THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

Appellate Case No. 2016-001943

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

v.

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

REPLY IN OPPOSITION TO THE RETURN TO PETITION FOR WRIT OF CERTIORARI

James R. Gilreath (S.C. Bar No. 02133)
William M. Hogan (S.C. Bar No. 65272)
THE GILREATH LAW FIRM, P.A.
110 Lavinia Avenue (zip 29601)
P. O. Box 2147
Greenville, SC 29602
Telephone: (864) 242-4727
Fax: (864) 232-4395

Monty D. Desai (S.C. Bar No. 73967)
Nihar Patel (S.C. Bar No. 74166)
J. Matthew Whitehead (S.C. Bar No. 73803)
THE CAROLINA LAW GROUP, LLC
910 E. Washington Street
Greenville, SC 29601
Telephone: (864) 312-4444
Fax: (864) 312-4447

Attorneys for Petitioner Pankaj Patel, individually and derivatively on behalf of Nominal Defendant, VP Enterprises, Inc.

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Petitioner Pankaj Patel ("Kaj") individually and derivatively on behalf of Nominal Defendant, VP Enterprises, Inc. ("VP Enterprises") respectfully submits this Reply Brief in Opposition to the Return to Petition for Writ of Certiorari filed by Krish Patel ("Krish"), Vijay Patel ("Vijay") and P Communications, Inc. ("P Communications").

I. RESPONDENTS' FRAUDLENT CONCEALMENT TOLLS THE STATUTE OF LIMITATIONS.

In the Introduction of his Initial Brief, Kaj stated that a central issue in this appeal is whether fiduciaries may 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 and laches from the date of partial disclosure. Respondents ignore this issue completely, discussing only cases regarding the duty of disclosure of nonfiduciaries. As a result, Respondents avoided the cases of Black v. Simpson, 94 S.C. 312, 77 S.E. 1023 (1913), Jacobson v. Yaschik, 249 S.C. 577, 155 S.E.2d 601 (1967), Anthony v. Padmar, Inc., 320 S.C. 436, 465 S.E.2d 745 (Ct. App.1995), and Moore v. Moore, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004).

Respondents' sidestepped the issue by claiming Kaj and VP Enterprises abandoned the Verizon store opportunity after VP Enterprises received the initial rejection letter from Verizon dated February 26, 2008, thereby allegedly ending Respondents' fiduciary duties to VP Enterprises. (Return 3, 6, 8 and 20). Respondents also avoided the issue of a fiduciary's duty of disclosure by claiming they hid nothing from Kaj and did not create P Communications in secret. (Return 7). Both of these position fly right into the face of the undisputed evidence produced at trial and ignored by the Court of Appeals.

A. Respondents' acts of fraudulent concealment tolled the statute of limitations because Petitioner had not abandoned VP Enterprises or abrogated the fiduciary duties its officers and directors owed the company.

To make the claim of abandonment by Kaj and VP Enterprises, Respondents had to ignore the facts showing that Kaj on behalf of VP Enterprises continued to pursue the Verizon opportunity after receipt of the initial rejection letter. For instance, the record shows that Kaj e-mailed Krish on three separate occasions about wireless phone retail opportunities after the receipt of Verizon's denial letter of February 26, 2008. On April 18, 2008 Kaj e-mailed Krish about a possible AT&T independent dealership for VP Enterprises. (R.p. 1033). On July 24, 2008 Kaj e-mailed Krish about other wireless stores available for purchase in South Carolina. (R.p. 123, ¶34; R.pp. 1090-91). On April 15, 2010 Kaj e-mailed Krish about a possible location for a Verizon store in the Columbus/Tryon, North Carolina area and asked if Krish were still interested. (R.p. 1131). In that e-mail, Kaj wrote "I checked Verizon's site as you suggested. . ." indicating the parties were still having oral discussions about Verizon store opportunities.

