IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780
Assignors,	Consolidated Case No: 2019-CA-2762

To:

Soneet Kapila,

Assignee	Division L

_____/

LASERSCOPIC CLAIMANTS' OBJECTION TO ASSIGNEES' MOTION TO COMPROMISE CLAIMS AGAINST DIRECTORS AND OFFICERS, PAY CONTINGENCY FEES, AND ENTER FINAL JUDGMENTS

Joe Samuel Bailey, Laserscopic Spinal Centers Of America, Inc., Laserscopic MedicalClinic, LLC and Laserscopic Spine Centers of America, Inc. (collectively the "Laserscopic Claimants"), acting by and through the undersigned counsel, file this objection to the "*Assignee's Motion for (A) Order Approving Settlement and Compromise of Claims Against Former Directors and Officers (the "Agreement"), (B) Order Authorizing Payment of Professional Fees, and (C)*

Final Judgment As To Settled Claims In Lawsuits" (the "Motion"). In support, the Laserscopic Claimants state as follows:

SUMMARY

As the Assignee noted, one of the four factors a Court must consider in reviewing a proposed settlement includes: "paramount interest of the creditors and a proper deference to their reasonable views in the premises." Laserscopic Claimants, the largest unsecured creditors in this proceeding, object to the proposed settlement because it will be used—and in fact is already being used—to impair the Laserscopic Claimants' legitimate collection efforts of their $369 million Judgment entered on July 3, 2019. While the Motion purports to resolve only the claims between LSI and the defendants in the D&O lawsuits brought against them, the language in the Agreement is not so narrowly tailored. The Laserscopic Claimants were not part of any settlement negotiations nor did they see a copy of the Agreement before it was executed and, hence, did not have an opportunity to provide comments on the language.

The Laserscopic Claimants brought separate claims against certain overlapping defendants arising out of their fleecing of a non-LSI entity, an entity that is not under the control of the Assignee: EFO Laser Spine Institute, Ltd.[1] On Wednesday, the Laserscopic Claimants were served with a 276-page motion to dismiss in their Dallas collection litigation (**Exhibit A**); in that action, certain defendants argue that the claims must be dismissed for lack of subject matter jurisdiction, claiming the proposed Agreement supports their position. They argue that the Agreement eliminates their liability to the Laserscopic Claimants and separately contend that the claims brought by the Laserscopic Claimants, which have been pending for well over a year, must

[1] The EFO Debtors are EFO Holdings, L.P. ("EFO Holdings") (who swears it does not own any interest in LSI) and the EFO affiliates EFO Genpar, Inc. (EFO Holdings' general partner) and EFO Laser Spine Institute, Ltd. ("EFO LSI"). EFO Holdings is currently in a chapter 7 bankruptcy and its current chapter 7 trustee is Scott Seidel. He was never served with the Motion.

be dismissed because only the Assignee has standing to pursue those claims. Upon learning of their position, the Laserscopic Claimants attempted to resolve the issue with the Assignee, but, unfortunately, was unable to do so. As a result, Laserscopic Claimants are compelled to file this objection and request discovery relating to the proposed settlement, a re-set of the hearing and ultimately a denial of the Motion.

BACKGROUND

LSI and the EFO Debtors lost a fraud lawsuit brought by the Laserscopic Claimants for $369 million, plus post-judgment interest and attorneys' fees and costs, jointly and severally. It is undisputed that the Laserscopic Claimants are the largest unsecured creditors in the estate. [2] The trial court (this Court) ordered *disgorgement* damages, which was upheld twice on appeal. All appeals have been exhausted, the judgment is final and this court's judgment of disgorgement[3] is *res judicata* against LSI and its Assignee and imposes a constructive trust on the assets that were the subject of the improper conduct. And as a result, the LSI assignment estate has no independent interest in the ill-gotten funds and nothing from them to convey (to creditors or to counsel). Therefore, there is only a narrow band of assets for the LSI Assignee to collect on—money outside of the fraud committed against the LSI Claimants and not subject to the liens of TCB. This issue is not being raised for the first time here, as the Laserscopic Claimants have raised this issue with the Assignee from virtually the outset of the ABC Proceeding.

