North Carolina for a Verizon retail store. The two met in Krish's P Communications' office during May and early June 2010 to discuss the Verizon venture. For the first time, Krish revealed to Kaj the names of his company P Communications and Krish's straw man, the involvement of Vijay in the company, and the opening of multiple stores. From that information, Kaj's research uncovered Respondents' wrongful appropriation of VP Enterprises' Verizon business opportunity. Kaj filed suit on November 4, 2011.

A central issue in this appeal is whether fiduciaries can disclose partial truths and limited amounts of information while withholding significant and material information about their misconduct and then seek protection under the statute of limitations from the date of partial disclosure. A corollary issue before the Court is whether the duties owed by a director and officer continue after a corporation receives an initial denial of a prospective business opportunity.

Since the firmness of a refusal to deal by a third party, such as Verizon here, cannot be adequately tested by the diverting corporate officer alone, other jurisdictions have required the reasons for the refusal to deal be fully disclosed to the corporation along with pertinent facts about the new opportunity the diverting officer seeks. Without full disclosure there will be a temptation to officers to refrain from exerting their strongest efforts on behalf of the corporation since, if the deal does not come to fruition, an opportunity of profit will be open to the officers personally.² As a result, Respondents' omissions and misrepresentations make Kaj's claims timely and render Respondents liable for the opportunity they misappropriated.

STATEMENT OF ISSUES ON APPEAL

1. Did Respondents fraudulently conceal from Kaj and VP Enterprises their breaches of the duties of loyalty and care thereby tolling the applicable statutes of limitations under S.C. Code Ann. §§ 33-8-300(e) and 33-8-420(e) and precluding the defense of laches?

2. Did Krish and Vijay as officers and director of VP Enterprises continue to owe Kaj and/or VP Enterprises a fiduciary duty or an obligation to act in good faith, with

² Kelly v. 74 & 76 W. Tremont Ave. Corp., 4 Misc. 2d 533, 536, 151 N.Y.S.2d 900 (Sup. Ct. 1956).

due care, and in the best interests of the corporation and its shareholders after Verizon Wireless rejected VP Enterprises' application "at this time" for a Verizon retail store license?

3. If so, did Respondents breach such duties to Kaj and VP Enterprises by misappropriating a corporate opportunity of VP Enterprises?

4. Did Kaj properly pursue this case as a derivative action on behalf of VP Enterprises, or alternatively could Kaj bring his claim as an individual action?

5. May Kaj and VP Enterprises seek an accounting, equitable disgorgement and a constructive trust for violations by Krish and Vijay of their duties as officers and director and a declaratory judgment imposing such relief?

STATEMENT OF THE CASE

The history of the proceedings in the Lower Court is as follows:

1. Pankaj Patel, individually and derivatively on behalf of VP Enterprises, commenced this action by filing, on November 4, 2011, a Complaint in the Court of Common Pleas, Thirteenth Judicial Circuit, Greenville County, South Carolina. (Compl. p. 1).

2. On February 7, 2012 Kaj, individually and derivatively on behalf of VP Enterprises, filed an amended complaint which primarily added additional fact allegations in paragraphs 19 and 45-47 thereof. (Am. Compl.).

3. By order filed June 7, 2012 with the Greenville County Clerk of Court for the Court of Common Pleas, the Supreme Court ordered the case to be assigned to the Business Court Pilot Program of the South Carolina Circuit Courts.

4. Kaj asserted 13 causes of action in his amended complaint: (1) dissolution of VP Enterprises, Inc., (2) violation of standards of conduct for directors under S.C. Code Ann. § 33-8-300 against Vijay, (3) violation of standards of conduct for officers under § 33-8-420 against Vijay and Krish, (4) breach of fiduciary duty against Vijay and Krish, (5) an accounting from all Respondents, (6) breach of fiduciary duty for partnership liability, (7) fraud against Vijay and Krish, (8) constructive fraud against Vijay and Krish, (9) negligent misrepresentation against Vijay and Krish, (10) equitable disgorgement against all Respondents, (11) constructive trust against all Respondents, (12) a violation of the South Carolina Unfair Trade Practices Act, and (13) a declaratory judgment.

5. In post-trial briefing, Kaj dismissed his claims for fraud, constructive fraud, negligent misrepresentation, and violation of the South Carolina Unfair Trade Practices Act.

6. Respondents asserted Kaj's suit was barred under the statutes of limitation and laches. Respondents also asserted that any duties Vijay and Krish owed to Kaj and VP Enterprises extinguished before the acts of misrepresentation and omission that Kaj alleged the individual Respondents committed. Alternatively, Respondents asserted that VP Enterprises had no viable corporate opportunity capable of being usurped.

7. The parties agreed that the liability and damage issues would be bifurcated and the liability issues tried first. The liability portion was tried non-jury before The Honorable Edward W. Miller on July 21 and 22, 2014. Following the parties' post-hearing briefs, the Lower Court entered an Order on December 31, 2014 denying liability

on Kaj's remaining claims. The Lower Court based its ruling on the defenses of Respondents set forth in paragraph 6 above.

8. Kaj received the Lower Court Order by e-mail on December 31, 2014 and by U.S. Mail on January 5, 2015. Kaj served his Notice of Appeal to opposing counsel and the Clerk of the Court of Appeals on January 23, 2015 by U.S. Mail.

STANDARD OF REVIEW

Kaj's claims pursued at trial and on appeal involve a breach of fiduciary duty by Krish and Vijay for their usurpation of a corporate opportunity of VP Enterprises, for conduct that is fraudulent, oppressive, or unfairly prejudicial, and for violation of the statutory duties of directors and officers under S.C. Code Ann. §§ 33-8-300 and -420. These causes of action all sound in equity. A claim for breach of fiduciary duty may be in equity or at law depending on the relief sought. Verenes v. Alvanos, 387 S.C. 11, 17, 690 S.E.2d 771, 773 (2010). In this case, Kaj seeks remedies of accounting, constructive trust and disgorgement, all of which are equitable claims. The parties agreed to bifurcate the proceedings in this action between liability and remedies due to the complexity of the equitable remedies that could be fashioned and the expense of damage expert testimonies. Thus the primary remedy is equitable, making this matter an equitable action. See Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 427, 673 S.E.2d 448, 453 (2009) ("An action for an accounting sounds in equity."); see also Lollis v. Lollis, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987) ("An action to declare a constructive trust is in equity"); see also Verenes v. Alvanos, 387 S.C. at 17, 690 S.E.2d at 773 (stating disgorgement is an equitable remedy). This case was also filed as a shareholder

derivative suit which is a suit in equity. See Straight v. Goss, 383 S.C. 180, 207-208, 678 S.E.2d 443, 458 (Ct.App. 2009).

In an appeal from an action in equity tried by a judge, appellate courts may find facts in accordance with their own views of the preponderance of the evidence. They may also decide questions of law with no particular deference to the lower court's findings. Wachovia Bank, N.A. v. Blackburn, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014), reh'g denied (Apr. 2, 2014). Where witness testimony at trial was presented through video deposition, the appellate court is placed in an equal position to judge the witness' credibility.³ See Macaulay v. Wachovia Bank of S.C., N.A., 351 S.C. 287, 296, 569 S.E.2d 371, 376 (Ct.App. 2002).

STATEMENT OF FACTS AND EVIDENCE

The pleadings, documentary evidence and testimony show the undisputed facts as follows:

A. VP Enterprises Planned and Created

During the latter part of 2007 Kaj, Krish and Vijay were co-owners in a real estate company named KVP Investments and Operation, LLC. (Tr. Transcript p. 40:11-22). Krish formerly worked at Verizon Wireless Company from 2004 through October 22, 2007 as a retail customer support/service technician and later as a retail sales representative. (Pl. Tr. Doc. 00002 A and 00273). Krish informed Kaj in late 2007 he "had terminated his employment with Verizon Communications and joined into business with his father Vijay Patel in the hotel and real estate business." (Answer Am. Compl. ¶16; Tr. Transcript pp. 42:12-17 and 131:4-9). In contrast Krish testified at trial: "I was

³ Kaj will be submitting to the Clerk of Court for the Court of Appeals video discs containing portions of the video depositions played at trial.

forced to resign [from Verizon] because of working with family accounts and it was against company policy.” (*Id.* at 376:22 - 377:1; *see id.* at 19:16-20). In short, Krish never disclosed to Kaj he was fired from Verizon until the trial of this case. (*Id.* at 42:18-25; 415:10-14 and 442:2-5).

From his previous business ventures, Kaj had developed a revenue-and-cost spreadsheet to help analyze whether a business plan would have potential. (Pl. Tr. Doc. 30B). In late 2007, Kaj, Krish and Vijay began discussions about entering into the Verizon wireless phone business as independent agents. (Tr. Transcript pp. 378:18 – 379:1; 43:13 – 45:21; Am. Compl. ¶16). Kaj and Krish then met in late November and/or early December 2007 to run financial projections for a retail store using Kaj’s spreadsheet. Krish admitted he and Kaj worked together on the financial projections for VP Enterprises. (Answer Am. Compl. ¶¶23 and 24). Krish had information on the revenues from Verizon account activations and sales of accessories, while Kaj had information on the various business costs to be incurred. (Pl. Tr. Doc. 31-41G). After Kaj and Krish ran the financial projections on his spreadsheet and saw the moderate profit projections for a single store, Kaj, Krish and Vijay agreed to pursue the Verizon franchise business by developing a multi-store operation. (Tr. Transcript pp. 43:13 - 45:21 and 48:12-21).

Kaj and Krish then met to develop a business plan to present to Verizon. (Answer Am. Compl. ¶17). Kaj had a business plan he developed for a previous restaurant venture, Tava Grill, that he forwarded to Krish. (Tr. Transcript p. 380:20-21 and 48:24 – 49:21; Pl. Tr. Docs. 3-16). Kaj’s Tava Grill business plan included relevant demographic information for the Greenville market. Kaj’s Tava Grill business plan was derived from a

business plan he obtained off the internet but which Kaj then added his research on the Greenville, South Carolina business environment. (Tr. Transcript pp. 37:12 - 38:7; Pl. Tr. Doc. 4-9). On December 5, 2007 Kaj e-mailed these business plans to Krish to use for their new Verizon business venture. (Pl. Tr. Doc. 3). In the e-mail Kaj instructed Krish regarding his prior Tava Grill business plan: "Please keep confidential and do not distribute." Krish admitted that both Kaj and Krish participated in the drafting of a business plan for VP Enterprises. (Answer Am. Compl. ¶¶ 22-23; Tr. Transcript pp. 380:16 – 381:13).

As part of the parties' business plan, attorney Allan Hill represented Kaj, Krish and Vijay Patel in the incorporation of VP Enterprises and was responsible for drafting all the initial corporate documents. (Answer Am. Compl. ¶ 28). Krish was concerned that because he had formerly worked at a Verizon corporate-owned store, Verizon might not allow him to be an owner of independent Verizon stores. (Id. at ¶17). The three then agreed the stock in VP Enterprises would be titled in Kaj and Vijay's names, each owning 50%, but that the 50% titled in Vijay's name would be shared equally between Vijay and Krish. (Vijay dep. 12:24-13:10). The corporate records named Kaj as president, Vijay the vice-president, and Krish as secretary-treasurer. (Pl. Tr. Docs. 364, 393 and 403; Tr. Transcript p. 438:10-16). In the business plan Kaj was named president and CEO, Vijay the vice-president, and Krish the general manager and project developer. (Pl. Tr. Doc. 23).

In this venture Kaj would be able to bring access to his \$800,000 line of credit, banking relationships and twenty plus years of business experience. Krish had the Verizon sales experience along with the time to manage the day-to-day operations. (Tr.

Transcript p. 62:5-22). Krish was also one of the corporation's promoters. (Tr. Transcript pp. 441:24 - 442:1; Krish dep. p. 123:7-20).

In developing the business plan, Kaj and Krish researched the upstate South Carolina area for potential store locations. Kaj and Krish rode together to examine various locations between December 2007 and May 2008. On one occasion an employee of Verizon named "Andre" rode with Kaj and Krish to inspect some of the locations they were considering for VP Enterprises. (Answer Am. Compl. ¶18; Tr. Transcript p. 56:12-22). Kaj and Krish agreed on 10 potential sites or areas they had located for new stores. Krish admitted Kaj played a role in selecting locations, (though he denies it was significant). (Answer Am. Compl. ¶19). These locations were included in the VP Enterprises business plan. (Pl. Tr. Doc. 19-20). After Kaj and Krish jointly drafted and finalized the VP Enterprises business plan, Krish e-mailed the business plan to Verizon's Kelley Pearson. (Pl. Tr. Doc. 17). The VP Enterprises – Verizon business plan closely tracked Kaj's business plan for Tava Grill. (Pl. Tr. Doc. 4-9 and 18-23).

After the business plan was submitted to Verizon, Krish Patel arranged with Allan Hill, Esquire, for Mr. Hill to draft the incorporation and organizational documents for VP Enterprises. The Articles of Incorporation for a Statutory Close Corporation were filed January 24, 2008 and listed Krish's home as the registered office. The concurrently drafted Initial Annual Report of Corporations listed Kaj, Vijay and Krish as the directors and principal officers. The Corporate Data sheet listed Kaj and Vijay as directors, Kaj as president, and Vijay as vice-president. Krish was named as Secretary and Treasurer of VP Enterprises which positions he accepted. (Pl. Tr. Doc. 42-48; Krish dep. 21:1-12; Answer Am. Compl. ¶ 12). The opening incorporator resolution appointed Kaj and Vijay

as directors. (Pl. Tr. Doc. 389). The day following the filing of the Articles of Incorporation, VP Enterprises filed its application for a federal ID number and listed “Verizon Cellular Store” as its principal service. (Pl. Tr. Doc. 51).

On January 28, 2008 Vijay and Kaj both submitted their Verizon Agent Applications for VP Enterprises to Verizon. The address on the Verizon Application form was 408 Ashby Park Lane, Greenville, SC, which was Krish’s residence. (Pl. Tr. Doc. 111-24). The application asked, among other things, whether the applicants had been convicted of non-traffic criminal offenses or been involved in any civil litigation in the past 5 years. Kaj reported his involvement in a civil suit in Greenville County Court of Common Pleas that had been settled. (Pl. Tr. Doc. 123). He did not include a \$2,500 magistrate court civil suit originally filed around 2000 or 2001. (Tr. Transcript pp. 67:19 – 68:18 and 118:20-24). Kaj’s attorney drafted an amended complaint dated June 30, 2002 and submitted to the magistrate court on July 2, 2002, which was five and a half years before the Verizon application. No further litigation activity by Kaj occurred in the lawsuit, and it was administratively dismissed for no activity in May 2009. (Def. Tr. Doc. 235). Krish filled out his father’s application and answered “no” to the criminal history question which Vijay then signed. (Pl. Tr. Doc. 116; Vijay dep. 10:20 - 11:7). Unbeknownst to Kaj, Vijay had actually been convicted of shoplifting on December 14, 2005. (Pl. Tr. Doc. 1-2).

While the Verizon agent application was pending, Krish opened a VP Enterprises bank account with Krish being an authorized signatory. On January 29, 2008 Kaj gave Krish a check for \$5,000 payable to VP Enterprises which was deposited into the new business account. (Answer Am. Compl. ¶29; Pl. Tr. Doc. 54). In early February, VP

Enterprises applied to BB&T Bank for a \$50,000 line of credit based on Kaj and Vijay as owners. (Pl. Tr. Doc. 138). On February 11, 2008 BB&T, through loan officer Mike Pavlick, approved a \$50,000 line of credit for VP Enterprises. (Pl. Tr. Doc. 141 and 144). During this time, Kaj, Krish and Vijay met with Verizon personnel, and Kaj and Krish continued to scout potential locations as Defendants have admitted. (Answer Am. Compl. ¶30).

B. Denial of VP Enterprises Application by Verizon

On February 26, 2008, Verizon sent a letter to VP Enterprises addressed to 408 Ashby Park Lane, Greenville (Krish's home) informing VP Enterprises that Verizon had denied its application "at this time". (Pl. Tr. Doc. 145). Verizon gave no explanation for the denial. Shortly thereafter Respondents informed Kaj of the denial letter. Krish testified that Kaj asked why Verizon denied VP Enterprises' application. (Tr. Transcript p. 384:20-21). Kaj testified he specifically asked Vijay and Krish if anybody had any criminal or negative financial history which they both denied. (Tr. Transcript pp. 73:23 - 74:14). In addition, the parties agreed that Krish, since he had previously worked at Verizon, would find out why the application was denied so that the parties could try to overcome the reasons for the denial. Krish testified he contacted the few people he knew at Verizon, but he could not get an explanation of why it was denied. (Tr. Transcript pp. 384:22 – 385:4).

Krish testified about his efforts on behalf of VP Enterprises stating: "I owed him and my father the duty to do my best to try to make the first round work, and I did do that." (Tr. Transcript. pp. 413:18 – 414:1) (emphasis added). In his Video Deposition he explained his approach towards VP Enterprises going forward: "Your client [Kaj] and my

father got denied of a Verizon Wireless application. After that was done, it was case closed. I moved on and looked for another opportunity.” (Krish dep. pp. 87:24 – 88:2) (emphasis added).

In the months after receipt of the Verizon denial, Krish did not tell Kaj he was forming a new company to obtain a Verizon license in a different way on his own. (Pl. Tr. Doc. 153; Tr. Transcript pp. 385:11-19, 387:25 - 388:5 and 412:17-20).

Following notification of the Verizon rejection, Kaj continued to look for other wireless phone stores for VP Enterprises. Krish verified that after the Verizon denial, he continued looking at other business opportunities with Kaj. (Tr. Transcript p. 387:18-20). On April 18, 2008 Kaj e-mailed Krish information on possibly becoming AT&T independent dealers. While Krish speculated “I probably didn’t” respond to Kaj’s e-mail, Kaj was more specific about their communications regarding the e-mail. He testified Kaj instructed him to focus on finding Verizon opportunities and that he was still trying to find out the reason for the denial. (Tr. Transcript pp. 80:21 – 81:16).

On July 24, 2008 Kaj e-mailed Krish about other wireless stores available for purchase in South Carolina. (Answer Am. Compl. ¶34; Pl. Tr. Doc. 239-40). Respondents showed no real interest in these opportunities. Krish testified he did not respond to Kaj’s e-mail and did not inform Kaj that he was trying to work a Verizon deal with a new applicant, Corby Phillips, through another company P Communications. (Tr. Transcript p. 391:7-25). During the spring of 2008 Kaj would meet with Vijay about once or twice a week, and occasionally with Krish to discuss real estate and other business matters. Unknown to Kaj, though, Krish and Vijay were carrying out a different plan to enter into the Verizon Wireless store business -- a plan which did not include VP

Enterprises or Kaj at all. As Respondents admitted, but mischaracterized, in their Answer, “Krish decided to pursue his idea on his own”. (Answer Am. Compl. ¶35).

C. P Communications Secretly Created

Within several weeks of Verizon’s denial of VP Enterprises’ application, around March 26, 2008, Krish began discussions with a neighboring businessman named Corby Phillips about Phillips applying to Verizon for a license to open wireless retail stores just as VP Enterprises had done. (Tr. Transcript p. 221:1-10; Krish dep. 44:14-17). Corby Phillips ran a sandwich shop near the Verizon store where Krish had worked. (Tr. Transcript p. 220:3-5). Krish testified he gave the VP Enterprises business plan to Corby Phillips shortly after Verizon denied the VP Enterprises’ application. (Tr. Transcript p. 386:15-17; Krish dep. 45:12-23). Krish admitted he did not inform Kaj that he was giving the VP Enterprises business plan to Corby Phillips. (Krish dep. p. 46:11-25).

By April 4, 2008 a new Verizon business plan was completed for Corby Phillips and P Communications, Inc. (Pl. Tr. Doc. 146-50). Nearly all the terms in the new Corby Phillips/P Communications plan were identical to the VP Enterprises business plan except the personnel names. (Pl. Tr. Doc. 505-16 where red print shows identical terms). Corby Phillips was listed as the sole owner. (*Id.* at 146). On April 5, 2008, this offshoot of the VP Enterprises’ business plan was submitted to Verizon. (*Id.* at 151).

The new Verizon business venture by P Communications was spearheaded by Krish Patel. Prior to April 25, 2008, Krish directed Corby Phillips to Allan Hill to form P Communications. Allan Hill was the same attorney who formed VP Enterprises for Kaj, Vijay and Krish. Corby Phillips testified he had never met Mr. Hill before this time, and Krish introduced him to VP Enterprises’ attorney for the purpose of forming P

Communications. Mr. Hill was also consulted to draft the contract for the straw man arrangement between Krish and Corby Phillips. (Tr. Transcript pp. 224:11 – 225:4).

On April 18, 2008 Kaj e-mailed Krish with information on an AT&T wireless opportunity. Krish testified he did not respond to this e-mail or inform Kaj he was working on a new application with Corby Phillips. He said “it just hadn’t occurred to him.” (Tr. Transcript pp. 387:21 – 388:2; Pl. Tr. Doc. 153).

On April 28, 2008 attorney Hill effected the filing of Articles of Incorporation for P Communications. The Initial Annual Report of Corporations, the South Carolina Business Tax Application and the federal ID application listed the business purpose as operating “Verizon Wireless Store”, just like VP Enterprises. (Pl. Tr. Doc. 155-56, 175A; Tr. Transcript pp. 225:5 – 227:7). Krish did not inform Kaj he had taken Corby Phillips to VP Enterprises’ attorney to set up a new company for the purpose of operating a Verizon Wireless store. (Tr. Transcript pp. 411:23 – 413:3).

Corby Phillips was only a straw man listed nominally as the owner of P Communications. (Tr. Transcript p. 392:1-18; Krish dep. pp. 67:14 – 68:12). On July 2, 2008 Krish e-mailed attorney Hill the terms for an agreement to inscribe Corby Phillips’ role as a straw man. Vijay was copied on the e-mail. (Pl. Tr. Docs. 228 & 228A). The July 7, 2008 notes of Respondents’ accountant Dan Jones list Corby Phillips as a 10% “silent Ptnr.” (Pl. Tr. Doc. 229). Krish told none of this to Kaj. (Krish dep. pp. 68:24 - 69:5).

Reflecting Corby Phillips’ role as a straw man, on August 25, 2008 Krish signed as president of P Communications a promissory note with BB&T Bank and signed a certified resolution to BB&T that he was the duly elected and appointed president of P

Communications. (Pl. Tr. Docs. 244, 263A-B). Corby Phillips was still the president, director and sole shareholder pursuant to the official corporate documents of P Communications. The loan officer Mike Pavlick testified at trial that, at the time Krish signed the August 2008 loan documents until shortly before trial, he had never heard of Corby Phillips. (Tr. Transcript pp. 125:1-8, 121:19 – 123:23, 428:4-22).

On July 8, 2008 Krish signed paperwork at Bank of America to transfer \$10,000 from the VP Enterprises account to Kaj, Krish and Vijay's separate real estate company by agreement of Krish and Kaj. Krish knew his Verizon venture with Corby Phillips was ongoing, but he failed to mention anything to Kaj about the new deal. (Tr. Transcript p. 391:7-25)

By July 18, 2008 P Communications and Verizon executed their Exclusive Authorized Agency Agreement. (Pl. Tr. Doc. 181-227). None of this was disclosed to Kaj even though Kaj continued to meet at least weekly with Vijay and sometimes Krish to discuss their real estate company and other business matters. (Tr. Transcript p. 394:12-17; Answer Am. Compl. ¶ 37).

During this time in the summer and fall of 2008, Krish and Vijay continued with their work on opening their first Verizon independent dealership to be located on Pelham Road, in Greenville, South Carolina, again without informing Kaj. Vijay, using his real estate experience and contacts from his hotel business, provided important assistance to Krish and P Communications in setting up the new store to be operated under the name Wireless Communications. (Krish dep. 48:17 - 49:14). And similar to what VP Enterprises had done, Krish obtained initial financing from Mike Pavlick at BB&T by October 1, 2008, except that the new loan application listed Krish and a new prospective

co-shareholder, Keith Gailey, as the co-borrowers. (Pl. Tr. Docs. 261 and 269). Prior to opening its first store, P Communications designated Krish as Director of Operations by company letter to Verizon. (Pl. Tr. Doc. 266). On October 1, 2008 Krish opened P Communications' first store. (Tr. Transcript p. 393:3-7).

Krish and Vijay disclosed none of the planning and organizing of P Communications to Kaj. Krish admitted it would have been "the polite thing to do". (Tr. Transcript p. 385:11-19).

D. P Communications' Grand Opening

On October 7, 2008, Krish sent out a mass e-mail to numerous people announcing the grand opening of P Communications' new Verizon store to be held on October 18. (Pl. Tr. Doc. 270-71). This e-mail, though, was not sent to Kaj. As Krish admitted in his trial testimony and his Answer, he made no effort at this time to inform Kaj about his continued efforts to obtain a Verizon store through P Communications or to do any Verizon deal with Kaj. (Tr. Transcript p. 385:12-19; Answer Am. Compl. ¶35).

On the evening of October 18, 2008, Kaj was invited to Vijay's home. According to Krish's trial testimony, he and Vijay had previously discussed that the night of the grand opening was "the time to have that discussion" with Kaj. (Tr. Transcript 393:3-20). The trial testimony of Kaj and Krish about what Krish said that evening varied significantly between Kaj and Krish.⁴ (cf. Tr. Transcript (Kaj) pp. 89:9 – 93:24 and

⁴ Krish claimed he told Kaj he joined with another individual who obtained a Verizon license and he moved on to that opportunity. Krish further testified: "I told Kaj that if there was an opportunity down the road that I'd certainly – would be happy to contact him." He concluded that was pretty much the end of the discussion. (Tr. Transcript pp. 393:21 – 394:11). Kaj testified Krish told him: "I [Krish] found this guy who already had a Verizon business and a license. And I just recently joined up with him to get our foot in the door... [O]nce I get Corby out, because he doesn't have the financial means or

186:15 – 191:5 with (Krish) 393:3 – 394:11, 411:14 – 414:8 and Krish dep. p. 89:10-24). It is undisputed Krish told Kaj he opened a Verizon store on Pelham Road and joined with another individual who had obtained a Verizon license. (Tr. Transcript pp. 187:18-21 and 393:23-25.) The Lower Court found that “[o]n October 18, 2008, Krish voluntarily disclosed to Kaj that he had opened a Verizon store with Corby...” (Order p. 12, ¶31 and p. 6).⁵

It is also undisputed, though, what Krish omitted telling Kaj on October 18, 2008.

Krish did not disclose the following:

- Krish met with Kaj’s lawyer Allan Hill to form P Communications to do what VP Enterprises was going to do (Tr. Transcript p. 411:23 – 412:7; 412:17 – 413:3; 413:15-17);
- Krish gave the VP Enterprises’ business plan to the new company which, after changing the names, submitted the plan to Verizon;
- The name of the new company, P Communications;
- The full name of Krish’s straw man, Corby Phillips;
- Krish and Vijay did all the work for P Communications (Tr. Transcript pp. 398:17 – 399:7);
- Vijay helped Krish to get the first store fitted up and built out for opening as a Verizon retail store (Vijay dep. p. 18:12-25);
- Krish had already laid plans to oust Corby Phillips and make himself the new owner;
- Krish obtained loans for P Communications from the same loan officer and bank that VP Enterprises used for its line of credit (Pl. Tr. Docs. 137 and 269);
- The fact Corby Phillips was just a straw man for Krish’s new Verizon company;

capabilities to grow this business like we're looking at...we can get back on our plan... [T]his should take anywhere from eight to twelve months.” (Id. at 92:1-18).

⁵ The Lower Court also found that Krish disclosed to Kaj “...that he planned to own the company at some point in the future.” However, there is no evidence in the record to support a finding that Krish made such a disclosure. (Order pp. 6 and 12, ¶31).

- Krish had no intention of calling Kaj later about new opportunities with the Verizon retail business.

In sum, Krish did not disclose the fact he actually obtained the Verizon license, not some third party he joined with, and he did so using VP Enterprises' business model.

E. P Communications Ownership Changes

Within two weeks of the grand opening, Krish Patel and Keith Gailey submitted to Verizon applications to change the ownership of P Communications and the Verizon license to Krish Patel and Keith Gailey from Corby Phillips, with Krish owning 60% and Gailey 40%. (Pl. Tr. Doc. 272-85). Verizon approved the ownership change, and on November 19, 2008 Corby Phillips, Krish Patel and Keith Gailey submitted a signed change of ownership form to Verizon. (Pl. Tr. Doc. 231). By December 15, 2008 all corporate resolutions and Secretary of State filings were completed to divest Corby Phillips from any ownership or involvement in P Communications. Phillips was paid \$14,000 cash for the stock transfer. (Pl. Tr. Doc. 287-97; Tr. Transcript p. 232:13-24). Shortly thereafter on January 1, 2009 Krish bought out Keith Gailey's 40% interest. (Pl. Tr. Doc. 299-300). Krish and Gailey belatedly informed Verizon of this ownership change one year later. (Pl. Tr. Doc. 302). All this change in ownership in Krish's Verizon venture was done without informing Kaj. (Krish dep. pp. 114:18 - 115:5).

F. P Communications Uncovered

On April 15, 2010 Kaj e-mailed Krish about a possible location for a Verizon store and asked if Krish was still interested. (Pl. Tr. Doc. 304A). Krish and Kaj met three or four times in May/June 2010 to discuss the Verizon store business. After a couple of meetings, Krish informed Kaj he had other locations already opened. (Tr. Transcript pp. 199:15 – 201:13).

In these discussions Krish informed Kaj he had bought out Corby Phillips, making Krish the sole owner.⁶ (Tr. Transcript pp. 101:17-24 and 405:12-15). During these meetings in May and June 2010, Krish revealed to Kaj the name of his company P Communications, the number of Verizon stores it owned and the staff working there. (Id. at 104:5 – 105:9). While meeting there on June 4, 2010, Kaj saw Vijay in the office and learned that Vijay had also been working with Krish for P Communications. (Id.). After learning this information, Kaj began researching the history of P Communications and Corby Phillips. (Id. at 104:11 – 106:20). Kaj learned from the Secretary of State website that P Communications was formed in April 2008, just a few months after VP Enterprises was formed. What also jumped out to Kaj was the fact Corby Phillips had been replaced as registered agent for P Communications in December 2010. (Pl. Tr. Doc. 306A; Tr. Transcript pp. 105:19 – 106:13). Kaj then e-mailed Krish the following day, June 5, and asked for an immediate meeting. (Pl. Tr. Doc. 305).

The two met on Sunday June 6 at Krish's home by his pool. Kaj was upset over what he learned from his search of P Communications. He told Krish that Krish had backstabbed him. (Tr. Transcript 108:6-17 and 436:15 – 437:10). On June 7, Kaj met Vijay at Vijay's hotel and had the same discussion with him. (Id. at 109:7-18). Krish did not testify about any other date prior to June 6, 2010 that Kaj was upset with Vijay and him about VP Enterprises, P Communications or their planned Verizon venture.

ARGUMENT

I. Statute of Limitations

A. Introduction

⁶ Krish testified he did not recall if he told Kaj whether he bought out Corby Phillips or how much he paid him. (Tr. Transcript pp. 437:22 – 438:5).

The Lower Court Order ruled as an initial matter that Kaj's complaint was time barred under the applicable statutes of limitations and laches. The Order did not specify which statute of limitations was applicable but cited to the case of Clearwater Trust v. Bunting, 367 S.C. 340, 626 S.E.2d 334 (2006) applying S.C. Code Ann. §§ 33-8-300 and -420. (Order at pp. 1 and 15-18). The issue before the Court then is whether the statute of limitations commenced on October 18, 2008 or in May/June 2010.

B. Respondents' fraudulent concealment prevents running of the statute of limitations

1. South Carolina law requires "perfect good faith and full disclosure" by a fiduciary of all significant and material facts to start the running of the statute of limitations

South Carolina has expressly codified the fraudulent concealment principle in breach of fiduciary claims against corporate directors and officers as follows:

(e) An action against an officer [or director] for failure to perform the duties imposed by this section must be commenced within three years after the cause of action has accrued, or within two years after the time when the cause of action is discovered, or should reasonably have been discovered, whichever sooner occurs. This limitations period does not apply to breaches of duty which have been concealed fraudulently.

S.C. Code Ann. § 33-8-420 ("[or director]" and underline added) (see also S.C. Code Ann. § 33-8-300 for mirror director liability statute).

A plaintiff may thus bring an action more than three years after the wrongs have been committed if the defendants fraudulently concealed their wrongdoing and the plaintiff brings his action within two years after discovery of that breach. See Clearwater Trust v. Bunting, 367 S.C. 340, 352, 626 S.E.2d 334, 340 (2006) (holding when breach of duty has been fraudulently concealed, three year outer limit does not apply and two year discovery rule governs). In cases of fraudulent concealment, neither S.C. Code Ann. §

33-8-420 nor the Clearwater Trust court have imposed on a plaintiff the duty of reasonable diligence in discovery of a defendant's breach.

This discovery standard is reflected in S.C. Code Ann. §§ 33-8-300(e) and -420(e). The first sentence of that subsection addressing breaches of duty not accompanied by fraudulent concealment provides an action must be commenced within two years after a cause of action "should reasonably have been discovered". In contrast, the language "should reasonably have been discovered" is omitted from the fraudulent concealment limitation period (the last sentence of §§ 33-8-300(e) and -420(e)).

A director and manager are liable as trustees to a corporation and its stockholders. Black v. Simpson, 94 S.C. 312, 77 S.E. 1023 (1913). The South Carolina Supreme Court has held "that officers and directors of a corporation stand in a fiduciary relationship to the individual stockholders and in every instance must make a full disclosure of all relevant facts..." when addressing matters of shareholder interests. Jacobson v. Yaschik, 249 S.C. 577, 584-85, 155 S.E.2d 601, 605 (1967) (holding director/manager of corporation violated his fiduciary duty to shareholder by failing to disclose prospective purchase offer from third party of corporate stock).

In Jacobson, the Supreme Court explained that a corporate executive's "nondisclosure becomes fraudulent when... the very... transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties." Jacobson v. Yaschik, 249 S.C. at 585, 155 S.E.2d at 605 (underline added).

"Parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material, and when this duty to disclose is triggered,

silence may constitute fraud.” Anthony v. Padmar, Inc., 320 S.C. 436, 449, 465 S.E.2d 745, 752 (Ct.App.1995).⁷ This Court has stated a fiduciary’s duty of disclosure imposes “...obligation of *refraining from taking any advantage of one another by the slightest misrepresentation or concealment.*” Moore v. Moore, 360 S.C. 241, 252, 599 S.E.2d 467, 473 (Ct. App. 2004) (emphasis in original).

The general rule that nondisclosure by a fiduciary constitutes fraudulent concealment tolling the statute of limitations has been summarized as follows:

A duty to disclose, for purposes of the affirmative claim of fraudulent concealment which defers the accrual of a cause of action, can arise in several situations, such as, when there is a fiduciary or confidential relationship; [and] when one voluntarily discloses information, the whole truth must be disclosed; ...

51 Am. Jur. 2d Limitation of Actions § 166.⁸

2. Krish’s October 18, 2008 omissions amounted to fraudulent concealment, thus tolling the statute of limitations - “a fiduciary’s silence is equivalent to a stranger’s lie”

⁷ Our research indicates all 50 states have recognized the principle that parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material. See, e.g., Lonergan v. EPE Holdings, LLC, 5 A.3d 1008 (Del. Ch. 2010) (general partner owes fiduciary duties that include a duty of full disclosure); Lariscy v. Hill, 159 S.E.2d 443 (Ga. App. 1968) (director in dealing with another stockholder for purchase of his stock is under same duties as other fiduciaries to make full disclosure of all material facts relative to transaction); and Underwood v. Stafford, 155 S.E.2d 211 (N.C. 1967) (officers and directors of corporation are fiduciaries owing duty of full disclosure to those for whom they act).

⁸ Other courts have applied the foregoing principle in the context of the statute of limitations, holding that a fiduciary’s partial disclosure, as distinguished from the foregoing duty of full disclosure, is not sufficient to start the running of the statute of limitations. See Conservatorship Estate of K.H. v. Continental Ins. Co., 73 P.3d 588 (Alaska 2003); Amtower v. Photon Dynamics, Inc., 71 Cal Rptr. 3d 361 (Ct.App. 2008); Stark v. Advanced Magnetics, Inc., 736 N.E.2d 434 (Mass.App.Ct. 2000); Estate of Watkins v. Hedman, Hileman & Lacosta, 91 P.3d 1264 (Mont. 2004); Southwestern Energy Production Co. v. Berry Helfand, 411 S.W.3d 581 (Tex.App. 2013); Valdez v. Hollenbeck, 410 S.W.3d 1 (Tex.App. 2013), review granted (Jan. 30, 2015).

As described on page 19 above, Krish failed to disclose critical information that would have revealed to a reasonable person that Krish had simply re-packaged the VP Enterprises' application with a different ribbon and sent it back in to Verizon. Information showing that Krish simply re-packaged the VP Enterprises plan and application would have revealed to Kaj that a corporate opportunity of VP Enterprises was being usurped. Without those disclosures, Krish's carefully crafted statement "I joined with another individual who obtained a Verizon license" conveys the unmistakable impression that Krish found another venturer who put together his own Verizon plan and company independently of VP Enterprises. (Tr. Transcript p. 393:23-25). If that were the case, Kaj and VP Enterprises would have had no claim for misappropriation of a business opportunity. But that is not what happened, at all.

Providing the names of the new company and the individual supposedly running it would have given Kaj the ability to research the background of this venture. Krish undoubtedly knew Kaj did not know this information since Kaj knew nothing about the existence of the store, yet Krish withheld these names.

Vijay helped Krish prepare the first store for opening as a Verizon retail store, but Vijay did not tell Kaj. (Vijay dep. p. 18:12-25). A disclosure that Vijay was handling the office up fitting and that Krish was doing all the other work for P Communications would have been significant to somebody in Kaj's position. The information would have let him know Krish and Vijay were the ones in full control instead of piggy-backing on some other individual's venture.