Further, Krish and Vijay knew Kaj had not abandoned the VP Enterprises venture following the Verizon denial letter. Vijay and Krish decided that the evening of the grand opening on October 18, 2008 was "the time to have that discussion" with Kaj about Verizon. (R.p. 523, lines 3-20). Therefore they crafted a way to disclose only a sliver of information while withholding significant and material facts in order to disguise what was really happening with the Verizon store opening.

In addition, the evidence is undisputed that Vijay and Krish never resigned as directors and officers of VP Enterprises. (R. p. 568, lines 10-16). As a result,

Respondents cannot skirt the issue of a fiduciary's duty of disclosure by claiming Kaj abandoned VP Enterprise. The only abandonment of VP Enterprises came from Krish and Vijay, not from Kaj.

B. The evidence abounds with Respondents' fraudulent concealment of VP Enterprises' business opportunity, thus tolling the statute of limitations.

Respondents claim they did not hide anything from Kaj when they created P Communications. (Return 7). The Court of Appeals ruled that Kaj presented "no evidence ... to suggest [Krish] or Vijay participated in deliberate acts of deception to mislead Pankaj..." (R.p. 1760). The evidence is uncontradicted, though, that Respondents concealed every material and significant fact about P Communications and its taking of the opportunity the parties planned to develop through VP Enterprises. Petitioner set forth sixteen of Respondents' numerous acts of deception and material omissions in his Petition. (Pet. 11-15). These omissions and deceptions include, but are not limited to, those instances where Krish admitted: (1) he did not tell Kaj he gave the VP Enterprises business plan to Corby Phillips (R.pp. 548, line 16 – p. 549, line 6, R.p. 591, lines 11-16 and R.p. 606, lines 16-23); (2) he did not tell Kaj of the formation of P Communications (R.p. 541, line 23 – p. 542, line 20); (3) he did not tell Kaj he was the one opening the Verizon retail store with Corby Phillips as a strawman (R.p. 547, lines 10-17; R.p. 598, line 24 – p. 599, line 5); (4) he did not tell Kaj that Vijay was helping him with up-fitting the new Verizon store (R.p.593, lines 15-25); (5) he did not tell Kaj he owned or planned to own the new company and store opened on October 18, 2008 [1]

[1] The trial court mistakenly found in its Order that Krish disclosed to Kaj on October 18, 2008 that he planned to own the new company even though there is no evidence of such a disclosure anywhere in the Record. (R.p. 11 and R.p. 17, ¶ 31).

(R.p. 523, line 21 – p. 524, line 11; R.p. 529, lines 20-21; R.p. 541, lines 19-22); (6) he did not tell Kaj until May/June 2010 that he removed Corby Phillips as an owner in 2008 (R.p. 225, line 16 – p. 227, line 7); and (7) after removing Corby Phillips and his successor Keith Gailey as owners of P Communications in 2008 and January 1, 2009, Krish did nothing with Kaj to include him in the business as he represented he would. (R.p. 1615, line 22 – p. 1616, line 3 and R.p. 607, line 18 – p. 608, line 5).

Respondents pointed to a brief excerpt of Kaj's trial testimony about Vijay "clamm[ing] up" on October 18, 2008 to excuse their fiduciary duty of full and truthful disclosure. (Return 15-16, n.17). A more complete review of Kaj's actual testimony, however, reveals how Krish's misrepresentations that evening concealed from Kaj what Krish was actually doing through this new store opening. Kaj testified:

> He [Krish] says, no, you know, I found this guy who already had a Verizon business and license. And I just recently joined up with him to get our foot in the door, since we were having the issue with, you know, not finding out from Verizon why we'd been denied.
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> * * * *
>
> ... [Krish] said, this is our foot in the door. We'll, you know, once I get Corby out...because he doesn't have the financial means or capabilities to grow this business like we're looking at ... once I figure out a way to get him out, we can get back on our plan.

(R.p. 222, lines 1-5 and 11-18) (emphasis added).

Krish misrepresented who actually opened the new store, who was in control of the company, and how the new business was started. Krish's false statement that he joined with a pre-existing Verizon retailer provided Kaj no basis to think he had a claim against his fiduciary for usurping VP Enterprises' corporate opportunity.