To recover on the Judgment, the Laserscopic Claimants filed various actions in Florida and Texas. Those claims include, avoidance of monies transferred from EFO LSI to its members (EFO

[2] Texas Capital Bank, N.A. ("TCB") as agent for a syndicate of banks. Virtually all assets of the LSI estate were subject to the secured lien claims of TCB. TCB collected on its secured collateral. TCB's alleged collateral was sold.

[3] **Exhibit B**, the Court's judgment of July 3, 2019, is attached.

LSI was a member of LSI Hold Co.), claims of breaches of fiduciary duty and duty of loyalty[4] and veil-piercing claims against the insiders of the EFO Debtors.[5] These lawsuits were filed over a year ago; the Assignee has been aware of these actions and has never moved to intervene, never moved to stay the suits, and never objected to or asserted any rights over these claims at any time. This notwithstanding, the defendants in the Texas action are now claiming that the Assignee has such rights and, despite a request made to the Assignee to clarify the issue, he has not. This prejudices the Laserscopic Claimants and necessitates that the Court not approve the Agreement and related actions until the issue can be properly considered and ruled upon.

The Motion seeks to recover and distribute portions of the $9 million settlement with ***LSI's*** insurers' D&O coverage. The settlement also purports to release a number of individuals and entities from claims filed by the Assignee on behalf of the LSI estate. The Laserscopic Claimants' actions against some of the same defendants do not arise out of any conduct related to the LSI estate, but, rather, involve their actions as it pertains to EFO LSI. But the EFO Debtors and other proposed released parties are attempting to capitalize on ambiguities that exist in the Agreement to end-run the Laserscopic Claimants' collection lawsuits, for example, arguing that they are released from the unrelated Texas claims. Accordingly, the Laserscopic Creditors file this objection and seek to conduct discovery relating to the proposed settlement agreement and further seek to be included in future negotiations regarding the terms of the Settlement Agreement.

I. Standard on Evaluating a Proposed Settlement.

This Court relies on the *Justice Oaks* factors to evaluate a proposed settlement. Those factors include: (a) The probability of success in the litigation; (b) the difficulties, if any, to be

[4] The Laserscopic Creditors purchased claims against the insiders of EFO LSI at a constable's sale in Texas.

[5] *See, e.g.,* (**Exhibit C**-the Third Amended Petition in Dallas DC-20-06211) and (**Exhibit D** the Dallas collection action DC-19-10056) **Exhibit E** (the Amended Third Party Complaint against EFO here).

encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *In re Justice Oaks II, Ltd.,* 898 F.2d 1544, 1549 (11th Cir. 1990). Courts consider these factors to determine "the fairness, reasonableness and adequacy of a proposed settlement agreement." *In re Chira*, 567 F. 3d 1307, 1312–13 (11th Cir. 2009) at 1312.[6] A court must also be informed of all the "relevant facts and information in order to make an independent judgment as to whether the settlement is fair and reasonable under the circumstances." *In re Vazquez*, 325 B.R. 30, 36 (Bankr. S.D. Fla. 2005). Here the *Justice Oaks* factors and the relevant facts and information lead to the result that as drafted, the settlement is not fair and reasonable under the circumstances, or that "relevant facts and information" are absent from the Motion.

II. The Assignee Cannot Release Claims He Does Not Have Authority to Release.

As discussed below, much of the confusion here arises out of ambiguities in the language of the proposed Settlement Agreement. While it would seem clear that the Assignee cannot release claims that belong to the Laserscopic Claimants, the EFO Debtors and their insiders and their transferees are taking the opposite position. Thus, it has become necessary to emphasize certain unobjectionable principles relating to the authority of the Assignee.