As shown on the P Communication loan application to BB&T in August 2008, prior to the grand opening, P Communications was already representing to its lender (and

lender to VP Enterprises) that Krish and Keith Gailey were the owners and officers of the company. (Pl. Tr. Doc. 241-44). This ownership change was formalized by November 19, 2008. (Pl. Tr. Doc. 286). At the time of the meeting between Krish and Kaj on October 18, 2008 Krish knew he was ousting Mr. Phillips and becoming the new co-owner, yet he said nothing to Kaj while realizing Kaj had no way of knowing this key fact.

Another vital piece of information that would have informed someone in Kaj's position that VP Enterprises' business opportunity was being hijacked would have been a truthful disclosure that Krish had given the VP Enterprises business plan that Kaj and Krish created to the new company. That piece of information would obviously have been a dead giveaway Krish was usurping VP Enterprises' business opportunity. It is unquestionable that Kaj would have had no way of learning that Krish had made such a blatant misappropriation unless Krish told him of that fact, which Krish did not do.

Krish did not inform Kaj he sent Mr. Phillips to VP Enterprises' own attorney within three months of forming VP Enterprises. Nor did he tell Kaj this new company he joined with was using VP Enterprises' same loan officer and bank. These are further details that would have alerted anyone that Respondents were using VP Enterprises' business model.

Finally, Krish did not admit to Kaj that the "other individual he joined with" was simply Krish's straw man for the re-packaging of VP Enterprises' prospective business venture. This information would have informed Kaj that Krish was obtaining the Verizon license for himself using VP Enterprises' business plan.

In addition to the omissions, Krish affirmatively misrepresented to Kaj the true reason Krish's job at Verizon ended. This misrepresentation was made a second and

third time to Kaj in Krish's answers to paragraph 16 of both the original and amended complaint. Vijay also willfully misrepresented he had no criminal record. Further, Krish represented he would contact Kaj if another opportunity came available. Kaj knew that representation was false when he made it because he had already signed a false bank loan application in August 2008 claiming he and Keith Gailey were the shareholders. When Keith Gailey exited as a shareholder on January 1, 2009, Krish did not call Kaj then either. Also, Kaj testified without contradiction that Vijay denied on October 18, 2008 having any involvement in Krish's activities with P Communications. (Tr. Transcript pp. 90:24 – 91:16). In contrast, Krish testified Vijay was in fact aware of Krish's activities by June 2008. (Tr. Transcript pp. 417:13 -418:3). As noted earlier, Vijay testified in his Video Deposition he helped Krish with the build out of the first store which opened in 2008.

Misrepresentations were a common operating procedure for Respondents. The evidence shows Krish hatched a fraudulent scheme that included additional misrepresentations as follows:

Krish commits two acts of perjury to the IRS:

- Krish Patel misrepresented his position as president of P Communications on the IRS Form 2553 – Sub Chapter S Election, which was signed under penalties of perjury. (Pl. Tr. Doc. 165);
- Krish Patel misrepresented on the same form that he acquired the shares on September 1, 2008 when actually the earliest record of any change in ownership of P Communications occurred on November 19, 2008. (Pl. Tr. Doc. 165);⁹

Krish makes two false certifications to the S.C. Department of Revenue:

⁹ Corby Phillips did not authorize Krish Patel to lie on any Department of Revenue or IRS documents and did not authorize Krish to serve as president of P Communications. (Tr. Transcript pp. 228:18 – 230:1; 231:3-17 and 235:1-9; 429:3-9).

- Krish Patel represented to the Department of Revenue on the Business Tax Application for P Communications that he was the president of the corporation on September 19, 2008 when he was not. (Tr. Transcript pp. 424:19 – 425:3; Pl. Tr. Doc. 163);
- Krish Patel represented in the Business Tax Application to the Department of Revenue that he owned 46.5% of the shares in P Communications on September 19, 2008 when he in fact owned no shares. (Pl. Tr. Doc. 163);

Krish makes multiple false certifications to BB&T Bank:

- Krish Patel represented (1) he was president of P Communications to BB&T Bank in order to obtain a loan on August 25, 2008, and (2) that the board of directors of P Communications duly adopted at a meeting of that date that he was authorized to obtain the loan by the board. (Tr. Transcript pp. 428:4 – 429:9; Pl. Tr. Doc. 263A).

In Demoulas v. Demoulas Super Mkts, Inc., the Massachusetts Supreme Court held fraudulent concealment tolls the statute of limitations, in an action for misappropriation of a corporate opportunity by directors and officers of a corporation, until such time as the defendants repudiated their fiduciary obligations. Demoulas v. Demoulas Super Mkts, Inc., 424 Mass. 501, 518-21, 677 N.E.2d 159, 173-76 (1997). The court cited the previously held requirement for fiduciaries that an oral repudiation of fiduciary obligations must be “open, definite, and *made to or brought to the attention*” of the other party. Id. at 519, 677 N.E.2d at 173. (emphasis in original).

Krish’s “disclosure” to Kaj on October 18, 2008 was made orally and not in writing. Krish testified he and Vijay planned in advance “to have that discussion” with Kaj. Yet they put nothing in writing, and Krish spoke it with no witnesses present. Krish’s oral “disclosure” or repudiation was far from open or definite, and certainly was not made in a manner that unambiguously brought to Kaj’s attention their usurpation of VP Enterprises’ business opportunity.

The “disclosure” Krish made that date lacked the clarity due from a fiduciary. The difference in the reactions of Kaj from October 18, 2008 compared to June 4, 2010, where Krish admitted Kaj was visibly upset, demonstrates the initial “disclosure” was not open and definite.

As secretary, treasurer and general manager of VP Enterprises, Krish had a fiduciary duty of “full disclosure” in “perfect good faith” without the “slightest concealment”. His statements as a fiduciary to VP Enterprises and Kaj on October 18, 2008, and on through April 2010, fell woefully short of the standard of full disclosure. As such, the statute of limitations was tolled until May/June 2010.

Vijay and Kaj met weekly after October 2008 through May 2010. During this time P Communications opened an additional four stores for a total of five stores by May 2010. Respondents alleged they told Kaj everything about the status of the Verizon venture between August 2008 and May 2010. (Answer Am. Compl. ¶ 37). Vijay knew about Krish’s work through P Communications, but the testimony shows he never said anything to Kaj about any of these store openings. (Tr. Transcript pp. 89:23 - 90:23; Vijay dep. pp. 22:12 – 23:4). Moreover, a conversation with Vijay is equivalent to a conversation with Krish since Vijay testified they were partners in Vijay’s 50% interest in VP Enterprises. (Vijay dep. 12:24-13:10).

The Lower Court incorrectly cited the general discovery rule requirement that a plaintiff is tasked with “the exercise of reasonable diligence” in discovering a defendant’s misconduct. (Order pp. 15-16, ¶¶ 2 and 6). However, directors and officers as fiduciaries are held to a higher disclosure standard of providing actual knowledge to their shareholders since shareholders are not required to make an independent investigation of

their own fiduciaries. Demoulas v. Demoulas Super Mkts, Inc., 677 N.E.2d 159, 173-74 (Mass. 1997). As a result Kaj was not under a duty to investigate his fiduciary's minimal disclosure to see if Krish was breaching his fiduciary duties to VP Enterprises.¹⁰

Because of Respondents' fraudulent concealment of material and significant information, Kaj did not gain actual knowledge of Respondents' breaches of their officer duties until May/June 2010. It is at that point the limitations period began to run.

In the concluding words of the Appeals Court of Massachusetts: "a fiduciary's silence is equivalent to a stranger's lie." Energy Res. Corp. v. Porter, 14 Mass.App.Ct. 296, 304, 438 N.E. 2d 391, 396 (1982).

C. Respondents' fraudulent concealment continued until June 4, 2010

According to Kaj's testimony, Krish's representations about the status of Corby Phillips continued until the spring of 2010, specifically June 4, 2010. On or around that date, Krish revealed to Kaj the name of P Communications and Corby Phillips for the first time. Respondents also informed Kaj of Vijay's involvement with P Communications. In those disclosures Krish did not admit he had misappropriated VP Enterprises' opportunities, but the disclosures did reveal enough information to allow Kaj to investigate the entity that Krish claimed had partnered with Corby Phillips.

During his ensuing investigation, Kaj discovered facts from the Secretary of State's website which, combined with the circumstances of Vijay's involvement in P Communications, informed Kaj that the rights of VP Enterprises may have been violated. Kaj's investigation of the Secretary of State's website showed a date of incorporation for P Communications of April 24, 2008 that was not entirely inconsistent with the formation

¹⁰ Regardless of whether the "reasonable diligence" or actual notice standard applies, Kaj discovered his cause of action in May/June 2010 as explained in Section I, C below.

by an existing Verizon licensee but was suspiciously close to the grand opening date of October 18, 2008. Also the date of December 4, 2008, shown on the Secretary of State's records as when the registered agent changed from Corby Phillips to Krish Patel, did not conclusively confirm that Corby Phillips had been removed as a shareholder in 2008, but it did raise strong doubts to Kaj in June 2010 as to the truthfulness of Krish and Vijay about the Verizon venture. That investigation then led to the personal meetings on the three days following June 4, 2010 between Kaj and Krish and Kaj and Vijay.

The disclosures made by Krish Patel in the spring of 2010 did not state he had used Corby Phillips as a straw man and P Communications as a mechanism to usurp the Verizon opportunity for himself. Instead, Kaj was able to take the information on the name of the new corporation and its straw man Corby Phillips to research the records and figure out that Krish Patel and Vijay Patel had likely backstabbed him by excluding him from the Verizon store business.

Even if the fraudulent concealment statutes of §§ 33-8-300 and -420 require a plaintiff to exercise reasonable diligence towards his fiduciary, Kaj is still within the statute of limitations. The facts and circumstances disclosed to Kaj in May/June of 2010 that led him to investigate Respondents' corporate activities are what the South Carolina discovery rule envisions as the commencement date for statutes of limitations, not the fraudulent representations of Respondents in October 2008.

D. Equitable Estoppel Prevents Running of the Statute of Limitations

Under South Carolina case law, the doctrine of equitable estoppel may prevent a defendant's resort to the statute of limitations where a defendant has acted in such a manner as to induce the plaintiff to delay in timely filing a cause of action. See Hooper v.

Ebenezer Senior Servs & Rehab. Ctr., 377 S.C. 217, 239-40, 659 S.E.2d 213, 225 (Ct.App. 2008)(reversed on other grounds). The South Carolina Court of Appeals described the elements of equitable estoppel as follows:

...To establish equitable estoppel, the party claiming estoppel must prove that he or she (1) lacked knowledge and means of obtaining knowledge of the truth of the facts in question; and (2) relied upon the conduct of the party to be estopped. The party claiming estoppel must also establish that the party to be estopped (1) acted in a way amounting to a false representation or concealment of material facts; (2) intended such conduct to be acted upon by the other party; and (3) possessed knowledge, either actual or constructive, of the true facts.

Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009) (internal citation omitted).

The same facts described for fraudulent concealment apply to meet all the elements of equitable estoppel. Thus, the statute of limitations does not bar Kaj's case.

E. Respondents do not have clean hands and are not entitled to the defense of laches.

As noted in the Standard of Review above, all Kaj's remaining claims sound in equity. The statute of limitations does not apply to actions in equity. Dixon v. Dixon, 362 S.C. 388, 400, 608 S.E.2d 849, 855 (2005). The doctrine of laches, however, may bar equitable causes of action as untimely. Chambers of S.C., Inc. v. Cnty. Council for Lee Cnty., 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993).

Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights...The court is vested with wide discretion in determining what is an unreasonable delay.

Chambers of S.C, Inc. v. Cnty. Council for Lee Cnty., 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993).

However, “[d]elay alone in the assertion of a right, without injury to the adversary, does not constitute laches.” Gibbs v. Kimbrell, 311 S.C. 261, 269, 428 S.E.2d 725, 730 (Ct.App.1993); see also Mazloom v. Mazloom, 382 S.C. 307, 319-20, 675 S.E.2d 746, 752-53 (Ct. App. 2009).

“It is well established that a party pleading an affirmative defense has the burden of proving it.” Cole v. S.C. Elec. & Gas, Inc., 355 S.C. 183, 195, 584 S.E.2d 405, 412 (Ct.App. 2003). Laches is an affirmative defense. Rule 8(c), SCRCF. Therefore, Respondents have the burden of proving the elements of laches.

The Lower Court’s Order makes no specific findings of how laches would be applicable. There is no finding Respondents incurred any expenses or entered into obligations it would not have otherwise incurred had Kaj asserted his claims earlier. The Lower Court stated “Krish expended great costs and efforts to expand the business of P Comm.” (Order p. 17, ¶ 7). There is no evidence, though, Krish would not have undertaken these efforts if the lawsuit had been filed in 2010 instead. The evidence shows Krish still continued to grow the commission revenues of P Communications after this suit was filed on November 4, 2011. (Pl. Tr. Doc. 466). In this case Kaj filed his suit three years and two weeks after October 18, 2008 and one year and five months after June 4, 2010. Respondents have failed to demonstrate how they have been prejudiced by any delay on Kaj’s behalf.

Kaj asserted before the Lower Court that Respondents are not entitled to assert the equitable defense of laches because of “unclean hands”, specifically their misrepresentations and lack of disclosures.

The Lower Court held “none of the misrepresentations [of Krish] were material to [Appellant’s] ability or responsibility to timely bring his claims.” (Order p. 17, ¶ 8). However, the Lower Court Order, though, gave no explanation of what representations it was referring to. Even more significantly, the Order makes no reference to the numerous material omissions which, when withheld by a fiduciary, constitute fraudulent representations. See Emery v. Smith, 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct. App. 2004) (holding defendant precluded from asserting laches due to failure to inform plaintiff of material marital assets).

Respondents acted with unclean hands in making untruthful statements to Kaj and failing to inform him of material events highly relevant to their Verizon venture. With no prejudice shown from Kaj’s November 4, 2011 filing date, Respondents are not entitled to the defense of laches.

II. Breach of Fiduciary Duty

A. Introduction

The Lower Court ruled alternatively that Kaj’s claims of breach of fiduciary duty failed as a matter of law. (Order p. 19, ¶ 16). The Lower Court held Kaj demonstrated no actions by Respondents constituting a breach of fiduciary duty as promoters, officers or directors. (Id. at p. 21, ¶21). The Lower Court ruled VP Enterprises possessed no business opportunity capable of being usurped. (Id. at ¶ 22).

The Lower Court identified three bases for finding no business opportunity was usurped. First, VP Enterprises lost any expectancy in the Verizon opportunity once Verizon rejected VP Enterprises’ application. Where a corporation is unable to avail itself of an opportunity, its executives are free to exploit it. (Id. at p. 22, ¶¶ 24-25). Second, the

Lower Court found that VP Enterprises and Kaj abandoned the Verizon venture after the Verizon rejection letter, thereby freeing Krish and Kaj to pursue the opportunity on their own. (Id. at pp. 23-24, ¶¶ 27-29). Third, the Lower Court opined that a claim of usurpation of business opportunity must involve an opportunity that is unique and particular. (Id. at p. 24, ¶ 30).

The first basis is legally and factually incorrect. The right to exploit an unavailable opportunity is dependent on full and fair disclosure. Also the fact Krish and P Communication were able to exploit the opportunity with only a minor tweak shows the opportunity was readily available.

The second basis -- that VP Enterprises abandoned the Verizon venture -- is factually inaccurate. The evidence conclusively shows Kaj and VP Enterprises never abandoned the prospective Verizon venture until after Respondents misappropriated it.

The third basis -- that a business opportunity must be unique -- is legally wrong. Uniqueness is not a requirement of the claim of usurpation of a business opportunity.

B. South Carolina law prohibits usurpation of a business opportunity by a corporation's officers and directors

South Carolina law holds promoters, directors and officers to a fiduciary duty of loyalty, candor and good faith which requires the fiduciary to abstain from appropriating a corporation's business opportunities for himself. The South Carolina Supreme Court enunciated the duties of a corporation's promoters as follows:

The promoters of a corporation occupy a relation of trust and confidence towards the corporation which they are calling into existence as well as to each other, and the law requires of them the same good faith it exacts from directors and other fiduciaries.

Duncan v. Brookview House, Inc., 262 S.C. 449, 456, 205 S.E.2d 707, 710 (1974).¹¹

It is the duty of directors and officers to refrain from misappropriating corporate opportunities for their own benefit. The Supreme Court has held in the case of a director/manager buying stock from his corporation's shareholders:

It was a breach of his trust to all of the stockholders to use any means to acquire for himself the corporate property, except in the open after giving to the stockholders, fully and candidly, all material information he possessed...

Jacobson v. Yaschik, 249 S.C. at 584, 155 S.E.2d at 605 (quoting Black v. Simpson, 94 S.C. 312, 77 S.E. 1023 (1913)).

This prohibition on a fiduciary's usurpation of business opportunities stems from the well-known case of Meinhard v. Salmon, 249 N.Y. 458, 164 N.E. 545 (1928) where Justice Cardozo famously stated:

Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court.

Meinhard, 249 N.Y. at 464, 164 N.E. at 546 (citations omitted) (emphasis added).

Meinhard has been cited explicitly five times by our state's Court of Appeals.¹² It was not mentioned once by the Lower Court even though Kaj's counsel presented an in-

¹¹ The Supreme Court defined promoters as "persons who plan or organize a corporation." Bivens v. Watkins, 313 S.C. 228, 233, 437 S.E.2d 132, 135 n.5.

depth comparison of this case to Meinhard in post-hearing briefing. (Pl.'s Resp. to Def.'s Mot. Involuntary Non-Suit pp. 19-24; Tr. Transcript pp. 27:6-24 and 253:12-22). A thorough evaluation of Meinhard highlights the depth of Respondents' breaches of fiduciary duty to Kaj.

Just as the defendant did in Meinhard, Krish breathed not a word to Kaj of the new venture he was undertaking until he had already obtained an agreement with Verizon, had set up the new corporation, and already opened the first store. And in fact, he hid from Kaj the bare facts that Kaj would need to discover that Krish had diverted the corporation and venture to himself until after five stores had been opened in June 2010.

The Meinhard court pointed out the defendant obtained the chance to enjoy the opportunity that came his way by virtue of his agency relationship with the joint venture. He therefore owed it to his co-venturer to include him in the subsequent enterprise. Meinhard at 465, 164 N.E. at 547. In our case, the opportunity came to Krish Patel from the business plan, spreadsheets, and site location work he and Kaj developed during the formation of VP Enterprises. By virtue of his agency, Krish owed an obligation to Kaj and VP Enterprises to include it in the subsequent venture.

In describing the standard of loyalty owed by a co-adventurer, Justice Cardozo in Meinhard stated "the standard of loyalty for those in trust relations is without the fixed divisions of a graduated scale." Id. at 466, 164 N.E. at 547. Just as Kaj's expert John Freeman testified¹³, the duties of Krish and Vijay were "relentless and supreme." Id. at

¹² See McCarter v. Willis, 299 S.C. 198, 200, 383 S.E.2d 252, 253 (Ct.App. 1989); Kuznik v. Bees Ferry Assocs., 342 S.C. 579, 597, 538 S.E.2d 15, 24 (Ct.App. 2000); Redwend Ltd. P'ship v. Edwards, 354 S.C. 459, 478, 581 S.E.2d 496, 506 (Ct.App. 2003); Ramage v. Ramage, 283 S.C. 239, 246, 322 S.E.2d 22, 27 (Ct.App. 1984); and Kiriakides v. Atlas Food Sys. & Servs., Inc., 338 S.C. 572, 588, 527 S.E.2d 371, 379 (Ct.App. 2000).

¹³ See Tr. Transcript pp. 249:23 - 250:11 and 253:12-22.

468, 164 N.E. at 548. Their fiduciary obligations are not to be watered down “by the ‘disintegrating erosion’ of particular exceptions.” *Id.* at 464, 164 N.E. at 546.

Applying the unbending and inveterate rule against diversion of corporate opportunities by fiduciaries, this Court has held that misappropriation of a business opportunity continues even after the co-venturers have terminated their business. Beck v. Clarkson, 300 S.C. 293, 303, 387 S.E.2d 681, 686-87 (Ct. App. 1989) (expressing general view “that the trust or fiduciary relation between partners and or their partnership, as to the firm business and assets, continues after dissolution”).

South Carolina has codified three broad duties owed by corporate directors and officers to the corporation and its shareholders: namely, the duties of good faith, due care and loyalty. S.C. Code Ann. § 33-8-300.¹⁴

An agent’s duty of loyalty and fidelity prohibits the agent from usurping the corporate opportunities of the principal for the agent’s own benefit. Lowndes Prods., Inc. v. Brower, 259 S.C. 322, 333, 191 S.E.2d 761, 767 (1972).

“The duty of loyalty is enforced by imposing upon officers the burden of: (1) disclosing corporate opportunities to the company, and (2) obtaining its consent to exploit them.” Office of Strategic Servs., Inc. v. Sadeghian, 528 F. App’x 336, 343 (4th Cir. 2013) (applying Virginia law).

When a corporation is unable to avail itself of an opportunity, its agents such as employees, officers and directors are free to exploit it. Energy Res. Corp. v. Porter, 14 Mass.App.Ct. 296, 300, 438 N.E.2d 391, 394 (1982). However, “before a director or

¹⁴ see S.C. Code Ann. § 33-8-420, Cmt. (“non-director officer with discretionary authority must meet the same standards of conduct required of directors under...Section 33-8-300”).

officer invokes a refusal to deal as the reason for diverting a corporate opportunity, there must be an unambiguous disclosure of that refusal to the corporation, together with a fair statement of the reasons for that refusal.” 18B Am. Jur. 2d Corporations § 1551 (2014).

C. A corporate opportunity for VP Enterprises in the Verizon business continued to exist as a matter of law making Respondents’ usurpation wrongful.

The Lower Court concluded there was no corporate opportunity capable of being misappropriated because Verizon had refused to deal with VP Enterprises when Verizon rejected its application. (Order pp. 21-23, ¶¶ 22-26). However, the Lower Court is incorrect in holding the refusal to deal defense is available to Respondents.

“A corporate opportunity is defined as a ‘proposed activity [that] is reasonably incident to the corporation’s present or prospective business and ... in which the corporation has the capacity to engage.’ ” Anest v. Audino, 332 Ill.App.3d 468, 478 773 N.E.2d 202, 210-11 (2002).

There is no question that VP Enterprises’ prospective and avowed business purpose was to operate Verizon retail stores as indicated on its Initial Annual Report. With Kaj’s \$800,000 line of credit, VP Enterprises had access to financial resources to carry out its intended Verizon retail business. No one debates that development of a chain of Verizon stores was squarely within VP Enterprises’ prospective corporate activity.

Respondent’s defense is that the intended Verizon retail business ceased being a corporate opportunity when Verizon refused VP Enterprises’ application “at this time.” The Lower Court noted a Verizon representative testified that to her knowledge Verizon never approved any applicant who reapplied after being rejected. (Order p. 11, ¶21). This

same witness, though, testified she was not involved in the decision of license approvals as that was above her position in the company. (Tr. Transcript, pp. 307:2-5 and 309:11).

The seminal case on the refusal to deal defense is Energy Res. Corp. v. Porter, supra, which is remarkably similar on its facts. In that case, the officer-defendant on behalf of his corporation presented a new venture to a third party. The third party refused to deal with the officer's corporation but agreed to do business with the officer through a newly formed corporation. The officer-defendant informed the corporation that it was not going to be awarded the contract. He then left the corporation and secretively set up a new company which proceeded with the venture with the third party. The officer-defendant never told the corporation the reasons why the third party refused to deal with the corporation, nor did he tell the corporation he was creating a new company to take the opportunity for himself.

In the corporation's suit for misappropriation of a corporate opportunity, the officer claimed the opportunity was unavailable to the corporation because the third party refused to deal with the corporation. The court rejected that defense noting the refusal to deal defense has not been favored when there has been a failure of full disclosure. The court stated "[w]ithout full disclosure it is too difficult to verify the unwillingness to deal and too easy for the executive to induce the unwillingness." Energy Res. Corp. v. Porter, 14 Mass.App.Ct. at 300-301, 438 N.E.2d at 394. The court pointed out that with full disclosure there could have been various alternatives the corporation might have undertaken to overcome the concerns of the third party. Instead the officer "acted secretively and ... masked his true reason for leaving." Id. at 302, 438 N.E.2d at 395. The court concluded stating:

...[B]efore a person invokes a refusal to deal as a reason for diverting a corporate opportunity he must unambiguously disclose that refusal to the corporation to which he owes a duty, together with a fair statement of the reasons for that refusal.

Id. at 14 Mass.App.Ct. at 302, 438 N.E.2d at 395 (emphasis added).

The justification for imposing these duties on directors and officers has been explained as follows:

If fiduciaries are permitted to justify their conduct on the theory that...the corporation could not make the purchase as proposed, and that the fiduciaries should therefore be permitted to assume a position in which their individual interests might be in conflict with those of the corporation, “there will be a temptation to refrain from exerting their strongest efforts on behalf of the corporation since, if it does not meet the obligations, an opportunity of profit will be open to them personally.”

Kelly v. 74 & 76 W. Tremont Ave. Corp., 4 Misc. 2d 533, 536, 151 N.Y.S.2d 900 (Sup. Ct. 1956) (quoting Irving Trust Co. v. Deutsch, 73 F. 2d 121, 124 (2d Cir. 1934)).

In this case, Krish and Vijay never gave Kaj a fair statement of the reasons for Verizon’s refusal of VP Enterprises’ application. Krish testified he asked Verizon but received no answer. Krish and Vijay, however, knew the two most likely reasons for the rejection – Vijay’s criminal record and Krish’s firing from Verizon. Not a word, though, was said to Kaj about either of these. Krish may claim he was not a shareholder on the application; therefore, his status is irrelevant. But he knew his being the general manager could be a factor for the denial. Corby Phillips testified Krish seemed worried about that when they put together the P Communications application and plan and therefore submitted them without Krish’s name on it. (Tr. Transcript p. 224:1-8).

If those possible reasons for denial had been disclosed to Kaj, the parties could have explored alternate arrangements to obtain the Verizon license. Instead of tasking Krish as being the eyes and ears of VP Enterprises towards Verizon since he had been

fired by Verizon, Kaj could have been given that role. Verizon may have been more forthcoming about the denial with a shareholder making inquiries and may have allowed Kaj to clear up any misconceptions Verizon had about his Magistrate Court lawsuit.¹⁵ Also, an alternative ownership arrangement could have been explored such as using Krish, Vijay's wife or Kaj's wife as the owners. These are but two of many possibilities that could have been proposed. If the rejection were based on a misunderstanding by Verizon regarding either applicant's background, such misunderstanding could have possibly been corrected to the satisfaction of Verizon. Instead, Krish and Vijay masked their true agenda and never told Kaj the truth about the circumstances of VP Enterprises' Verizon application. Critically they also remained silent about their setting up a new corporation with a straw man to take the Verizon business for Krish.

Just as the Lower Court did in this case, the trial court in Energy Res. Corp. found that "no amount of persuasion could alter" the third party's decision to reject the plaintiff corporation's request to enter into a business relationship with it. The Massachusetts Appeals Court rejected that reasoning since the inalterability of the third party's resolve can by no means be certain since the corporate officer never afforded the plaintiff corporation a chance to test it. Energy Res. Corp. v. Porter, 14 Mass.App.Ct. 296 at 300, 438 N.E.2d at 394.

The Lower Court made this same mistake by assuming Verizon's refusal was inalterable even though its rejection letter contained the qualifying language "we are unable to proceed with an Authorized Agency Agreement at this time." (Pl. Tr. Doc.

¹⁵ Kaj's expert Professor John Freeman testified he considered the \$2500 Magistrate Court lawsuit to be small compared to Vijay's criminal conviction for shoplifting in overcoming Verizon's initial denial. (Tr. Transcript p. 276:3-4).

145). Moreover the Lower Court's finding was based on one witness who was below the decision-making level.

The general rule, mandating full disclosure to the corporation regarding the refusal to deal, has also been applied to require complete disclosure by the officer of his plans to take the new business opportunity. Regal-Beloit Corp. v. Drecoll, 955 F. Supp. 849, 861 (N.D. Ill. 1996). In its finding of a breach of fiduciary duty and usurpation of a corporate opportunity despite a third-party's initial refusal to deal, the court explained:

This lack of candor, by itself, likely constitutes a violation of the corporate opportunity doctrine * * * "[I]f financial disabilities or third-party refusals to deal with the corporation are accepted as tests, the inevitable result will be to permit the diversion. This is true because courts must resolve the legal issues on the basis of a set of facts largely within the control of the diverter." * * * "To permit the destruction of a corporate fiduciary's duty to disclose the material facts of any given transaction within the line of his corporation's business by such means necessarily will operate to encourage dishonesty and infidelity on the part of the fiduciary in self-dealing."

Regal-Beloit Corp. v. Drecoll, 955 F. Supp. 849, 863 (N.D. Ill. 1996) (quoting Production Finishing Corp. v. Shields, 158 Mich.App. 479, 405 N.W.2d 171, 175 (1987) and Imperial Group (Texas), Inc. v. Scholnick, 709 S.W.2d 358, 367 (Tex.Ct.App. 1986).

Similarly, the Michigan Court of Appeals rejected the refusal to deal defense in a case against a corporate officer and the new corporation he formed to take the new business opportunity. Production Finishing Corp. v. Shields, 158 Mich.App. 479, 405 N.W.2d 171 (1987). In that case Ford Motor Company, the third party, rejected the plaintiff corporation's purchase offer of Ford's polishing unit out of concern the plaintiff would have a polishing monopoly in the area. Defendant officer then submitted a proposal to Ford without informing the plaintiff corporation until after he resigned. The

trial evidence included testimony of at least three Ford employees, one of whom testified that even if the plaintiff corporation made a more attractive offer, Ford would not have dealt with the plaintiff. The court held that as a matter of law the plaintiff corporation was entitled to a judgment where the officer did not fully disclose the refusal and that he was pursuing the new business for his own company.

Krish acknowledged “it was probably the polite thing” to tell Kaj about running off with the Verizon retail opportunity for himself. Remarkably, Krish denied he owed any obligation of disclosure as an officer to VP Enterprises by stating: “I didn’t have any responsibility to tell him [Kaj] how Corby got set up.” (Tr. Transcript p. 414:6-8).

At trial Krish was asked what duty as an officer did he owe Kaj. He responded: “I owed him and my father the duty to do my best to try to make **the first round work**, and I did do that.” (Tr. Transcript. pp. 413:18 – 414:1) (emphasis added). In his Video D eposition he testified: “Your client [Kaj] and my father got denied of a Verizon Wireless application. After that was done, it was case closed. I moved on and looked for another opportunity.” (Krish dep. pp. 87:24 – 88:2) (emphasis added).

Those testimonies demonstrate that, once the application was denied, Krish felt no obligation to exert any more efforts on behalf of VP Enterprises. He then fell to the temptation to pursue the opportunity for profit for himself personally. This is exactly the misconduct the courts in Kelly v. 74 & 76 W. Tremont Ave. Corp, supra, and Meinhard, supra, would not tolerate.

The central point in all the refusal-to-deal cases is that the diverting officer must make a full disclosure of all material facts so the corporation will know the officer is making all reasonable efforts on behalf of the company. Full disclosure includes the

most basic fact the officer is seeking the corporate opportunity. Only with this duty of full disclosure can the inalterability of the third party's refusal be fully explored. Here, Krish failed to make these fundamental disclosures to Kaj and VP Enterprises, and Verizon's denial went untested.

The assertion by Defendants of a refusal-to-deal defense when they made no disclosure of taking the Verizon opportunity would be an attempt "to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions." Meinhard v. Salmon, 164 N.E. at 546. The level of conduct required of fiduciaries should not consciously be lowered to that sought by Respondents.

D. VP Enterprises did not abandon the Verizon Wireless opportunity

1. Kaj on behalf of VP Enterprises continued pursuit of prospective wireless retail business

The evidence indisputably shows Kaj and VP Enterprises did not abandon the prospect for a wireless retail business after Verizon's initial denial letter declining the application "at this time." Kaj sent e-mails to Krish on April 18, 2008, July 24, 2008 and April 15, 2010 informing Krish of possible wireless retail opportunities.

While Kaj may not have used the words "VP Enterprises, Inc." in those e-mails, it is axiomatic that corporations work through individuals. There is nothing in the context of the e-mails suggesting he is pursuing these opportunities only for himself personally or outside of VP Enterprises. Otherwise he would not be asking Krish to join in.

Krish and Vijay understood very well on October 18, 2008 Kaj was still strongly interested in finding a way to develop the retail wireless business for their company. Krish testified at trial he did not respond to Kaj's July 24, 2008 e-mail because "I didn't want to insult [Kaj] in any way." (Tr. Transcript p. 391:7-25). Krish thereby

acknowledged that a revelation to Kaj about Krish and Vijay's P Communications activities would be hurtful to Kaj. Krish recognized Kaj had not abandoned VP Enterprises at that point.

Krish also testified: "Actually, my dad and I had spoken before and, you know, that was the time to have that discussion" with Kaj. (Tr. Transcript p. 393:19-20). If Kaj had abandoned the retail wireless idea, then why did they need to have a discussion with him about their being in the Verizon Wireless business?

In addition, Krish and Vijay never resigned as officers. (Tr. Transcript p. 438:10-16). VP Enterprises continued its corporate existence until its administrative dissolution in 2011. Instead, it was Krish who abandoned VP Enterprises within three weeks of its initial denial in favor of a new company he could control and own 100%.

2. Kaj did not abandon VP Enterprises' claims in this litigation and maintained a derivative claim

The Lower Court held that despite the case caption Kaj did not pursue this litigation derivatively for the benefit of VP Enterprises. (Order p. 2). However, Kaj's Pre-Trial Brief states on the first page in the footnote "Kaj Patel has brought this action individually and derivatively as a stockholder in VP Enterprises, Inc. on behalf of VP Enterprises, Inc. ..." (Pl's Pretrial Br. p. 1, n. 1). That definitive statement of derivative intent is entirely consistent with the case caption and pleadings. (Am. Compl. ¶ 1).

In addition, Kaj and his counsel made repeated references throughout the trial to taking action on behalf of VP Enterprises. (See Tr. Transcript pp. 90:25 – 91:1; 98:18-22; 100:24 – 101:2; 102:8 – 103:13; 110:20-21; 175:15-23; 180:19 – 181:11; 196:15-19; 211:9-12; and 418:23 – 419:6; see also Id. at 92:1-18 for discussion of "our plan" in reference to VP Enterprises' business plan for Verizon).

Regardless of Kaj's styling and advocating this case derivatively, South Carolina statutory corporate law expressly states directors and officers owe duties directly to shareholders who may bring direct actions. See S.C. Code Ann. §§ 33-8-300 and -420; see also Rivers v. Wachovia Corp., 665 F.3d 610, 617-18 (4th Cir. 2011) (citing Jacobson v. Yaschik, *supra*, discussing lack of derivative requirement under South Carolina law where corporation's officers and directors owe fiduciary duty to minority stockholder to make full disclosure of all relevant facts when purchasing shares from the stockholder).

E. Corporate opportunity does not have to be unique as long as it fits into prospective field of business

The Lower Court held that a corporate opportunity must be unique. (Order p. 24, ¶30). While an opportunity may certainly be a unique venture, there is no requirement that it be so. "...[I]n an action for usurpation of corporate opportunity, the dominant inquiry in determining if [a] corporate opportunity exists is whether [the] opportunity at issue falls within the corporation's avowed business purpose." 18B Am. Jur. 2d Corporations § 1544 (citing Ostrowski v. Avery, 243 Conn. 355, 703 A.2d 117 (1997)). A usurpation of an opportunity can involve a myriad of goods and services. Central Ry. Signal Co. v. Longden, 194 F.2d 310 (7th Cir. 1952) (liability found for usurpation of dock loading services); Southeast Consultants, Inc. v. McCrary Eng'g, 246 Ga. 503, 273 S.E.2d 112 (1980) (liability for usurping water and sewer services); Hill v. Southeastern Floor Covering Co., Inc., 596 So. 2d 874 (Miss. 1992) (appropriation of flooring business held to be usurpation of corporate opportunity).

There is no exception for officers and directors of corporations in the wireless phone business from the requirements of the duty of loyalty and candor.

F. The same fiduciary duty of loyalty and candor applies to promoters and officers

The Lower Court held Krish and Vijay owed Kaj and VP Enterprises “various duties at different times”, indicating a lower fiduciary standard for officers than for promoters. (Order, pp. 8 and 20). However, the South Carolina Reporters’ Comments to S.C. Code Ann. §33-8-300 specify the fiduciary duties of directors and officers to the corporation and shareholders continue under the statute by stating: “The purpose here is to make clear that the fiduciary duty of directors runs to the shareholders, and prevents them from making use of their favored position to take advantage of shareholder interests.” S.C. Code Ann. § 33-8-300, S.C. Rprt’s cmt. (underline added).¹⁶

Krish and Vijay initially owed fiduciary duties to Kaj and/or VP Enterprises as promoters. Once the corporation was fully formed, they continued to owe the same fiduciary duties to Kaj and VP Enterprises since they assumed the positions of director and officers. Under South Carolina law, the change in status of Krish and Vijay from promoters to officers and director did not diminish their fiduciary duties of loyalty, good faith and candor.

III. Appellant entitled to an accounting

The Lower Court held there was no basis for seeking an accounting from Respondents. (Order p. 25, ¶ 31). Shareholders of a statutory close corporation may petition for an accounting where there is deadlock, grounds for dissolution, or conduct

¹⁶ The Official Comment of the Committee on Corporate Laws of the American Bar Association to the Model Act’s version of § 33-8-300 states that the term “fiduciary” was not included for directors (and officers) to avoid confusion with the fiduciary duties of the law of trust. S.C. Code Ann. § 33-8-300, cmt. 1. However, the South Carolina statute differs from the Model Act by adding that executive duties flow to shareholders in addition to the corporation.

otherwise “illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner” perpetrated by directors or persons in control. S.C. Code Ann. §§ 33-18-400(a)(1), 410(a)(5). As explained above, the conduct of Respondents was an illegal and prejudicial breach of their fiduciary duties to VP Enterprises and Kaj. VP Enterprises derivatively maintains a chose in action against Respondents. The benefits of that chose in action will need to be accounted for, which the court may carry out. S.C. Code Ann. § 33-18-410 cmt.1 (“A court should have broad discretion to fashion the most appropriate remedy to resolve the dispute.”)