C. South Carolina law requires a fiduciary to disclose all known significant and material information with perfect good faith without the slightest misrepresentation or concealment.

The appellate courts of this State have consistently held that a fiduciary must fully disclose to its beneficiaries all known information that is significant and material without the slightest misrepresentation or concealment. See Anthony v. Padmar, Inc., 320 S.C at 449, 465 S.E.2d at 752; Moore v. Moore, 360 S.C. at 252, 599 S.E.2d at 473. However, our state's appellate courts have not opined on whether the general 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 which tolls acts of fraudulent concealment. See, §§ 33-8-300(e) and -420(e).

Adhering to the duty of full disclosure of significant and material information, Petitioner has maintained the statute of limitations could only have started running against Kaj in May/June 2010 when Krish first revealed that he had been the actual controller, and later sole owner, of the new Verizon store opened in October 2008.

To support their claim that the statute of limitations started to run no later than October 2009, Respondents cited Kaj's testimony about the parties' meeting on October 18, 2008. (Return 15-16, and n.17 and 19). However, an accurate review of Kaj's testimony cited by Respondents shows this action is well within the limitations period. Kaj testified that Krish explained to him on October 18, 2008 it would take eight to twelve months – *i.e.*, until June-October 2009 – to get Corby out and get back on the VP Enterprises plan. (R.pp. 222-23). Kaj then followed up with Krish during the eight to twelve month time frame, by July or August 2009, about the status of Corby. Krish subsequently told Kaj at that time to "just be patient. And when I get him out, we'll continue on [our plan]." (R.p. 225, line 20 – p. 226, line 11). Kaj testified further that

after having received Krish's assurance by July or August 2009 to continue being patient, "that brought us to the late 2009. And when that came and went, that's when I was getting antsy..." (R.p. 325, lines 3-6). Kaj's concerns about Krish's handling of the Verizon venture, based on Krish's representations to him, thus arose after late 2009 which would be by January 1, 2010 at the earliest.

Kaj filed suit on November 4, 2011 which is within two years of the time Krish's misrepresentations generated suspicions. (See S.C. Code §§ 33-8-300(e) and -420(e)).

Citing Maher v. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998), Respondents asserted Petitioner should have been suspicious about Krish and Vijay after October 2009 when Corby Phillips supposedly had not been ousted as the owner by Krish after one year, and that the statute of limitations should have started running then. Respondents, however, ignored the testimony about Krish instructing Kaj to continue being patient for a few more months. Moreover, the case of Maher v. Tietex Corp. did not involve a duty of full disclosure in perfect good faith by a fiduciary, but instead was a simple breach of contract matter between an employer and employee.

Respondents also refer to the case of Kreutner v. David, 320 S.C. 283, 465 S.E.2d 88 (1995), for authority that repeated instances of stonewalling from a defendant should eventually put a plaintiff on notice he or she might have a claim against the defendant. This Court in Kreutner ruled that under the discovery rule a person of common knowledge should have known she might have a claim against a defendant who stonewalled more than nine requests for simple production of a mortgage.

In contrast, Kaj was given his first misrepresentation from Krish on October 18, 2008 regarding the time it would take to remove Corby from the Verizon venture. Krish

then provided Kaj a second misrepresentation by July/August 2009 to continue being patient about removing Corby from the company. When several months passed, after Krish's second misrepresentation, with no tangible results towards removing Corby and including Kaj in the venture, Kaj then became antsy after the end of 2009.

This case is a far cry from the nine instances of stonewalling repeated over eighteen months in Kreutner. In addition, the removal of a shareholder and officer, who is also an alleged founder of a company, is a much more time consuming and involved process than simply providing a copy of a recorded mortgage at issue in Kreutner. Allowing a fiduciary like Krish less than fourteen months to effect a corporate restructuring, as requested by Krish, is not unreasonable. The two misrepresentations of Krish, as a corporate fiduciary to Kaj, toll the statute of limitation and negate the defense of laches for the fourteen months Krish implored Kaj to wait, making Kaj's action timely.