In an ABC proceeding, like in a bankruptcy proceeding, approval of proposed settlements in bankruptcy assumes that the parties to the settlement have the requisite legal

[6] The Eleventh Circuit affirmed the Middle District of Florida in *In re Able Body Temp. Servs*., Inc., 2015 WL 791281, at *5 (M.D. Fla. Feb. 25, 2015), aff'd, 632 F. App'x 602 (11th Cir. 2016) stating that "[b]efore a bankruptcy court approves a settlement that constitutes a sale of assets, the trustee must demonstrate an 'articulated business justification or sound business reasons for the proposed sale.'" Id. (citing In re Moore, 608 F.3d 253, 262 (5th Cir. 2010); *see also In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986)).

right and power to conclude the proposed settlement. *See, e.g.*, *Olson v. Anderson (In re Anderson)*, 357 B.R. 473, 476–77 (Bankr. W.D. Mich. 2006). A debtor could not, through a settlement, "convey to the [settlement counterparty] the Brooklyn Bridge for their money." *Id.* at 476. The settlement is improper simply because the debtor has no right to or power over the Brooklyn Bridge. *Cf. Anderson*, 357 B.R. at 476. Put differently, the settlement "approval process cannot be used to countenance an *ultra vires* activity regardless of how advantageous the proposed settlement might otherwise be to the bankruptcy estate." *Id.* Using the language in the Agreement, the proposed released parties—who are also defendants in suits brought by the Laserscopic Claimants—have already taken the position in the Texas action that the Assignee can release such claims.

In reviewing the objection, it is critical to keep in mind the ownership structure of LSI, and that LSI is a *subsidiary*, not a parent. Thus, the ownership has about 80 entities and people at several parent ownership levels, some shareholders owned subsidiaries that in turn owned subsidiary interests in EFO LSI, which was run by the EFO Debtors. EFO LSI, in turn, owned interests in LSI Holdco, which held interests of LSI, the Assignee's Companies. The parent entities sued by the Laserscopic Claimants in Texas are steps above the subsidiaries of this ABC proceeding. Yet, in verified answers like **Exhibit H**, the defendants in the Texas action make the following sworn statements, among others:

> a) Pursuant to Florida Statutes §727.104, the assets that are subject of the assignment, which Defendant contends include the claims alleged against it by Plaintiffs in their Petition, were transferred to the assignee for possession, protection, preservation and administration by the assignee. As such, the claims asserted herein, the underlying bases of which include fraudulent transfer claims asserted by the Assignee in the ABC Litigation, belong, in whole or in part, to the Assignee.
>
> b) Accordingly, Plaintiffs' claims in this case are subject to a stay imposed by law in the ABC Litigation, which is being violated by Plaintiffs by the existence and prosecution of this case.

But it cannot be disputed that the Assignee does not own claims of the parents against their own insiders. Although counsel concedes as much, no action has been taken by the Assignee to resolve this key issue by making curative filings to that effect. The Agreement is sufficiently ambiguous, which is why the Laserscopic Claimants asked that it be modified to make it accurate and perfectly clear that the Assignee was not intending to release and cannot release such claims. The EFO Debtors and their insiders and transferees are taking advantage of the lack of clarity in the Agreement in their recent filings, which have now spilled over into responses to discovery filed in the Florida action filed in this Court today.

The Laserscopic Claimants have significant evidence of breaches of fiduciary duty, conspiracy to commit those breaches, fraudulent transfer, and other claims against the professionals who aided the looting of LSI, the entities who benefited from the looting of LSI, and the limited partners of those entities, *i.e.,* the defendants in the Dallas litigation. The Dallas defendants now seek to have the entire case dismissed by (1) intentionally conflating the fraudulent transfer claims involving initial and subsequent distributions from LSI to its investors (claims belonging to the Assignee) with the fraudulent transfer claims involving direct distributions from EFO LSI (claims not belonging to the Assignee) to its limited partners and (2) performing an end-run around § 727 to have someone other than this Court determine what is property of the ABC estate. If the Dallas defendants believe that this Court has settled their case in Dallas, the issue should properly be brought before this Court, requiring a continuance of the hearing to approve the settlement to allow time for discovery and the ability to supplement.