VP Enterprises and Kaj have sought a constructive trust on the assets of P Communications and its stock owned by Krish and/or Vijay in their Eleventh Cause of Action. (Am. Compl. ¶¶ 107-08 and Prayer ¶ C). An action to impose a constructive trust against copartners is permissible with or without an action at law for damages. J. William Callison & Maureen A. Sullivan, Partnership Law & Practice § 13:4 (2014). With a finding that Krish and Vijay breached their fiduciary duties, an accounting of their ill-gotten gains is proper.

IV. Equitable Disgorgement and Constructive Trust are Appropriate Remedies; Declaratory Judgment for Kaj is Proper

The Lower Court ruled the remedies of equitable disgorgement and constructive trust are not available because Kaj has not established liability by Respondents. (Order, p. 27, ¶¶ 38-39). Since Respondents have breached their fiduciary duties to VP Enterprises and Kaj as a matter of law as set forth above, Kaj and VP Enterprises are entitled to the imposition of these remedies to correct the wrongs undertaken by Respondents.

“A declaratory judgment action is neither legal nor equitable, and therefore, the standard of review is determined by the nature of the underlying issue.” Lozada v. S.C.

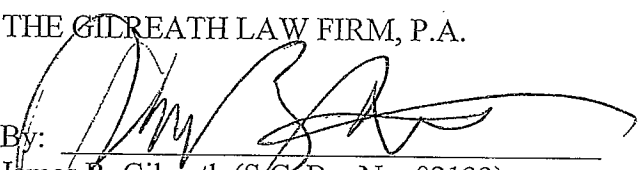
Law Enforcement Div., 395 S.C. 509, 511, 719 S.E.2d 258, 259 (2011). Here the relief sought is equitable, making the review of Kaj's request for a declaratory relief equitable. For the substantive reasons stated above, Kaj's claim for declaratory judgment entitling him to a constructive trust, an accounting and equitable disgorgement is proper.

CONCLUSION

Kaj, individually and derivatively on behalf of VP Enterprises, Inc., asks this Court for a finding of a breach of fiduciary duty by Krish and Vijay as a matter of law. This Court should also direct the Lower Court on remand to proceed with the imposition of a constructive trust attaching to Respondents' shares of stock in P Communications. Given the lengths of deception to which Respondents have resorted in this case, Kaj is fearful of what may happen if a constructive trust is not imposed immediately by this Court. Kaj further requests that this Court direct the Lower Court to proceed immediately with an accounting of Respondents' gains and an equitable disgorgement thereof.

Respectfully submitted,

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VP Enterprises, Inc.

April 24, 2015
Greenville, South Carolina.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

RECEIVED
APR 9 2015
SC Court of Appeals

Trial Court Case No.: 2011-CP-23-07338
Appellate Case No. 2015-000162

Pankaj Patel, individually and derivatively on behalf of Nominal Defendant,
VP Enterprises, Inc., ... APPELLANTS,

v.

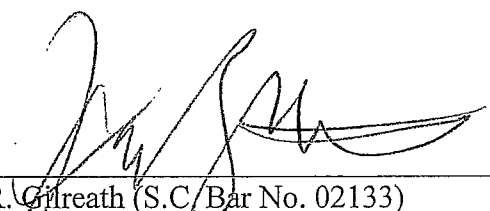
Krish Patel, Vijay Patel, and P Communications, Inc., ... RESPONDENTS.

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the Respondents in the foregoing matter with a copy of the **Initial Brief of Appellant** by depositing same in the United States Mail with adequate postage affixed thereon to ensure delivery, addressed as follows:

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EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Pankaj Patel, Individually and Derivatively on
behalf of Nominal Defendant, VP Enterprises,
Inc.,

Plaintiff,

vs.

Krish Patel, Vijay Patel, and P
Communications, Inc.,

Defendants,

and,

VP Enterprises, Inc.

Nominal Defendant.

Case No. 2011-CP-23-7338

ORDER

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL E. WOODWARD
2014 FEB 31 AM 11 54

The parties to this action agreed that "the liability and damage issues w[ould] be bifurcated and the liability issues [were] to be tried first." The liability portion was tried before this Court on July 21 and 22, 2014. Any evidence on damages was to be presented at a later date if Plaintiffs had prevailed during the liability phase of the trial. After hearing testimony from many witnesses and reviewing voluminous documentary evidence, however, this Court finds no liability on the part of Defendants with respect to all of Plaintiff's causes of action. First, Plaintiff's claims are time-barred. But, second, even if Plaintiff did not file his claims too late, they are without merit. The duties that Defendants Vijay Patel ("Vijay") and Krish Patel ("Krish") owed to Plaintiff Kaj Patel ("Kaj" or "Plaintiff") extinguished prior to the Defendants' acts that were allegedly in violation of those duties. Additionally, the agency relationship with Verizon Wireless ("Verizon") that is at the heart of Plaintiff's claims against all Defendants,

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including P Communications, Inc. ("P Comm"), is not a "corporate opportunity" such that it is capable of being usurped and giving rise to liability.

Kaj's complaint alleged that this litigation was being pursued derivatively on behalf of VP Enterprises, Inc. ("VP"). Notwithstanding those allegations, Kaj's trial presentation focused exclusively upon the impact that Vijay's and Krish's conduct had upon his (Kaj's) individual interest in VP. The law is clear that a "shareholder's suit is derivative if the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder." *Brown v. Stewart*, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001). The Court finds that Kaj's focus on the impact to his individual interest in VP is inconsistent with a derivative action, and it indicates to the Court that he did not pursue this litigation for the benefit of VP. Accordingly, the Court concludes that Kaj intended to bring a direct claim and waived his derivative claim allegations. Moreover, under Rule 23(b)(1), South Carolina Rules of Civil Procedure, it is the duty of the Court to ensure that a derivative action is maintained only by a shareholder who fairly and adequately represents the interests of the other shareholders. In this case, VP has only one other member—Vijay—and he is a defendant. Because of this direct conflict, the Court finds that Kaj is not actually pursuing a derivative claim on behalf of VP; but rather a direct action against his fellow shareholder, Vijay, and the other defendants. This factor, as well as the manner in which the matter was tried to this Court, indicates that this case was truly a direct—as opposed to derivative—action.

Alternatively, assuming that Kaj brought a derivative claim and did not waive the same, the Court concludes, as explained *infra*, that VP did not suffer a loss. *Id.* at 49, 557 S.E.2d at 684 (noting that an "action seeking to remedy a loss to the corporation is generally a derivative one"). VP did not suffer a loss because P Comm's activities were not corporate opportunities of

VP. The absence of any loss to the corporation precludes any recovery on behalf of the corporation—that is, precludes any recovery for Kaj's claim as a derivative representative of VP.¹

BACKGROUND

Kaj emigrated from India in the early 1980's to attend Clemson University. He now makes a living as an engineer, but has also engaged in various entrepreneurial endeavors. Kaj has attempted to own and operate a restaurant, a kiosk in the mall, and a granite import company, among other ventures. None of these companies exist today.

Vijay and Krish are father and son, respectively. Although they share a surname with Kaj, they are not related to him. Vijay immigrated to the United States at about the same time as Kaj, but he did not know him at the time. Vijay previously owned and operated retail and service businesses, but he now owns two hotels in the Greenville area. He also works for Defendant P Comm, which is owned by Krish. P Comm has the agency agreement with Verizon which is the subject of this dispute.

Krish was born in 1986. He graduated from Mauldin High School in 2004 and University of South Carolina Upstate in 2008. While in school, he maintained jobs in the retail industry, including a full-time job at a corporate-owned Verizon store from 2004–2007. At trial Krish explained that in approximately late-2006, while working for Verizon, he became interested in owning and operating independent Verizon stores and that—at that time—he took steps to accomplish this goal such as looking for a physical location for a store and approaching potential investors. In October 2007, Krish was asked to resign from Verizon for violating company policy with respect to managing family members' phone plans. Krish did not benefit

¹ When referring to "Kaj" or "Plaintiff" in this Order, the Court is referring to him in both his individual and derivative capacities.

from this activity, but it was in violation of company policy. Krish thereafter joined his father in the hotel business and, according to his testimony, continued to work on a plan to open Verizon retail locations as an independent agent.

VP Enterprises, Inc. – Application Denied

The parties agree that in late 2007, after Krish no longer worked for Verizon, Kaj, Vijay, and Krish began to informally discuss a myriad of potential investment opportunities. The three of them discussed many possibilities including buying a hotel in Charleston, a pine straw company in North Carolina, and several pieces of real estate. While traveling to inspect a potential investment in the fall of 2007, Kaj, Vijay, and Krish discussed the possibility of forming a company that would own and operate Verizon retail stores. The parties disagree as to whose idea this was. The Defendants claim it was Krish's idea, but Kaj claims it was his. The evidence makes clear that, unlike Krish, Kaj had no experience in the wireless communications industry, and certainly no experience with Verizon. Also, Krish had informally pursued the idea before he discussed any investment opportunities or business ventures with Kaj.

In any event, the group agreed to form a company for the purpose of applying for an agency relationship with Verizon. Krish formed VP and listed Kaj and Vijay as its owners. Krish was not listed as an owner because of his young age and because Krish believed it might hurt his chance of getting an agency because he was a former employee. All three agreed that, because of his experience, Krish would run VP's operations. Krish was also tasked with doing all the work necessary to submit VP's application to Verizon. He received only minor assistance from Kaj.

As part of its process, Verizon requires all applicants to submit a business plan. Krish was responsible for drafting VP's business plan. Kaj provided Krish with two business plans

that he said could serve as examples. One plan was for "Tava Grill," a failed restaurant that Kaj operated, while the second was for "Kundo," another restaurant. These business plans were nearly identical. Krish—with minor assistance from Kaj—used the two plans as examples and crafted a business plan for VP. The plan was submitted to Verizon with VP's application on January 28, 2008.

At the time of filing the Complaint, Kaj alleged that he created the "Tava Grill" and "Kundo" business plans that Krish used as examples when drafting the VP business plan. However, during the course of discovery, the Defendants found the "Kundo" business plan. It is offered as a free sample on www.virtualrestaurant.com and, thus, available to anyone with an internet connection. At trial, Kaj admitted that he used the "Kundo" business plan as the basis for his "Tava Grill" business plan and that they were nearly identical, yet he continued to maintain that the ideas and content contained in both these business plans were his property.

VP's application to Verizon was denied. The evidence uncovered in discovery and presented at trial indicates that Verizon declined VP's application because a background check conducted on both Kaj and Vijay revealed that they each failed to disclose certain information during the application process. Specifically, Vijay failed to disclose that he had a minor criminal record and Kaj failed to disclose the existence of at least one (if not more) civil suits in which he was a party within the five (5) years prior to submitting the application. The application unambiguously asked the principals of the applicant company to disclose this specific information (*i.e.*, criminal and civil litigation history).

P Communications, Inc.

After Verizon denied VP's application, Krish continued to pursue the creation of a company that would own and operate independent Verizon retail locations. Krish continued to

believe that if he applied directly, Verizon might not accept the application. He approached an acquaintance, Corby Phillips ("Corby"), and asked if he would form a company and apply for an agency relationship with Verizon. Corby agreed. From the outset, Krish and Corby's agreement was that Krish would buy Corby's interest in the to-be-formed company after it was established, assuming Verizon approved its application. After agreeing to these basic terms, Corby formed P Comm and applied for a Verizon agency relationship in April 2008. Verizon approved P Comm's application soon thereafter.

P Comm opened its first location on Pelham Road in Greenville, South Carolina in October 2008. Krish did all the work—he arranged all the financing, personally guaranteed all the loans, entered into the lease, oversaw all of the up-fitting of the property, acquired all the inventory, hired all the employees, and did anything else necessary to open the location. To celebrate, P Comm held a grand opening party on October 18, 2008. After the party, Krish joined a group of family friends at his parents' house. Kaj was there. Krish voluntarily informed Kaj that he opened a Verizon store on Pelham Road with Corby and that he planned to own the company at some point in the future. According to Krish, he told Kaj that they could discuss potential opportunities for him and the Verizon business at a later date. Kaj claims, however, that Krish withheld pertinent information from him that would have allowed him to know the full nature of his arrangement with Corby and P Comm. After opening a second location and laying the groundwork for a third, Krish acquired P Comm.

Krish Offers Kaj a Potential Opportunity

Krish continued to discuss potential investment opportunities with Vijay and Kaj. These ideas included the acquisition of hotels, convenience stores, and other real estate. In the spring of 2010, Krish approached Kaj after he (Krish) had found a handful of already-existing,

independently-owned Verizon retail locations in the Columbia, South Carolina area that were for sale. Krish wanted to purchase the stores on his own and hire Kaj to run them. Krish proposed a deal whereby Kaj would be paid as though he was a fifty-percent owner but not have any equity—or risk—associated with the operation. Kaj suggested that he and Krish purchase those stores together, each owning fifty percent. Kaj rejected Krish's proposal and offer of employment. Krish, through P Comm, acquired the stores.

Krish continued to grow P Comm, and attracted attention because of his success at such a young age. A widely-distributed local periodical, *TOWN Carolina* magazine published an article in its October 2011 issue highlighting Krish's success. Specifically, the author stated "Krish has built what you might call a wireless empire across much of South Carolina and northern Georgia as the President of [P Communications, Inc., d/b/a] Wireless Communications, a premium retailer for Verizon Wireless. He is also only 25 years old, and, no, he made his fortune the old-fashioned way—he earned it." Jac Chebatoris, *Twenty-something biz whiz Krish Patel made a good call*, *TOWN Carolina*, October 2011 at 40, available at www.towncarolina.com/issues/11-oct/ (last visited Oct. 14, 2014) (hereinafter, the "TOWN Article"). Kaj admits that the October 2011 issue of *TOWN Carolina* magazine was delivered to his home. Soon thereafter, on November 4, 2011, Kaj filed this suit.

Expert Testimony

At trial the Plaintiff presented expert testimony from Professor John Freeman ("Professor Freeman"). Professor Freeman opined that Kaj, Vijay, and Krish were co-promoters of VP and owed one another and VP fiduciary duties arising out of that relationship. These duties, he testified, continued long past Verizon's denial of VP's application because, as Kaj testified, Verizon could have changed its mind and approved VP's application if it was submitted again.

Kaj claims he instructed Krish to talk to the Verizon representatives, identify the deficiencies in their application, and make the appropriate corrections, if possible. Kaj claims Krish did not do as instructed. Professor Freeman testified that, in his opinion, Krish's alleged failure to follow up with Verizon and correct the deficiencies was a violation of the duties he owed Kaj and VP as a co-promoter. Furthermore, based on the existence of duties owed to one another long past the denial of VP's application, Professor Freeman opined that Krish and P Comm usurped a corporate opportunity from Kaj and VP when he helped form P Comm and acquire a Verizon agency relationship. Professor Freeman offered no testimony with respect to the alleged derivative claims.

Defendants presented the testimony of Professor Martin McWilliams ("Professor McWilliams"). Professor McWilliams opined that although Kaj, Vijay, and Krish owed one another and VP various duties at different times, all of those duties were extinguished prior to Krish's work to form P Comm and acquire a Verizon agency relationship. Furthermore, Professor McWilliams testified that the Verizon agency relationship was not a "corporate opportunity" capable of being usurped for two reasons: (1) Verizon has many agency relationships and just because P Comm acquired one does not preclude Kaj, VP, or anyone else from receiving another; and (2) VP's application was denied for "mutual non-disclosure" and the record makes clear that VP's effort was abandoned.

FINDINGS OF FACT

After considering voluminous documentary evidence, the testimony of many witnesses at trial, and making judgments as to their credibility, the Court makes the following findings of fact:

1. Krish worked for Verizon in a corporate-owned retail store from 2004 to 2007, during which time he acquired significant experience in the wireless retail industry.
2. Krish began to informally investigate owning his own Verizon stores before he ever talked to Kaj about any investment idea, let alone the idea of starting a company to own independent Verizon stores.
3. It was Krish's idea, not Kaj's idea, to open Verizon stores, and Kaj's testimony to the contrary is not credible.
4. Kaj has no experience or expertise in the wireless communications industry.
5. Krish chose not to apply in his own name because of his young age and because he had lost his former position with Verizon. He believed the application had a better chance of being approved if he was not the named applicant.
6. The business plan submitted by VP to Verizon actually states that Krish looked at locations for Verizon stores in September 2007; this is before Krish ever discussed the idea with Kaj. Kaj reviewed this business plan before it was submitted to Verizon.
7. In late 2007, Krish shared with Kaj and Vijay his plans to open Verizon retail stores.
8. Kaj testified he prepared certain spreadsheets in December 2007 used to analyze the idea of Verizon stores. The spreadsheets were of little or no use as they were extremely basic and pertained to running a restaurant.
9. These spreadsheets were associated with the business plan Kaj found on the internet.

10. Kaj and Vijay formed VP. Kaj and Vijay were each fifty-percent owners of the company and served as its directors. Krish owned no stake in VP, but served as an officer of the corporation.
11. Because of Krish's experience with Verizon, he was to be in charge of running the day-to-day operations of VP.
12. Krish, not Kaj, dealt almost exclusively with the representatives from Verizon when the VP application was submitted. Although Krish was not listed and the applicant, Verizon officials knew of his involvement.
13. Krish, with the assistance of a business plan Kaj had found on the internet and modified for a prior restaurant venture, developed and submitted a business plan and application materials to Verizon for the purpose of becoming an agent.
14. Kaj never revealed to Krish that the business plan he gave him was downloaded for free off the internet. Kaj invested nothing in order to obtain the business plan template. In fact, the website www.virtualrestaurant.com, still up at the time of trial, offered the document as a "free sample."
15. The VP business plan submitted to Verizon contained no particularly unique ideas. The business plan submitted to Verizon by VP was very basic and only five pages long.
16. Kaj claimed that those ideas in the business plan that were original to him included non-confidential information, such as the approximate population of Greenville County or that the local Chamber of Commerce listed over 6,000 businesses in the area. Most of the business plan was copied directly from the free sample document Kaj found on www.virtualrestaurant.com.

17. Verizon rejected VP's application on February 26, 2008. The letter from Verizon communicating the decision did not disclose the reason(s) for the denial and none of the parties knew why VP's application was denied.
18. At trial a representative from Verizon testified that Kaj's failure to fully and accurately disclose his litigation history contributed to the denial. This testimony is credible.
19. After VP's application was denied, Krish asked Verizon representatives why it was denied. They would not tell him.
20. Once the VP application was denied by Verizon without explanation, it was reasonable for Krish to conclude that he could not pursue the idea with VP, Kaj or Vijay.
21. Verizon's representative also testified at trial that, to her knowledge, Verizon never approved any applicant who reapplied after being rejected. This representative had decades of experience with Verizon and its predecessor company. This testimony is credible.
22. Kaj never made any independent effort to pursue ownership of Verizon stores after the initial application was rejected in February 2008.
23. Once the application was rejected, Kaj abandoned the idea of owning Verizon stores and, instead, pursued other entrepreneurial opportunities with Krish and Vijay, including hotels, houses, and convenience stores.
24. After the VP application was rejected by Verizon, Kaj emailed Krish many times about other possible businesses, including hotels, houses, and convenience stores. In one email on April 18, 2009, Kaj mentioned a link on the internet about AT&T

stores that were for sale. Accordingly, Kaj believed the Verizon idea was abandoned by VP.

25. After VP's application was denied, Krish independently continued to pursue his goal of owning and operating Verizon stores.
26. Krish entered into an arrangement with Corby, pursuant to which Corby formed P Comm for the purpose of submitting an application to Verizon to become a licensed agent.
27. From the beginning and while Corby initially held one-hundred percent (100%) of the shares of P Comm, he agreed to sell Krish his stake in P Comm once the company was up and running.
28. Using a modified version of the business plan created by Krish for VP, P Comm applied to become an agent of Verizon in April 2008. The application was approved.
29. P Comm opened its first Verizon store in October 2008 in Greenville, South Carolina.
30. After hosting a grand opening party for the store on October 18, 2008, Krish visited his parents' home where he spoke to Kaj.
31. On October 18, 2008, Krish voluntarily disclosed to Kaj that he had opened a Verizon store with Corby and that he would one day own the company.
32. Krish made no specific promise to Kaj to involve him in the venture.
33. At no time did Krish represent to Kaj that he would use P Comm to resurrect the failed VP venture, and any testimony to the contrary is not credible and rejected.

34. Kaj knew of Krish's involvement in P Comm and the opening of Verizon stores since at least October 18, 2008.
35. In December 2008, Krish acquired 100% ownership of P Comm.
36. In early 2010, Krish found an opportunity to buy some existing Verizon stores in the Columbia, South Carolina area.
37. After finding the opportunity in Columbia, Krish contacted Kaj and asked if he was interested in becoming involved in the Columbia opportunity.
38. Kaj had no expectation that he would have involvement in stores other than in Columbia. There is no credible testimony to the contrary.
39. After the Columbia possibility was abandoned in mid-2010, Kaj did not mention any specific claim or desire to be involved in P Comm until this suit was filed in November 2011.
40. There was nothing to prevent Kaj from pursuing his own Verizon agency relationship and, indeed, there is credible evidence that anyone can pursue such an opportunity.
41. At trial, a Verizon representative testified that there are over one hundred (100) independently-owned Verizon retail stores in South Carolina alone and that anyone is free to submit an application.
42. From 2009 until the time this suit was filed in November 2011, Kaj, Krish, and Vijay communicated via email regularly. They communicated about pursuing other ventures and about a rental house Kaj and Krish owned together. In none of these emails does Kaj claim or mention that he believed he was entitled to participate in the Verizon stores Krish was running. The only emails mentioning

Verizon are when Krish offered Kaj the possibility of becoming involved in the Columbia stores as an employee.

43. Many of the emails to Kaj from Krish about the house they owned together are from Krish's business email address with P Comm, and Kaj obviously knew Krish was running Verizon stores.
44. Professor McWilliams's testimony is consistent with the evidence in this case and, therefore, credible. Professor Freeman's testimony as to the duties owed by the parties to one-another, however, is only consistent with the self-serving testimony of Kaj.
45. This suit was filed almost immediately after *TOWN Carolina* magazine published an article touting Krish's success and stating he had "made a fortune." (*TOWN Article*, at 40.)
46. Kaj admitted that the *TOWN Carolina* magazine was delivered to his house in October 2011.
47. Kaj filed suit on November 4, 2011.

CONCLUSIONS OF LAW

Plaintiff asserted 13 causes of action in his amended complaint: (1) dissolution of VP Enterprises, Inc., (2) violation of standards of conduct for directors under S.C. Code Ann. § 33-8-300 against Vijay, (3) violation of standards of conduct for officers under § 33-8-420 against Vijay and Krish, (4) breach of fiduciary duty against Vijay and Krish, (5) an accounting from all Defendants, (6) breach of fiduciary duty for partnership liability, (7) fraud against Vijay and Krish, (8) constructive fraud against Vijay and Krish, (9) negligent misrepresentation against Vijay and Krish, (10) equitable disgorgement against all Defendants, (11) constructive trust against all Defendants, (12) a violation of the South Carolina Unfair Trade Practices Act, and

(13) a declaratory judgment. In post-trial briefing, Plaintiff dismissed his claims for fraud, constructive fraud, negligent misrepresentation, and violation of the South Carolina Unfair Trade Practices Act. Accordingly, those particular claims are not addressed by this Order.

A. Statute of Limitations and Laches

1. Kaj's legal claims all had, at most, a three-year statute of limitations. However, claims predicated upon a breach of fiduciary duty are codified by statutes that have a two-year limit from the date of discovery. *Clearwater Trust v. Bunting*, 367 S.C. 340, 350-51, 626 S.E.2d 334, 339-40 (2006). In this case, therefore, Kaj's claims had to have been filed within two or three years of discovery. But, even if all of the applicable limitations periods were three years, Kaj's suit was filed too late.
2. Kaj's claims were not brought within either two or three years of their accrual. Accrual of a statute of limitations begins when "the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct." *Graham v. Welch, Roberts & Amburn, LLP*, 404 S.C. 235, 239, 743 S.E.2d 860, 862 (Ct. App. 2013) (quoting *True v. Montheith*, 327 S.C. 116, 119, 489 S.E.2d 615, 616 (1997)).
3. Krish testified that he explained to Kaj on October 18, 2008 that he joined forces with another person—Corby—to open independently-owned Verizon stores. Kaj claims Krish withheld information from him that would have allowed him to know that he had a claim against the Defendants. Krish's testimony is more credible on this point.

4. In the Court's view, considering the credibility of the witnesses, Kaj knew or should have known of the existence of the claims he asserts in this matter on or by October 18, 2008, yet he did not file this suit until November 4, 2011.
5. In order for a statutory limitations period to begin to run, a plaintiff need not have a fully-developed legal theory of recovery or have sought the assistance of counsel. *Snell v. Columbia Gun Exch., Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). All that must occur is that the plaintiff be aware through the "exercise of reasonable diligence" that a claim "might exist." *Id.* The determination of whether a reasonable person knew or should have known of a potential claim is an objective test and does not rely on what Kaj subjectively thought or believed. *Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994).
6. Likewise, tolling the statutes of limitation based on claims of fraudulent concealment is not appropriate here. The evidence does not show that any Defendant did anything to prevent Kaj from discovering his injury. South Carolina has recognized fraudulent concealment based on the duty to disclose "inherent in the relationship between physicians and patients." *Maher v. Tietex Corp.*, 331 S.C. 371, 381, 500 S.E.2d 204, 209 (Ct. App. 1998). Indeed, this exception applies specifically because of "the expert knowledge required to ascertain an injury." *McClain v. Jarrard*, 354 S.C. 218, 220, 580 S.E.2d 763, 764 (Ct. App. 2003). Kaj's alleged injury was not hidden from him.
7. Kaj, in his post-trial response to Defendants' Motion for Involuntary Non-Suit, stated that he was pursuing his claims against Krish and Vijay in equity only.

However, even to the extent Kaj seeks only equitable relief, his claims are nevertheless time-barred. "Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or to enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." *Mazloom v. Mazloom*, 382 S.C. 307, 319, 675 S.E.2d 746, 753 (Ct. App. 2009) *aff'd*, 392 S.C. 403, 709 S.E.2d 661 (2011). Kaj, well aware of his alleged injury, slumbered on his rights for over three years, during which time Krish expended great costs and efforts to expand the business of P Comm. Equity prevents Kaj from stepping in years later to attempt to reap the benefits of Krish's work.

8. Kaj's claims of "unclean hands," so as to prevent the application of laches, do not apply. Kaj testified that Krish led him astray and misrepresented key facts material to his claims. However, even if Krish misrepresented certain facts, none of the misrepresentations were material to Plaintiff's ability or responsibility to timely bring his claims.
9. Tolling of equitable claims is not appropriate in this case. Kaj presented no credible evidence, testimony or otherwise, that there were barriers or misconduct that prevented him from filing his suit within the prescribed time limits. Equitable tolling of the statute of limitations is an extraordinary remedy that is to be used sparingly. *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009). It is intended to prevent unfairness to befall a "diligent plaintiff." *Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 620 (Ct. App. 2008). Generally, it arises only in cases where "extraordinary circumstances

prevented the plaintiff from filing despite his or her diligence . . . or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass" *Am. Legion Post 15 v. Horry Cnty.*, 381 S.C. 576, 583, 674 S.E.2d 181, 184 (Ct. App. 2009).

B. Merits of Kaj's Claims

10. As a separate and independent basis for this Court's decision, this Court finds that Kaj's claims each fail on their merits.

**Dissolution
(Cause of Action 1)**

11. In order for this Court to dissolve a corporation, the plaintiff must show deadlock; illegal, fraudulent, oppressive, or unfairly prejudicial action by directors or persons in control; waste or misapplication of corporate assets; abandonment of corporate purpose; or that the duration of the entity as stated in the articles of incorporation has expired. S.C. Code Ann. § 33-14-300(2).
12. However, even where grounds for dissolution exist, a judge may grant a less drastic remedy where appropriate. S.C. Code Ann. § 33-14-310(d). Further, where statutory close corporations are involved, dissolution is only available where all other remedies have failed. S.C. Code Ann. § 33-18-430.
13. In order to proceed with a claim for dissolution, it is therefore axiomatic to show that an entity exists which can be dissolved. For example, it cannot have been previously dissolved through administrative dissolution pursuant to S.C. Code Ann. §§ 33-14-220 *et seq.* VP Enterprises was administratively dissolved in June, 2011.

14. Nevertheless, in order to proceed with a so-called “oppression case” and establish entitlement to dissolution, a plaintiff must show one of many factors outlined by *Kiriakides v. Atlas Food Sys. & Servs., Inc.* Specifically,

A host of factors is identified . . . including, but not limited to, dividend withholding, eliminating minority shareholders from directorate and excluding them from employment, siphoning off corporate earnings via high compensation, leases and loans favorable to majority shareholders, failure to enforce contracts for the benefit of the corporation, appropriation or [sic] corporate assets, contracts or credit for personal use, usurping corporate opportunities, transactions between a parent corporation and a subsidiary, withholding information from minority shareholders.

343 S.C. 587, 605 n.28, 541 S.E.2d 257, 267 n.28 (2001).

15. Kaj’s only articulated basis for dissolution comes from an alleged usurpation of corporate opportunities. However, as fully discussed below, there is no corporate opportunity to usurp in this case. Kaj acknowledges that VP’s application to serve as an agent of Verizon was rejected. VP, therefore, had neither the ability nor the expectation of pursuing any such opportunity. And, even if it did, it still could have pursued an agency relationship after P. Comm acquired its relationship with Verizon.

**Breach of Fiduciary Duty
(Causes of Action 2, 3, and 4)**

16. Kaj alleged statutory and common law claims for breach of fiduciary duty. Each fails as a matter of law. In order to prevail on a claim for breach of fiduciary duty, a plaintiff must show:

- (1) the existence of a fiduciary duty,
- (2) a breach of that duty owed to the plaintiff by the defendant, and

(3) damages proximately resulting from the wrongful conduct of the defendant.

RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012) (citation omitted).

17. The common law breach of fiduciary duty has been codified and subsumed by statute (see *Clearwater Trust*, 367 S.C. at 349-50, 626 S.E.2d at 339) meaning, in this case, the fourth cause of action asserted by Plaintiff is subsumed by the second and third causes of action, which invoke relevant statutes. Under these applicable statutes, directors and officers of a corporation must act “(1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interests of the corporation and its shareholders.” S.C. Code Ann. §§ 33-8-300(a), 420(a).
18. The existence or non-existence of a fiduciary relationship is a question for this Court. *Moore v. Moore*, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct. App. 2004). Here, the parties owed one another varying duties at different times. However, Kaj has not shown that Defendants breached any of these duties.
19. Prior to incorporation of VP, Krish, Kaj, and Vijay all acted as promoters for the organization. “A promoter of a corporate entity is a person who acts to organize the entity by preparing it to transact business and establishing it.” *Hansen v. Fields Co., LLC*, 2011-190886, 763 S.E.2d 31, 34 n.5, 2014 WL 4087772, at **3 n.5 (S.C. Aug. 20, 2014) (citing *Bivens v. Watkins*, 313 S.C. 228, 233 n. 5, 437 S.E.2d 132, 135 n. 5 (Ct. App. 1993)). Prior to incorporation, promoters share a

fiduciary duty to the corporation and to one another similar to that of partners. *Bivens*, 313 S.C. at 232 n.4, 437 S.E.2d at 135 & nn. 4-5. However, once "the corporation has been established and an independent board of directors takes charge," the parties cease acting as promoters. *Old Dominion Copper Mining & Smelting Co. v. Bigelow*, 203 Mass. 159, 188, 89 N.E. 193, 206 (1909) *aff'd*, 225 U.S. 111, 32 S. Ct. 641, 56 L. Ed. 1009 (1912); *Pub. Inv. Ltd. v. Bandeirante Corp.*, 740 F.2d 1222, 1235 n.72 (D.C. Cir. 1984); 18 Am.Jur.2d Corporations §§ 104, 107.

20. Once VP was fully formed, Krish, Kaj, and Vijay were no longer promoters and took on their respective roles as officers and directors. Officers and directors have statutory and common law fiduciary responsibility to carry out their duties (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interests of the corporation and its shareholders. S.C. Code Ann. §§ 33-8-300(a), 420(a).
21. Kaj has not demonstrated any actions by the Defendants that constitute a breach of fiduciary duty as promoters or as officers and directors.
22. Kaj relies on his allegation that the Defendants usurped a corporate opportunity from him and VP. However, no such opportunity existed in this case.
23. "To establish a breach of fiduciary duty by usurping a corporate opportunity, the corporation must prove that an officer or director misappropriated a business opportunity that properly belongs to the corporation." *Landon v. S & H Mktg. Grp., Inc.*, 82 S.W.3d 666, 681 (Tex. App. 2002) (citation omitted).

24. A corporate opportunity is something that a company has an "interest or reasonable expectancy" in. *Guth v. Loft, Inc.*, 23 Del. Ch. 255, 272-73, 5 A.2d 503, 511 (1939); *see also Aqua-Culture Technologies, Ltd. v. Holly*, 677 So. 2d 171, 183 (Miss. 1996). If a company is unable to undertake an opportunity, then it is not, by definition, a corporate opportunity. *Straight v. Goss*, 383 S.C. 180, 209-10, 678 S.E.2d 443, 454, 460 (Ct. App. 2009). Once Verizon rejected VP's bid to become an agent, VP lost any expectancy in the opportunity and was unable to undertake it. From that point on, as Professor McWilliams testified, the business purpose of VP was thwarted and the parties owed one another no particular duties, at least insofar as related to pursuing opportunities with Verizon.
25. Where, as in this case, "a corporation is unable to avail itself of an opportunity, its employee, officer or director is free to exploit it." *Beane v. Beane*, 856 F. Supp. 2d 280, 311 (D.N.H. 2012) (citations omitted); *Energy Res. Corp., Inc. v. Porter*, 14 Mass. App. Ct. 296, 300, 438 N.E.2d 391, 394 (1982); *See also, Looney v. M-Squared, Inc.*, 262 Ga. App. 499, 502, 586 S.E.2d 44, 48 (2003); *A. Teixeira & Co., Inc. v. Texeira*, 699 A.2d 1383, 1388 (R.I. 1997); *Field v. Allyn*, 457 A.2d 1089, 1099 (Del. Ch. 1983); *Fliegler v. Lawrence*, 361 A.2d 218, 220 (Del. 1976); *A. C. Petters Co., Inc. v. St. Cloud Enterprises, Inc.*, 301 Minn. 261, 266, 222 N.W.2d 83, 86 (1974); *Schildberg Rock Products Co. v. Brooks*, 258 Iowa 759, 769, 140 N.W.2d 132, 138 (1966); *Solimine v. Hollander*, 128 N.J. Eq. 228, 247, 16 A.2d 203, 215 (Ch. 1940); 18B Am.Jur.2d Corporations §§ 1542, 1544, 1551.

26. Where a third-party refuses to allow a company to use its product, and the company is unable to pursue that market, employees of that company are freely able to pursue that "outside opportunity" for their own gain. *See Sci. Accessories Corp. v. Summagraphics Corp.*, 425 A.2d 957, 963-64 (Del. 1980); 18B Am.Jur.2d Corporations § 1551. "An opportunity may be embraced by a director as his own without accountability to the corporation if the corporation sought without success to obtain it." *Nw. Terra Cotta Corp. v. Wilson*, 74 Ill. App. 2d 38, 47, 219 N.E.2d 860, 864 (Ill. App. Ct. 1966) (citing 19 Am.Jur.2d, Corporations, § 1313); *see also Puritan Med. Ctr., Inc. v. Cashman*, 413 Mass. 167, 178, 596 N.E.2d 1004, 1011 (1992). Here, Verizon refused to do business with VP and left Krish free to pursue the opportunity on his own.
27. Likewise, if a company abandons what may have once been a corporate opportunity, then it cannot succeed in a claim against an employee that chooses to pursue it. *See Landon*, 82 S.W.3d at 681; *Maryland Metals, Inc. v. Metzner*, 282 Md. 31, 47, 382 A.2d 564, 573 (1978); 18B Am.Jur.2d Corporations § 1551. Once Verizon rejected VP, the evidence indicates that VP was abandoned and its sole corporate purpose had been thwarted. Krish was therefore free to endeavor to work with Verizon on his own.
28. Kaj's testimony that he directed Krish to continue to pursue the Verizon agency relationship on behalf of VP is not credible, as it is not supported by any other evidence. In fact, the evidence presented at trial indicates that Kaj had moved on to other ventures.

29. Professor McWilliams's testimony regarding the abandonment of VP by Kaj and the Defendants is credible and based on documentary evidence. Professor Freeman's testimony on this topic is, therefore, disregarded because it is not based on supporting evidence other than Kaj's self-serving testimony.
30. Furthermore, notwithstanding Verizon's denial of VP's application, in the view of this Court, the agency relationship with Verizon was not a "corporate opportunity" within the meaning of the law. Corporate opportunities are business prospects that are unique and particular, including things such as the:

- **Purchase/sale of share of unique stock.** See *Kohls v. Duthie*, 791 A.2d 772 (Del. Ch. 2000); *Yiannatsis v. Stephanis by Sterianou*, 653 A.2d 275 (Del. 1995); *Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart*, 833 A.2d 961 (Del. Ch. 2003).
- **Purchase of a unique company related to an ongoing enterprise.** See *Rapistan Corp. v. Michaels*, 511 N.W.2d 918 (Mich. Ct. App. 1994).
- **Purchase of unique corporate assets.** See *Collie v. Becknell*, 762 P.2d 727 (Colo. App. 1988).
- **Purchase of unique real estate.** See *Carolina Park Assocs. LLC v. Marino*, 400 S.C. 1, 732 S.E.2d 876 (2012); *DiMaggio v. Rosario*, 950 N.E.2d 1272 (Ind. Ct. App. 2011); *Babb v. Estate of Watson*, No. 2008-UP-247, 2008 WL 9841508 (Ct. App. May 2, 2008); *Straight*, 383 S.C. 180, 678 S.E.2d 443; *Ne. Harbor Golf Club, Inc. v. Harris*, 725 A.2d 1018 (Me. 1999).
- **Acquisition of a unique and exclusive contract.** See *Klinicki v. Lundgren*, 695 P.2d 906 (Or. 1985).