II. RESPONDENTS FAIL TO DISPROVE PETITIONER'S FIDUCIARY DUTY CLAIMS ON THE MERITS.

A. Meinhard v. Salmon.

Just like the Lower Court's Order, Respondents failed to mention the renowned case of Meinhard v. Salmon, 249 N.Y. 458, 164 N.E. 545 (1928). Because of the distinct similarities of Meinhard with this case, Petitioner has repeatedly raised to the courts below the facts and legal principals espoused in Meinhard; however, none of the courts below or counsel for Respondents ever mentioned Meinhard at all.

Petitioner first raised Meinhard in his pre-trial brief where he proffered its principles on three pages thereof. (R.pp. 1472-73 and 1479). Petitioner's counsel then addressed the applicability of Meinhard with the trial court in his opening statement. (R.p. 157, lines 8-24). During trial, Petitioner's expert witness, Professor John Freeman,

discussed Meinhard and its central principle that for business managers "the rule of undivided loyalty is relentless and supreme." Id. at 468, 164 N.E. at 548; (R. 383, lns. 14-22).[2] Petitioner then discussed Meinhard and its relevance to this case extensively for six pages in his post-trial brief submitted prior to the trial court's order. (R.pp. 1548-53). The order from the trial court did not mention Meinhard at all.

Before the Court of Appeals, Petitioner raised the applicability of Meinhard in five pages of his opening Brief (R.pp. 1660-62 and 1668-69) and again in his Reply Brief (R.p. 1737). Respondents never mentioned Meinhard in their brief to the Court of Appeals. As did the trial court, the Court of Appeals never addressed Meinhard since it based its ruling on the statute of limitations and laches.

Before this Court, Petitioner cited Meinhard in the first paragraph of his Introduction and in the final paragraph before the Conclusion. (Pet. 1 and 25). Again, Respondents ignored the case in their Return.

Respondents' failure to address Meinhard is understandable given its remarkable similarity to this case. In Meinhard, one co-venturer of a real estate management venture agreed with the development's landlord to re-develop the venture's property without informing his co-venturer. The New York Court of Appeals held the defendant breached his fiduciary duty to his co-venturer by not fully disclosing the opportunity to his co-venturer even though the landlord did not want to deal with the plaintiff and even though the defendant did not misrepresent anything to the plaintiff. The only significant difference between Meinhard and this case is the Respondents' more egregious conduct involving their intentional misrepresentations and fraudulent omissions.

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[2] Respondents' own expert witness also briefly mentioned Meinhard but without discussing its relevance to this case. (R.pp. 468, ln. 25 – 469, ln. 10).

While Meinhard has been cited five times by our state's Court of Appeals[3], 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 to South Carolina corporations.

B. Respondents Misapprehend Energy Resources Corp. v. Porter.

To avoid the holding of Energy Res. Corp. v. Porter, 14 Mass. App. Ct. 296, 438 N.E.2d 391 (1982), Respondents incorrectly construct the facts of that case. Respondents describe the plaintiff ERCO as a partner with Howard University and not as an independent contracting entity with Howard University. (Return 23). That description is factually incorrect. As the opinion states: "Howard was to be the primary applicant and ERCO would be the subcontractor." Energy Res. Corp., 14 Mass. App. Ct. at 298, 438 N.E.2d at 393. The party ERCO was seeking to do business with was Howard University. Near the end of the negotiations for a potential contract, ERCO's president asked Porter, the usurping officer, about the proposal to Howard University. The court described the encounter as follows: "Davis asked Porter about the Howard proposal on a later occasion and, once again, was told, without further elaboration, that ERCO wasn't going to get a subcontract from Howard." Id. at 299, 438 N.E.2d at 393. In other words, the opinion makes clear that the party with whom ERCO was seeking a contract was Howard University, not the Department of Energy. Howard, like Verizon, was the general contractor who was contemplating awarding a subcontract with ERCO, the

[3] 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).

equivalent of VP Enterprises. DOE never refused to do business with ERCO. It was Howard University that refused to deal with ERCO.