Florida law however requires the opposite—that this Court make the determination of interests in assets of the estate first, then any other supplemental proceedings may continue elsewhere. Florida law requires this issue to be brought only before this Court. "All proceedings under this chapter shall be subject to the order and supervision of the circuit court for the county

where the petition is filed ….” Fla. Stat. § 727.102. Thus this Court is solely empowered to determine the ownership of property of the estate and the extent of its stay, to “[h]ear and determine any of the following actions brought by the assignee, which she or he is empowered to maintain: … (b) Determine the validity, priority, and extent of a lien or other interests in assets of the estate, or to subordinate or avoid an unperfected security interest pursuant to the assignee’s rights as a lien creditor under s. 679.3171.” Fla. Stat. § 727.109. Whether the Laserscopic Claimants are violating the Agreement or the ABC stay by continuing the suits in Dallas may only be determined by this Court. But rather than sue the Assignee (or others) under § 727.105 in this Court, the Dallas defendants ask the Dallas Court to determine this Court’s stay, this ABC estate’s property, and this Court’s Order and Agreement.

Any proposed settlement needs to include a statement from the Assignee that disavows the misrepresentation of **Exhibit A** and **Exhibit H**–that the proposed settlement halts, takes control over, or releases claims in the Dallas and Florida suits. The Laserscopic Claimants did not sue to collect from the ABC Companies (or their insiders in the capacity as LSI insiders). Of course, some officers who happened to be LSI insiders also breached duties as EFO Debtors’ insiders, but those claims are not being settled and cannot be settled here. In light of actions already being taken by the proposed “Defendant Releasees”, an affirmative statement would be necessary for the Court and creditors to evaluate the compromise. Removing ambiguity will prevent the waste of judicial resources in this proceeding and any other collection proceedings to resolve these disputes over the language of the proposed settlement agreement now. To fail to do so will certainly generate more litigation as to what was meant and unfairly prejudice the creditors.

To be clear, the Court’s Judgment of $369 million awarded relief directly against the EFO Debtors (EFO Holdings, EFO Genpar and EFO LSI). The Laserscopic Claimants thus sought collection directly against the EFO Debtors and their insiders, *but not LSI***.** The EFO Debtors had

different creditors than LSI, different owners than LSI, and some of the board members of EFO were not at LSI. The insiders of the EFO Debtors committed qualitatively different wrongs from their wrongs against LSI, the fact that some of those insiders overlap is of no moment. While the Assignee acknowledges tacitly that the Agreement does not affect rights against the EFO Debtors and their transferees, the actions taken by the Texas Defendants makes clear that the proposed Agreement is not in the "paramount interest of the creditors."

Additionally, Laserscopic Claimants own direct claims against the Texas Defendants. In January 2020, the EFO Debtors' claims were sold at a Constable's sale to the Laserscopic Claimants. Those claims against the insiders of the EFO Debtors are owned by the Laserscopic Claimants and they have brought actions on the claims in this Court and in Dallas.[7] These claims are not and cannot be within the scope of the Assignee's claims, and he certainly has never taken the position that they would be. The causes of action were again ordered turned over by a turnover order in January 2021.[8] Not being owned by either LSI or any of the Defendants the Assignee would settle with, the effort to "settle" those claims is improper and undisclosed.

III. The Ambiguities in the Proposed Settlement Agreement and the Proposed Released Parties Are Already Capitalizing on those Ambiguities.

One of the primary objections to the proposed Agreement relates to the language used by the parties, which was not reviewed by the Laserscopic Claimants in advance. The proposed Agreement contains contradictory provisions and the ambiguity creates tangible concerns with future enforcement and current interpretation.[9] Some of the illustrations of these ambiguities include:

[7] **Exhibit F** Notice of Levy, Writ of Execution and Constable's Bill of Sale.
[8] **Exhibit G** Order of Dallas Court in DC-20-06211.
[9] In light of these ambiguities, mediation should likely be resumed and the Laserscopic Creditors should be required to participate in this iteration.