Here, an agency relationship with Verizon was not a unique business opportunity such as these. Even after P Comm entered into its agency agreement with Verizon, anyone, including Kaj and VP, could submit an application to acquire one. Therefore, because Kaj and/or VP could have done this, the agency relationship P Comm entered into with Verizon was not a corporate opportunity.

Accounting
(Cause of Action 5)

31. There is no basis for seeking an accounting from the Defendants. First, Kaj has not demonstrated liability for any cause of action that would enable him to procure an accounting to establish a measure of damages. Secondly, while partners and shareholders may sometimes obtain an accounting, neither situation is applicable here.

32. "A court should have broad discretion to fashion the most appropriate remedy to resolve the dispute." S.C. Code Ann. § 33-18-410 cmt.1. Therefore, even where the prerequisites for an accounting may be met, this Court may determine the remedy unsuitable.

33. Partners may claim an accounting only:

- (1) if he is wrongfully excluded from the partnership business or possession of its property by his copartners;
- (2) if the right exists under the terms of any agreement;
- (3) as provided by § 33-41-540; or
- (4) whenever other circumstances render it just and reasonable.

S.C. Code Ann. § 33-41-550.² As an initial matter, however, it stands to reason that a party must first show the existence of a partnership in order to claim partner's accounting rights. 59A Am.Jur.2d Partnership § 15 ("A partnership and a corporation are two different and distinct entities."); *see also Martinez v. Posner, Martinez, & Padgett*, 385 So. 2d 525, 528 (La. Ct. App. 1980). Here,

² § 540 provides "Every partner must account to the partnership for any benefit and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct or liquidation of the partnership or from any use by him of its property." S.C. Code Ann. § 33-41-540(1).

however, there was never a partnership for Kaj to claim entitlement to an accounting. There is no credible evidence to contradict this finding.

34. Similarly, shareholders of a statutory close corporation may petition for an accounting where there is deadlock, grounds for dissolution, or conduct otherwise "illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner" perpetrated by directors or persons in control. S.C. Code Ann. §§ 33-18-400, 410(a)(5). Thus, in order to petition the court for an accounting, it stands to reason that the claimant must show two things: first, the claimant must be shareholder; second, the claimant must show grounds for dissolution or other misfeasance by directors or control persons. Insofar as Kaj seeks an accounting as a shareholder of VP, his claim is untenable because that corporation no longer exists and there is nothing to account. Moreover, Kaj provides no basis for his claim for an accounting of P Comm. He is neither a partner nor a shareholder of that company.

Breach of Fiduciary Duty for Partnership Liability
(Cause of Action 6)

35. Partners are held to a high level of fiduciary duty with one another. *See Kuznik v. Bees Ferry Associates*, 342 S.C. 579, 597, 538 S.E.2d 15, 24 (Ct. App. 2000) (citing 59A Am.Jur.2d Partnership § 420 (1987)).
36. There is, however, no partnership in this case. There is no credible evidence to support a different finding.
37. Therefore, Kaj is unable to support a showing of a violation of partnership fiduciary duties where no such entity ever existed.

**Equitable Disgorgement
(Cause of Action 10)**

38. Because Kaj is unable to show that Defendants are liable under any of the claims pled, he is not entitled to equitable disgorgement. Disgorgement is an equitable remedy, not a cause of action. Essentially, disgorgement acts like restitution, seeking to remove assets from parties that are obtained by ill-gotten means and result in unjust enrichment. *See Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 229 (2002). Because disgorgement is merely a remedy once liability is established, claimants must first demonstrate entitlement thereto. *See Verenes v. Alvanos*, 387 S.C. 11, 17, 690 S.E.2d 771, 773 (2010). Plaintiff has failed to demonstrate any liability in this case.

**Constructive Trust
(Cause of Action 11)**

39. A constructive trust is a remedy, not a cause of action. Therefore, in order to demonstrate entitlement thereto, a claimant must first establish liability. Because Kaj is unable to show that Defendants are liable under any of the claims plead, he is not entitled to a constructive trust. "A constructive trust results when circumstances under which property was acquired make it inequitable that it be retained by the one holding legal title. These circumstances include fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution." *Gordon v. Busbee*, 397 S.C. 119, 141, 723 S.E.2d 822, 834 (Ct. App. 2012) (citing *Macaulay v. Wachovia Bank of S.C., N.A.*, 351 S.C. 287, 294, 569 S.E.2d 371, 375 (Ct. App. 2002)).

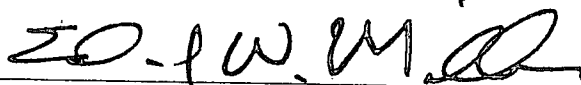
**Declaratory Judgment
(Cause of Action 13)**

40. As discussed throughout this Order, Kaj is unable to show that Defendants are liable under any of the claims pled. It follows, then, that Kaj is not entitled to a declaratory judgment. Where a justiciable case or controversy exists, a plaintiff may seek to have the court declare “rights, status, and other legal relations.” *Tourism Expenditure Review Comm. v. City of Myrtle Beach*, 403 S.C. 76, 83, 742 S.E.2d 371, 375 (2013); S.C. Code Ann. § 15-53-20; *see also* S.C. Code Ann. § 15-53-40 (“A contract may be construed either before or after there has been a breach thereof.”). However, nothing under the Declaratory Judgment Act removes or otherwise alters a plaintiff’s obligation to prove his or her legal case. *See Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) (citations omitted) (“A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.”).
41. Alternatively, to the extent Kaj is entitled to a declaratory judgment, this Court hereby declares that none of the duties owed by the Defendants to Kaj were violated and he is not entitled to any of the relief he seeks.

CONCLUSION AND JUDGMENT

For the reasons stated herein, this Court finds in favor of Defendants on all counts and hereby enters a judgment accordingly.

[Signature Page to Follow]

A handwritten signature in black ink, appearing to read "E.W. Miller", written over a horizontal line.

The Honorable Edward W. Miller
Judge, Thirteenth Judicial Circuit

December 30, 2014
Greenville, South Carolina

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

PANKAJ PATEL, INDIVIDUALLY
AND DERIVATIVELY ON BEHALF
OF NOMINAL DEFENDANT,
VP ENTERPRISES, INC.,

PLAINTIFF,

-VS-

KRISH PATEL, VIJAY PATEL
AND P COMMUNICATIONS, INC.,
AND VP ENTERPRISES, INC.,

DEFENDANTS.

2011-CP-23-07338

TRANSCRIPT OF RECORD

JULY 21 - 22, 2014
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEYS FOR PLAINTIFF:

JAMES R. GILREATH, ESQUIRE
WILLIAM M. HOGAN, ESQUIRE
MONTY DESAI, ESQUIRE
NIHAR PATEL, ESQUIRE
J. MATTHEW WHITEHEAD, ESQUIRE

ATTORNEYS FOR DEFENDANTS:

THOMAS L. STEPHENSON, ESQUIRE
ANDREW A. MATHIAS, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

1 back there in the back.

2 Of course, during this case I'm going to refer to Mr.
3 Pankaj Patel as Kaj. And it's no disrespect to Mr. Patel,
4 but we've got so many Patels in this case, including Nihar
5 Patel, and most of them are not even related to each other.
6 So it's almost necessary that we use first names.

7 And I've already explained to you, I represent Krish,
8 Vijay. Jim represents Kaj. And there's a witness Corby
9 Phillips, who you may hear from this afternoon.

10 Krish is now twenty-eight years old. When all of this
11 started, he was twenty-one or twenty-two and still in
12 college. Vijay immigrated to this country in the '80s with
13 his wife, Alca. Krish went to Mauldin High School and to
14 college over at Upstate South Carolina.

15 You're going to hear about three entities. And I have
16 a hard time keeping them straight, and so I assume that you
17 may have some difficulty, Your Honor, because the names are
18 so similar. The entity we're really here on is an entity
19 called VP Enterprises, Inc. V stands for Vijay, P stands
20 for Pankaj. There's another entity called KVP Investments.
21 K stands for Krish, V stands for Vijay, P for Pankaj.

22 There is an entity called P Communications. P
23 Communications is really the Defendant in this case. P
24 Communications is now owned by Krish. And P Communications
25 now has forty-something Verizon stores. But you'll hear

1 **THE COURT:** Okay.

2 **MR. GILREATH:** Your Honor, just for the record, I'm Jim
3 Gilreath here with Bill Hogan, Monty Desai, Nihar Patel, my
4 client, Kaj, we'll call him Kaj, is here. And I think his
5 wife is coming. She may not be here yet.

6 Your Honor, this is very, very brief because I'm ready
7 to try this case. I've been living with it a long time.
8 But at this point I can only say this is a case where two
9 individual defendants, in the words of the late Justice
10 Cardozo, in the famous case of Meinhard versus Salmon,
11 unquestionably owed my client, Kaj Patel, fiduciary duties
12 and the duty of finest loyalty and something stricter than
13 the morals of the marketplace.

14 Not just honesty alone, but the punctilio of an honor
15 of the most sensitive, as Cardozo said. And he said what I
16 just said. That was a quote out of Meinhard.

17 An honor and level of conduct higher than that trodden
18 by the crowd. And still honoring this standard, which has
19 withstood the test of time since it was handed down on
20 December 31st, 1928, some eighty-six years ago, and has been
21 approved no less than five times by our Court of Appeals or
22 cited five times by our Court of Appeals, four times by the
23 Fourth Circuit, one time by Judge Joe Anderson in the U.S.
24 Circuit and eleven times by the United States Supreme Court.

25 The two Defendants in this case effectively threw

1 Q. And what was Krish's role?

2 A. Krish was going to manage and keep the books. He had
3 the most flexible time. So he was going to do all the day-
4 to-day type of stuff that Vijay and I didn't have due to our
5 full-time jobs.

6 Q. At the time this KVP started where was Krish working?
7 Was he at Verizon or was he at ---

8 A. When it started he had already quit and he was with
9 Vijay.

10 Q. He'd already quit at Verizon?

11 A. Right.

12 Q. What did Krish tell you the reasons were that he left
13 Verizon and went with his dad?

14 A. During that period of time there was no reasons. We
15 just never discussed Verizon at all. It was just, I used to
16 work there, and I quit, and I've joined my father to own the
17 hotel and real estate business.

18 Q. Okay. There did come a time when he -- did there ever
19 come a time when he told you why he left?

20 A. You know, I don't think ---

21 Q. If you didn't, that's fine.

22 A. I don't think I ever heard until just now.

23 Q. Until when?

24 A. Until, I think, Mr. Stephenson was going through why he
25 left, something about phones.

1 Q. All right. There's a -- let me -- this is going to
2 come up, so I'm going to go ahead and go into this now while
3 we're on it. Look on page 123. The question there -- it
4 says litigation history. List any pending and settled suits
5 or actions for the past five years. Provide a brief
6 description and so forth. You said you had a suit against
7 AGE Solutions. What was that?

8 A. It was an engineering company that I had filed a
9 lawsuit against, and then it was settled.

10 Q. Were you the plaintiff?

11 A. Yes, I was.

12 Q. What was that suit, just briefly, about? We don't need
13 to go in any detail with it.

14 A. I had three other partners. And they had banded
15 together to terminate and try to take over the company.

16 Q. Okay. Now, look -- and that's the only suit you
17 disclosed, correct?

18 A. Correct.

19 Q. Now, look over on page 122. And there's some
20 handwriting there that says plaintiff, Pankaj Patel, 23
21 Avens something drive, defendant, Randall Rice, 4/1/2003.
22 Tell the Court -- is that your handwriting?

23 A. No, that's not my handwriting.

24 Q. When's the first time you ever saw that or heard about
25 that?

1 A. Was when Verizon produced the documents in response to
2 this lawsuit.

3 Q. Okay. And tell the Court what that is, if you recall.

4 A. Randall Rice was a landscaper. And he had -- this was
5 in 2000 right after I built my house. And it was -- we were
6 going to -- he basically did not do what he was supposed to
7 do. So I was trying to get square with him.

8 And I'd talked to a lawyer, Rodney Pillsbury, around
9 that time, 2000 -- at the latest 2001. And nothing ever
10 came out of that. They kept on getting -- dates kept on
11 getting reassigned and it eventually just went away.

12 Q. Why didn't you disclose that on paragraph 6 of the
13 application?

14 A. Because in the application they were asking for a
15 listing of the last five years. And I think this was
16 already -- I thought this was already gone by 2002 or so.
17 So I wasn't -- I didn't think it was a problem with that
18 five-year limit.

19 Q. Okay. Now, there's also a question on here about some
20 criminal activity. I've got to find it. Do you recall
21 that?

22 A. Yes.

23 Q. And let me refer you to what is the first page in our
24 book, which is an arrest warrant and a copy of some criminal
25 court records on Vijay Patel involving a shoplifting charge.

1 When was the first time you ever heard about that?

2 A. That was when Verizon produced these documents for this
3 lawsuit.

4 Q. Did Vijay ever tell you?

5 A. No, he did not.

6 Q. Did there come a time when you had to ask Vijay? Did
7 you ever ask Vijay about that?

8 A. I didn't specifically ask about it because I didn't
9 know anything about this.

10 Q. Not about that, but did you ever ask Vijay about --
11 have occasion to ask him about criminal ---

12 A. Yes, you know, when we were -- the application -- was
13 told I was denied with Verizon. We had a meeting and we
14 were trying to get to the bottom of why we were denied. And
15 Krish kept on telling us that they didn't -- they wouldn't
16 tell him, so we don't know why we're denied.

17 Q. I'm going to get to that in a minute. But when did you
18 first find out about his criminal record?

19 A. When I saw this document after it was produced.

20 Q. All right. And do you know where we got that document
21 from?

22 A. I guess Verizon provided that in response.

23 Q. All right. Now, look at -- what did VP Enterprises do
24 regarding loans and lines of credit? And in that connection
25 I would refer you to look at trial documents 130, 113, 137.

1 408 Ashby Park Lane?

2 A. That's Krish's home address.

3 Q. Okay. Did you ever get a copy of this letter?

4 A. No, I didn't.

5 Q. When is the first time you ever saw a copy of this
6 letter?

7 A. When it was produced for this litigation.

8 Q. After the lawsuit was filed?

9 A. After this lawsuit was filed.

10 Q. All right. When did you first hear about the letter?

11 A. It was around the same -- around the same timing,
12 February, late February that Krish had told me that the
13 application was denied.

14 Q. All right. Now, I want you to tell the Court what
15 happened after you got this rejection letter from Verizon.

16 A. Krish had called me and told me that, you know, we'd
17 been denied. So I said, well, we need to get together and
18 figure out what to do.

19 So we met, the three of us. And I asked them, you
20 know, why -- or I asked Krish, I said, why are we being
21 denied? He said, well, they wouldn't give us any reason why
22 it's been denied. They just told us it's denied.

23 So I asked him, I said, you know, the only thing I
24 could think of because it was denied without a reason, I
25 said -- and I asked Vijay and Krish, do either one of you

1 have anything in your financial records or criminal records
2 that might be a cause of denial? Because one of the things
3 that they told us they would do background checks on the
4 company and individuals. So they both told me that they
5 didn't have any issues with their financial or criminal
6 records.

7 Q. Vijay told you that?

8 A. He did.

9 Q. And what did you know, if any, about his criminal
10 shoplifting record at the time you asked him that question?

11 A. I knew nothing about that.

12 Q. And it's your testimony that he didn't tell you about
13 it at that point, right?

14 A. Yes.

15 Q. Okay. Now -- all right. Where were you working when
16 this letter came in?

17 A. I had a contract with Fluor at their main offices right
18 behind Hayward Road.

19 Q. Okay. And where was Vijay's office?

20 A. His was at his Comfort Inn Hotel on Congaree.

21 Q. And in a typical work day or work week, how often would
22 you see Vijay and/or Krish?

23 A. I would stop by there at least once a week if not more.
24 And Vijay and Krish would usually be there.

25 Q. Let's talk a little bit about what you discussed before

1 at least once a week, if not more. And if I was out of town
2 or they were out of town, then we wouldn't see each other.
3 So it was at least, I'd say sixteen weeks -- at least
4 sixteen to maybe twenty-five, thirty times. At least five
5 or ten if you look at it from that ---

6 Q. All right. In that sixteen or fifteen, however many
7 times it was, you say it was once a week, tell the Court
8 what came up in those meetings that related to VP
9 Enterprises.

10 A. Related to VP Enterprise, it was, you know, our key
11 thing was I asked Krish, so where are you on the Verizon?
12 Did you find out the reason why we've been denied so we can
13 go work around it? And it was always the same answer, I'm
14 working on it. I'm trying to get to the bottom of it. I'm
15 not getting anywhere.

16 So I might have to go to the Charlotte office. I have
17 some contacts over there. I think that that was a bigger
18 Verizon office. He was going to get to the -- maybe go up
19 the corporate ladder and find the reason.

20 Q. Did he tell you anything? What else -- did he tell you
21 anything else other than that kind of line or is that what
22 he told you every time?

23 A. That was pretty much it every time. That was pretty
24 much the same thing. Because I was -- we were kind of on a
25 hold. So we needed to get past that.

1 MR. GILREATH: You talking about me or the witness?

2 MR. STEPHENSON: You.

3 MR. GILREATH: All right. I apologize for that bump in
4 the road.

5 THE COURT: That's all right.

6 Q. But we've got Plaintiff's trial document 146, Verizon
7 business plan, April 4th, 2008, Corby Phillips. Do you see
8 that?

9 A. Yes.

10 Q. Now, tell me first, when's the first time you ever
11 heard of that document?

12 A. This was after the lawsuit was filed and produced.

13 Q. And so I want to go back. Now, we were talking about
14 that in the context of this document, July the 8th, 2008,
15 where the money got taken out of VP. You put VP on hold.
16 That's trial document 230. You see that?

17 A. Right.

18 Q. So on April the 4th, at that time-frame, what was Krish
19 telling you about VP Enterprises?

20 A. That he's still trying to chase down why we've been
21 denied.

22 Q. Okay. What was he telling you about Corby Phillips?

23 A. Nothing.

24 Q. What was he telling you about P Communications?

25 A. Nothing.

1 Q. Okay. You didn't even know -- did you know anything
2 about P Communications?

3 A. Uh-uh (negative).

4 Q. All right. Now, let's go over to Plaintiff's trial
5 document 239. This is an email from you to -- from you to
6 Krish, July 25th, 2008. Wireless business opportunity.
7 Tell the Court what that is.

8 MR. GILREATH: Is that in your green book, Judge?

9 THE COURT: Yeah.

10 MR. GILREATH: Okay. I'll get you that other one to
11 put in there.

12 Q. So tell the Court about this wireless opportunity email
13 on July the 25th.

14 A. I had followed up per the plan we had for me to go look
15 for other businesses that we could buy and get in the
16 Verizon or the industry. I found one on some network. It
17 looks like I sent the email to Krish on July 24th.

18 I didn't get a response from him. So I sent it --
19 forwarded it back to him on the 25th. And he later
20 responded on Sunday that the link become available.

21 Q. And what did you know on July the 27th about Corby
22 Phillips?

23 A. I didn't know anything about him.

24 Q. And on July the 27th when you sent this email, what did
25 you think Krish Patel was doing for K -- for VP Enterprises?

1 October the 18th, that you think you met with Krish Patel.

2 A. About seven months. My normal routine was to stop by
3 Vijay's office. So I would have seen him, you know, quite a
4 -- numerous times. I can't put down exactly how many. But
5 towards maybe May/June, around that time-frame, I was seeing
6 -- Krish was a lot less over there. So if Vijay was there,
7 then I'd ask him about what was going on.

8 Q. Okay. I would ask you to look at their allegation in
9 paragraph thirty-seven of their answer, which you've got up
10 there. And I'll just read it into the record.

11 In regard to paragraph thirty-seven, it is admitted
12 that Kaj on numerous occasions during the time period
13 alleged had conversations with Vijay. So during this period
14 did you also have conversations with Vijay? You don't -- is
15 that correct?

16 A. Yes, I had plenty of conversations with Vijay.

17 Q. Did anything about Corby Phillips come up in -- what
18 came up about Corby Phillips in any conversation you had
19 between February the 26th and Saturday, October the 18th
20 about Corby Phillips?

21 A. There was nothing that came up.

22 Q. Nothing. Is that what you're saying?

23 A. Right.

24 Q. All right. Now, let's fast forward to Saturday,
25 October the 18th. And tell the Court what you learned that

1 day about what was going on with VP Enterprises?

2 A. Well, I was invited to Vijay's house, my wife and I
3 were, for a small gathering, another couple, friend of ours
4 were there. And they had a couple of guests from India that
5 I didn't know of.

6 We were talking about -- the men were in the kitchen, I
7 mean, the men were in the garage. And I'd asked Vijay if
8 Krish was going to be joining us. And he said, yeah, he
9 would be later on, once he gets back from his Verizon grand
10 opening.

11 And I said, Verizon grand opening? Is this -- did he
12 get a job back with them or is this something to do with
13 our, you know, the Verizon plan that we were working on?
14 And he immediately clammed up and said, well, you know,
15 you're going to have to talk to Krish about this. I'm not
16 involved in that. So I said, well, I'll just wait for
17 Krish.

18 Krish came in probably later on that evening, maybe an
19 hour or two later. And after he got a chance to say hello
20 to everybody, I pulled him off to the side. So the men were
21 in the garage, the women were in the kitchen. So we went to
22 the living room.

23 And I asked him, I said, you know, I just -- what is
24 going on with this Verizon thing? And I said, is this
25 related to what we're doing or is this something different?

1 He says, no, you know, I found this guy who already had a
2 Verizon business and a license. And I just recently joined
3 up with him to get our foot in the door, since we were
4 having the issue with, you know, not finding out from
5 Verizon why we'd been denied.

6 So I asked him, I said, you know, you should have told
7 me about this before. And he said, well, you know, I just
8 recently joined with him, and I haven't had much time. So I
9 will, you know, I should have -- I'm sorry. I should have
10 mentioned that to you.

11 So -- and I said, well, you know -- he said, this is
12 our foot in the door. We'll, you know, once I get Corby out
13 -- that's the first time I heard the name Corby. He said,
14 once I get Corby out, because he doesn't have the financial
15 means or capabilities to grow this business like we're
16 looking at from, you know, to grow a big business like we're
17 looking at. He said, once I have a -- once I figure out a
18 way to get him out, we can get back on our plan.

19 And I said, well, you know, how long are you looking at
20 this taking? He said, this should take anywhere from eight
21 to twelve months. And I was interested, you know, in the
22 time-frame because it kind of left me in a quandary. We had
23 already discussed a while back and the plan we were
24 proceeding with, you know, I was going to give up my
25 consulting business to jump into this full-time after the

1 end of the year.

2 So I said, you know, if it's going to take that long,
3 then we need to, you know, I need to either go get on
4 another project or go talk to Fluor and try to reintegrate
5 myself back in the project.

6 Q. And what did he say when you told him all that?

7 A. He said, yeah, you know, he said, it is going to take
8 eight to twelve months. So we'll have to -- until then, you
9 know, once I get Corby out, we'll resume back on our plan.

10 Q. Okay. What else -- did Corby's last name ever come ---

11 A. No, I ---

12 Q. What was said about Corby's last name?

13 A. It was just Corby. The name I remember was Corby.

14 Q. Why didn't you ask him anymore about Corby that night?

15 A. Well, you know, it was some -- what he led me to
16 believe and what I understood was that he had just joined up
17 with him and this was going to be our foot in the door and
18 that, you know, whatever arrangement they had would get our
19 foot in the door. And, you know, I could have probably ---

20 Q. Was there any discussion with him about the name of any
21 corporation that Corby had?

22 A. No. And I didn't think of asking at that time.

23 Q. He didn't volunteer it either, right?

24 A. No, he did not.

25 Q. Now, so what happened in your life as a result of that

1 going to have to figure out, you know, how to integrate that
2 into our overall VP business.

3 And while we're talking about that, after about the
4 first or second meeting, he switched gears, Kaj, we need to
5 forget about Columbus/Tryon. I have some stores in
6 Columbia/Florence area that are up for sale. And we can buy
7 those at a much cheaper price than we can start our own
8 stores.

9 So then we started talking -- all right. So I think
10 he'd said something in the range of three to five hundred
11 thousand dollars. So we talked about I would put in half
12 the money, he would put in half the money. We'd acquire
13 those stores. We'd travel back and forth from that
14 Columbia/Florence area and manage those stores. And in the
15 meantime, we would figure out how to integrate what he
16 already, you know, has with Corby.

17 And it was at that time that he told me he was
18 successful in getting Corby out and that it was a lot of
19 pain and anguish. It took him a long time to get him out.
20 And he had to spend more than thirty thousand dollars to get
21 him out.

22 Q. So you say he -- what did he tell you about getting
23 Corby out?

24 A. He said he had finally managed to get Corby out.

25 Q. Okay. When did he tell you he got Corby out?

1 A. This was in our April/May time-frame.

2 Q. And what did he tell you he paid Corby?

3 A. He said it was more than thirty thousand dollars.

4 Q. More than thirty thousand?

5 A. Right.

6 Q. Okay. And so now you know that Corby's out. So what
7 happened next with Krish?

8 A. Well, we were talking about, you know, prior to this,
9 I'd put half the money, he'd put in half the money. And
10 then, you know, we'll figure out how to integrate this. And
11 we'll integrate his existing, whatever, four or five stores
12 or however many he had at that time. I think it was -- I
13 think he said it was five or six stores. And ---

14 Q. What are you going to integrate it with?

15 A. You know, we were going to buy this seven stores in
16 Columbia. And so I would put in half the money, he would
17 put in half the money. And whatever equities he had in that
18 deal with Corby, whatever he had to pay, you know, we'd have
19 to figure out some amount of number and integrate that with
20 our Verizon plan. And so all those details we were going to
21 work out.

22 Q. Now, what do you mean when you say integrate it with
23 our Verizon plan?

24 A. So we're at the point where Corby's out. We've got the
25 foot in the door and, you know, we can now be -- we're now

1 where we can continue with the plan we had to start ---

2 Q. So what plan are you talking about?

3 A. The Verizon plan, I mean, sorry, the VP plan.

4 Q. The VP plan?

5 A. The VP plan.

6 Q. Okay. So where did that go to? What happened on all
7 of that?

8 A. Right. So we were talking about putting monies in.

9 And then towards around late May he brought in his CFO into
10 a couple of those meetings, Bruce Cole. And he says, you
11 know, Kaj, you know, we were talking about you putting in
12 half the money for this portion and we're going to take
13 these existing stores and continue with the VP plan.

14 He said, Verizon's very, very sensitive to adding
15 people. That would require me adding my name to the --
16 adding my name to Verizon. He said that it's -- they're
17 already very sensitive since I've already changed ownership
18 with Corby.

19 And so he said, you know, rather than doing that, how
20 about you don't put any money in it. We'll give you the
21 same benefits as a fifty percent owner. And we started
22 talking about that.

23 And I said, you know, as long as we take all of this
24 stuff and we agree to this and we put it into an ironclad
25 agreement, you know, that's fine. And I said, well, you

1 know, let me take a day or two and think about it. And we
2 planned on meeting on June -- on Friday, June 4th. We were
3 going to meet there at his office on that Friday to finalize
4 ---

5 Q. Okay. And tell the Court what happened at this meeting
6 on Friday, June the 4th.

7 A. So he said, all right, you know, let's go ahead and do
8 this. And we shook hands on it. And he walked me around
9 his Augusta Road -- that was where he was running his
10 operation out of and introduced me to the whole staff.

11 And while he was doing that, Vijay passed by. And I
12 asked Krish, I said, you know, how's your dad involved in
13 this or is your dad involved in this? Oh, yeah, you know.
14 My dad's been involved in this from day one. You know, this
15 is a family business. My mother's involved. My brother's
16 involved. Everybody's involved, you know.

17 And he asked me, he said, do you have any problem with
18 that? I said, that -- when he was telling me that, it just
19 sent all these red flags and bells and whistles because all
20 of -- for two years, you know, I'm talking to my friend and
21 he's been telling me that -- excuse me. He's been telling
22 me that he doesn't know a thing about it. This is all
23 Vijay's [sic] thing. And here Krish is telling me that he's
24 been involved from day one.

25 So I, you know, I didn't know what to say or what to

1 do. So I just said, all right, you know, I'll see you on
2 Monday. And -- because I was going to start work on Monday.
3 And I went back home and started thinking about it. And I
4 said -- and, you know, at that time actually when we were
5 talking about the, about an ironclad agreement that we'd
6 both agreed that we were going to have Allan Hill do, I
7 said, you know, I asked him, I said, you know, how are you
8 structured? And he says, you know, I've got a company, P
9 Communications, and I've got various LLCs under that.

10 So that was the first time I found out about P
11 Communications. So I went back home, you know, got on the
12 internet. And I was just going to look up P Communications,
13 but the thing he told about Vijay was really bothering me.
14 So when I pulled up ---

15 Q. What's really -- the thing he said about what?

16 A. About Vijay, that, you know, he's been involved on it
17 from day one.

18 Q. So you went home and what?

19 A. So I went home, pulled up -- got on the Secretary of
20 State -- on the website and pulled up P Communications.

21 And, you know, what I saw on the screen was, you know, this
22 company was formed on ---

23 Q. Well, that's next. Let me slow you down there a
24 minute. Let's go look at page 306A in the green book, South
25 Carolina Secretary of State printout, which I think is what

1 you see on some of those screens when you go to the
2 Secretary of the State's Office. Did you pull up something
3 similar to that?

4 A. Yes.

5 Q. Are you familiar with that document?

6 A. Yes.

7 Q. All right. Tell the Court what you saw on that
8 document on Friday, June the 4th that got your attention.

9 A. Well, the first thing that jumped out was the April 28,
10 2009. This company was formed in April. This is two months
11 after we formed VP Enterprise. And I saw at the bottom
12 where it says changed the agent from Corby Phillips to Krish
13 back in 2008.

14 And it just hit me that, you know, these guys have been
15 taking me for a ride. And I immediately picked up the
16 phone, I called up Krish. I didn't get him on the phone.
17 So I left a message for him to call me back. I called him a
18 couple of times that day. And I think it was either that
19 day or the next day I sent him an email saying, you know, I
20 need to talk to you in person.

21 And I think it was on Saturday that he called me and
22 said, hey, you know, I've been busy. Sorry you haven't been
23 able to get a hold of me. He's been busy trying to put that
24 deal together with Columbia and we can meet on Sunday, which
25 was, I guess the 6th.

1 Q. Go your separate ways.

2 A. We would figure out what needs to be done with VP
3 Enterprises. VP Enterprises was still up and up. The line
4 of credit was still in place. The bank account was still in
5 place.

6 We had not -- the three of us never sat down and said,
7 you know, this business is closed. We're not pursuing it
8 anymore. They kept on telling me this is where -- per our
9 plans. I mean, you show me one piece of document that says
10 that this is -- you talking about paper. Show me one piece
11 of document that says that we sat down and decided to close
12 this business, and close this account and close this LLC.

13 Q. The Judge will decide that.

14 A. Okay. I'm sorry.

15 Q. Okay. Kaj, in April of 2010 you told Krish, hey, --
16 you sent this to smoke him out and if he wants to go his own
17 way, you could figure it out, right?

18 A. Right.

19 Q. And at the time he had five stores.

20 A. I didn't know he had ---

21 Q. Well, that's what it turned out. He had five.

22 A. Right.

23 Q. And this location you say you found in Tryon, just so
24 the record's clear, he didn't take it, right?

25 A. Sorry. Please ask that again.

1 Q. He never put a store in Tryon.

2 A. I don't know if he's ---

3 Q. Well, there's no evidence he put a store in Tryon. You
4 found this location. Krish Patel didn't stick a store in
5 Tryon.

6 A. Correct.

7 Q. No one went there as far as you know.

8 A. If there isn't one there.

9 Q. And you never tried to get a partner to go in there,
10 did you?

11 A. I didn't because when I asked him at that time, where
12 are we on this, because if this is not working out, if
13 you're not done with Corby, then let's figure out what we're
14 going to do. And what he told me was that I got Corby out.
15 We can do this and let's start one. That's when we started
16 talking about these.

17 And then, from that he changed subjects and said, wait
18 a minute, I've got these seven stores that we can buy. So
19 then we said, all right, that seven store deal is much
20 better than starting this one. So let's put our efforts in
21 that and forget about this one. So that's why we didn't do
22 that.

23 Q. And what happened is you went to his store on Augusta
24 Road.

25 A. Correct. I met with him three or four times there.

1 Q. At the store on Augusta Road. And it's there at the
2 corner of McDaniel and Augusta, still there.

3 A. Right.

4 Q. You went in there. And you knew he was in a deal with
5 Corby. And you say you never met Corby, but you knew he was
6 in a deal with Corby.

7 A. Corby, correct.

8 Q. That's what you thought, right?

9 A. Correct.

10 Q. And he didn't hide from you when you went in there that
11 he had other locations. You knew it.

12 A. Yes, after the first couple of meetings, he said he had
13 other locations.

14 Q. He said he had other locations.

15 A. Other locations, right.

16 Q. So he brought up the fact that he had the opportunity
17 to buy some stores, five or six stores, in Columbia, right?

18 A. Yeah, Columbia. He mentioned Columbia, Aiken, ---

19 Q. Columbia, South Carolina, right?

20 A. --- Florence, that area. Right.

21 Q. And y'all talked about it?

22 A. We did.

23 Q. And your talk with him was about you going fifty/fifty
24 in the Columbia store.

25 A. Yes, we talked about fifty/fifty on that.

1 Q. Now, did -- when did Krish Patel first approach you
2 about getting in the Verizon business?

3 A. I'd sold the restaurant in '05, was selling real estate
4 in '06 and part of '07. So I'd say it was around the first
5 quarter of '08.

6 Q. Okay. The first -- when did you say?

7 A. The first quarter of '08, probably around the March
8 time-frame.

9 Q. The March time-frame?

10 A. Yeah.

11 Q. March of '08. Can you -- was it -- can you say first,
12 middle or the last part of March?

13 A. I can't, Mr. Gilreath.

14 Q. Okay. And what -- had you been in any business
15 dealings with him other than selling food over there at Roly
16 Poly?

17 A. Yeah. I helped him with a couple of real estate deals
18 and his investment group to buy -- I'm not sure of the
19 address, but behind the Pizza Inn down there on Woodruff
20 Road, a couple of properties down there. And I helped him
21 facilitate those deals.

22 Q. And so some time in March you say he approached you
23 about some kind of Verizon business.

24 A. Correct.

25 Q. And just tell the Court, briefly as you can, what he

1 a business. You're in a venture where you owe a duty of
2 loyalty to your other co-venturers who have reposed trust
3 and confidence in you. And that's what was going on here.
4 They were agents of each other. They were working together
5 for a common end. And a lot was expected of each of them
6 when it comes to honesty in fair dealing and integrity.

7 Q. You used the term venture. What was the nature of the
8 venture in your opinion?

9 A. To establish a Verizon operation and to do multiple
10 stores, just what Krish did under the name of P
11 Communications.

12 Q. If the duties owed were partner-like, how could Krish
13 have a heightened standard of conduct in your estimation?

14 A. Because that's the way it works. Go back to the
15 Meinhard case where you had Salmon who was the managing
16 joint venturer is what that was. That's what Cardozo --
17 called it a joint venture. He said as to people who are
18 managers, they're held to specially high standard. And
19 that's where the relentless and supreme duty of candor and
20 honesty and fair dealing comes from. It's his terms,
21 relentless and supreme. Famous case. It's in all the
22 books.

23 Q. Okay. How long in your opinion does this obligation of
24 good faith and fair dealing owed by the promoter last?

25 A. It lasts -- we've got a marker in South Carolina called

1 A. Yes.

2 Q. Do you know why VP was denied?

3 A. I do not.

4 Q. That's beyond your grade level basis, ---

5 A. Right.

6 Q. --- so they say?

7 **MR. STEPHENSON:** One second. I may be through.

8 (Pause)

9 **MR. STEPHENSON:** That's all I've got, Your Honor.

10 **THE COURT:** Okay. Cross.

11 **Cross Examination by Mr. Gilreath:**

12 Q. You've never seen anybody that was denied get approved,
13 right?

14 A. Right.

15 Q. Isn't it true, Ms. Blew, Krish Patel repackaged his
16 plan through P Communications and got it approved with Corby
17 Phillips and took it on to where it is today?

18 A. I don't know that I would call it repackaged. He -- he
19 and Corby got together and wanted to open up an agent
20 location.

21 Q. And it got -- and it got approved?

22 A. Through Corby, yeah.

23 Q. And you knew Krish was involved with Corby?

24 A. Yes.

25 Q. It wasn't any big secret about that?

1 A. Answer. I compiled information, I verified social
2 security numbers, dates of birth to ensure that I had to the
3 best of my ability, had the person actually on the report
4 which I do if anything comes back within ten years.

5 Q. Question. Right.

6 A. I compiled information, put it all together and then I
7 provide that information as part of the approval process to
8 our legal department.

9 Q. Question. And who makes the ultimate decision whether
10 to accept or reject the application?

11 A. Answer. I'm not sure.

12 **MR. STEPHENSON:** Some additional documents are marked.

13 Q. Question. Are those the documents that obtain -- that
14 you referred to earlier?

15 A. Yes, sir.

16 Q. Now that you've seen this would I be correct to assume
17 that the problem Verizon had was with Mr. Vijay Patel, not
18 Mr. Kaj Patel?

19 A. Are you asking me if it was solely Vijay?

20 Q. Yeah.

21 A. I don't believe so. I don't -- I don't believe so.

22 Q. Question. You don't believe so?

23 A. No, sir.

24 Q. Well, can you tell me what kind of problem they had
25 with Kaj Patel, if you know?

1 A. If you provided me with a background check I could
2 recall.

3 Q. Question. I don't have a background check on him
4 because it wasn't produced to me. I think that's part of my
5 30(b)6 notice. Well, question, so as we sit here today
6 you're still telling me that you think the problem was with
7 another -- with the other principal, Kaj Patel?