In Energy Resources, the usurping officer took no action to form a new corporation to obtain the corporate opportunity until after learning that Howard University refused to deal with ERCO. He then concealed his formation of a new entity to take the venture. Id. at 298-99, 438 N.E.2d at 393. Likewise, Krish made the decision to take the Verizon corporate opportunity three weeks after Verizon's refusal without telling Kaj and VP Enterprises he had formed a new corporation to do so. As such, Howard University does equal Verizon, ERCO equals VP Enterprises, and Porter equals Krish and Vijay. The seminal case is squarely on all fours with the matter *sub judice*.

Whether the parties align exactly the same as in Energy Resources or its prodigy is not the central point. The larger principle is that a corporate officer or director who owes a fiduciary duty to the corporation is not entitled to divert a corporate opportunity to himself by withholding significant and material facts from the corporation about the deal he is taking, even if the third party has stated unequivocally it will not deal with the plaintiff. Justice Brown's conclusion in Energy Resources is equally applicable here: "A fiduciary's silence is equivalent to a stranger's lie." Id. at 304, 438 N.E.2d at 396.

III. STANDARD OF REVIEW FOR ACTION IN EQUITY.

Respondents incorrectly characterize this Court's authority to review the findings and rulings in this case. In Petitioner's second, third and fourth causes of action related to Respondents' fiduciary duties, Petitioner asked for "a constructive trust on the assets and shares of P Communications and assets of Vijay Patel and Krish Patel, for disgorgement ... and other equitable relief." (R.p.p. 99-101, ¶¶ 62, 66 and 70).

Petitioner also requested the equitable remedy of an accounting in the fifth cause of action. The relief Petitioner is seeking is primarily equitable.

In his reply brief to the Court of Appeals, Petitioner described in detail how all ten of the bullet point "findings" of the trial court cited by Respondents had no evidentiary support in the record. (*Compare* Return 8-9 to R.pp. 1747-52). These factual discrepancies were overlooked by the Court of Appeals and will be subject to review by this Court should it grant Petitioner's request for review. *cf.*, South Carolina Dep't of Soc. Servs. v. Cummings, 345 S.C. 288, 298, 547 S.E.2d 506, 511-12 (Ct. App. 2001) (appellate court gave deference to the lower court finding on "credibility" where the judge analyzed the facts and relevant precedents "with specificity").

IV. SIGNIFICANT FACTUAL ERRORS OF RESPONDENTS.

A. Errors in Respondents' Statement of the Facts, including Kaj's background.

Respondents made a series of factual inaccuracies some of which must be pointed out to the Court. First, Petitioner's counsel would like to correct Respondents' mischaracterization of Kaj as "an unsuccessful entrepreneur" (Return 3), implying that Kaj is some sort of shiftless freeloader. Nothing can be further from the truth. Kaj came to the United States from Kenya with $86 to his name. (R.p. 160, line 6 – p. 161, line 14). Kaj studied computer engineering at Clemson and worked hard to develop a consulting business that he has owned for 21 years and makes over $200,000 a year. (R.p. 164, line 13 – p. 166, line 8; R.p. 333, lines 18-22). Like many persistent entrepreneurs, Kaj has had some failures along with his success. As the result of his hard work and frugality, he was able to bring an $800,000 line of credit to VP Enterprises – an important asset to any start-up business. (R.p. 192, lines 17-12).