- the Agreement proposes to release claims of "agents" "shareholders" and "members" of Companies (without limitation), as if a subsidiary could control the claims of its parent —as discussed below—a legal impossibility.

- The chapter 7 Trustee of the EFO Holdings, L.P. bankruptcy holds claims that are implicated by the Agreement but he was not served with the Motion or consulted on the Agreement. Instead, two Defendants (Julie Krupala and Esping) claim to act for EFO Holdings. If the arguments raised by **Exhibit A** were meritorious, the Agreement would lack capacity without bankruptcy court approval from the bankruptcy court of the EFO Holdings chapter 7.

- The Agreement contains two integration clauses that appear, given the above, to be inaccurate or misleading because there is also a severability clause. The Court should know that it is approving the entire integrated agreement, and the Assignee is seeking to approve the entire agreement, not an agreement with severable portions subject to future annulment.

- The releases are imprecisely drafted and are subject to varying interpretations.

All of which is why, on short notice, the Laserscopic Claimants must file this objection and request a re-set of the hearing, discovery about the intent behind the Agreement and denial of the Motion.

More precisely, the Agreement contains several provisions that are ambiguous, misleading, and contradictory, and several of them have been misrepresented by the EFO Defendants in Texas to avoid the EFO Debtors liability to its victims. For example, the definition of "Assignee Releasing Parties" includes parties whose capacity is absurdly ambiguous or logically impossible. That is, as noted above, it is impossible for the Assignee to release claims held by shareholders or parents when he only represents a subsidiary, yet the Agreement purports to release claims held by "managers, members" and "shareholders" of companies, which would presumably release claims of the shareholder/owning member. A shareholder's claim cannot be released merely because the entity in which he owns a share makes a settlement agreement.

Similarly, the Agreement does not restrict the capacity of agents, and could be misread to imply all capacities. This would purport to release claims unrelated to an agent's service for LSI and include service for the parent company EFO LSI, or for the supposedly unrelated entity Judgment Debtor EFO Holdings—merely because a person also happened to have held a title at

LSI at some time. Judgment Debtor EFO Holdings has some of the same control persons who, in stealing from the Creditors and breaching duties to EFO Debtors, simultaneously breached duties to LSI. The release confusingly indicates that these insiders would be released from "any" claim for breach of duty, while the EFO Debtors claims are not the Assignee's to release.

The release language below the general release is also flawed because it releases claims for "any **other** fraudulent transfer claims **or other claims that seek the recovery** of distributions, or the value of any distributions (as damages or otherwise), **made directly by any of the LSI Entities**", then releases claims based on litigation cases. While the EFO Debtors will not agree on whether "made directly by" is a limitation on all claims released, that language could be clarified *before* years of litigation. This language is inconsistent and raises material questions on enforcement. Similarly, if one retains a claim, the other person retains certain defenses as matter of law. Here, "All defenses, counterclaims and third-party claims are preserved and in no way impacted or impaired by this Agreement" seems to have the potential to revive claims that would be compulsory to that defense.[10]

The Agreement is also confusing in granting releases to professionals. The release by and of the Assignee's own lawyers, professionals, and agents is improper and interferes with the rights of others, including (if the Defendants' reading were correct) EFO Holdings and its bankruptcy estate. The counsel and professionals for LSI are not providing value to the ABC estate for the release of claims. There may be undisclosed claims that the Laserscopic Claimants own based on 1) the turnover order entered January 2021 turning over all claims of EFO, 2) the writ of execution

[10] The releases are plagued with other issues as well. The release language violates the ABC statute because it purports to release "statutory" claims, without notice of which statute is involved or notice to the affected governmental entity or those required to notice under the statute. For instance, if the statute is a WARN Act claim, that would require actual notice to affected employees.

served January 2020 and constable's sale in February 2021 where the Laserscopic Claimants purchased the EFO claims.