8 A. Answer. I believe so. Yes, sir.

9 Q. Question. But you can't tell me what it was?

10 A. Answer. Specifically, I cannot.

11 Q. Question. Well, how did you prepare for this
12 deposition?

13 A. I spoke to Laura ---

14 **MR. STEPHENSON:** Editorial; Laura was the lawyer who
15 was outside counsel.

16 A. Answer. I spoke to Laura. At the time I did not have
17 access to these particular documents to go back and review
18 all them. I'm not in a position -- in that position at this
19 time and if they were not available to me.

20 Q. Question. Did you meet with anybody other than Laura?

21 A. Answer. No.

22 Q. Did you talk with any of the other two witnesses we've
23 got here today?

24 A. Answer. No, sir.

25 Q. Did you have any discussions with anybody about any

1 Q. Let me take you forward to page 103, Plaintiff's trial
2 document 145. You there?

3 A. Yes, sir.

4 Q. For the record, this is the letter you received from
5 Verizon letting you know that the application had been
6 denied?

7 A. That's correct.

8 Q. Tell us what you did.

9 A. After the initial shock I, you know, informed my father
10 that we'd received the denial. And I also informed Mr. Kaj
11 that -- the same news.

12 Q. And at the same time you were pursuing several other
13 businesses?

14 A. That's correct.

15 Q. Was there any conversation at that point in time about,
16 hey, let's get another way to skin this cat, apply a
17 different way, any of that?

18 A. No, sir, there was no discussion of any -- any of that
19 nature.

20 Q. Did they ask why were we denied?

21 A. They did.

22 Q. And what did you do?

23 A. Contacted the few people I knew over there regarding
24 this matter and tried to get an answer.

25 Q. How soon did you do that?

1 A. Immediately.

2 Q. Did they tell you?

3 A. They just told me that the application was denied and
4 they couldn't give me any other information.

5 Q. Did you relay that to Kaj and your dad?

6 A. I did, yes, sir.

7 Q. Was there any indication by either one of them at that
8 point in time that they expected you to continue to pursue
9 the Verizon opportunity on behalf of VP?

10 A. No, sir.

11 Q. All right. Let me ask you the elephant in the room.
12 Between that date and October the 18th did you have any
13 discussions with Kaj about your continued efforts to get a
14 Verizon store another way?

15 A. No, sir.

16 Q. Why not?

17 A. You know, the polite thing to do would probably -- to
18 discuss that with him, but, you know, we just didn't discuss
19 it. I didn't -- I didn't talk to him about it.

20 Q. All right. Now, let me take you forward to page 104.
21 Are you there?

22 A. Yes, sir.

23 Q. After you were denied did y'all look at medical office
24 buildings?

25 A. Yes.

1 Q. All right. Now, let's talk about Corby Phillips for a
2 minute. What was the deal between you and Corby? What was
3 Corby going to do long-term when you first brought it up to
4 him?

5 A. When I first brought it up to Corby I told him about
6 this opportunity that I needed his help getting it set up
7 and that I'd pay him for his time. And, you know, he was
8 okay with that. And he knew that he would be exiting at
9 whatever point of arrangement that we come to an agreement
10 on.

11 Q. Did y'all actually talk about maybe he wouldn't exit
12 entirely, he would keep seven percent?

13 A. That conversation did come up, yes, sir.

14 Q. All right. Did Corby put one cent in the deal?

15 A. He did not.

16 Q. Other than submitting the application did Corby do any
17 of the work?

18 A. He did not.

19 Q. The next email we got was April the 9th of 2009. And
20 that is at page 126. You there?

21 A. Yes, sir.

22 Q. Defendant's trial document 118. And that's April the
23 9th, 2009. And that's, you know, not quite a year later.

24 Is there any piece of paper anywhere where Kaj talked about
25 the Verizon deal, P Communications or any of that that you

1 Q. All right. You heard all this discussion that he
2 alleges you said something to the effect of when I get my
3 foot in the door I'm going to kick Corby out and get you
4 back in. Did any of that occur?

5 A. No, sir.

6 Q. What did you tell him?

7 A. I told Mr. Kaj that if there was an opportunity down
8 the road that I'd certainly -- would be happy to contact
9 him.

10 Q. Was that pretty much the end of the discussion?

11 A. Pretty much.

12 Q. All right. After that did you see Kaj periodically?

13 A. Sure.

14 Q. He testified he would see y'all once a week, once a
15 month for the rest of '08, '09. In your recollection did
16 that happen?

17 A. I'm sure I saw him a few times.

18 Q. Well, did y'all buy this house at 189 Bomar Road?

19 A. We did.

20 Q. Was there anymore discussion about his trying to get
21 into the Verizon business that you had started that you're
22 talking about on October the 18th?

23 A. Not at all.

24 Q. So of all this testimony by Kaj that he's brought it up
25 repeatedly and you kept putting him off, do you admit or

1 Corby, you're denying all that, correct?

2 A. Can you ask me a specific question?

3 Q. You are denying, if I understand your testimony on
4 direct, you're -- from what -- you're denying or you're
5 saying that everything Kaj said from that witness stand
6 regarding conversations he had with you about when are you
7 going to get Corby out, when are you going to find out
8 what's going on with Verizon, you denied that those
9 conversations even occurred, correct?

10 A. I agree. Yes, sir.

11 Q. You're denying that? You absolutely deny it under
12 oath?

13 A. I am, yes, sir.

14 Q. Okay. And you deny that you -- that he -- that you
15 told him at the meeting on October 16th that you had gotten
16 in with another guy and gotten your foot in the door and as
17 soon as you could get him out you'd be able to get back to
18 y'all's VP deal? You deny that, correct?

19 A. I deny that statement. And what I actually said was
20 that I'd joined up with another individual who obtained a
21 license, and that if there was an opportunity down the road
22 that I'd give him a call.

23 Q. And let me ask you this. Did you tell him at that
24 meeting that not only had you joined up with that
25 individual, but that you had gotten up with his lawyer,

1 Allan Hill and your lawyer, Allan Hill, and y'all had formed
2 a new corporation called P Communications that was going to
3 do what VP was going to do? Did you tell him that on
4 October the 16th at your daddy's house?

5 A. No, sir.

6 Q. You didn't tell him, did you?

7 A. No, sir.

8 Q. Why didn't you tell him?

9 A. Can you repeat the question, please?

10 Q. Why didn't you tell him? A fairly simple answer.

11 A. Tell him what?

12 Q. Why didn't you tell him what was going on? Why didn't
13 you tell him you'd gone to his lawyer and your lawyer and
14 formed a new corporation with Corby?

15 A. I told him that I'd joined up with another individual
16 that got a license. That's what I told him.

17 Q. My question to you, Mr. Krish, is why didn't you tell
18 him you had helped form that corporation? Why didn't you
19 tell him that?

20 A. I don't recall.

21 Q. You don't recall. Okay. I'll take that. Now, the
22 truth is you didn't want him to know what was going on, did
23 you?

24 A. That's not correct.

25 Q. Well, then why didn't you tell him?

1 A. I just didn't tell him.

2 Q. You don't recall?

3 A. I just didn't tell him.

4 Q. Do what?

5 A. I just did not tell him.

6 Q. You just did not tell him.

7 A. As I mentioned earlier, ---

8 Q. You can't tell -- you don't ---

9 THE COURT: Wait, wait. Let him finish his answer.

10 Q. You don't want ---

11 MR. STEPHENSON: Wait a minute.

12 MR. GILREATH: Excuse me, excuse me, excuse me. All
13 right.

14 THE COURT: Go ahead and finish your answer.

15 A. As I mentioned to Mr. Stephenson when he asked me the
16 same question, looking back on it, it was probably the
17 polite thing to have told him that, but I just didn't.

18 Q. Probably been the polite thing to do. As an officer
19 and director or as an officer of VP Enterprises, you don't
20 think you owed him anymore than something that was polite,
21 is that correct?

22 A. No, sir.

23 Q. What did you owe him? What kind of duty did you owe
24 him?

25 A. I owed him and my father the duty to do my best to try

1 A. I'm just answering your questions.

2 Q. Where do you think he made it up? You reckon he got it
3 from John Grisham? Where do you think he got it?

4 A. I'm not sure.

5 Q. You're not sure?

6 A. No, sir.

7 Q. You're not sure? It's the truth. You just don't want
8 it to come out in this courtroom, do you?

9 A. That's not correct.

10 Q. Okay. All right. You never told him that you got
11 fired at Verizon, did you?

12 A. I did not.

13 Q. Why didn't you?

14 A. It's pretty embarrassing.

15 Q. You never told me when I took your deposition, did you?

16 A. You didn't ask.

17 Q. I don't remember all that I asked you. It's never come
18 up in this litigation, never come up until your lawyer stood
19 right there yesterday ---

20 MR. STEPHENSON: Your Honor, if he's got a place where
21 it was asked anywhere, let's see it.

22 THE COURT: Yeah, if you've got -- if you can show
23 impeachment, impeach him.

24 Q. You never told anybody?

25 A. I'm sorry?

1 did, too.

2 MR. GILREATH: I'm not going to talk about mine. I'm
3 going to take the Fifth Amendment on those questions.

4 THE COURT: Stephenson was at night school, too.

5 Q. Isn't it true that the reason you didn't want your name
6 on the application with Corby Phillips was because you had
7 been fired from Verizon?

8 A. No, sir.

9 Q. Okay. And isn't it true that you were afraid that
10 you'd get denied again because your name was on the first
11 application and you don't -- you do admit your name was on,
12 I think it was actually on the business plan or either
13 application for VP, correct?

14 A. My name was on the application, yes, sir.

15 Q. And that one got denied. So -- and you knew you had
16 been -- you'd actually been fired when that one went in,
17 right?

18 A. I'm sorry, say that again.

19 Q. You'd been fired when that one went in, hadn't you?

20 A. The first one?

21 Q. Yeah.

22 A. Yes, sir.

23 Q. You don't think that you owed any duty to my client
24 because you were a promoter back then, weren't you? You
25 were a promoter when y'all sent this thing in, weren't you?

1 A. Sure.

2 Q. And you didn't disclose to my client as a promoter that
3 the entity that he was sending the application into, you had
4 been fired from? You didn't tell him that, did you?

5 A. I did not.

6 Q. All right. Thank you. No further questions.

7 THE COURT: How about it? Redirect? Anything?

8 MR. STEPHENSON: I just got one question.

9 THE COURT: Yeah.

10 MR. STEPHENSON: It is, one question.

11 **Redirect Examination by Mr. Stephenson:**

12 Q. Krish, I'm going to show you Defendant's trial document
13 225 and 226. And that is a letter on Allan Hill's
14 stationery stating that you'd bought Corby out that date.
15 Is that what happened?

16 A. Yes, sir, that's correct.

17 Q. All right.

18 MR. STEPHENSON: That's all I got.

19 MR. GILREATH: I don't have any questions.

20 THE COURT: Okay. Thank you. You can step down.

21 A. Thank you.

22 THE COURT: Call your next witness.

23 MR. STEPHENSON: We are done, Your Honor. I have to
24 publish a couple of things.

25 THE COURT: Okay.

EXHIBIT D

February 26, 2008



VP Enterprises, Inc.
Attn: Pankaj Patel
Vijay Patel
408 Ashby Park Lane
Greenville, S.C. 29607

Re: Verizon Wireless Authorized Agent Application

Dear Sirs:

Thank you for submitting an Authorized Agency Agreement application with Verizon Wireless.

Various information and numerous factors are considered in the application process. After careful review of your application, we are unable to proceed with an Authorized Agency Agreement at this time.

Again, thank you for your interest in Verizon Wireless.

Sincerely,

A handwritten signature in cursive script that reads "Tim Butler".

Tim Butler,
Director Indirect Sales Distribution
Carolinas Tennessee Region

cc: Tammy Blew
Kelley Pearson
VZW Legal Department

Defendants 000732

Borrower: P COMMUNICATIONS INC, KRISH V PATEL and KEITH R GALLEY

Account Number: 952183875

Note Number: 00001

Address: 408 ASHBY PARK LANE
GREENVILLE, SC 29607-0000**BB&T**GREENVILLE South Carolina
Date: August 23, 2008

PROMISSORY NOTE

BORROWER(S) REPRESENTS HERewith THAT THE LOAN EVIDENCED HEREBY IS BEING OBTAINED FOR BUSINESS/COMMERCIAL PURPOSES. For value received, the undersigned, jointly and severally, if more than one, promises to pay to BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation (the "Bank"), or order, at said Bank at any of its offices in the above referenced city or such other place or places that may be hereinafter designated by Bank, the sum of

SIXTY THOUSAND DOLLARS & 00/100

Dollars (\$ 60,000.00), in immediately available coin or currency of the United States of America.

☐ Borrower shall pay a prepayment penalty as set forth in the Prepayment Penalty Addendum attached hereto.

Interest shall accrue from the date hereof on the unpaid balance outstanding from time to time at the:

☐ Fixed rate of _____ % per annum.

☒ Variable rate of the Bank's Prime Rate plus 0.500 % per annum to be adjusted _____ Daily _____ as the Bank's Prime Rate changes, (if checked here ☒, the interest rate will not exceed a(n) ☒ Fixed ☐ average maximum rate of 9.000 % or a ☐ floating maximum rate of the greater of _____ % or the Bank's Prime Rate; and the interest rate will not decrease below a fixed minimum rate of 5.500 %. If an average maximum rate is specified, a determination of any required reimbursement of interest by Bank will be made: ☐ when Note is repaid in full by Borrower ☐ annually beginning on _____

☐ Fixed rate of _____ % per annum through _____ which automatically converts on _____ to a variable rate equal to the Bank's Prime Rate plus _____ % per annum which shall be adjusted as such Prime Rate changes.

Principal and interest is payable as follows:

☐ Principal (plus any accrued interest not otherwise scheduled herein) is due in full at maturity on _____☐ Principal plus accrued interest☒ Payable in consecutive _____ Monthly _____ installments of ☐ Principal ☒ Principal and interest commencing on 10/05/2009

and continuing on the same day of each calendar period thereafter, in _____ 71 _____ equal payments of \$ 996.75, with one final payment of all remaining principal and accrued interest due on 09/05/2015

☐ Choice of Payment Option: 2% of outstanding balance is payable monthly commencing on _____ and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and accrued interest due on _____

☒ Accrued interest is payable _____ Monthly _____ commencing on October 5, 2008 and continuing on the same day of each calendar period thereafter, with one final payment of all remaining interest due on September 5, 2009

☒ Bank reserves the right in its sole discretion to adjust the fixed payment due hereunder _____ Annually _____ on 10/05/2010 and continuing on the same day of each calendar period thereafter, in order to maintain an amortization period of no more than _____ 72 _____ months from the date of the initial principal payment due hereunder. Borrower understands the payment may increase if interest rates increase.

☐ Prior to an event of default, Borrower may borrow, repay, and reborrow hereunder pursuant to the terms of the Loan Agreement, hereinafter defined.

☐ Borrower hereby authorizes Bank to automatically draft from its demand deposit or savings account(s) with Bank or other bank, any payment(s) due under this Note on the date(s) due. Borrower shall provide appropriate account number(s) for account(s) at Bank or other bank.

The undersigned shall pay to Bank a late fee in the amount of five percent (5%) of any installment past due for fifteen (15) or more days. When any installment payment is past due for fifteen (15) or more days, subsequent payments shall first be applied to the past due balance. In addition, the undersigned shall pay to Bank a returned payment fee if the undersigned or any other obligor hereon makes any payment at any time by check or other instrument, or by any electronic means, which is returned to Bank because of nonpayment due to non-sufficient funds.

All interest shall be computed and charged for the actual number of days elapsed on the basis of a year consisting of three hundred sixty (360) days. In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the Bank's sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate; provided that unless elected otherwise above, the fixed payment amount shall not be reduced below the original fixed payment amount. However, Bank shall have the right, in its sole discretion, to lower the fixed payment amount below the original payment amount.

This Note is given by the undersigned in connection with the following agreements (if any) between the undersigned and the Bank:

Mortgage(s) / deed of trust(s) granted in favor of Bank as mortgagee / beneficiary:

☐ dated _____ in the maximum principal amount of \$ _____

granted by _____

☐ dated _____ in the maximum principal amount of \$ _____

granted by _____

ACCOUNT / NOTES

952183875 00001

147250 (401)



Page 1 of 4

Kaj000862

Security Agreement(s) granting a security interest to Bank:

☒ dated 02/25/2008 given by P COMMUNICATIONS INC☐ dated _____ given by _____☐ Securities Account Pledge and Security Agreement dated _____, executed by _____☐ Control Agreement(s) dated _____, covering ☐ Deposit Account(s) ☐ Investment Property
☐ Letter of Credit Rights ☐ Electronic Collateral Paper☐ Assignment of Certificate of Deposit, Security Agreement, and Power of Attorney for Certificated Certificates of Deposit dated _____, executed by _____☐ Pledge and Security Agreement for Publicly Traded Certificated Securities dated _____, executed by _____☐ Assignment of Life Insurance Policy as Collateral dated _____, executed by _____☐ Loan Agreement dated _____, executed by Borrower and ☐ Guarantor(s).☐ _____☐ _____☐ _____

All of the terms, conditions and covenants of the above described agreements (the "Agreements") are expressly made a part of this promissory note (the "Note") by reference in the same manner and with the same effect as if set forth herein at length and any holder of this Note is entitled to the benefits of and remedies provided in the Agreements and any other agreements by and between the undersigned and the Bank.

No delay or omission on the part of the holder in exercising any right hereunder shall operate as a waiver of such right or of any other right of such holder, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or of any other right on any future occasion. Every one of the undersigned and every endorser or guarantor of this Note regardless of the time, order or place of signing waives presentment, demand, protest and notices of every kind and assents to any one or more extensions or postponements of the time of payment or any other indulgences, to any substitutions, exchanges or releases of collateral if at any time there be available to the holder collateral for this Note, and to the additions or releases of any other parties or persons primary or secondarily liable.

The failure to pay any part of the principal or interest when due on this Note or to fully perform any covenant, obligation or warranty on this or on any other liability to the Bank by any affiliate (as defined in 11USC Section (101) (2)), or by any guarantor or surety of this Note (said affiliate, guarantor, and surety are herein called "Obligor"); or if any financial statement or other representation made to the Bank by any of the undersigned or any Obligor shall be found to be materially incorrect or incomplete; or if any of the undersigned shall fail to furnish information to the Bank sufficient to verify the identity of the undersigned as required under the USA Patriot Act; or in the event of a default pursuant to any of the Agreements or any other obligation of any of the undersigned or any Obligor in favor of the Bank or in the event the Bank demands that the undersigned secure or provide additional security for its obligations under this Note and security deemed adequate and sufficient by the Bank is not given when demanded; or in the event one or more of the undersigned or any Obligor shall die, terminate its existence, allow the appointment of a receiver for any part of its property, make an assignment for the benefit of creditors, or where a proceeding under bankruptcy or insolvency laws is initiated by or against any of the undersigned or any Obligor; or in the event the Bank should otherwise deem itself, its security interest, or any collateral unsafe or insecure; or should the Bank in good faith believe that the prospect of payment or other performance is impaired; or if there is an attachment, execution, or other judicial seizure of all or any portion of the Borrower's or any Obligor's assets, including an action or proceeding to seize any funds on deposit with the Bank, and such seizure is not discharged within 20 days; or if final judgment for the payment of money shall be rendered against the Borrower or any Obligor which is not covered by insurance or debt cancellation and shall remain undischarged for a period of 30 days unless such judgment or execution thereon is effectively stayed; or the termination of any guaranty agreement given in connection with this Note, then any one of the same shall be a material default hereunder and this Note and other debts due the Bank by any one or more of undersigned shall immediately become due and payable without notice, at the option of the Bank. From and after any event of default hereunder, interest shall accrue on the sum of the principal balance and accrued interest then outstanding at the variable rate equal to the Bank's Prime Rate plus 5% per annum ("Default Rate"), provided that such rate shall not exceed at any time the highest rate of interest permitted by the laws of the State of South Carolina; and further provided that such rate shall apply after judgment. In the event of any default, the then remaining unpaid principal amount and accrued but unpaid interest then outstanding shall bear interest at the Default Rate called for hereunder until such principal and interest have been paid in full. In addition, upon default, the Bank may pursue its full legal remedies at law or equity, and the balance due hereunder may be charged against any obligation of the Bank to any party, including any Obligor. Bank shall not be obligated to accept any check, money order, or other payment instrument marked "payment in full" on any disputed amount due hereunder, and Bank expressly reserves the right to reject all such payment instruments. Borrower agrees that tender of its check or other payment instrument so marked will not satisfy or discharge its obligation under this Note, disputed or otherwise, even if such check or payment instrument is inadvertently processed by Bank unless in fact such payment is in fact sufficient to pay the amount due hereunder.

WAIVER OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS NOTE OR ANY LOAN DOCUMENT EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND BANK. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO MAKE THE LOAN EVIDENCED BY THIS NOTE. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

Unless otherwise required under a Loan Agreement, if applicable, and as long as any indebtedness evidenced by this Note remains outstanding or as long as Bank remains obligated to make advances, the undersigned shall furnish annually an updated financial statement in a form satisfactory to Bank, which, when delivered shall be the property of the Bank.

The term "Prime Rate," if used herein, means the rate of interest per annum announced by the Bank from time to time and adopted as its Prime Rate. The Prime Rate is one of several rate indexes employed by the Bank when extending credit. Any change in the interest rate resulting from a change in the Bank's Prime Rate shall become effective as of the opening of business on the effective date of the change. If this Note is placed with an attorney for collection, the undersigned agrees to pay, in addition to principal and interest, all costs of collection, including reasonable attorneys' fees which the undersigned agrees shall be equal to 15% of the principal and interest outstanding at the time of acceleration or other action by Lender to collect the sums due hereunder, unless the actual attorneys' fees incurred, based upon Bank's counsel's normal hourly fees chargeable to Bank, shall be greater than 15% of principal and interest, in which case such billed amount based on such hourly rate shall be the attorneys' fee payable hereunder. All obligations of the undersigned and of any Obligor shall bind his heirs, executors, administrators, successors, and/or assigns. Use of the masculine pronoun herein shall include the feminine and the neuter, and also the plural. If more than one party shall execute this Note, the term "undersigned" as used herein shall mean all the parties signing this Note and each of them, and all such parties shall be jointly and severally obligated hereunder. Whenever possible, each provision of this Note shall be interpreted in such a manner to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under such law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note. All of the undersigned hereby waive all exemptions and homestead laws. The proceeds of the loan evidenced by this Note may be paid to any one or more of the undersigned. No waivers and modifications shall be valid unless in writing and signed by the Bank. In case of conflict between the terms of this Note and the Loan Agreement or Commitment Letter issued in connection herewith, the priority of controlling terms shall be first this Note, then the Loan Agreement, and then the Commitment Letter. This Note shall be governed by and construed in accordance with the laws of South Carolina.

(SIGNATURES ON FOLLOWING PAGE)

BB&T

PROMISSORY NOTE SIGNATURE PAGE

Borrower: P COMMUNICATIONS INC

Account Number: Redacted

Note Amount: \$ 60,000.00

Note Number: 00001

Date: 01/23/2002

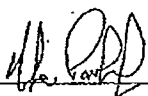
Notice of Right to Copy of Appraisal: If a 1-4 family residential dwelling is pledged as collateral for this Note, you, the undersigned, have a right to a copy of the real estate appraisal report used in connection with your application for credit. If you wish to receive a copy, please notify in writing the branch office where you applied for credit. You must forward your request to the Bank no later than 90 days after the date of this Note. In your request letter, please provide your name, mailing address, appraisal property address, the date of this Note, and the Account and Note Numbers shown on the front of this Note.

Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, MORTGAGOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

IN WITNESS WHEREOF, the undersigned, on the day and year first written above, has caused this Note to be executed under seal.

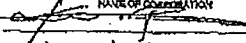
If Borrower is a Corporation:

WITNESS:



P COMMUNICATIONS INC

NAME OF CORPORATION

By:  (SEAL)

Title: President

By: _____ (SEAL)

Title: _____

If Borrower is a Partnership, Limited Liability Company, or Limited Liability Partnership:

WITNESS:

NAME OF PARTNERSHIP, LLC OR LLP

By: _____ (SEAL)

Title: _____

By: _____ (SEAL)

Title: _____

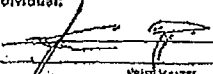
By: _____ (SEAL)

Title: _____

If Borrower is an Individual:

WITNESS:



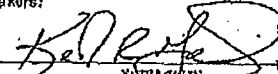
 (SEAL)

NAME OF INDIVIDUAL

WITNESS:



Additional Co-makers:

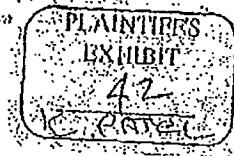
 (SEAL)

NAME OF CO-MAKER

(SEAL)

(SEAL)

(SEAL)



ACTION TAKEN BY WRITTEN CONSENT OF ALL THE DIRECTORS
OF
P COMMUNICATIONS, INC.

The undersigned, constituting all of the Directors of P Communications, Inc., hereby adopted the following resolutions by unanimous consent and without the necessity of a meeting therefor pursuant to the authority granted in Section 33-8-210 of the South Carolina Business Corporation Act.

WHEREAS, the current corporation share ownership is as follows:

	<u>Number of Shares</u>	<u>Certificate #</u>
Corby S. Phillips	100	1
Total Shares Outstanding	100	and;

WHEREAS, Corby S. Phillips wishes to transfer his One Hundred (100) shares of corporate stock back to the corporation and wishes to resign as an officer and director of the corporation; and,

WHEREAS, the corporation intends to add additional shareholders and issue Sixty (60) new shares of corporate stock to Krish V. Patel; and,

WHEREAS, the corporation intends to issue Forty (40) new shares of corporate stock to Keith R. Gailoy; and,

WHEREAS, the corporation intends to appoint new officers and new directors;

NOW, THEREFORE, it is unanimously resolved as follows:

RESOLVED, the corporation's Secretary is authorized to cancel the shares of Corby S. Phillips and accept his resignation.

RESOLVED FURTHER, the corporation is hereby authorized and directed to issue to Krish V. Patel, a certificate representing Sixty (60) fully paid and nonassessable shares of the corporation.

RESOLVED FURTHER, the corporation is hereby authorized and directed to issue to Keith R. Gailoy, a certificate representing Forty (40) fully paid and nonassessable shares of the corporation.

Defendants 000615

RESOLVED FURTHER, the corporation's share ownership, after the after the issuance of the above-shares is ratified by the shareholders and recognized to be as follows:

	<u>Number of Shares</u>	<u>Certificate No.</u>
Krish V. Patel	60	2
Kelth R. Galley	40	3
Total Shares Outstanding	100	and;

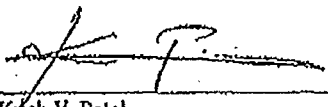
RESOLVED, the officers of the corporation for this year and forward, unless changed by entry into the minute book, are as follows:

Krish V. Patel	President
Kelth R. Galley	Secretary, Treasurer

RESOLVED FURTHER, the directors of the corporation for this year and forward, unless changed by entry into the minute book, are as follows:

Krish V. Patel
Kelth R. Galley

Effective the 15th day of December, 2008.

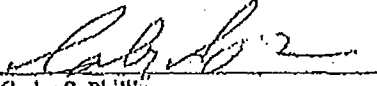


Krish V. Patel



Kelth R. Galley

I consent.



Corby S. Phillips

Defendants 000616



ACTION TAKEN BY WRITTEN CONSENT OF ALL THE DIRECTORS

OF

P COMMUNICATIONS, INC.

The undersigned, constituting all of the Directors of P Communications, Inc., hereby adopted the following resolutions by unanimous consent and without the necessity of a meeting therefor pursuant to the authority granted in Section 33-8-210 of the South Carolina Business Corporation Act.

WHEREAS, the current corporation share ownership is as follows:

	<u>Number of Shares</u>	<u>Certificate #</u>
Krish V. Patel	60	2
Kelth R. Galley	40	3
Total Shares Outstanding	100	and;

WHEREAS, Kelth R. Galley desires to sell his Forty (40) shares of corporate stock to the corporation in consideration of Five Thousand Dollars (\$5,000.00) and wishes to be removed as an officer and director of the corporation;

WHEREAS, the corporation intends to appoint new officers and new directors;

NOW, THEREFORE, it is unanimously resolved as follows:

RESOLVED FURTHER, the corporation's share ownership, after the after the issuance of the above-shares is ratified by the shareholders and recognized to be as follows:

	<u>Number of Shares</u>	<u>Certificate No.</u>
Krish V. Patel	60	2
Total Shares Outstanding	60	and;

Defendants 000617

RESOLVED FURTHER, the officers of the corporation for this year and forward,
unless changed by entry into the minute book, are as follows:

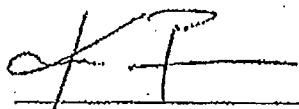
Krish V. Patel

President, Secretary, Treasurer

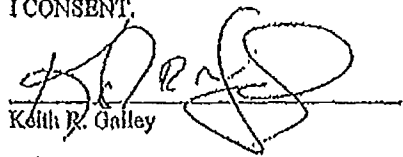
RESOLVED FURTHER, the directors of the corporation for this year and forward,
unless changed by entry into the minute book, are as follows:

Krish V. Patel

Effective the 1st day of January, 2009.


Krish V. Patel

I CONSENT.


Keith R. Galley

Defendants 000618

PI. Trial Document 00300

From: Krish Patel <krish.patel@wcvzw.com>
Sent: Thursday, April 15, 2010 9:23 PM
To: kaj.patel@armanci.com
Subject: Re: Pryor HUD

Follow Up Flag: Follow up
Flag Status: Flagged
Categories: Red Category

No problem .

I am always interested in looking for new sites .

We can get together and talk about possibilities .

Do you have time next week?

Krish Patel - Director of Operations

Wireless Communications
Verizon Wireless Premium Retailer

864-275-5605- Direct
864-282-8050- Office
864-282-8550- Fax

Sent from my Verizon Wireless BlackBerry, Provided by Wireless Communications

From: "Kaj Patel" <kaj.patel@armanci.com>
Date: Thu, 15 Apr 2010 21:01:49 -0400
To: 'Krish Patel' <krish.patel@wcvzw.com>
Cc: <vijay831@hotmail.com>
Subject: RE: Pryor HUD

Got it. Looks fine. Thanks for getting it closed.

I checked verizon's site as you suggested, there is no store listed for that area. When do you want to get together and talk? Please let me know your interest level in this as soon as possible since I have another party I can partner up with in this if you are not interested. I have already looked at a few buildings that are available for lease. rent range is \$1200 to \$1800 and are willing to do a 1yr term.
Thanks.

Pankaj (Kaj) Patel
Arman Consulting, Inc.
www.armanci.com

EXHIBIT E

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively
on behalf of Nominal Defendant, VP
Enterprises, Inc.

Plaintiff,

v.

Krish Patel, Vijay Patel, and
P Communications, Inc.,

Defendants,

and,

VP Enterprises, Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23-7338

**PLAINTIFF'S RESPONSIVE
DESIGNATIONS FROM
PATRICIA L. COOK
DEPOSITION**

The Plaintiff, pursuant to SCRCR Rule 32(a)(5), makes the following responsive designations to be added to Defendants' designations from the individual and Rule 30(b)(6) depositions of Patricia L. Cook both taken July 23, 2013, as follows:

Patricia L. Cook individual deposition:

Pg. 20:1-16

Pgs. 24:20 – 25:12.

From the Verizon Wireless 30(b)(6) deposition with Patricia L. Cook as corporate designee:

P. 16:12-15

P. 19:8-9

P. 22:5-19

P. 26:5-12

Pp. 33:16 – 34:7.

As can be seen from the deposition excerpts, Patricia L. Cook knew very little about the VP Enterprises, Inc. application review and the reasons for its rejection. Initially in her deposition she could not recall the names of the applicants. (Cook individual dep. 12:11-13). She testified that, for one of the applicants but not both, the background checks did not match the answers given on the Agent Application. (Id. at 18:1-11). She then stated she believed it was Kaj Patel who had a problem in the background check. But she could not remember the specifics. (Id. at 19:5-9). When shown the criminal records of Vijay Patel, she subsequently changed her testimony to saying that she did not believe it was just one of the two applicants who had a problem. (Id. at 22:1-22). She then testified again that she could not state what the problem was with Kaj Patel's background if any. (Id. at 22:21-24 and 24:14-19).

Later on the same day, in the Rule 30(b)(6) deposition of Verizon Wireless, Ms. Cook testified as the Verizon designee. When asked if she were prepared to tell all the reasons why Verizon rejected VP Enterprises' Application, she responded:

A. I can tell you that the application was denied based on nondisclosure. I cannot give you the specifics related to nondisclosure other than there was information on the background check that was not indicated on the Agent Application.

Verizon Wireless 30b6 dep. – P. Cook at 10:17-21 (See Id. at 9:11-17 and 10:14-16 for question asked).

She testified she remembered there were shoplifting and open container charges in Vijay's background. (Verizon Wireless 30b6 dep. – P. Cook at 12:23-13:4). Remarkably, she then stated that the other gentlemen, who would be Plaintiff Kaj Patel, had something in his background, but she could not recall exactly what it was. (Id. at 13:5-8). She was then asked again as follows:

Q. Was there a problem with both individuals or with one individual?
Do you know?

A. No, sir.

Q. You don't know?

A. No, sir. My -- to the best of my recollection, it was both individuals.

Verizon Wireless 30b6 dep. -- P. Cook at 14:16-23.

Plaintiff's counsel then objected on the record to the lack of preparation by the
Verizon designee:

When they testify, they're going to be saying: This is the reason we rejected that application, and these are the exact reasons. And here are the documents. And you're supposed to give me the documents. And I don't have any documents, either. I'm complaining about that.

Id. at 15:19-25.

Plaintiff's counsel then again asked the 30(b)(6) designee Patricia L. Cook if she knew if there was a problem with Plaintiff Kaj Patel as follows:

Q. If you don't know, you don't know; is that correct?

A. That's correct.

Q. You don't know? Okay. Then --

Id. at 16:12-15.

When asked what preparations she undertook for the Rule 30(b)(6) deposition, Patricia Cook responded that she spoke with the Verizon attorney Laura Ashby. She stated she was also provided documents but did not know what they were. She testified that the document that she read was the Rule 30(b)(6) subpoena for her to testify. She mentioned no other document that she read nor did she cite any other person within the

Verizon organization that she talked with. (Verizon Wireless 30b6 dep. – P. Cook at 8:22-9:5).

The Notice of Taking Rule 30(b)(6) Videotape Deposition of Verizon Wireless in paragraph 1 asked for the person designated by Verizon Wireless who was most knowledgeable regarding “Rejection of the Agent Application of VP Enterprises, Inc., including, but not limited to, the person most knowledgeable about the reasons for the rejection.” (Ex. A).

Under SCRCF Rule 30(b)(6): “The witness must be prepared to testify on matters ‘known or reasonably available to the organization.’” Flannigan, S.C. Civil Procedure 3d Ed., 265-66 (quoting SCRCF Rule 30(b)(6)). “When a corporation produces an employee under Fed.R.Civ.P. 30(b)(6) to testify to corporate knowledge, the employee must provide responsive underlying factual information even though such information was transmitted through a firm’s corporate lawyers.” Great American Ins. Co. of NY v. Vegas Constr. Co., Inc., 251 F.R.D. 534, 541 (D. Nev. 2008)(quoting Sprint Commc’ns Co., LP v. TheGlobe.com, Inc., 236 F.R.D. 524, 527 (D. Kan. 2006) (emphasis added).

The court in Vegas Constr. Co., Inc. also stated that the corporation “was required to educate an appropriate rule 30(b)(6) designee to provide knowledgeable answers reasonably available to the corporation, which include information ascertainable from project files and documents in the repository, information from past employees, witness testimony and exhibits, or any other sources available to the corporation, including factual information learned through or from its counsel.” Id.

Plaintiff’s 30(b)(6) deposition notice specifically asked for “the reasons for the rejection.” Ms. Cook’s testimony fell far short of providing the reasons Verizon rejected

the VP Enterprises' application or the underlying factual information about the denial.

Ms. Cook obviously was not prepared as a Rule 30(b)(6) witness; therefore, she gave completely unresponsive answers on the reasons for the rejection of VP Enterprises. While she had specific information on Vijay Patel such as his shoplifting and open containing charges, she had no information at all regarding Kaj Patel. Therefore Ms. Cook's deposition testimony, individually and as Verizon Rule 30(b)(6) designee, about Kaj Patel's background check and the effect it had on Verizon's rejection should be ignored or given no weight or credibility.

Respectfully submitted,

THE GILREATH LAW FIRM, P.A.

By: William M. Hogan
William M. Hogan (SC Bar #65272)
James R. Gilreath (SC Bar #2133)
110 Lavinia Avenue (zip 29601)
P. O. Box 2147
Greenville, SC 29602
Telephone: (864) 242-4727
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jim@gilreathlaw.com
bhogan@gilreathlaw.com

and

Monty D. Desai
The Carolina Law Group
910 E. Washington Street
Greenville, SC 29601
Telephone: (864) 312-4444
Facsimile: (864) 312-4447
monty@thecarolinallawgroup.com

ATTORNEYS FOR PLAINTIFF

Dated: July 20, 2014
Greenville, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively
on behalf of Nominal Defendant, VP
Enterprises, Inc.

Plaintiff,

v.