B. Respondents distort Kaj's accurate disclosure of civil litigation.

To bolster their refusal-to-deal defense, Respondents mischaracterize the testimony and evidence regarding the effect of Petitioner's prior civil litigation on the VP Enterprises application process. (Return 4-6). Respondents declare that Kaj "admittedly failed to disclose numerous civil suits in his past" (Return 5) and that "Kaj admitted that he failed to disclose at least four different lawsuits either in the Verizon application or in his Answers to Interrogatories." (Id. at n. 9). This characterization has no foundation in fact. At issue is only one magistrate court lawsuit Kaj filed around 2000 which was a $2,500 claim, about seven years prior to the filing of the business application with Verizon. (R.p. 197, line 1 – p. 198, line 18, R.p. 292, lines 15-16, R.p. 295, line 16). The Verizon application asked for civil litigation that the applicants, Kaj and Vijay, were involved in within the past five years. (R.p.1020). Kaj's magistrate court case never proceeded past the pleading stage and was simply stricken for inactivity from the docket years later in 2009. (R.pp. 1422-33). Because Kaj never proceeded with the case at any time during the five year period prior to the Verizon business application, he did not believe that the 2000 magistrate court case came within the ambit of the Verizon litigation questionnaire. (R.p.198, lines 14-18).

What is undisputed is that Kaj disclosed a lawsuit he initially filed in 2005 and then refiled in 2008 against Applied Engineering Solutions, Inc., in keeping with Verizon's disclosure request. The two filings were all part of one claim against the same defendants. (R.p.294, lines 7-19). Respondents' cross-examination about "your lawsuit against . . . A[pplied] Engineering", "... a lawsuit filed in '05. And ... another lawsuit filed in '08" all refer to the same fully disclosed lawsuit Kaj filed against Applied

Engineering Solutions, Inc. (R.p. 294, lines 4-11). They do not comprise three different undisclosed litigations as claimed by Respondents. Significantly, Verizon never indicated any problem with the way Kaj disclosed the Applied Engineering litigation.

At issue is only the seven year old, $2,500 magistrate court lawsuit whose only known activity occurred outside the five year disclosure window requested by Verizon. As Professor Freeman testified, this issue is small compared to Vijay's criminal conviction for shoplifting. (R.p. 406, lines 3-4).

Respondents claim that "non-disclosure of this sort" is why VP Enterprises' application was denied. (Return 5). However, a thorough review of the Verizon testimony shows that Kaj's civil litigation was never identified by Verizon as the cause of the VP Enterprises rejection. Verizon's Rule 30(b)(6), SCRCP, witness, designated to testify why Verizon rejected VP Enterprises' license application, testified at her deposition that she did not know if there was a problem with both Kaj and Vijay or just with Vijay who had a known shoplifting conviction. (R.p. 886, line 23- p. 887, line 8 and R.p. 888, lines 15-20, Verizon 30(b)(6) Dep. P. Cook , July 23, 2013).

At trial, which occurred one year after the Rule 30(b)(6) deposition of Verizon, no Verizon witness could point to anything in Kaj's background that contributed to the denial. The only Verizon employee to testify, Tammy Blew, was specifically asked: "Do you know why VP was denied?" She answered: "I do not", since the decision was above her job level. (R.p.437, lines 2-5).

In contrast, the trial court Order stated: "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." (R.p. 16, ¶18). In actuality, there is

no such testimony. This finding is wholly unsupported by the record.

A critical take-away from the refusal-to-deal cases, such as Energy Resources and its prodigy, is that any misunderstanding between Kaj and Verizon about the reporting of civil litigation on the license application could have been easily cleared up with a discussion among Vijay, Krish, Kaj and Verizon personnel. Instead, Krish and Vijay withheld from Kaj the glaring problems in their backgrounds (Krish's firing and Vijay's criminal conviction) and continued to proceed with Krish as the point man in the application process. As other courts have emphasized, full disclosure among fiduciaries could have led to arrangements with the third party (Verizon) that allowed the application to proceed toward approval. The concealments by Vijay and Krish prevented Verizon's initial denial from ever being tested. That is why, as a matter of law, Respondents' refusal-to-deal defense should be rejected and the lower courts' orders overturned.