Also problematic is any language releasing the "Predecessors" of "shareholders" of LSI. The language used purports to release claims via the Assignee and also of "counsel" of the "predecessor." This broad release includes "counsel" and "agents" of the wrongdoers. Yet, the Assignee is investigating and pursuing claims against LSI's counsel and accountants. Thus, those claims are impacted by this inartful drafting and ultimately, if extinguished, impact the unsecured creditors by accidentally eliminating claims (and sources of recovery). Potentially millions of dollars could be lost to the estate if it is not clear that professionals who aided in the looting of LSI are **not** being released by the Agreement, whether they represented LSI or the wrongdoers in the fraud.

The Agreement also contains inconsistent provisions on the integration and severability of the clauses. But this Court must only approve or consider only the entire agreement, not some portion of it. That is clear from the Agreement's provisions on approval by this Court ¶3 and Termination (¶7 "If the Circuit Court does not approve this Agreement in its entirety"). The same Agreement contains an integration clause – (¶12 "This Agreement constitutes the entire agreement between the Parties") and there are no secret side-agreements allowed to be concealed from the creditors under the Motion and ABC statute. Unfortunately, the Agreement contains a severability clause (¶16) inconsistent with the other portions of the Agreement. As a factual matter, if the Court approved the agreement, it would not be allowed to then be only partly performed, re-interpreted, or changed by the severability clause.

The Trustee's authority to settle cases is circumscribed by his primary obligation – that he act as a fiduciary of the creditors. The 75% creditor was not involved in these settlement

discussions but is quickly becoming a victim of a deal trumpeted in Dallas as a *fait accompli* and done deal. The chapter 7 Trustee for EFO Holdings was never told.

The settlement fails to specifically identify all direct claims against Released Parties. Any attempt by the Assignee to settle all direct claims—such as those of the Laserscopic Claimants in the Dallas litigation—is prohibited. In the absence of Florida case law, the bankruptcy courts have resolved the issue relying on *Baillie Lumber Co. v. Thompson*, 391 F.3d 1315 (11th Cir. 2004). In *Xenerga*, the court found the direct claims against the principals did not belong to the estate:

> Piercing the corporate veil is unnecessary to find a corporation's principal individually liable. NTAE thus need not bring an alter ego action to establish the Principals' liability under the FDUTPA. Accordingly, NTAE's claim under FDUTPA is a direct claim against the Principals that belongs solely to NTAE and not the estate.
>
> Likewise, NTAE's conspiracy claim is directly against the Principals and Filta. The claim alleges Clewes and Sayers each conspired with Xenerga and Filta to commit unlawful acts, including fraudulent inducement into two contracts, fraudulent transfer of funds, violation of the FUDTPA, and breaches of fiduciary duties.

In re Xenerga, Inc., 449 B.R. 594, 600 (Bankr. M.D. Fla. 2011).

This issue has been identified and elaborated upon by counsel for Shirley Langston and John Langston (the "Langstons") and Crystal and Leonard Tinelli (the "Tinellis") in their *Objection By Shirley and John Langston and Crystal and Leonard Tinelli to Assignee's Motion for (A) Order Approving Settlement and Compromise of Claims Against Former Directors and Officers (B) Order Authorizing Payment of Professional Fees and (C) Final Judgment as to Settled Claims in Lawsuit* filed April 16, 2021. Laserscopic claimants incorporate by reference issues number 3 and 4 raised by the Langstons and Tinellis in their objection.

At bottom, the proposed language is ambiguous, unclear, and harmful to the creditors. Accordingly, the Laserscopic Creditors further request discovery to address the factual issues raised in the Motion as they dispute the following:

- That the settlement is in the best interests of the estate,

- that the litigation should be compromised,
- that the compromise is in good faith.