Krish Patel, Vijay Patel, and
P Communications, Inc.,
Defendants,

and,

VP Enterprises, Inc.,
Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23-7338

**CERTIFICATE OF
SERVICE**

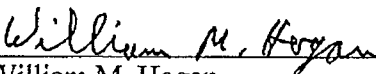
The undersigned attorney for the Plaintiff certifies that he served a copy of the
Plaintiff's Responsive Designations from Patricia L. Cook Deposition by the
following means:

☐	Hand Delivery	☐	Facsimile
☐	United States Mail	☐	Overnight Delivery
☒	Other: Electronic Mail		

with adequate payment or arrangements for payment to insure delivery thereof to:

Thomas L. Stephenson, Esquire
STEPHENSON & MURPHY, LLC
207 Whitsett Street
Greenville SC 29601

Andrew A. Mathias, Esquire
NEXSEN PRUET, LLC
Post Office Drawer 10648
Greenville, SC 29603


William M. Hogan

July 20, 2014
Greenville, South Carolina.

STATE OF SOUTH CAROLINA

ISSUED BY COMMON PLEAS COURT IN THE COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively on behalf
of Nominal Defendant, VP Enterprises, Inc.

Plaintiff.

v.

SUBPOENA IN A CIVIL CASE

Krish Patel, Vijay Patel, and P Communications, Inc.

Case Number: 2011-CP-23-7338

Defendants.

Pending in Greenville County

TO: Cellco Partnership
d/b/a Verizon Wireless
701 Brookfield Parkway
Greenville, SC 29607

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear through a corporate representative at the place, date, and time specified below to testify at the taking of a deposition pursuant Rule 30(b)(6) SCRCP in the above case. See **Attachment A** for subject matter.

PLACE OF DEPOSITION

The Gilreath Law Firm, P.A.
110 Lavinia Avenue
Greenville, SC 29601

DATE AND TIME

Tuesday, July 23, 2013 at 1:00 p.m.

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects):

PLACE:

DATE AND TIME:

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature

June 7, 2013

William M. Hogan

Indicate if Attorney for Plaintiff or Defendant

Date

Print Name

Attorney's Address and Telephone Number:

The Gilreath Law Firm, P.A., PO Box 2147, Greenville, SC 29602 - Phone: (864) 242-4727 - bhogan@gilreathlaw.com

Clerk of Court/Issuing Officer's Signature

Date

Print Name

Pro Se Litigant's Name, Address and Telephone Number:

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

ATTACHMENT A

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively on
behalf of Nominal Defendant, VP Enterprises,
Inc.

Plaintiff,

v.

Krish Patel, Vijay Patel, and
P Communications, Inc.,
Defendants,

and,

VP Enterprises, Inc.,
Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23-7338

**NOTICE OF TAKING
RULE 30(b)(6) VIDEOTAPE
DEPOSITION OF
VERIZON WIRELESS**

**TO: Celco Partnership
d/b/a Verizon Wireless
701 Brookfield Parkway
Greenville, SC 29607**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc., (Plaintiff"), through his undersigned attorneys, will take the deposition by videotape, upon oral examination, pursuant to Rules 30(b)(6) and 45 of the South Carolina Rules of Civil Procedure, at The Gilreath Law Firm, P.A., 110 Lavinia Avenue, Greenville, South Carolina, 29601, on the 23rd day of July 2013, commencing at 1:00 p.m., or immediately following the videotape depositions of Patricia L. Cook, Tammy C. Blew, and/or Kelley Pearson, of the person or persons designated by Verizon Wireless to testify on its behalf and who are most knowledgeable regarding the following matters:

1. Rejection of the Agent Application of VP Enterprises, Inc., including, but not limited to, the person most knowledgeable about the reasons for the rejection.

2. Who, on behalf of VP Enterprises, Inc., was most involved with Verizon Wireless on the Agent Application of VP Enterprises, Inc.

3. Who, on behalf of P Communications, Inc., was most involved with Verizon Wireless on the Agent Applications of P Communications, Inc.

4. The rules and standards of Verizon Wireless for a awarding franchisee license or authorized agency contact and for determining who is eligible or ineligible for a franchisee license or authorized agency contact.

5. The person or person most knowledgeable about the approvals of ownership changes on P Communications, Inc. from Corby Phillips to Keith Gailey to Krish Patel.

6. The person or person most knowledgeable about the fees/commissions and/or residual payments or recovering payments paid and/or due to P Communications, Inc. or any of its agents from January 1, 2009 to the present.

7. The value or sales price of any other Verizon agent stores, other than P Communications, Inc., which have been approved by Verizon Wireless for sale or purchase or which have been purchased or sold by Verizon Wireless.

8. The person or persons most knowledgeable regarding any communications between P Communications, Inc. and/or any of its agents including, but not limited to, Krish Patel and/or Vijay Patel, and Verizon regarding P Communications, Inc. updated business plans, plans for expansion, or plans/proposals for acquisitions of additional stores since January 2009.

9. The person or persons most knowledgeable regarding periodic performance reports to Verizon from P Communications, Inc. and periodic statements or reports received by P Communications, Inc. from Verizon.

The Plaintiff requests that five (5) business days prior to the commencement of the deposition, Verizon Wireless supply a written designation of the persons or persons who will testify and an indication of the topic or subject matter on which each person shall testify.

Said deposition is to be taken upon oral examination for the purpose of discovery and/or use as evidence in the above-captioned action pursuant to the South Carolina Rules of Civil Procedure, before a notary public or before some other officer authorized by law to take depositions, and before a videographer, said deposition to continue from day to day until completed. You are notified to appear and take such part in the examination as is fit and proper.

THE GILREATH LAW FIRM, P.A.

By: William M. Hogan
James R. Gilreath (SC Bar #2135)
William M. Hogan (SC Bar #65272)
110 Lavinia Avenue (zip 29601)
P. O. Box 2147
Greenville, SC 29602
Telephone: (864) 242-4727
Fax: (864) 232-4395
jim@gilreathlaw.com
bhogan@gilreathlaw.com

and

Monty D. Desai
The Carolina Law Group
910 E. Washington Street
Greenville, SC 29601
Telephone: (864) 312-4444
Facsimile: (864) 312-4447
monty@thecarolinallawgroup.com

ATTORNEYS FOR PLAINTIFF

Dated: June 7, 2013
Greenville, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively
on behalf of Nominal Defendant, VP
Enterprises, Inc.

Plaintiff,

v.

Krish Patel, Vijay Patel, and
P Communications, Inc.,
Defendants,

and,

VP Enterprises, Inc.,
Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23-7338

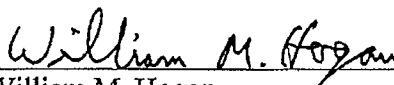
**CERTIFICATE OF
SERVICE**

The undersigned attorney for the Plaintiff certifies that he served a copy of the
deposition subpoena and Notice of Taking Rule 30(b)(6) Videotape Deposition of
Verizon Wireless by the following means:

☐	Hand Delivery	☐	Facsimile
☒	United States Mail	☐	Overnight Delivery
☐	Other: Electronic Mail		

with adequate payment or arrangements for payment to insure delivery thereof to:

Thomas L. Stephenson, Esquire
William W. Wilkins, Esquire
Andrew A. Mathias, Esquire
NEXSEN PRUET, LLC
P.O. Drawer 10648
Greenville, SC 29603



William M. Hogan

June 7, 2012
Greenville, South Carolina.

EXHIBIT F

KRISH VIJAY PATEL

1

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-23-7974

CORBY PHILLIPS,
Plaintiff,
vs.
KRISH PATEL, VIJAY PATEL,
KEITH R. GAILEY, and
P COMMUNICATIONS, INC.,
Defendants.

DEPOSITION OF KRISH VIJAY PATEL

DATE TAKEN: November 9, 2012

TIME BEGAN: 9:13 a.m.

TIME ENDED: 2:24 p.m.

LOCATION: Nexsen Pruet
55 East Camperdown Way
Suite 400
Greenville, South Carolina

REPORTED BY: Eileen Thompson, CCR
Gallagher Court Reporting
864-234-5744

VIDEOGRAPHER: Benjamin Weeks

GALLAGHER COURT REPORTING

864-234-5744

gcr@charter.net

1 letter, that Mr. Corby Phillips has somehow gotten
2 in the picture and has come up with a business plan
3 that he has sent over to Kelley Pearson. Would you
4 agree with me on that?

5 A. Yes, sir.

6 Q. And can you tell me when you first met Mr. Corby
7 Phillips?

8 A. Regarding this, or for the first time?

9 Q. For the first time -- how did you get to know him?

10 A. Corby owned the Roly Poly shop next to the Verizon
11 that I worked at on Woodruff Road and it was
12 directly next door. And he was the owner, and
13 that's how I got to know him. And then --

14 Q. Okay. When did you first have a conversation with
15 Corby Phillips about becoming a -- about
16 Mr. Phillips becoming a Verizon agent?

17 A. Probably about a month after I got the letter.

18 Q. About a month. So you think it was, like, March the
19 26th?

20 A. It could have been around that date.

21 Q. Okay. And tell me, as best you can recall, what you
22 and he talked about in that first meeting where you
23 discussed this agency with Verizon?

24 A. Corby and I had already done some business together
25 on the real estate side. And so I contacted him and

1 Q. You wouldn't deny that that business plan --

2 MR. STEPHENSON:

3 3.

4 EXAMINATION RESUMED BY MR. GILREATH:

5 Q. -- was sent to Verizon on behalf of you and Kaj? It
6 doesn't just have your name on it, does it? Look at
7 Number 3.

8 A. Okay.

9 Q. It's got Kaj's name on there, doesn't it?

10 A. Yes, sir.

11 Q. Did you call up Kaj and say, "Hey, Kaj, I got this
12 guy over here that I believe we could get to help us
13 on this store and I want to let him send a business
14 plan in with his name on it." Did you make that
15 call to Kaj?

16 A. No, sir.

17 Q. Why didn't you?

18 A. Well, Mr. Gilreath, the way I see it is I'm the one
19 who made the business plan. We made a very, very
20 strong attempt to get approved by Verizon with VP
21 Enterprises. And once they denied that application,
22 everybody a part of that application that was on the
23 application got denied, so why would I want to
24 involve someone else is what I was thinking from
25 that original application.

1 A. I don't recall.

2 Q. You don't recall. Do you -- did you ever have a
3 meeting with Allan Hill that related to any business
4 of P Communications?

5 A. Yes, sir.

6 Q. And tell me about that. And I'm talking about in
7 this time frame now in the late April, early May
8 2008 time frame when this corporation was formed.
9 Did you have any conversations or meetings with
10 Allan Hill?

11 A. I believe after the corporation was set up, I'm sure
12 Allan and I had some discussions about some
13 agreements that Corby and I were working on.

14 Q. Okay. And tell me about those agreements that you
15 and Corby were working on. Do you remember what
16 they were?

17 A. I remember something along the lines of Corby was
18 going to get the application submitted for Verizon
19 wireless and Corby was going to help initiate that
20 procedure. And then once and if the business moved
21 forward, then we needed to have some type of
22 agreement which I can purchase Corby's share and
23 ownership of the company.

24 Q. So would it be fair for me to conclude that Corby
25 was really just a straw man in this deal?

1 A. If that's the way you want to see it.

2 Q. Well, would you agree with me? I mean, if I
3 understand what you just said, he was kind of there
4 to get the approval from Verizon, and as soon as P
5 Communications got the approval, he was going to
6 kind of step out the back door and you were going to
7 step in the front door, correct?

8 A. Assuming that Verizon would allow that.

9 Q. Okay. So you wouldn't disagree with my conclusion
10 that he might perhaps be characterized as a straw
11 man?

12 A. Sure.

13 Q. Now, and let's look over here at Exhibit Number --
14 well, let me just go back here and ask you. Did you
15 bother to pick up the telephone or write a letter or
16 an e-mail to this Kelley Pearson woman and tell her
17 hey, this guy -- or tell her that this guy, Corby
18 Phillips, you're dealing with, he's really my straw
19 man? You didn't tell her that, did you?

20 A. No, sir.

21 Q. Do you think that's something she might have wanted
22 to know?

23 A. I'm not sure.

24 Q. And, of course, you never picked up the phone and
25 called Kaj, whose name is on the front page of your

1 A. Him and I had made some arrangements for his future
2 of the company and his employment and we worked
3 something out.

4 Q. And what kind of arrangements did y'all make?

5 A. That he would be the director of sales for the
6 organization and he would be essentially the right
7 hand to me.

8 Q. And he was going to sell all his stock?

9 A. Yes, sir.

10 Q. Why was that a good deal for him?

11 A. A little more aggressive payout with no risk and no
12 liability.

13 Q. And what did you pay him for his stock?

14 A. I don't remember.

15 Q. Well, look at Number 43, page 617 says he desires to
16 sell 40 shares for \$5,000. Is that what he got?

17 A. That looks -- looks to be correct.

18 Q. So he was kind of short-lived as a stockholder,
19 wasn't he? He came in in November and he's out the
20 door by the first of the year, correct?

21 A. Yes, sir.

22 Q. And you got the whole shooting match at that point,
23 correct?

24 A. I then became the sole shareholder of P
25 Communications. Yes.

1 Q. And what, if anything, did you do -- well, when that
2 happened, what, if anything, did you do with Kaj
3 Patel to see if maybe you could go forward with him
4 at that point?

5 A. Nothing.

6 Q. Did you ever tell Kaj Patel after Mr. Gailey got out
7 that you now had 100 percent of this corporation,
8 that this guy Corby who you had mentioned to him was
9 in, did you ever tell him you had gotten total
10 control of it at that point?

11 A. I may have. I don't recall.

12 Q. You may have. He says you didn't. Do you believe
13 him, or do you not believe him?

14 A. Well, I don't want to get into my opinion at this
15 point, but I'm just telling you that I may have told
16 him.

17 Q. Can you tell me where you were when you told him?

18 A. No, sir.

19 Q. Can you tell me when you told him?

20 A. I don't recall.

21 Q. Can you tell me who, if anybody, was present when
22 you told him that?

23 A. I don't know.

24 Q. And if you told him, can you tell me how you told
25 him? Did you tell him on the telephone,

EXHIBIT G

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Pankaj Patel, Individually and Derivatively on
behalf of Nominal Defendant, VP Enterprises,
Inc.,

Case No. 2011-CP-23-7338

Plaintiff,

vs.

ANSWER TO AMENDED COMPLAINT

Krish Patel, Vijay Patel, and P
Communications, Inc.,

Defendants,

And

VP Enterprises, Inc.

Nominal Defendant.

FILED-CLERK OF COURT
GREENVILLE CO. SC
MAR. 1. 2012
2012 FEB 21 PM 12:22

The Defendants Krish Patel ("Krish"), Vijay Patel ("Vijay") and P Communications, Inc. ("P") by and through their undersigned counsel answer the Amended Complaint as follows:

FOR A FIRST DEFENSE

Defendants answer the Amended Complaint upon their knowledge and otherwise upon information and belief and respond to the individually numbered paragraphs as follows:

1. Defendants admit that Kaj is a citizen and resident of Greenville County, South Carolina and that Kaj attempts to bring an action on behalf of VP Enterprises, Inc. It is alleged that VP Enterprises, Inc. is no longer in existence and never actually engaged in any business.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted except that it is alleged that Vijay is no longer an officer, stockholder or director of VP Enterprises, Inc.

4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted.

6. Paragraph 6 is admitted.

7. So much of Paragraph 7 is admitted as it alleges that Kaj is the Plaintiff in this lawsuit and has plead the causes of action alleged. The remaining allegations are denied.

8. In regard to Paragraph 8, the Defendants do not have sufficient knowledge to enable them to form a belief and therefore denies the same.

9. Paragraph 9 is denied.

10. Paragraph 10 is admitted.

11. So much of Paragraph 11 is admitted as alleges that VP Enterprises was to be owned by Kaj and Vijay. It is denied that Krish was to have ownership.

12. Paragraph 12 is admitted.

13. Paragraph 13 is denied.

14. Paragraph 14 is denied.

15. Paragraph 15 is denied.

16. Paragraph 16 is admitted except it is alleged that Krish Patel left Verizon in October of 2007 and alleged that the idea of operating independent wireless communication stores under a license agreement with Verizon was entirely Krish's idea not the idea of Kaj.

17. So much of Paragraph 17 is admitted as alleges that Krish and Kaj discussed the idea of opening Verizon stores and that Krish prepared a business plan and that Krish was

worried that Verizon may have some reluctance in allowing him to become an owner since he was a former employee of Verizon. The remaining allegations are denied.

18. So much of Paragraph 18 is admitted as alleges that Kaj and Krish may have looked at one or two possible locations together but it is alleged that nearly all of the possible locations were investigated by Krish not Kaj. The remaining allegations are denied except that Kaj and Krish did ride with Andre.

19. In regard to Paragraph 19, it is admitted Verizon let Krish know if locations were in a restricted area. It is denied Kaj played any significant role in selecting locations.

20. It is admitted Krish prepared a business plan and shared it with Kaj. The remaining allegations are denied.

21. Paragraph 21 is admitted.

22. Paragraph 22 is admitted.

23. In regard to Paragraph 23, it is admitted that Kaj made minor revisions to Krish's business plan and shared certain worksheets Kaj had done for a restaurant that he ran (and which ultimately failed). The Defendants do not have sufficient information to enable them to form a belief as the specifics of the e-mail referenced in this Paragraph and therefore deny the same.

24. As previously stated, Kaj e-mailed Krish certain calculations for a restaurant he ran which ultimately failed. The Defendants do not have sufficient information to enable them to form a belief as to the exact date of such e-mails and therefore deny the same.

25. Paragraph 25 is admitted.

26. Paragraph 26 is admitted and it is alleged that the price list e-mailed by Kaj was entirely worthless, was for technology not compatible with Verizon and was of absolutely no use.

27. The ownership of VP Enterprises, Inc. was always 50% Kaj and 50% Vijay.
28. Paragraph 28 is admitted.
29. Paragraph 29 is admitted.
30. Paragraph 30 is denied except that it is admitted that Kaj participated in a couple of meetings and may have reviewed a couple of locations.
31. Paragraph 31 is denied.
32. In regard to Paragraph 32, it is alleged that Verizon notified the parties that their application had been turned down in February 2008. Verizon gave no explanation for its actions. Kaj received the same information as Krish and Vijay. The remaining allegations are denied.
33. Paragraph 33 is denied.
34. Paragraph 34, based upon information and belief, is admitted but also upon information and belief, the "opportunity offered by Sunbelt Business Network" was not a Verizon affiliated business.
35. In regard to Paragraph 35, it is alleged that after Verizon denied the application submitted by VP Enterprises, Inc., Krish decided to pursue his idea on his own. The initial location for P Communications was opened on approximately October 1, 2008. It is further admitted that on October 1, 2008 Kaj became aware that Krish had become involved in the opening of the store; and that Krish had not tried to do any deal with Kaj. The remaining allegations are denied.
36. In regard to Paragraph 36, it is alleged that Kaj asked that the \$5,000 he had put into VP Enterprises be transferred to KVP Investments since VP Enterprises no longer had any further real possibility. The remaining allegations are denied.

37. In regard to Paragraph 37, it is admitted that Kaj, on numerous occasions during the time period alleged, had conversations with Vijay. The remaining allegations are denied and it specifically alleged that no information was kept from Kaj.

38. In regard to Paragraph 38, it is admitted that Kaj did ask Krish if he thought that Columbus-Tryon, North Carolina area was a potential site for a Verizon store. At the time, Krish informed Kaj that he was in the process of buying five stores in the Columbia-Florence area and did not have time to pursue any location in Columbus-Tryon. The remaining allegations are denied.

39. Paragraph 39 is denied.

40. In regard to Paragraph 40, it is admitted that Krish had discussions with Kaj about the possibility of Kaj becoming an employee but not an owner. The remaining allegations are denied.

41. In regard to Paragraph 41, it is possible that Krish told Kaj about Krish buying Corby Phillips out of P Communications, Inc. but the remaining allegations are denied.

42. It is admitted that Krish informed Kaj that he was operating a number of Verizon stores through P Communications, Inc.; that the stores were set up with separate leases with separate LLCs. The Defendants do not have sufficient information to enable them to form a belief as to what Kaj "discovered" or "learned" and therefore deny the remaining allegations.

43. Paragraph 43 is denied.

44. In regard to Paragraph 44, it is admitted that Krish and Kaj met on or about May 25, 2011 at Sabroso restaurant and that Krish discussed with Kaj what he had been doing for the last three years. The remaining allegations are denied.

45. Paragraph 45 is denied.

46. In regard to Paragraph 46, it is alleged the business plan was drafted by Krish not Kaj.

47. Paragraph 47 is denied.

48. So much of Paragraph 48 is admitted as it alleges that P Communications, Inc. has a website but these Defendants do not have sufficient information to enable them to form a belief as to how or when the Plaintiff became aware of said website and therefore denies the same.

49. Paragraph 49 is admitted except that there is no location on Haywood Road and Monroe is in Georgia.

50. Paragraph 50 is admitted except that the business plan was drafted by Krish not Kaj.

51. Paragraph 51 is denied.

52. Paragraph 52 is admitted.

53. Paragraph 53 is admitted.

54. So much of Paragraph 54 is admitted as alleges that VP Enterprises was dissolved. The remaining allegations are denied.

55. The foregoing allegations are realleged and incorporated herein by reference.

56. Paragraph 56 is admitted except that it is denied Plaintiff has plead facts sufficient to constitute a cause of action.

57. Paragraph 57 is denied.

58. Paragraph 58 is denied.

59. The foregoing allegations are realleged and incorporated herein by reference.

60. Paragraph 60 is denied.

61. Paragraph 61 is denied.

62. Paragraph 62 is denied.
63. The foregoing allegations are realleged and incorporated herein by reference.
64. Paragraph 64 is denied.
65. Paragraph 65 is denied.
66. Paragraph 66 is denied.
67. The foregoing allegations are realleged and incorporated herein by reference.
68. Paragraph 68 is denied.
69. Paragraph 69 is denied.
70. Paragraph 70 is denied.
71. The foregoing allegations are realleged and incorporated herein by reference.
72. Paragraph 72 is denied.
73. Paragraph 73 is denied.
74. The foregoing allegations are realleged and incorporated herein by reference.
75. Paragraph 75 is denied.
76. Paragraph 76 is denied.
77. Paragraph 77 is denied.
78. Paragraph 78 is denied.
79. The foregoing allegations are realleged and incorporated herein by reference.
80. Paragraph 80 is denied.
81. Paragraph 81 is denied.
82. Paragraph 82 is denied.
83. Paragraph 83 is denied.
84. Paragraph 84 is denied.

85. Paragraph 85 is denied.
86. Paragraph 86 is denied.
87. Paragraph 88 is denied.
88. The foregoing allegations are realleged and incorporated herein by reference.
89. Paragraph 89 is denied.
90. Paragraph 90 is denied.
91. Paragraph 91 is denied.
92. Paragraph 92 is denied.
93. Paragraph 93 is denied.
94. Paragraph 94 is denied.
95. Paragraph 95 is denied.
96. The foregoing allegations are realleged and incorporated herein by reference.
97. Paragraph 97 is denied.
98. Paragraph 98 is denied.
99. Paragraph 99 is denied.
100. Paragraph 100 is denied.
101. Paragraph 101 is denied.
102. Paragraph 102 is denied.
103. Paragraph 103 is denied.
104. The foregoing allegations are realleged and incorporated herein by reference.
105. Paragraph 105 is denied.
106. Paragraph 106 is denied.
107. The foregoing allegations are realleged and incorporated herein by reference.

- 108. Paragraph 108 is denied.
- 109. The foregoing allegations are realleged and incorporated herein by reference.
- 110. Paragraph 110 is denied.
- 111. Paragraph 111 is denied.
- 112. Paragraph 112 is denied.
- 113. Paragraph 113 is denied.
- 114. Paragraph 114 is denied.
- 115. The foregoing allegations are realleged and incorporated herein by reference.
- 116. Paragraph 116 is denied.
- 117. Defendants deny the allegations in the Paragraph entitled "Wherefore".
- 118. Defendants deny any and all allegations of the Complaint not expressly admitted herein; deny that the Plaintiff is entitled to any form of relief and deny that the Plaintiff is entitled to a trial by jury.

FOR A SECOND DEFENSE

- 119. The Complaint fails to state sufficient facts to constitute a claim or cause of action.

FOR A THIRD DEFENSE

- 120. The Plaintiff's claims are barred in whole or in part by the statute of limitations.

FOR A FOURTH DEFENSE

- 121. The Plaintiff's claims are barred in whole or in part because there is an accord and satisfaction.

FOR A FIFTH DEFENSE

122. The Plaintiff's claims are barred in whole or in part by the doctrines of estoppel, waiver, acquiescence and/or ratification.

FOR A SIXTH DEFENSE

123. Some of Plaintiff's claims are barred because the Plaintiff failed to make a demand on the Board of Directors and failed to meet other procedural and substantive requirements for a derivative action as specified in Rule 23(b)(1) of the South Carolina Rules of Civil Procedure.

FOR A SEVENTH DEFENSE

124. The Plaintiff's claims are barred in whole or in part under the doctrine of laches.

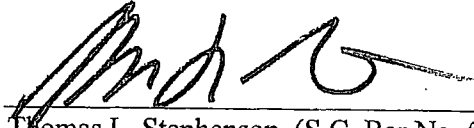
FOR AN EIGHTH DEFENSE

125. Some or all of the Plaintiff's claims are barred by the doctrine of mitigation.

WHEREFORE the Defendants pray as follows:

- (1) That the Plaintiff take nothing by virtue of their Complaint and this action be dismissed in its entirety;
- (2) That the Plaintiff's demand for jury be denied;
- (3) That the Defendants be awarded their costs and attorney's fees incurred; and
- (4) For such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Thomas L. Stephenson (S.C. Bar No. 5332)

William W. Wilkins (S.C. Bar No. 6112)

Andrew A. Mathias (S.C. Bar No. 76220)

NEXSEN PRUET, LLC

55 East Camperdown Way (29601)

Post Office Drawer 10648

Greenville, SC 29603-0648

864.370.2211

Attorneys for Defendant

February 21, 2012

Greenville, South Carolina

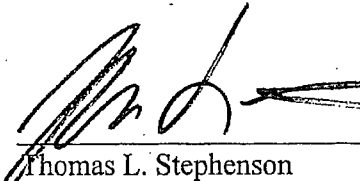
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing ANSWER TO AMENDED COMPLAINT has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 21st day of February, 2012.

James R. Gilreath, Esq.
William M. Hogan, Esq.
The Gilreath Law Firm, P.A.
P.O. Box 2147
Greenville, SC 29602

Monty D. Desai, Esq.
The Carolina Law Group
517 Laurens Road
Greenville, SC 29607

2012 FEB 21 PM 12:22
FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENS



Thomas L. Stephenson
NEXSEN PRUET, LLC
55 East Camperdown Way (29601)
Post Office Drawer 10648
Greenville, South Carolina 29603-0648
Telephone: 864.370.2211

EXHIBIT H

Exhibit H

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively
on behalf of Nominal Defendant, VP
Enterprises, Inc.

Plaintiff,

v.

Krish Patel, Vijay Patel, and
P Communications, Inc.,

Defendants,

And,

VP Enterprises, Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23-7338

**AMENDED
VERIFIED COMPLAINT
(Jury Trial Demanded)**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
CATHY D. WICK-REID

2012 FEB - 7 P 4: 33

The Plaintiff, complaining of the Defendants in this Amended Complaint, would respectfully show to the Court as follows:

GENERAL ALLEGATIONS

1. The Plaintiff, Pankaj Patel ("Kaj"), is a citizen and resident of Greenville County, South Carolina. Kaj brings this action both individually and on behalf of VP Enterprises, Inc., a South Carolina corporation whose principal place of business is in Greenville, South Carolina.

2. The Defendant, Krish Patel ("Krish"), is a citizen and resident of the county of Greenville, state of South Carolina. On information and belief Krish is an officer of VP Enterprises, Inc.

3. The Defendant, Vijay Patel (“Vijay”), is a citizen and resident of the county of Greenville, state of South Carolina. On information and belief, Vijay is an officer, stockholder and director of VP Enterprises, Inc.

4. The Defendant P Communications, Inc. is a South Carolina corporation which was formed on or about April 28, 2008. Its registered agent is Krish Patel and its principal place of business is in Greenville County, South Carolina.

5. This Court has jurisdiction over the parties and the subject matter of this action and venue is properly laid in Greenville County, South Carolina.

6. The Nominal Defendant, VP Enterprises, Inc. (sometimes hereinafter “VP” or “VP Enterprises”) is a South Carolina corporation which was formed on or about January 28, 2008 with a principal place of business in Greenville County, South Carolina. Further details of its formation are outlined below.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

7. This is an action by Plaintiff Kaj Patel, individually and derivatively, on behalf of VP Enterprises, Inc. against certain officers and directors of VP Enterprises, Inc., namely the Defendants, Krish and Vijay for breach of the standards of conduct for directors and officers; for dissolution and/or purchase of the Plaintiff's shares for fraudulent, oppressive, and unfairly prejudicial conduct of the Defendant shareholders, directors and officers; for breach of fiduciary duty for diversion of corporate opportunities and assets; for breach of fiduciary duties as partners and/or joint venturers; for fraud, constructive fraud and negligent misrepresentation and unjust enrichment; for an accounting and disgorgement; for a declaratory judgment regarding the ownership of VP Enterprises Inc. and P Communications Inc.; and for violations of the South Carolina

Unfair Trade Practices Act. VP Enterprises, Inc. is named as a nominal defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

8. Plaintiff, by and through his undersigned attorneys, brings this action upon personal knowledge as to himself and his own acts and upon the investigation conducted by his attorneys. Plaintiff, as of February 7, 2012, is out of the country and will file the original sworn verification to this Amended Complaint upon return.

9. At all times relevant hereto Plaintiff Kaj Patel was a shareholder of VP Enterprises, and he will fairly and adequately represent the interests of VP Enterprises relevant to the Defendants' wrongful course of conduct alleged herein.

10. VP Enterprises, Inc. was formed with the assistance of Greenville attorney Allan Hill who also served as the certifying attorney on the Articles of Incorporation. The formation documents were drafted pursuant to the instructions of one or more of the individual parties who contacted Allan Hill on behalf of the corporation and the individual parties.

11. According to records recently obtained from the file of Attorney Allan Hill, the stockholders of VP Enterprises were Kaj and Vijay, each of whom was to be issued 50 shares of stock. The file of attorney Hill contains two unsigned stock certificates dated January 24, 2008, with Certificate #1 being for 50 shares to Vijay and certificate #2 being to Kaj for 50 shares with the understanding among all three individuals that Vijay would own 25 shares and Krish would also own 25 shares.

12. The Corporate Data sheet from attorney Hill's files, dated as of February 14, 2008, shows Kaj and Vijay as directors, Kaj as the President, Vijay as the Vice President, and Krish as the Secretary and Treasurer.

13. Pursuant to Rule 23(b)(1) SCRCPP, no demand was made on VP Enterprises, Inc. and the Defendants, Krish and Vijay, since such a demand would have been futile as further outlined below.

14. The director defendant of VP Enterprises, Inc., namely Vijay, and the Secretary/Treasurer, namely Krish, as more fully detailed herein, participated in, approved and/or permitted the wrongs alleged herein to have occurred, participated in efforts to conceal or disguise those wrongs from Kaj Patel as a stockholder and director of VP Enterprises, Inc., and/or negligently disregarded the wrongs complained of herein, and are not disinterested parties.

15. Because there are at most only three directors of VP and because there is no majority of independent directors capable of making a decision on the question of whether to bring this action, any demand on the inside directors who undertook the actions complained of would have been futile. Moreover, any demand would have requested that Vijay and Krish sue themselves which they will not do, thereby effectively making any demand futile.

FACTUAL ALLEGATIONS

16. In early to mid-2007, the Defendant Krish Patel had terminated his employment with Verizon Communications and joined into business with his father Vijay Patel in the hotel and real estate business. At or about this time, while discussing various real estate ventures with Krish and his father, Vijay, Kaj Patel asked Krish Patel about the

possibility of establishing some type of business venture which would operate independent wireless communications stores under a license agreement with Verizon Wireless Communications. Krish informed Kaj that the Verizon idea was a very good business opportunity and he would like to have his own Verizon store(s), but Verizon would probably never allow that since he was a former Verizon employee.

17. Kaj Patel then suggested that Krish give him some further details and later, in about November 2007, Krish shared various information with Kaj who began work on a proposed business plan for Verizon independent stores which would be operated between Kaj and Krish's father, Vijay, since Verizon presumably would not allow Krish to become an owner.

18. Kaj Patel along with Krish researched the upstate South Carolina area for potential store locations. Kaj and Krish rode together to examine various locations between December 2007 and May 2008. On one occasion an employee of Verizon named "Andre" rode with Kaj and Krish to inspect some of the locations they were considering for VP Enterprises. The parties were also considering hiring Andre as an employee of VP Enterprises.

19. Before Krish and Kaj visited potential store locations together, Krish would e-mail the addresses of potential locations to Kelly McPherson of Verizon. She would pre-approve the various locations submitted to her to let Kaj and Krish know that the proposed locations were not in a restricted area.

20. In December of 2007 Kaj and Krish met, over a four day period, at Kaj's home to discuss various cash flow scenarios using spreadsheets Kaj had developed for the business. Kaj and Krish also drafted a business plan for VP Enterprises on Krish's

computer for him to submit to Verizon. The business plan also included the potential store locations researched by Kaj Patel together with Krish Patel.

21. Under the proposed business plan, Vijay was to be the CEO and President, Kaj was to be Vice President, and Krish was to be the general manager. Kaj, Vijay and Krish all planned to be the co-owners of VP Enterprises and to share the profits therefrom. The object of the venture was stated in the business plan as follows:

To build the flagship agent store of Verizon Wireless in the district. Not only through sales and revenues but customer experience as well. To provide training and support for store personal [sic], maintaining excellent moral [sic] of all store employees. To create the best possible customer experience resulting not only in customer loyalty and increasing sales for the store, but also for Verizon Wireless. To hold store meetings that will result in the continued commitment of building one team, who, by working together will make this flagship agent store of the district.

22. The final business plan, which is dated December 6, 2007, was emailed to Kaj on or about December 4, 2007, and Krish received a marked up version from Kaj shortly thereafter. A copy of the version showing Kaj's revisions is attached to this complaint as Exhibit 1.

23. On or about December 19, 2007 Kaj sent an additional calculation worksheet to Krish for the new business plan and told Krish "I have not received your email regarding loan yet."

24. On January 6, 2008 Kaj emailed Krish and forwarded to him additional financial calculations in a worksheet form.

25. On information and belief this business plan was sent to Verizon, and on December 20, 2007, Kaj emailed Krish and requested that Krish send him the final version of the business plan that was sent to Verizon.

26. On February 8, 2008 Kaj emailed Krish a cell phone price list from a supplier in Hong Kong and asked "Will that work with Verizon?"

27. It was agreed that the ownership for the new venture, named VP Enterprises, Inc., would be 50% to Kaj, 25% to Krish, and 25% to Vijay. The members of the initial board of directors for VP Enterprises, Inc. were to be Vijay and Kaj.

28. Greenville attorney, Allan Hill represented Kaj, Vijay and Krish in the incorporation of VP Enterprises, Inc. and was responsible for drafting all of the initial corporate documents, the charter, stock certificates and initial minutes. The "VP" stood for Vijay and Pankaj. The corporate charter was filed with the South Carolina Secretary of State on January 28, 2008.

29. On or about January 29, 2008, Kaj gave his check number 1015 in the amount of \$5,000 payable to VP Enterprises, Inc. to Krish to be deposited in the new business account for VP Enterprises, Inc.

30. Kaj, Krish and Vijay spent the next few months in discussions with Verizon Wireless while Kaj, Vijay and Krish reviewed locations throughout the Greenville, Easley, and Clemson, South Carolina areas for proposed new Verizon free-standing stores.

31. In the March-April 2008 time frame, the parties had at least three meetings with various Verizon personnel regarding a possible license operation with Verizon.

32. Shortly after the March-April meetings, Kaj was informed by Krish and Vijay that Verizon was denying any type of license operation with the new proposed venture; however, they gave Kaj no explanation or details for Verizon's unexpected actions.

33. Following what Kaj thought was a denial of any possible business operation with Verizon, the parties then looked at existing Verizon stores that might be on sale and continued to do so up until July of 2008.

34. On July 24, 2008, Kaj emailed Krish regarding a wireless business opportunity offered by the Sunbelt Business Network and wrote "check this link out for wireless business for sale" Krish replied the next day and said "when I clicked on the link it came up unavailable?"

35. Shortly thereafter, in the August to September 2008 time frame, Kaj, while visiting Vijay at his home, discovered that Krish had just attended the grand opening of a Verizon store on Pelham Road at a specific location the three parties, namely Kaj, Vijay, and Krish, had previously reviewed and discussed as a possible store location. Kaj immediately inquired of Krish as to what was going on as this should have been in the VP Enterprises, Inc. name that Kaj, Vijay and Krish were in the process of forming and organizing. Vijay and Krish told Kaj that since Verizon would not approve a license with their proposed entity, VP Enterprises, Inc., Krish had purchased an interest in an existing corporation which had a license for a Verizon store. Kaj was not at this time told the name of this corporation. However he was told this corporation had been formed by Corby Phillips and that Krish had purchased an interest in Mr. Phillips' corporation in order "to get his foot in the door" with Verizon. Krish and Vijay then assured Kaj that the three of them (Kaj, Krish and Vijay) would continue to pursue their original plans through VP Enterprises as contemplated in the business plan (outlined in Paragraphs 20-27 above) as soon as they could figure a way to "kick" Corby Phillips out of P Communications. Upon learning this information, Kaj inquired of Vijay as to

whether Vijay was involved in the Pelham Road store with Corby Phillips, and Vijay informed Kaj that he (Vijay) had no involvement.

36. Following this development, Kaj was told by Vijay that it appeared the \$5,000 he had put in VP Enterprises was not going anywhere and suggested that the \$5,000 be moved to another venture they owned named KVP Investments which was in the real estate business.

37. Following these developments Kaj, during the period between August of 2008 and May of 2010 (except during January-May of 2010 when he was out of the country), would, at least twice a week, meet with Vijay, on various matters. During the course of these numerous meetings, he was never told any more about the status of Krish and the new Verizon store venture with Corby Phillips.