V. PETITIONER'S FIDUCIARY DUTY CLAIMS ARE WELL ESTABLISHED AS A MATTER OF LAW AND FACT.

Respondents contend that there can be no claim for usurpation of a corporate opportunity because Kaj could have opened his own Verizon store. First, this point is irrelevant because Kaj, Vijay and Krish chose to operate jointly through a corporation thereby pooling their resources, such as Kaj's $800,000 line of credit and his experience in drafting business plans and profit-and-loss projections. (R.p. 341, lines 9-12). Second, the store locations had to be approved by Verizon which would prevent agents from locating stores in the same proximity as existing Verizon stores, and Respondents took the best locations early on in the Greenville market. (R.pp. 149-150, 433 and 443-445). Instead of continuing to pool talents and resources into one organization, namely VP Enterprises, Krish chose to withdraw his contributions (time and sales experience) from

VP Enterprises and divert them to P Communications once he obtained a business plan and a profit-and-loss template from Kaj and an alternate funding source.

Respondents cite the cases of Cooper Linse Hallman Capital Mgmt., Inc. v. Hallman, 368 Ill.App.3d 353, 856 N.E.2d 585 (1st Dist. 2006) and Nw. Terra Cotta Corp. v. Wilson, 74 Ill.App.2d 38, 219 N.E.2d 860 (1st Dist. 1966). Those cases are inapposite. In Nw. Terra Cotta Corp., the plaintiff company (VP Enterprises equivalent) declined to purchase stock from a third party (Verizon equivalent) at the price the third party requested. Id. at 48, 219 N.E.2d at 865. In other words, it was the VP Enterprises equivalent who refused to deal with the third party.

In Cooper Linse, the matter involved two employees of an investment firm who left their employer to start a competing company. In finding no breach of fiduciary duty, the court emphasized that the two employees "did not solicit business for their new corporation or begin competing with plaintiff until after they had resigned." Id. at 361-62, 856 N.E.2d at 592 (underline added). Krish and Vijay, however, never resigned their positions as officers and director of VP Enterprises.

CONCLUSION

There is no genuine confusion about timeliness of this action in light of the fraudulent concealment perpetrated by Krish and Vijay and their failure to disclose significant and material information in perfect good faith as fiduciaries. The facts and the law as explained herein establish that Respondents breached their fiduciary duties to Petitioner and that Petitioner is entitled to a constructive trust over the Respondents' shares of stock in P Communications or the proceeds thereof.

Respectfully submitted,

THE GILREATH LAW FIRM, P.A.

By: _____

James R. Gilreath (SC Bar No. 2133)
William M. Hogan (SC Bar No. 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 (SC Bar No. 73967)
Nihar Patel (SC Bar No. 74166)
J. Matthew Whitehead (SC Bar No. 73803)
The Carolina Law Group
910 E. Washington Street
Greenville, SC 29601
Telephone: (864) 312-4444
Fax: (864) 312-4447
monty@thecarolinalawgroup.com
nihar@thecarolinalawgroup.com
matt@thecarolinalawgroup.com

ATTORNEYS FOR PETITIONER

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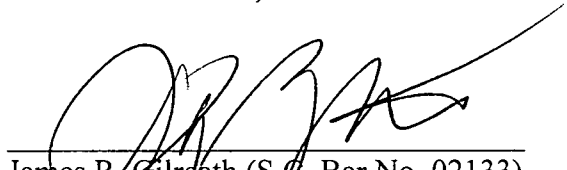
PROOF OF SERVICE

The undersigned does hereby certify, this 10th day of November, 2016, that service of the **REPLY BRIEF IN OPPOSITION TO THE RETURN TO PETITION FOR WRIT OF CERTIORARI** was made on counsel of record, specified below, by email and mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Thomas L. Stephenson, Esquire
STEPHENSON & MURPHY, LLC
207 Whitsett Street
Greenville SC 29601

Andrew A. Mathias, Esquire
Kirsten E. Small, Esquire
NEXSEN PRUET, LLC
55 E Camperdown Way,
Suite 400 (zip 29601)
P.O. Box 10648
Greenville, SC 29602



James R. Gilreath (S.C. Bar No. 02133)
William M. Hogan (S.C. Bar No. 65272)
THE GILREATH LAW FIRM, P.A.
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

Attorneys for Petitioner Pankaj Patel, individually and derivatively on behalf of Nominal Defendant, VP Enterprises, Inc.

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