38. In the spring of 2010, Kaj became aware of what he thought would be an excellent opportunity for a Verizon store in the Columbus-Tryon, North Carolina area. He immediately inquired of Krish to see if this would be something the three of them could pursue. While they were pursuing the potential Columbus-Tryon store operation, Krish came back to Kaj with an opportunity to buy seven Verizon stores in the Columbia-Florence, South Carolina area. Kaj informed him that he was only interested in a 50-50 equity partnership with Kaj managing those stores as outlined in the original VP Enterprises business plan.

39. Krish assured Kaj that he was agreeable to that proposition and informed him they should shortly be able to get back on track with their original VP Enterprises business plan. At this meeting they shook hands and further confirmed what Kaj had always thought was a 50-50 ownership in any Verizon business deal. At this point Krish

said he would meet with attorney Allan Hill and have him draw up the appropriate legal paperwork.

40. However, after a few more weeks of discussions on this proposal between Kaj and Krish, which sometimes included Krish's "CFO" named Bruce, Kaj was informed that Krish only wanted Kaj to be an employee, not an owner. Krish tried to convince Kaj that he would be getting the same benefit as a 50% owner without having to invest any money.

41. It was at or about this time, namely the spring of 2010, that Krish informed Kaj that he had "kicked" Mr. Corby Phillips out of the corporation he and Mr. Phillips had started in August of 2008. It was at this time in 2010 when Kaj first was told the name of the Corby Phillips related corporation, which was P Communications, Inc. It was at this same time, namely the spring of 2010, that Krish told Kaj there was a lot of pain and anguish in getting Mr. Phillips out of P Communications, Inc. and that it had cost him in excess of \$30,000. As described in paragraph 47 below, upon information and belief, Krish actually only paid Corby Phillips \$14,000.

42. It was at this same time that Krish informed Kaj that he was operating eight or nine Verizon stores under P Communications, Inc. He also told him he was operating all of his Verizon stores as separate limited liability companies which were owned/controlled by P Communications, Inc. Following this revelation, Kaj discovered, for the first time, from a review of records in the South Carolina Secretary of State's file, that P Communications had been formed on April 28, 2008 by Kaj's attorney, Allan Hill. At this time Kaj also discovered that Corby Phillips was removed as the registered agent on December 4, 2008 and Krish was named as the new registered agent on that same

date. He has since learned that Corby Phillips is or was the owner of a restaurant known as "ROLY POLY SANDWICHES" which is located at 1616 Woodruff Road, Greenville, South Carolina and is either next door or very near to the Verizon Store where Krish worked when he was employed with Verizon.

43. Upon becoming aware of all these facts, Kaj immediately confronted Krish and told him that he and Vijay had wrongfully concealed their extensive involvement with Verizon and P Communications from him. At this time he asked Krish what Vijay's involvement was and Krish informed him that Vijay, contrary to what Vijay told Kaj in August of 2008, had always been involved in the Verizon venture and was involved in all the Verizon stores that Krish was involved in.

44. During this meeting Kaj laid out the time line of his involvement with Krish and Vijay, as outlined above in this complaint. In subsequent meetings Kaj held separately with Krish and Vijay, Kaj forthrightly told each of them that they had "backstabbed" him. At the request of Krish, Kaj met with Krish on May 25, 2011 at Sabroso restaurant on Woodruff Road. After reviewing documents on his laptop computer, Krish confirmed that Kaj's timeline of events related to VP Enterprises and the Verizon Wireless business was basically correct. Kaj asked Krish "do you not see anything wrong with your conduct?" Krish replied "I was keeping my options open."

45. Throughout this time, Krish and Vijay Patel hid from Kaj their ownership and involvement in, and the existence of, P Communications in order to capture the Verizon Wireless business for themselves. Similarly, Krish and Vijay Patel hid from Corby Phillips the existence and involvement of Kaj Patel in VP Enterprises in order to appropriate its business for himself.

46. During the start-up phase of P Communications, Krish Patel used the business plan originally drafted by Kaj Patel as the business plan for his Verizon Wireless venture with Corby Phillips with only minor insignificant changes.

47. To avoid properly sharing the profits of the Verizon Wireless business with his co-owner, Krish Patel concealed from Kaj the true operations of Krish and Vijay with Verizon Wireless. Likewise, Krish and Vijay Patel hid from Corby Phillips the extent of the real operations of P Communications with Verizon. Kaj is informed and believes that Krish Patel bought out the ownership interest of Corby Phillips in P Communications by offering to buy Phillips' shares for \$7,000 per store. Krish Patel represented to Phillips that as of December 15, 2008, he had opened only two Verizon stores, thus convincing Phillips to sell his stock in P Communications to Krish for only \$14,000. At the closing for the stock transfer, attorney asked Krish how the third store was doing, thus inadvertently revealing the existence of a third store. Plaintiff is informed and believes Krish failed to disclose the contracts and/or applications already in existence at that time for additional Verizon franchises.

48. In October of 2011 Plaintiff, for the first time became aware of the website of a company known as Wireless Communications. Its web address is: www.wirelesscommunicationsc.com. Plaintiff is informed and believes that this company is owned and/or controlled by P Communications, Inc. and/or Vijay and Krish.

49. According to the website of Wireless Communications, it owns and/or operates twenty-three (23) Verizon Wireless stores in Georgia and North and South Carolina in the following locations: Augusta Road, Pelham Road, Main Street and Haywood Road, all of which are in Greenville, South Carolina; Simpsonville/Five Forks

on Woodruff Road in Greenville County; Anderson, Central, Chapin, Duncan, Hwy 153 in Powdersville, Irmo/Ballentine, Laurens, Lexington, Manning, Marion and Newberry, all in South Carolina; Southport, Conyers, Lawrenceville, Duluth and Winder, all in Georgia; and Monroe, North Carolina.

50. The original business plan originally drafted by Kaj and revised by both Kaj and Krish envisioned ten Verizon stores, with locations on Woodruff Road, Pelham Road, Augusta Road and Haywood Road, in Greenville, Butler Road in Mauldin, Blackstock Road in Spartanburg, Highway 9 in Spartanburg, Highway 123 in Easley and stores in Anderson and Gaffney, South Carolina.

51. Thus, it appears that Krish has now established Verizon stores at all ten locations envisioned in the original business plan drafted by Kaj, with the exception of Gaffney. These stores and the others since developed by the Defendants are in the exact line of business for which VP Enterprises was formed. VP Enterprises had an actual and expectant interest in developing these opportunities and had the financial ability to undertake the development of these Verizon stores.

52. The Wireless Communications website, referenced above, under the heading "Leadership Team" lists Krish Patel as President and Vijay Patel as Vice President.

53. According to a recent article in the Greenville business magazine, *Town*, entitled "Hot Wire", Krish, at the end of 2009, had opened five Verizon stores which had reached \$3.3 million in sales. At the time this article was published, which Plaintiff believes was on or about September 30, 2011, Krish reportedly had 23 stores with plans

to reach 30 stores by the end of 2011 and 50 by the end of 2012. According to this article the Defendant Vijay Patel is a vice president of Krish's wireless Verizon store business.

54. On June 22, 2011 the South Carolina Secretary of State filed a Certificate of Administrative Dissolution of VP Enterprises for failing to pay taxes and/or failing to deliver its annual report to the Department of Revenue. Defendant Vijay Patel was the registered agent to whom the Secretary of State on information and belief mailed the pre-dissolution sixty-day statutory notice of filing deficiencies at his home address listed on file with the Secretary of State's office. Neither Vijay Patel nor his son Krish Patel informed Kaj Patel of the pre-dissolution sixty-day statutory notice or the subsequent administrative dissolution. Plaintiff Kaj Patel is informed and believes Vijay and Krish Patel knew of the corporate filing deficiencies of VP Enterprises and the administrative dissolution, yet failed as officers and director to properly carry out the required administrative filings for the benefit of VP Enterprises and its other stockholder Kaj Patel.

FOR A FIRST CAUSE OF ACTION

(Dissolution and/or Buyout of Shares of VP Enterprises under §33-14-300 *et. seq.*)

55. All allegations stated above are realleged as if fully repeated herein.

56. This cause of action arises pursuant to §§ 33-14-300 and -310 of the South Carolina Business Corporation Act.

57. Because of the actions and events outlined above, the economic purpose of VP Enterprises has been unreasonably frustrated as it is not reasonably possible for the parties to continue owning the corporation together. The actions of Vijay Patel and Krish Patel relating to the business of VP Enterprises have made it impracticable to carry on business with said Defendants. Further, Defendants Vijay Patel and Krish Patel, as the

shareholders in control of VP Enterprises, have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the Plaintiff and VP Enterprises.

58. The Plaintiff is a 50% owner in VP Enterprises, Inc. with Defendants Vijay Patel and Krish Patel owning the other half. The actions of Vijay Patel and Krish Patel as outlined above have severely damaged the Plaintiff's reasonable expectations to be realized from his interest in VP Enterprises, Inc. Vijay Patel and Krish Patel have acted in a manner unfairly prejudicial and oppressive to the Plaintiff within the meaning of South Carolina Code § 33-14-300. The Plaintiff is therefore entitled to have VP Enterprises, Inc. dissolved, or as an alternative to dissolution to be paid the fair value of his undiluted stock interest in VP Enterprises, Inc. pursuant to S.C. Code § 33-14-310.

FOR A SECOND CAUSE OF ACTION
(Violation of Standards of Conduct for Directors under § 33-8-300 against Vijay Patel)

59. All allegations stated above are realleged as if fully repeated herein.

60. Defendant Vijay Patel as a director of VP Enterprises has failed to discharge his duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interests of the corporation and its other shareholder Kaj Patel. Specifically, Vijay Patel diverted a corporate opportunity of VP Enterprises to develop, open, and operate Verizon Wireless stores under the name of VP Enterprises and instead usurped such opportunity for P Communications. Said Defendant negligently and intentionally failed to perform his duties as director in that he permitted property, property rights, and contractual rights of VP Enterprises to be diverted to Defendant P

Communications for the personal benefit of Vijay Patel and his son Krish Patel and for the benefit of P Communications, all to the detriment of VP Enterprises and Plaintiff Kaj Patel.

61. While Defendant Vijay Patel served as a director of VP Enterprises, he negligently, carelessly and intentionally failed to perform his duties as director so that assets of VP Enterprises were mismanaged, wasted and diverted to Defendant P Communications through his failure to develop the business opportunities associated with the Verizon Wireless franchises. He also failed to oversee critical administrative duties of which he had notice, such as the failure to pay necessary taxes and/or file annual report(s), and to correct such deficiencies when notified. Plaintiff Kaj Patel has thereby suffered great loss, and the value of said Plaintiff's stock and dividends have suffered great loss thereby damaging the Plaintiff as a shareholder.

62. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P Communications and assets of Vijay Patel, for disgorgement of Defendant Vijay Patel's ill-gotten gains and other equitable relief.

**FOR A THIRD CAUSE OF ACTION
(Violation of Standards of Conduct for Officers under § 33-8-420 against Vijay Patel
and Krish Patel)**

63. All allegations stated above are realleged as if fully repeated herein.

64. Defendants Vijay Patel and Krish Patel, as officers of VP Enterprises, have failed to discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner they reasonably believe to be in the best interests of the corporation and its other

shareholder Kaj Patel. Specifically, Vijay Patel and Krish Patel diverted a corporate opportunity of VP Enterprises to develop, open, and operate Verizon Wireless stores under the name of VP Enterprises and instead usurped such opportunity for P Communications. Said Defendants negligently and intentionally failed to perform their duties as officers in that they permitted property, property rights, and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal benefit of Vijay Patel and Krish Patel and for the benefit of P Communications, all to the detriment of VP Enterprises and Plaintiff Kaj Patel.

65. While Defendants Vijay Patel and Krish Patel served as officers of VP Enterprises, they negligently, carelessly and intentionally failed to perform their duties as officers so that assets of VP Enterprises were mismanaged, wasted and diverted to Defendant P Communications through their failure to develop the business opportunities associated with the Verizon Wireless franchises. They also failed to oversee critical administrative duties of which they had notice, such as the failure to pay necessary taxes and/or file annual report(s), and to correct such deficiencies when notified. Plaintiff Kaj Patel has thereby suffered great loss, and the value of said Plaintiff's stock and dividends have suffered great loss thereby damaging the Plaintiff as a shareholder.

66. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P communications and assets of Vijay Patel and Krish Patel, for disgorgement of Defendants Vijay Patel's and Krish Patel's ill-gotten gains and other equitable relief.

**FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duties against All Defendants)**

67. All allegations stated above are realleged as if fully repeated herein.

68. While individual Defendant Vijay Patel was a director and individual Defendants Vijay Patel and Krish Patel were officers of VP Enterprises, they negligently, carelessly and intentionally failed to perform the duties of director and officers so that assets and corporate opportunities of VP Enterprises were mismanaged, wasted, diverted and siphoned off to Defendant P. Communications. VP Enterprises thereby suffered great loss, and the value of the stock of the Plaintiff was greatly reduced. Plaintiff Kaj Patel and VP Enterprises lost large gains from the wasting of VP Enterprises' business opportunities by the diversion of the Verizon Wireless business to P Communications.

69. Defendants Vijay Patel and Krish Patel permitted property, property rights, business methods and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal advantage of Defendants Vijay Patel and Krish Patel.

70. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P Communications and assets of Vijay and Krish Patel, for disgorgement of Defendants Vijay Patel's and Krish Patel's ill-gotten gains and other equitable relief.

**FOR A FIFTH CAUSE OF ACTION
(Accounting from All Defendants)**

71. All allegations stated above are realleged as if fully repeated herein.

72. To the extent Defendants Vijay Patel and Krish Patel were not functioning as officers and/or directors of the corporate enterprise VP Enterprises, said Defendants were acting as partners and/or joint venturers with the Plaintiff Kaj Patel in developing a business organization for the operation of Verizon stores.

73. Defendants Vijay Patel and Krish Patel were the signatories to the bank account of VP Enterprises and controlled the financial records of VP Enterprises. They also have controlled all the accounting and financial records of P Communications to the complete exclusion of Plaintiff Kaj Patel. The Plaintiff is entitled to an accounting of both VP Enterprises, whether functioning as a partnership and/or joint venture or as a corporation, and P Communications from all the Defendants for all activities related to VP Enterprises and the gains diverted from VP Enterprises to P Communications.

**FOR A SIXTH CAUSE OF ACTION
(Breach of Fiduciary Duty for Partnership Liability)**

74. All allegations stated above are realleged as if fully repeated herein.

75. To the extent Defendants Vijay Patel and Krish Patel were not functioning as officers and/or directors of the corporate enterprise VP Enterprises, said Defendants were acting as partners and/or joint venturers with the Plaintiff Kaj Patel in developing a business organization for the operation of Verizon stores.

76. As partners and/or joint venturers with Plaintiff Kaj Patel, Defendants Vijay Patel and Krish Patel owed their partner a fiduciary duty. Instead, said Defendants carelessly and intentionally failed to perform their duties as partners and joint venturers so that assets and corporate opportunities of VP Enterprises were mismanaged, wasted, diverted and siphoned off to Defendant P Communications. The partnership interest of Kaj Patel in VP Enterprises thereby suffered great loss, the value of the partnership interest of the Plaintiff was greatly reduced, and Plaintiff Kaj Patel and VP Enterprises lost large gains from the wasting of VP Enterprises' business opportunities by the diversion of the Verizon Wireless business to P Communications.

77. Defendants Vijay Patel and Krish Patel permitted property, property rights, business methods and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal advantage of Defendants Vijay Patel and Krish Patel to the detriment of Plaintiff Kaj Patel and VP Enterprises.

78. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P. communications and assets of Vijay Patel, for disgorgement of Defendants Vijay Patel's and Krish Patel's ill-gotten gains and other equitable relief.

**FOR A SEVENTH CAUSE OF ACTION
(Fraud as To Defendants Vijay Patel and Krish Patel)**

79. All allegations stated above are realleged as if fully repeated herein.

80. Defendants Vijay Patel and Krish Patel made representations to Plaintiff Kaj Patel that they would be developing a business with said Plaintiff for owning and operating multiple Verizon stores as more fully stated above.

81. Said representations were false and were also material to the Plaintiff in that the representations induced him to invest money in VP Enterprises and induced him to rely on the information provided to him by the Defendants Vijay Patel and Krish Patel concerning management decisions and the progress of store development opportunities for VP Enterprises.

82. Defendants Vijay Patel and Krish Patel knew their representations were false or had a reckless disregard for the truth of such representations.

83. Said Defendants intended that Plaintiff Kaj Patel act upon their representations about the development of the Verizon Wireless business through VP Enterprises.

84. Plaintiff Kaj Patel was ignorant of the falsity of the representations of Defendants Krish Patel and Vijay Patel. Said Plaintiff therefore relied on the representations of Defendants Vijay Patel and Krish Patel.

85. Plaintiff Kaj Patel had a right to rely on the representations of Defendants Vijay Patel and Krish Patel since the representations were pertaining to matters peculiarly within their knowledge.

86. Plaintiff Kaj Patel was consequently and proximately injured by his reliance on said Defendants' false representations.

87. Plaintiff Kaj Patel is therefore entitled to actual and punitive damages and for the imposition of a constructive trust on the Defendants Vijay Patel's and Krish Patel's ill-gotten gains.

**FOR AN EIGHTH CAUSE OF ACTION
(Constructive Fraud)**

88. All allegations stated above are realleged as if fully repeated herein.

89. Defendants Vijay Patel and Krish Patel made representations to Plaintiff Kaj Patel that they would be developing a business with said Plaintiff for owning and operating multiple Verizon stores as more fully stated above.

90. Said representations were false and were also material to the Plaintiff in that the representations induced him to invest money in VP Enterprises and induced him to rely on the information provided to him by the Defendants concerning management decisions and progress of store development opportunities for VP Enterprises.

91. Said Defendants intended that Plaintiff Kaj Patel act upon their representations about the development of the Verizon Wireless business through VP Enterprises.

92. Plaintiff Kaj Patel was ignorant of the falsity of said Defendants' representations. Said Plaintiff therefore relied on the representations of Defendants Vijay Patel and Krish Patel.

93. Plaintiff Kaj Patel had a right to rely on the representations of Defendants Vijay Patel and Krish Patel since the representations pertained to matters peculiarly within their knowledge.

94. The Plaintiff Kaj Patel was consequently and proximately injured by his reliance on said Defendants false representations.

95. Plaintiff Kaj Patel is therefore entitled to actual and punitive damages and for the imposition of a constructive trust on the Defendants Vijay Patel's and Krish Patel's ill-gotten gains.

**FOR A NINTH CAUSE OF ACTION
(Negligent Misrepresentation against Defendants Vijay Patel and Krish Patel)**

96. All allegations stated above are realleged as if fully repeated herein.

97. As stated above, Defendants Vijay Patel and Krish Patel made false representations to Plaintiff Kaj Patel that they would be developing a business with said Plaintiff for owning and operating multiple Verizon stores.

98. Said Defendants had a pecuniary interest in making the representations.

99. Defendants Vijay Patel and Krish Patel owed a duty of care to Plaintiff Kaj Patel to see that they communicated truthful information to him.

100. Said Defendants breached that duty by failing to exercise due care in their representations.

101. Plaintiff Kaj Patel justifiably relied on the representations of Vijay Patel and Krish Patel.

102. Plaintiff Kaj Patel suffered a pecuniary loss as the proximate result of his reliance upon said Defendants' misrepresentations.

103. Plaintiff Kaj Patel is therefore entitled to actual and punitive damages and for the imposition of a constructive trust on the Defendants Vijay Patel's and Krish Patel's ill-gotten gains.

**FOR A TENTH CAUSE OF ACTION
(Equitable Disgorgement against All Defendants)**

104. All allegations stated above are realleged as if fully repeated herein.

105. By taking control of all the assets, contract negotiations, and finances of VP Enterprises, the Defendants have been able to misappropriate all business opportunities and assets to themselves. The misappropriation of the business of VP Enterprises has enabled Defendants Vijay Patel, Krish Patel and P Communications to take over the profits and future growth of VP Enterprises.

106. The misappropriation of the business opportunities of VP Enterprises by the Defendants was done by fraudulent, illegal and inequitable means. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are entitled to an order of this court requiring said Defendants to disgorge the profits and revenues received by said Defendants from their business operations related to the Verizon stores.

**FOR AN ELEVENTH CAUSE OF ACTION
(Constructive Trust against All Defendants)**

107. All allegations stated above are realleged as if fully repeated herein.

108. Because of the diversion of valuable corporate opportunities away from VP Enterprises and Plaintiff Kaj Patel, said Plaintiff and VP Enterprises are entitled to

have a constructive trust placed on the assets and stock of P Communications for the benefit of Plaintiff Kaj Patel and VP Enterprises.

**FOR A TWELFTH CAUSE OF ACTION
(Violation of South Carolina Unfair Trade Practices Act)**

109. All allegations stated above are realleged as if fully repeated herein.

110. The actions of the Defendants constituted a trade within the meaning of S.C. Code Ann. § 39-5-20(a).

111. The repeated actions of Defendants Vijay Patel, Krish Patel and P Communications in repeatedly opening new Verizon stores, without the knowledge of Plaintiff Kaj Patel or the involvement of VP Enterprises, through misrepresentations and fraudulent concealment as outlined above were unfair and deceptive acts and willful violations of the S.C. Unfair Trade Practices Act, § 39-5-20, *et seq.*, S.C. Code Ann. (1976).

112. The acts of Defendants Vijay Patel, Krish Patel and P Communications impacted upon the public interest of the people of the state of South Carolina and were committed repetitiously against the Plaintiff.

113. The Plaintiff is informed and believes that the Defendants have employed similar acts of illegal, oppressive, fraudulent, or unfairly prejudicial conduct against other individual shareholders in other comparable companies including, but not limited to, Corby Phillips and shareholders/partners in their closely-held hotel companies.

114. As a result of the unfair and deceptive trade practices committed, the Plaintiff has suffered losses for which willful violations the Plaintiff is entitled to treble actual damages and an award of reasonable attorney fees and costs.

**FOR A THIRTEENTH CAUSE OF ACTION
(Declaratory Judgment)**

115. All allegations stated above are realleged as if fully repeated herein.

116. The Plaintiff seeks a declaratory judgment pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10 through -140 determining that the assets of P Communications and/or the stock therein belong to VP Enterprises and that the Plaintiff is entitled to a 50% interest in P Communications.

WHEREFORE, the Plaintiff, individually, and on behalf of VP Enterprises, Inc., prays:

A. For judgment against the Defendants in favor of VP Enterprises Inc. for actual and punitive damages due to the breaches of fiduciary duty by Defendants Vijay Patel and Krish Patel, due to the breach of the standards of conduct for directors and officers, due to the fraud, constructive fraud, and negligent misrepresentation of the Defendants;

B. Alternatively, for judgment against the Defendants in favor of Kaj Patel for 50% of the damages to VP Enterprises, Inc. due to the breaches of fiduciary duty by Defendants Vijay Patel and Krish Patel, due to the breach of the standards of conduct for directors and officers, due to the fraud, constructive fraud, and negligent misrepresentation of the Defendants along with punitive damages thereon;

C. For an accounting, constructive trust, disgorgement and such other equitable relief as the Court deems just and proper;

D. For actual and treble damages, costs and attorney fees for violation of the South Carolina Unfair Trade Practices Act;

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

THE GILREATH LAW FIRM, P.A.

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ATTORNEYS FOR PLAINTIFFS

Dated: February 7, 2012
Greenville, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively
on behalf of Nominal Defendant, VP
Enterprises, Inc.,

Plaintiff,

v.

Krish Patel, Vijay Patel, and
P Communications, Inc.,

Defendants,

and

VP Enterprises, Inc.,

Nominal Defendant.

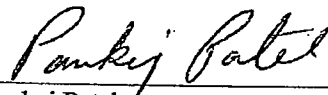
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23-7338

**VERIFICATION OF
AMENDED COMPLAINT**

The undersigned, Pankaj Patel, hereby verifies that he has read the allegations of the foregoing Amended Complaint against the Defendants and, based upon his own personal knowledge, such allegations are true and correct to the best of his knowledge, and, as to any allegations based upon information and belief, he believes them to be true and correct to the best of his good faith belief.

Further affiant sayeth not this 7 day of February 2012.



Pankaj Patel

Verizon Wireless Agent Business Plan



Company Description

This company is formed by a group of local entrepreneurs. This South Carolina based company will operate Verizon Wireless agent location(s). Location(s) will be exclusive retail location(s) to purchase Verizon Wireless service and equipment.

Objectives:

To build the flagship agent store of Verizon Wireless in the district. Through sales, revenues and customer experience,

To provide training and support for store personal, maintaining excellent moral of all store employees.

To create the best possible customer experience resulting not only in customer loyalty and increasing sales for the store, but also for Verizon Wireless.

To hold regular staff meetings that will result in the continued commitment of building one team, which, by working together will make our stores flagship agent stores of the district.

Development & Status

The company has not been incorporated and licenced yet. Upon meeting with Verizon Wireless approval committee, Incorporation and licensing will be persued immediately. The founders are Vijay Patel and Pankaj. Vijay will be the CEO & President. The agent location will be operated and managed by the company. Pankaj Patel will be the Vice President. Startup capital will be provided by Vijay and Pankaj Patel. Additional capital requirements of up to \$250,000.00 can be available. Bank of America and BB&T have established relationships with our principles.

A few locations sites were found in September 2007.

One definite location which is available for business is:

1618 Woodruff Road Greenville, SC 29607,

Earle Furman, NAI has already been contacted to confirm availability.

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Comment: Krish, you may want to include a paragraph of your experience and accomplishments as verizon employee. I don't think that you being a previous employee would disqualify us. Call and check with them anonymously.

9 Additional locations have been preliminary outlined to be located as follows;

Pelham Road , Greenville, SC
Augusta Road , Greenville, SC
Haywood Road , Greenville, SC
Butler Road , Mauldin , SC
Blackstock Road, Spartanburg, SC
SC Highway 9 , Spartanburg, SC
SC Highway 123, Easley, SC
Anderson, SC
Gaffney, SC

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Earle Furman, NAI (Broker in charge, Principal) has worked projects with our group previously. His firm will keep us up to date on availability of key retail locations for future expansions.

Expansion Time Line

Immediate Actions

After the business meets its projections within 3-6 months, we will start expanding locations starting with highest traffic count and market research. Our goal is to have all ten locations operating in the Upstate of South Carolina as fast as possible.

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Short Term

We would like to expand north and south of I - 85. Our stretch goal would entail expanding vastly in the Carolina and Tennessee regions.

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Long Term

Our long term goal would be to expand along the east coast of the United States and to be recognized as agent leaders of Verizon Wireless.

Industry Analysis

The wireless industry is very competitive and demanding. Verizon Wireless is a recognized market

leader in this industry, mainly competing with GSM leader AT&T Mobility. Verizon Wireless has over 63.7 million customers and over 38 billion dollars in revenue. With Greenville's rank "highest cell phone per capita users" a few years ago, we believe there still is a high demand for wireless services. By offering the premium network Verizon Wireless and a strategically planned

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business team, both companies will benefit and succeed.

The wireless industry has evolved from trunk phones to the ability to download your favorite song over the air, right off your handset device. There are over 162 million subscribers to the wireless industry and over \$118 billion in investments.

There's much more that is offered in today's wireless products. Verizon Wireless offers America's most reliable network with the industry fastest mobile broadband network. This is one of the few reasons why Verizon Wireless dominates the Carolinas/Tennessee market. With Carolina/Tennessee region being one of the most productive and revenue generating regions in the company, our company knows we can contribute to that success.

Products & Related Services

Our locations will have full intent to offer the complete line of products and wireless solutions provided by Verizon Wireless. By using a strategic inventory process control, we will be able to provide all different types of products to our consumers.

Service

A team of professional, motivated, positive and knowledgeable staff will be available for our customers.

Every customer will get the perfect customer experience from our sales team. All employees will go through extensive training when hired. The sales team will be intergraded with the communities' business events. All representatives will be trained on out bound and cold calling. Employees will be trained on how to generate small business leads as well as how to establish and create them. Employee will be trained on personal selling skills, customer first and probing models. Mystery shops will be conducted in order to evaluate and promote better performances. Employees will be trained on CDMA technology as well as evdo. As technology changes or improves all employees will be kept up to date.

Verizon Wireless VS. Competitors – AT&T, T-Mobile, Sprint, Alltel,

The competitive advantage will be taught to be sure our employees providing consumers with accurate information.

The Target Market

The market for the Verizon Wireless products is anyone age 6 and up. The Upstate, SC market is densely populated and increases to grow. With iCAR research center and south financial bank coming into Greenville, it will increase the demand for cellular users.

Market Location & Customers

Our first location will be placed on Woodruff Road, the highest traffic count and real estate value in the Upstate of SC.

Local population -- the county of Greenville with a year-round population of 500,000 +-.

Local businesses -- The Chamber of Commerce lists over 6400 businesses. Companies such as Michelin, BMW, Fluor, Jacobs, etc have large offices or corporate headquarter located here.

Venues: Bi-Lo Center (16,000), Furman University, Timmons Arena (4,750), Sirtine Stadium (13,000),

Furman University Paladin Stadium (16,000), Furman University Soccer Stadium (3,000)

The student -- USC Upstate, the largest growing university in the state. Clemson, Furman, Greenville Tech, Bob Jones, North Greenville College

Competitive Strategy

Our locations will offer:

- A professional, perfect customer experience and total wireless solutions.
- Trained individuals, guided by professionals of the business industry.
- changing behaviors to change results
- High-employee motivation and good sales attitude

Marketing Plan & Sales Strategy

Market Penetration.

Entry into the market should not be a problem. The first store has extremely high visibility with heavy foot traffic all day long. The most traveled on and highest real estate value road in the Upstate of SC.

Marketing Strategy

Focusing on the unique service and professionalism. Courteous and knowledgeable sales consultants to provide consumers with all their wireless needs. Backed up by Verizon Wireless, Worry Free Guarantee

- Print media -- local newspapers, magazines and student publications
- Chamber of Commerce brochures
- Direct mail -- subscriber lists, office
- Misc. -- yellow pages, charity events
- Internet Website

Corporate relations

The marketing effort will be split into 3 phases;

- 1) Opening -- An advanced notice sent out to our personal, business and community contacts.
- 2) Ongoing -- A flexible campaign with personal, business and community contacts, assessed regularly for effectiveness.
- 3) Point of sale -- A well-trained staff can increase the average check as well as enhancing the customer's overall experience. Word-of-mouth referral is very important in building a customer base.

Hours of Operation

TBA, 7 Days a week operation

Employee Training & Education

Employees will be trained not only in their specific operational duties but in the philosophy and applications of our concept. They will receive extensive information from the management and be kept informed of the latest information on the industry.

Systems & Controls

Selling with integrity

Management & Organization

Vijay R. Patel, CEO & President
Pankaj Patel, Vice President

Krish Patel, General Manager & Project Development
TBA, Sales & Operations Manager

Parul P. Patel, Director of Training & Inventory Control
Alka V. Patel, Director of Marketing

S. Allan Hill -- Attorney & Professional Business/Legal Support
Mukund Desai -- CPA, Consultant

Revenues					
				16	
	Items sold per day	Avg/person	Total/Day	Tot/Month	Tot/Year
Activations	5	\$100	\$500	\$12,000	\$144,000
	25	\$15	\$375	\$6,000	\$72,000
Accessories					
Totals	30	\$115	\$875	\$18,000	\$216,000
Tips					
		0%	\$0	\$0	\$0

Expense			Tot/Month	Tot/Year
18.00%	Food		\$75	\$900
	Rent		\$2,700	\$32,400
	CAM		\$0	\$0
	Maintenance		\$50	\$600
	Insurance		\$200	\$2,400
25%	Payroll		\$4,000	\$48,000
	Licences		\$1,200	\$14,400
	Profesional Fees		\$100	\$1,200
	Utilities		\$800	\$9,600
	Uniforms		\$0	\$0
	Linen Laundry		\$0	\$0
	Linen Rental		\$15	\$180
	Replacement costs		\$0	\$0
	Flyers		\$100	\$1,200
	Pest Extermination		\$45	\$540
1%	Disposable supplies		\$350	\$4,200
	Office Materials		\$130	\$1,560
7%	Sales& Hospitality Tax		\$1,260	\$15,120
	Credit card equipment rental		\$0	\$0
2%	Credit Card Fees		\$360	\$4,320
Total			\$11,385	\$136,620

Assume 75% by CC

Profit	\$6,615	\$79,380
% Profit	58.10%	58.10%

Expense		Tot/Month
	Rent	\$2,170
	CAM	\$600
	Insurance	\$200
	Payroll	\$1,700
	Utilities	\$600
	Linen Rental	\$26
	Takeaway Menus	\$10
	Pest Extermination	\$45
	Dishwasher rental	\$130
2%	Credit Card Fees	\$140
Total		\$5,621

140.8

Compatibility Report for Verizon Wireless Agent Financial Summary.xls

Run on 12/19/2007 18:40

The following features in this workbook are not supported by earlier versions of Excel. These features may be lost or degraded when you save this workbook in an earlier file format.

Minor loss of fidelity

of occurrences

Some cells or styles in this workbook contain formatting that is not supported by the selected file format. These formats will be converted to the closest format available.
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1

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively
on behalf of Nominal Defendant, VP
Enterprises, Inc.

Plaintiff,

v.

Krish Patel, Vijay Patel, and
P Communications, Inc.,
Defendants,

and,

VP Enterprises, Inc.,
Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23-7338

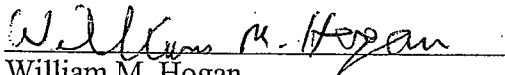
**CERTIFICATE OF
SERVICE**

The undersigned attorney for the Plaintiff certifies that he served a copy of the
AMENDED VERIFIED COMPLAINT by the following means:

☐ Hand Delivery	☐ Facsimile
☒ United States Mail	☐ Overnight Delivery
☒ Other: Electronic Mail	

with adequate payment or arrangements for payment to insure delivery thereof to:

Thomas L. Stephenson, Esquire
William W. Wilkins, Esquire
Andrew A. Mathias, Esquire
Nexsen Pruet, LLC
P.O. Drawer 10648
Greenville, SC 29603


William M. Hogan

February 7, 2012
Greenville, South Carolina.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JAN 23 2012

2012 FEB - 7 P 4: 33

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively
on behalf of Nominal Defendant, VP
Enterprises, Inc.,

Plaintiff,

v.

Krish Patel, Vijay Patel, and
P Communications, Inc.,

Defendants,

and

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Nominal Defendant.

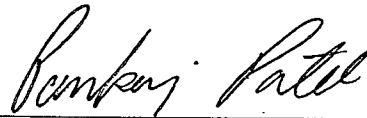
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23-7338

VERIFICATION OF
AMENDED COMPLAINT

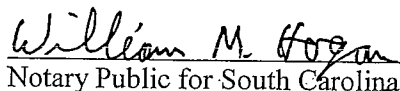
The undersigned, Pankaj Patel, being first duly sworn, hereby verifies that he has read the allegations of the foregoing Amended Complaint against the Defendants and, based upon his own personal knowledge, such allegations are true and correct to the best of his knowledge, and, as to any allegations based upon information and belief, he believes them to be true and correct to the best of his good faith belief.

Further affiant sayeth not this 13th day of February 2012.



Pankaj Patel

SWORN to and subscribed before me this
13th day of February 2012


Notary Public for South Carolina

My commission expires: 1/30/13

EXHIBIT I

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively
on behalf of Nominal Defendant, VP
Enterprises, Inc.

Plaintiff,

v.

Krish Patel, Vijay Patel, and
P Communications, Inc.,

Defendants,

and,

VP Enterprises, Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23-7338

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTION FOR
INVOLUNTARY NON-SUIT
UNDER RULE 41(b)**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 AUG 5 AM 10:00

Plaintiff, Pankaj Patel ("Kaj"), responds to Defendants motion for involuntary non-suit made after the close of Plaintiff's evidence and subsequently renewed after the close of all evidence. The Court did not rule on Defendants' motion after the close of Plaintiff's evidence and deferred ruling on Defendants' renewed motion made at the conclusion of all testimony. Based upon the law, facts in evidence and arguments set forth herein, Defendants' motion should be denied. Defendants Krish Patel ("Krish") and Vijay Patel ("Vijay") were officers, directors, promoters and/or co-venturers of VP Enterprises, Inc. ("VP Enterprises") at, and during, the numerous instances of material concealment from and misrepresentations to Kaj – a fellow officer, director and co-venturer.

STANDARD OF REVIEW

A motion for involuntary non-suit serves a similar function in non-jury trials as a directed verdict motion does in civil jury trials. See Rule 41(b) SCRPC, Rule 50(a) SCRPC; see also Alex Sanders and John S. Nichols, Trial Handbook for South Carolina Lawyers § 4:47 at 316 (5th ed. 2012). The presentation of evidence by the defendant waives the right to have the court review the motion only in the light of the plaintiff's evidence alone. Evans v. Wabash Life Ins. Co., 247 S.C. 464, 148 S.E.2d 153 (1966). Therefore, for a motion for involuntary non-suit made after the close of all evidence, the court must consider all evidence presented, not just evidence presented in the plaintiff's case in chief.

Plaintiff's claims involve a breach of fiduciary duty by Defendants for their usurpation of a corporate opportunity of VP Enterprises, Inc. ("VP Enterprises"), for conduct that is fraudulent, oppressive, or unfairly prejudicial, and for violation of the statutory duties of directors and officers under S.C. Code Ann. §§ 33-8-300 and 420.¹ Plaintiff's causes of action pursued at trial were equitable claims. A claim for breach of fiduciary duty may be in equity or at law depending on the relief sought. Verenes v. Alvanos, 387 S.C. 11, 17, 690 S.E.2d 771, 773 (2010). In this case, Plaintiff has sought remedies of accounting, constructive trust and disgorgement, all of which are equitable claims. The parties agreed to bifurcate the proceedings in this action between liability and remedies due to the complexity of the equitable remedies that could be fashioned and the expense of damage expert testimonies. Thus the primary remedy is equitable, making this matter an equitable action. See Historic Charleston Holdings, LLC v. Mallon, 381

¹ Plaintiff also brought causes of action for fraud, constructive fraud, negligent misrepresentation and violation of the South Carolina Unfair Trade Practices act, all legal actions. Plaintiff did not pursue these causes of action at trial and hereby agrees to dismiss such claims.

S.C. 417, 427, 673 S.E.2d 448, 453 (2009) (“An action for an accounting sounds in equity.”); see also Lollis v. Lollis, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987) (“An action to declare a constructive trust is in equity”); see also Verenes v. Alvanos, 387 S.C. at 17, 690 S.E.2d at 773 (stating disgorgement is an equitable remedy). This case was also filed as a shareholder derivative suit which is a suit in equity. See Straight v. Goss, 383 S.C. 180, 207-208, 678 S.E.2d 443, 458 (Ct.App. 2009).

ARGUMENT

I. Plaintiff’s claims are within the applicable statutes of limitation and laches.

A. Credibility of witnesses supports Kaj’s testimony that Defendants fraudulently concealed the statute of limitations

Kaj testified that Krish made material misrepresentations to him on the night of October 18, 2008 about the status of VP Enterprises and the parties’ Verizon venture. Kaj contends these misrepresentations fraudulently concealed the wrongs Defendants were committing and thus tolled the statute of limitations. Krish later testified that he made full and truthful disclosures to Kaj that night. Vijay did not testify. Determining the credibility of the two main witnesses – Kaj Patel versus Krish Patel – therefore is essential to the statute of limitations issue.

The evidence from the documents presented at trial and from the disinterested witnesses Corby Phillips and Mike Pavlick clearly shows that the testimony of Kaj is significantly more credible. The evidence established the following:

Krish commits two acts of perjury to the IRS:

- Krish Patel misrepresented his position as president of P Communications on the IRS Form 2553 – Sub Chapter S Election, which was signed under penalties of perjury. (Pl. Trial Doc. 165);

- Krish Patel misrepresented on the same form that he acquired the shares on September 1, 2008 when actually the earliest record of any change in ownership of P Communications occurred on November 19, 2008. (Pl. Trial Doc. 165);

Krish makes two false certifications to the S.C. Department of Revenue:

- Krish Patel represented to the Department of Revenue on the Business Tax Application for P Communications that he was the president of the corporation on September 19, 2008 when he was not. (Pl. Trial Doc. 163);
- Krish Patel represented in the Business Tax Application to the Department of Revenue that he owned 46.5% of the shares in P Communications on September 19, 2008 when he in fact owned no shares. (*Id.*);

Krish makes multiple false certifications to BB&T Bank:

- Krish Patel represented (1) he was president of P Communications to BB&T Bank in order to obtain a loan on August 25, 2008, and (2) that the board of directors of P Communications duly adopted at a meeting of that date that he was authorized to obtain the loan by the board. (Pl. Trial Doc. 263A).²

Vijay provided false criminal history to Verizon:

- Vijay represented to Verizon on his Agent Application that he had no criminal records when in fact he had been convicted for shoplifting on or about December 14, 2005 in Greenville County. (Pl. Trial Docs. 1-2A and 116).

Krish failed to inform Kaj Verizon terminated his employment

- Krish admitted at trial Verizon terminated him because of improper use of Verizon phone connections for his family members.

In contrast, Defendants in frustration tried to portray Kaj Patel as having lied on the VP Enterprises Agent application form by not declaring a \$2,500 magistrate court lawsuit against his landscaper as being litigation Plaintiff was involved in within the five-year period prior to the application date. The documents presented by defense counsel, however, showed the last pleadings filed in that case were dated June 30, 2002 and were served on the court on July 2, 2002, thus being outside the five-year period. Also the

² Corby Phillips testified he did not authorize Krish Patel to lie on any bank applications and did not authorize Krish to serve as president of P Communications.

records presented show that the matter never went to court and was later dismissed after no prosecution.³ Defendants subsequently tried to claim Kaj Patel was not being honest or making full disclosures by inadvertently failing to list on his interrogatory answers the landscaper matter that never went to court. The record is clear, however, Plaintiff disclosed the matter to Defendants, albeit inadvertently omitted from his Answer to Interrogatories. Plaintiff produced a document to Defendants in discovery providing the name of the landscaper Randall Rice and the date of filing was noted on the Verizon records. (Def. Trial Doc. 171).⁴

Because Defendants had no legitimate impeachment issues against Kaj, they resorted to questioning Kaj about a suit on the public record entitled Unifund CCR Partners v. Patel. Kaj testified that suit was against a different Pankaj Patel which was dropped immediately after Kaj demonstrated to the plaintiff that he was not the same Pankaj Patel the plaintiff was trying to locate. There is no evidence in the record to the contrary.

Given the clear lack of credibility from Krish Patel and the consistency with which the testimony of Kaj Patel matched the documentary evidence in this matter, the credibility of Kaj Patel overwhelmingly trumps that of Krish Patel.⁵

³ Defendants introduced the Magistrate court case documents after their document notebook had been given to the Court and Plaintiff. Plaintiff therefore does not have the exhibit number of the pleadings but believes they may be found around or near Exhibit No. 234.

⁴ This document was produced by Plaintiff to Defendants on January 17, 2012 pursuant to Plaintiff's document production response.

⁵ Kaj testified that during the period of concealment from him of the true facts concerning the Verizon venture, he had numerous meetings with Vijay and sometimes Krish. Neither Defendant ever revealed to Kaj truthful information about the Verizon venture, Vijay's criminal conviction, Krish's firing from Verizon and many other material facts. Defendants admitted Vijay and sometimes Krish met regularly with Kaj to discuss business matters, including VP Enterprises. (Answer Am. Compl. ¶37).

B. Defendants' concealment and misrepresentations made in October 2008, and for many months following, toll the running of the statute of limitations.

Defendants claim the statutes of limitations in S.C. Code Ann. §§ 33-8-300 and -420 for breaches of duties by directors and officers bar Plaintiff's claims. Both statutes provide that such a claim must be brought within three years after the cause of action has accrued. Significantly for this case, both statutes contain an express fraudulent concealment exception that states:

(e) An action against an officer [or director] for failure to perform the duties imposed by this section must be commenced within three years after the cause of action has accrued, or within two years after the time when the cause of action is discovered, or should reasonably have been discovered, whichever sooner occurs. This limitations period does not apply to breaches of duty which have been concealed fraudulently.

S.C. Code Ann. § 33-8-420 (“[or director]” and underline added) (see also S.C. Code Ann. § 33-8-300 for mirror director liability statute).

A plaintiff may thus bring an action more than three years after the wrongs have been committed if the defendants fraudulently concealed their wrongdoing and the plaintiff brings his action within two years after the cause of action is discovered or should reasonably have been discovered. See Clearwater Trust v. Bunting, 367 S.C. 340, 352, 626 S.E.2d 334, 340 (2006) (holding when breach of duty has been fraudulently concealed, three year outer limit does not apply and two year discovery rule governs).⁶

Defendants claim Plaintiff knew or should have known on October 18, 2008 that a cause of action existed against Vijay and Krish Patel for their wrongful conduct, thus triggering the two-year discovery rule of §§ 33-8-300 and -420. Plaintiff testified he learned on October 18, 2008 from Krish Patel that Krish had opened a Verizon Wireless

⁶ Under the facts established at trial, if Kaj's testimony is believable, and it is, then he meets both the three and two year tests.

retail store on Pelham Road that day. Defendants claim the information about the grand opening of the Pelham Road store put Plaintiff on notice Krish had stolen corporate opportunities from VP Enterprises or that Plaintiff should have realized by reasonable diligence he had a cause of action against Defendants for their misappropriation.

The testimonies of Kaj Patel and Krish Patel diverged in significant details about the information disclosed on the night of October 18, 2008. Krish testified he told Plaintiff he had opened a Verizon retail business with someone else and that if he ever found an opportunity to include Kaj in the business, he would consider it.

The testimony of Kaj Patel was much more specific and detailed. He testified Krish said on October 18, 2008 he had found someone with an existing Verizon license to associate with in order that we can “get our foot in the door.” Krish further stated, according to Kaj’s testimony, that he was looking to kick out the other investor named Corby and that as soon as he did, Kaj, Krish and Vijay would be able to proceed with their business plans for VP Enterprises. In other words, instead of repudiating the rights of VP Enterprises and the parties’ plans for a Verizon retail venture, Krish Patel was leading Kaj to believe that the partnering with “Corby” was actually a step forward for VP Enterprises and its goal of developing a Verizon chain store business.

In addition to representing that the partnering with “Corby” was furthering the Verizon plan, Kaj testified Krish represented it would take eight to twelve months to remove Corby from the business. This representation was made to induce delay in Kaj and to deceive him in thinking Defendants were protecting his rights as a VP Enterprises shareholder. In follow up meetings between the parties, Krish repeatedly represented to

Kaj that Kaj needed to be patient when Kaj asked about the status of Corby leaving the business so that Kaj, Vijay and Krish could take control.

Under the South Carolina discovery rule, a claim must be commenced within the applicable period after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action. Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994). The Supreme Court stated:

The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist.

Id. at 128, 442 S.E.2d at 169 (quoting Snell v. Columbia Gun Exch., Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981)).

In this case, Krish Patel did not inform Plaintiff on October 18, 2008 that some right of his had been invaded or provide him with any information or belief that a claim against him might exist. To the contrary, Krish Patel painted a picture to Kaj that led Kaj to believe Defendants were taking steps to move forward with the VP Enterprise plan.

A reasonable person under the same circumstances and subject to the same representations as made by Krish Patel would not have been placed on notice that any legal or equitable claim existed on October 18, 2008. The opening of a Verizon store combined with representations of Krish⁷ that the store opening was a step towards their

⁷ Krish was, without doubt, both a manager and officer of VP Enterprises at all times and thus a fiduciary towards Kaj regarding VP Enterprises. Vijay was a director and officer and also a fiduciary. While there were multiple misrepresentations and failures to disclose by both of them, there is no question Krish failed to disclose his termination from Verizon until the first day of this trial, and Vijay never disclosed his criminal record until Kaj discovered it in a document production from Verizon on or about March 7, 2012. Defendants had ample opportunity to disclose the significant events to Kaj during the pre-incorporation stage when promoter liabilities unquestionably were owed and later while Defendants served as director and officers.

Verizon plans did not put Kaj on notice that Defendants were breaching their duties to act in the best interests of the corporation and its shareholders. Defendants as director, officers and/or promoters of VP Enterprises made no repudiation to Kaj of their fiduciary duties to him and the company. Demoulas v. Demoulas Super Mkts., Inc., 424 Mass. 501, 677 N.E.2d 159 (1997) (holding fraudulent concealment tolls statute of limitations, in action for misappropriation of a corporate opportunity by directors and officers of a corporation, until such time as defendants repudiated their fiduciary obligations). By their misrepresentations, Defendants concealed from Kaj that they were invading his rights as a stockholder⁸ of VP Enterprises and the rights of VP Enterprises itself.

In order to hold that Kaj's claims against Vijay as director and officer and Krish as a corporate officer (secretary, treasurer and general manager) are not tolled, it would be necessary to find Krish's testimony more credible than Kaj's. The untrustworthiness of Krish's testimony is shown not just by the contradictory testimony of Kaj but also by the testimonies of Corby Phillips and Mike Pavlick. Corby Phillips directly contradicted Krish's testimony by saying he never authorized Krish to take the title of president of P Communications as Krish did on documents submitted to the IRS, S.C. Department of Revenue and to BB&T Bank. Mike Pavlick testified Krish represented he was president of P Communications and that he had never heard of Corby Phillips until this trial. It is inescapable that Kaj's testimony is more accurate and that Krish fraudulently concealed Kaj's claims against Defendants. In short, to find there was no fraudulent concealment, the Court will need to find the testimony of Krish Patel, who falsely certified three

⁸ In fact, unlike the Model Act, §§33-8-300 and -420 state that directors' and officers' duties are owed to the corporation "and its shareholders". S.C. Code Ann. §33-8-300, S.C. Rpts.' Cmt.

separate documents including, but not limited to, an IRS form signed under penalties of perjury, more believable than Kaj's testimony.

C. Defendants' fraudulent concealment continued until June 4, 2010

According to Kaj's testimony, Krish's representations about the status of Corby Phillips continued until the spring of 2010, specifically June 4, 2010. On or around that date, both parties testified Krish Patel revealed to Kaj the name of P Communications and Corby Phillips for the first time. Defendants also informed Kaj of Vijay's involvement with P Communications. In those disclosures Krish did not admit he had misappropriated VP Enterprises' opportunities, but the disclosures did reveal enough information to allow Kaj to investigate the entity that Krish claimed had partnered with Corby Phillips.

During his ensuing investigation, Kaj discovered facts from the Secretary of State's website, which combined with the circumstances of Vijay's involvement in P Communications, put Kaj on notice that the rights of VP Enterprises may have been violated. Kaj's investigation of the Secretary of State's website showed a date of incorporation for P Communications of April 24, 2008 that was not entirely inconsistent with the formation by an existing Verizon licensee but was suspiciously close to the grand opening date of October 18, 2008. Also the date of December 4, 2008, shown on the Secretary of State's records as when the registered agent changed from Corby Phillips to Krish Patel, did not conclusively confirm that Corby Phillips had been removed as a shareholder in 2008, but it did raise strong doubts to Kaj in June 2010 as to the truthfulness of Krish and Vijay about the Verizon venture. That investigation then led to the personal meetings on the three days following June 4, 2010 between Kaj and Krish and Kaj and Vijay.

The disclosures made by Krish Patel in the spring of 2010 did not state that he had used Corby Phillips as a straw man and P Communications as a mechanism to usurp the Verizon opportunity for himself. Instead, Kaj was able to take the information on the name of the new corporation and its straw man Corby Phillips to research the records and figure out that Krish Patel and Vijay Patel had likely backstabbed him by excluding him from the Verizon store business when they could have included him. The facts and circumstances discovered and disclosed in the spring of 2010 that led Kaj to investigate Defendants' corporate activities are what the South Carolina discovery rule envisions as the accrual date for statutes of limitations, not the fraudulent representations of Defendants in October 2008.

D. Fraudulent Concealment Prevents Running of the Statute of Limitations

As noted in Plaintiff's Pretrial brief, it is established throughout the United States that fraudulent concealment of facts underlying a cause of action tolls all statutes of limitation. 51 Am. Jur. 2d Limitation of Actions § 162. The South Carolina Supreme Court recognized this general rule by stating:

... "[T]he practically universal rule is that deliberate acts of deception by a defendant calculated to conceal from a potential plaintiff that he has a cause of action, thereby inducing him to postpone institution of suit will be held to toll the statute." . . . When the relationship ends, the duty to disclose, which is the basis of [a] fraudulent concealment claim, ceases to exist absent extenuating circumstances such as the withholding or altering of plaintiff's medical records.

Strong v. Univ. of S. Carolina Sch. of Med., 316 S.C. 189, 191-92, 447 S.E.2d 850, 852 (1994) (quoting 1 David W. Louisell and Harold Williams, Medical Malpractice ¶ 13.03 p. 13-67 (1993)).

The proof required to invoke fraudulent concealment has been explained as follows:

The essence of fraudulent concealment is: (1) actual knowledge that a wrong has occurred, and (2) a fixed purpose to conceal the facts necessary for the plaintiff to know that the cause of action has accrued. Stated somewhat differently, to constitute concealment of a cause of action within the general rule tolling the statute of limitations on that ground, in the absence of a duty to disclose, there must be an actual misrepresentation of fact that fraudulently conceals the cause of action. In other words, there must be either an active suppression of the truth or a failure to disclose when there is a duty to speak, made with the intent to prevent inquiry or knowledge of the injury...

51 Am. Jur. 2d Limitation of Actions § 164.

It has also been firmly established that a failure to reveal is fraudulent if there is a duty to disclose. "If there are fiduciary or confidential relations between the parties, or if the fraud itself is secret in its nature and such that its existence cannot be readily ascertained, the failure of a defendant to adequately disclose the facts that would give rise to a plaintiff's knowledge of a cause of action constitutes fraudulent conduct and is equivalent to fraudulent concealment." 51 Am. Jur.2d Limitation of Actions § 166.

Fraudulent concealment can thus occur either by (1) affirmative acts or representations or (2) silence by a fiduciary who is under a duty to disclose such material facts. DeLuna v. Burciaga, 223 Ill.2d 49, 76-77, 857 N.E.2d 229, 245-46 (2006) (holding attorney because of his fiduciary duty to client had duty to disclose his acts of legal malpractice, thus tolling statute of limitations by his failure to disclose his negligence).

As noted above Defendants made the following material misrepresentations among others:

- Vijay had no criminal history;
- Krish was working on finding out why VP Enterprises was turned down by Verizon;
- Krish had joined with an existing Verizon licensee and was working to "get our foot in the door";

- The parties would continue to look for Verizon opportunities after the Verizon denial letter;
- It would take 8 to 12 months to dislodge Corby when Krish actually ousted him in a month;
- Vijay had no involvement in the Verizon business Krish was working on.

The instances of failure to timely disclose material facts are vast. They include but are not limited to the following:

- Failure to disclose Krish being fired from Verizon⁹;
- Non-disclosure on formation of P Communications;
- Use of VP Enterprises' business plan by P Communications in its Verizon application;
- Use of a straw man for P Communications to gain a Verizon license;
- The entire existence of P Communications;
- The removal of Corby Phillips as an owner in P Communications in November/December 2008;
- The opening of additional stores by Defendants; and
- The inclusion of Keith Gailey as an owner in November 2008 instead of Kaj.

Defendants, while having a fiduciary relationship to Kaj, concealed their true course of conduct from Kaj until June 4, 2010, thus tolling the statute of limitations to less than two years prior to Plaintiff's filing date of November 4, 2011.

⁹ Plaintiff's counsel subpoenaed Krish's work history from Verizon, but Verizon did not include any documentation about Krish's termination of employment from Verizon.

E. Defendants do not have clean hands are not entitled to assert the defense of laches.

Defendants asserted laches bars Plaintiff's claims in the equitable causes of action. Defendants, though, are not entitled to assert laches resulting from their misrepresentations and lack of disclosures since laches is a defense in equity. As listed in the prior section Defendants made many material misrepresentations and fraudulent failures of disclosure that bar their assertion of laches.

"Laches is a defense in equity, and one who comes to the court seeking equity must come with clean hands." Emery v. Smith, 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct. App. 2004). The Emery court held the defendant was precluded from asserting laches because of his failure to inform the plaintiff of material marital assets. Likewise, in this case Defendants acted with unclean hands in making untruthful statements to Plaintiff and failing to inform him of material events highly relevant to their Verizon venture. They are not entitled to the defense of laches.

II. Plaintiff amply demonstrated Defendants' Breaches of Fiduciary Duty and Violations of Duties by Promoters, Directors and Officers.

The Defendants claim VP Enterprises had no corporate opportunity to be diverted since Verizon turned down its application. However, Krish Patel found a way around the denial by simply repackaging the same business plan and applications by just using a straw man.¹⁰ He presented essentially the same offer to Verizon through P Communications except that he used the name of Corby Phillips as the owner. He subsequently changed the ownership from Corby Phillips to Krish Patel and Keith Gailey in November 2008. There is no reason that Krish could not have used Kaj as the co-

¹⁰ In addition, Vijay Patel, a director, officer and shareholder of VP Enterprises, was able to reap the benefits of Krish Patel's usurpation of this corporate opportunity despite having been previously denied a Verizon Wireless agency license.

shareholder with him instead of Keith Gailey in November 2008. Krish Patel undertook the entire exercise of applying through a straw man and then later replacing the straw man with Keith Gailey and himself as owners all without telling Kaj Patel. It is disingenuous for Defendants to contend the proverbial barn door was closed on Kaj Patel when Verizon first denied VP Enterprises' application, when the same "door" remained open for Krish Patel and Vijay Patel, neither of whom had clean hands.

The evidence presented at trial established the application denial was not final or permanent. Indeed, the denial letter stated "at this time." There was no evidence presented, other than Krish Patel's personal subjective belief, that the denial letter somehow "drew a line in the sand" or "closed the case" on VP Enterprises.

Krish claimed in his testimony that since VP Enterprises' application with Kaj's name attached had been rejected, he therefore had the right to proceed with someone else besides Kaj. There was no available evidence, though, that Kaj's background caused the rejection. In fact the far more likely cause of the rejection would have been Krish's own firing by Verizon and the criminal conviction of Vijay. Despite his name being on the VP Enterprises application as general manager, his presence as the point man with Verizon in the application process, and notwithstanding the glaring black marks on his record in relation to Verizon, Krish proceeded with making himself the new owner of P Communications. The excuse that Kaj's name was on a previously rejected application as the reason for excluding him from P Communications is a complete red herring.

There is no dispute the corporate purpose of VP Enterprises was to establish Verizon retail stores. That was the same corporate purpose of P Communications. Indeed Krish launched P Communications using the same business plan drafted by VP

Enterprises through Kaj and Krish Patel. Krish then followed the same operational and growth strategies first developed for VP Enterprises.

Krish Patel admitted he was the secretary and treasurer of VP Enterprises and therefore an officer. He was also the general manager as stated in the business plan presented to Verizon. Therefore the conduct of Krish Patel and the duties he owed to the corporation come under the auspices of S.C. Code Ann. § 33-8-420(a).

Even without the statute, Krish Patel as an officer of the corporation was an agent of VP Enterprises. It is black letter law an agent owes a fiduciary duty to his principal. Restatement (Second) of Agency § 13 (1958). Thus Krish owed a fiduciary duty to VP Enterprises.

Defendants claim there can be no usurpation of corporate opportunity because the Verizon business was not unique and was available to members of the public. However there is no requirement the opportunity be unique or specialized in order for the opportunity's diversion by a co-venturer to be wrongful. What is required is that:

The opportunity must fit . . . into an established corporate policy that the acquisition of the opportunity would forward. Only those projects in which the corporation has an active commercial interest or expectancy are prescribed under this test.

* * * *

. . . [W]hether an opportunity is a corporate opportunity focuses on whether the corporation could realistically expect to seize and develop the opportunity; if so, the director or officer may not appropriate it and thereby frustrate the corporate purpose.

18B Am. Jur. 2d Corporations §1542.

Here, VP Enterprises clearly had an expectancy in entering the Verizon retail business as stated in its corporate formation documents. VP Enterprises had the financial ability to do so given the \$800,000 line of credit that Kaj Patel brought to the enterprise.

Most critically, the opportunity was available to VP Enterprises as evidence by the repackaged deal that Krish Patel put together for P Communications using VP Enterprises' business plan but conveniently eliminating Kaj from the venture. Krish could have used Corby Phillips as a straw man and later replaced him with Krish and Kaj as the subsequent owners just as he did with Keith Gailey and himself. Krish, however, used this "expectancy" to his advantage to misguide and deceive Kaj while he was, in reality, seizing the same corporate opportunity for himself to the exclusion of Kaj Patel.

Defendants claim Verizon had an open corporate policy in accepting dealership applicants and that Kaj could have applied as well. This overlooks the fact that to do so, Kaj would have had to breach his fiduciary duty to his fellow Directors, Officers and Co-Venturers, Krish and Vijay. Second, as testified by Tammy Blew of Verizon, agents have to receive specific advance permission from Verizon for each prospective location to prevent dealerships from being too close to one another. As can be seen by documents presented, there were requests for real estate locations that were denied by Verizon because they were too close to other stores. (See eg. Def. Trial Doc. 227).

Once Krish had developed the locations that he and Kaj had explored, setting up a Verizon retail business in those areas was no longer an available opportunity. It had been snatched by Krish Patel. Further, Krish Patel's build-out of nine additional stores by June of 2010 in addition to the already existing stores operated by other owners left little to be developed by a third party such as Kaj. It is quite reasonable to assume the first stores were placed in the best locations.

In addition to committing a breach of fiduciary duty by usurpation of corporate opportunity, Defendants also acted oppressively, unfairly prejudicial and secretly

towards Plaintiff. First, Krish Patel admitted on cross examination that he was forced to resign from Verizon because he had violated their policies regarding use of phone connections by family members. Krish conceded he did not inform Kaj Patel of this material fact. Had it been disclosed, Krish's termination obviously would have had a significant impact on how the business application to Verizon was handled—such as the extent to which the involvement of Krish Patel was disclosed and whether Krish Patel should have been the contact person with Verizon after the denial was received. Because of Krish's non-disclosure, Kaj relied on Krish to handle the contacts with Verizon thinking Krish was the most appropriate person to handle Verizon relations.

Second, Vijay Patel did not disclose to Kaj that he had a criminal conviction for shoplifting which would have to be disclosed on the Verizon Agent Application. Had this information been truthfully disclosed to Kaj, he could have worked out an arrangement without using Vijay Patel as the named applicant just as Krish Patel did after the denial when submitting P Communications' application.

The Defendants should have disclosed the Verizon firing and criminal convictions to Kaj at the outset while the VP Enterprises venture was being formed. The lack of disclosure of this critical information occurred while Krish and Vijay were promoters of the corporation. See Bivens v. Watkins, 313 S.C. 228, 437 S.E.2d 132 (Ct.App. 1993) (holding promoter liable as fiduciary to co-shareholder and co-promoter for acts committed after formation of corporation). They owed a fiduciary duty to Kaj Patel to truthfully disclose these significant facts that impacted how the venture was to be structured. Their failure to do so was a breach of their fiduciary duty as promoters of VP Enterprises.

Defendants' continued failure to disclose the firing and arrest information after the corporate charter had been filed and while its Verizon application was under consideration, and even after the application was denied, also amounted to a breach of fiduciary duties to VP Enterprises and Kaj Patel under S.C. Code Ann. § 33-8-300 and -420 owed by directors and officers.

III. Comparison of Meinhard v. Salmon and this case reinforces the only conclusion that Defendants breached their fiduciary duties to Plaintiff.

The facts of this case are remarkably similar to those of the renowned case of Meinhard v. Salmon, 249 N.Y. 458, 164 N.E. 545 (1928). Meinhard has been cited five times in approval by the South Carolina Court of Appeals. A thorough comparison of this case with Meinhard highlights the depth of Defendants' breaches of fiduciary duty to Kaj.

In Meinhard, the defendant was the manager of a venture with the plaintiff to operate the Hotel Bristol in New York City. The hotel and its underlying real estate were owned by a third-party lessor. At the end of the lease, the third-party owner approached the defendant-manager about undertaking a new project wherein the Hotel Bristol would be destroyed and some surrounding properties, where the Hotel Bristol had been located, would be combined, redeveloped and managed under a new lease. The defendant agreed to enter into the new venture but did not mention a word of it to the plaintiff, his co-venturer. The defendant did not disclose to the plaintiff that a new lease had been executed and a new venture undertaken until after the new lease had been signed and was an accomplished fact. Meinhard, 249 N.Y. at 461-63, 164 N.E. at 545-46. The defendant claimed that the third-party landlord was not willing to renew the current lease but insisted on a new project that included adding additional properties to the enterprise.

Therefore the opportunity to continue operating the Hotel Bristol as it currently existed was not available to the plaintiff and defendant. Id. at 475, 164 N.E. at 551.

Even though no misrepresentations were made to the plaintiff¹¹, Chief Justice Cardozo writing for the majority found that the defendant had breached his fiduciary duty and the standard of loyalty he owed to his co-venturer.

In setting up the new venture, the defendant kept all the negotiations to himself. The plaintiff was not informed even of the bare existence of the newly proposed project. Id. at 463, 164 N.E. at 546.

The court stated that as a co-venturer, the plaintiff misappropriated to himself in secrecy and silence the pre-emptive opportunity that was an incident of the enterprise. The court pointed out the defendant could have warned the plaintiff that a new venture was being proposed and that the plaintiff would be free to compete for the award of the new venture. Had the defendant done this, the court signaled the result could have been different. Id. at 464, 164 N.E. at 547.

Similarly in our case, Defendant Krish Patel breathed not a word to the Plaintiff of the new venture he was undertaking until he had already obtained an agreement with Verizon and had set up the new corporation and already opened the first store. And in fact, he hid from Kaj the bare facts that Kaj would need to discover that Krish had diverted the corporation and venture to himself until after nine stores had been opened in June 2010.

The Meinhard court pointed out that the defendant obtained the chance to enjoy the opportunity that came his way by virtue of his agency relationship with the joint

¹¹ Id. at 477, 164 N.E. at 551.

venture. He therefore owed it to his co-venturer to include him in the subsequent enterprise. Id. at 465. In our case, the opportunity came to Krish Patel from the business plan, spreadsheets, and site location work that he and Kaj developed during the formation of VP Enterprises. By virtue of his agency, he owed an obligation to Kaj and VP Enterprises to include it in the subsequent venture.

The dissent in Meinhard countered that the third-party landlord refused to renew the existing hotel lease on any terms, and therefore the defendant did not need to mention the new property lease to the plaintiff because of the landlord's refusal to deal on the same basis. Id. at 477, 164 N.E. at 552. Justice Cardozo responded, "No answer is it to say that the chance would have been of little value even if seasonably offered. Such a calculus of probabilities is beyond the science of the chancery." Id. at 465, 164 N.E. at 547 (emphasis added). The court further opined that the plaintiff could have successfully renegotiated the Hotel Bristol lease by offering better terms, or he could have reinforced his offer by alliance with others. Id. at 465, 164 N.E. at 547.

In our case, Kaj also could have worked an alliance with others to obtain the Verizon license. That is precisely what Krish did except he excluded Kaj from the revised venture undertaken in the name of P Communications.

The Meinhard court further pointed out that whatever the protestations of unwillingness from the landlord to renew the Hotel Bristol lease, a response with improved terms may have gained the landlord's assent. Id. at 465, 164 N.E. at 547. Similarly, the Defendants and Kaj could have proposed a new arrangement with Verizon that would have been acceptable had the opportunity been broached by Krish. P Communications did, and it was successful.

Justice Cardoza explained that the defendant's lack of disclosure was the catalyst of the inequities thereafter arising. He wrote:

The very fact that Salmon was in control with exclusive powers and directions charged him the more obviously with the duty of disclosure, since only through disclosure could opportunity be equalized.

Id. at 466, 164 N.E. at 547.

Likewise with Krish being the general manager, the eyes and ears of VP Enterprises towards Verizon, the full-time manager, and with his father the constructive owner of 50% of the stock, he was in control of the company.¹² With these exclusive powers of control and direction, he more heavily is charged with the duty of disclosure "since only through disclosure could opportunity be equalized.

The Meinhard court recognized that the defendant had no conscious purpose to defraud. He very likely assumed in all good faith that he could ignore his co-adventurer given that he had provided the time and labor as well as money to the enterprise to make it work, and that he might view the plaintiff as grasping more than the plaintiff was entitled to receive. Id. at 467-68, 164 N.E. at 548. However, the court rejected that attempt at justification for usurping an opportunity pronouncing:

[Defendant] Salmon had put himself in a position in which thought of self was to be renounced, however hard the abnegation. He was much more than a coadventurer. He was a managing coadventurer. For him and for those like him, the rule of undivided loyalty is relentless and supreme.

Id. at 468, 164 N.E. at 548.

Even though as Krish testified in his deposition excerpts played at trial that he was "the brains behind the business plan", "the brains behind the operation", "the one

¹² Plaintiff's corporate duty expert, John Freeman, testified he considered Krish not only a promoter and officer but also a controlling shareholder based on Vijay's uncontroverted testimony that he held his nominal 50% share in VP Enterprises on behalf of Krish and himself equally.

with the experience”, “knowledge” and “expertise”, the recipient of “awards from Verizon”, those factors do not justify the disloyalty of non-disclosure and the secrecy in which he acted towards Kaj Patel. As the managing agent, Krish’s duty of undivided loyalty was relentless and supreme.

The Meinhard court noted that even though the new venture involved not just the land where the Hotel Bristol was located but also multiple adjoining properties added to it, the imposition of the trust was still warranted. The court stated, “If confusion has resulted from the union of adjoining parcels, the trustee who consented to the union must bear the inconvenience.” Id. at 469-70, 164 N.E. at 549. Likewise in this case, it is no defense for Defendants to claim that additional stores had been added to the corporate opportunity taken by Defendants. It was Krish’s decision to appropriate the corporate opportunity without disclosure to his co-adventurer. The additional assets are part of the venture just as much as the adjoining and additional real properties were part of the Meinhard v. Salmon venture.

Justice Cardozo further pointed out that the defendant “neither by word nor by act did either partner manifest a choice to view the enterprise as ended.” Id. at 470, 164 N.E. at 549. Similarly in this case, at no time did Krish inform Kaj that the Verizon venture was over for Kaj. Instead he hid the new P Communications venture while he expanded his territorial reach to saturate the Greenville market.

In describing the standard of loyalty owed by a co-adventurer, Justice Cardozo stated “the standard of loyalty for those in trust relations is without the fixed divisions of a graduated scale.” Id. at 466, 164 N.E. at 547. Just as Plaintiff’s expert John Freeman testified, the Defendants’ duties were “relentless and supreme.” Their fiduciary

obligations are not to be watered down “by the ‘disintegrating erosion’ of particular exceptions.” Id. at 464, 164 N.E. at 546.

Because the defendant in Meinhard breached his duty of loyalty by his non-disclosures, the court found a constructive trust over the defendant’s new venture was warranted. The court explained “a constructive trust is, then, the remedial device through which preference of self is made subordinate to loyalty to others.” Id. at 467, 164 N.E. at 548. The only material distinctions between the facts of Meinhard and the case *sub judice* consist of the explicit misrepresentations made by Defendants and the valuable line of credit Kaj brought to the enterprise. With these factors included, the dissent in Meinhard acknowledges the defendant may well have been liable. See Id. at 473, 164 N.E. at 550 (“The issue, then, is whether actual fraud, dishonesty, or unfairness is present in the transaction. If so, the purchaser may well be held as a trustee.”). In other words, if the Meinhard court had encountered the same misrepresentations Defendants made to Kaj, the Meinhard case would have been a unanimous opinion. As such, Defendants owed a fiduciary duty in which the stock of P Communications should be deemed to be held in a constructive trust for the benefit of VP Enterprises, Inc.

CONCLUSION

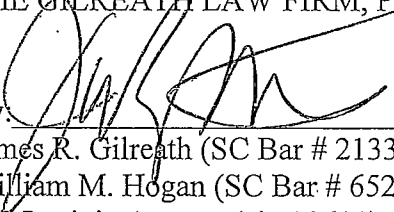
The statute of limitations does not limit Kaj Patel’s claims because of Defendants’ failure to disclose material facts and their fraudulent concealment of their undertakings until June 4, 2010. Defendants, as co-venturers with Kaj Patel, owed Kaj a duty of loyalty under the South Carolina Business Corporation Act in their roles as promoters, director and officers, which duties they breached by their misappropriation of corporate opportunities, failure to disclose, and misrepresentations. Therefore, Defendants

breached their duties to Plaintiff Kaj Patel, and the Court should so hold in denying Defendants' motion.

Contrary to discussions held at the end of the trial, Plaintiff respectfully requests oral arguments on Defendants' motion for involuntary nonsuit before the Court rules on the matter.

Respectfully submitted,

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August 1, 2014
Greenville, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively
on behalf of Nominal Defendant, VP
Enterprises, Inc.

Plaintiff,

v.

Krish Patel, Vijay Patel, and
P Communications, Inc.,
Defendants,

and,

VP Enterprises, Inc.,
Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23-7338

**CERTIFICATE OF
SERVICE**

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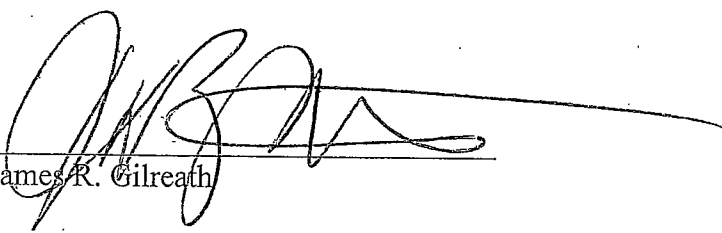
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August 1, 2014
Greenville, South Carolina.


James R. Gilreath

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In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas

SC Court of Appeals

The Honorable Edward W. Miller, Circuit Court Judge

Appellate Case No. 2015-000162

Pankaj Patel, individually and derivatively on behalf of Nominal Defendant,
VP Enterprises, Inc., ...Appellant,

v.

Krish Patel, Vijay Patel, and P Communications, Inc., ... Respondents.

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the Respondents in the foregoing matter with a copy of the foregoing **MOTION FOR CERTIFICATION AND MEMORANDUM IN SUPPORT OF MOTION FOR CERTIFICATION** by Hand Delivery as follows:

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Attorney for Appellants Pankaj Patel, individually
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VP Enterprises, Inc.

June 5, 2015
Greenville, South Carolina.

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June 5, 2015

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SC Court of Appeals

VIA FEDERAL EXPRESS

Honorable Daniel E. Shearouse
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

RE: *Pankaj Patel, individually and derivatively on behalf of Nominal Defendant, VP Enterprises, Inc. v. Krish Patel, Vijay Patel, and P Communications, Inc.*
Appellate Case No.: 2015-000162

Dear Mr. Shearouse:

Please find enclosed the original and seven (7) copies of the Appellant's Motion for Certification, Memorandum in Support of Motion for Certification with Exhibits A- I, and Certificate of Service regarding the above-referenced matter. Also enclosed is the filing fee of \$25 for the Motion for Certification. Please file these enclosures and return a clocked-in copy to me in the enclosed, self-addressed stamped envelope.

By copy of this letter to counsel of record, I am serving them with a copy of the same.

Sincerely,

William M. Hogan

William M. Hogan

WMH/kmk

Enclosures

cc (w/enclosures):

The Honorable Jenny Abbott Kitchings (via Federal Express)
Monty Desai, Esquire (via Hand Delivery)
Nihar Patel, Esquire (via Hand Delivery)
J. Matthew Whitehead, Esquire (via Hand Delivery)
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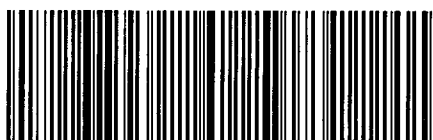
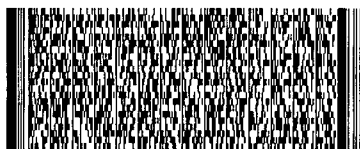
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