Alternatively, if the Court will not permit discovery, the Court should correct the ambiguities of the Agreement in the order and further clarify the intent with language such as:

> "Notwithstanding anything to the contrary in the Agreement or this Order, the Agreement does not affect, impair, or release the Laserscopic Claimants' rights against anyone other than the Assignee's Companies in the ABC. There is no stay preventing the Laserscopic Claimants from pursuing their claims currently in Dallas and this Court. Any dispute over the property of the ABC estate or the Agreement shall be brought only to this Court. This Order controls over the Agreement if there is an inconsistency. The Court has the sole power to resolve the disgorgement issue, which the Laserscopic Claimants are not waiving. Pending resolution of that issue, the funds from the Agreement are held in escrow."

IV. The Assignee's Distribution Should Be Held in Trust for the Laserscopic Creditors

Lastly, the Assignee's rights here are subject to the disgorgement judgment. Unless that issue is resolved, any distribution of money should be held in trust, yet the proposed settlement does not address this issue. As a result, because no court has determined why the disgorgement suit that affects the LSI estate would not be implicated by the recovery from fraudsters. The Court will require evidence and testimony on the funds and the equitable claims such a constructive trust that have been imposed on LSI.

The Laserscopic Claimants request that the Motion be denied, or alternatively that the Assignee be ordered back to a mediation where the Laserscopic Claimants can participate, and that the Assignee, at *that* settlement, make provisions to address the disgorgement and other concerns raised above. Alternatively, any order granting approval must control over the Agreement clarify the Agreement to remove ambiguities that impair all creditors of the estates, that there is no stay violation, and specifically provide a forum to address disgorgement issues and issues of estate property.

Finally, the Laserscopic Claimants must reserve their right to supplement this objection because of these circumstances and the possibility that additional issues may arise.

WHEREFORE, the Laserscopic Claimants pray for an Order of this Court denying the Motion, or alternatively providing for discovery and amendment to correct the agreement, or alternatively for a mediation that also includes the Laserscopic Claimants, and for such other relief as this Court may equitably grant the Laserscopic Claimants.

Dated: April 16, 2021

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CERTIFICATE OF SERVICE

I CERTIFY that on April 16, 2021, a true and correct copy of the foregoing has been electronically filed with the Clerk of Court through the Florida Courts E-Filing Portal, which will

send a Notice of Electronic Filing to all counsel of record or electronic mail to the parties listed on the Limited Notice Parties attached.

/s/ Kenneth G. M. Mather
Kenneth G. M. Mather, Esq.

MASTER LIMITED NOTICE SERVICE LIST

January 14, 2020

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Laser Spine Surgery Center of St. Louis, LLC
Laser Spine Surgery Center of Warwick, LLC
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EXHIBIT A

CAUSE NO. DC-20-06211

JOE SAMUEL BAILEY, *et al.*,	§	**IN THE DISTRICT COURT**
Plaintiffs,	§	
v.	§	**162nd JUDICIAL DISTRICT**
JAMES S. ST. LOUIS, *et al.*,	§	
Defendants.	§	**DALLAS COUNTY, TEXAS**

DEFENDANTS' MOTION TO DISMISS FOR LACK OF JURISDICTION, OR IN THE ALTERNATIVE, MOTION TO STAY

INTRODUCTION

Defendants respectfully ask this Court to dismiss this case for lack of subject matter jurisdiction.[1] On March 14, 2019, Soneet R. Kapila, the "Assignee" for Judgment Debtor Laser Spine Institute, LLC ("LSI") filed a complaint in Florida, commencing an assignment for the benefit of creditors proceeding pursuant to Chapter 727 of the Florida Statutes (the "ABC Proceeding"). An assignment for the benefit of creditors proceeding is "intended as an economical and efficient alternative to the Federal Bankruptcy Act." *Akin Bay Co. v. Von Kahle*, 180 So.3d 1180, 1184 (Fla. 3d DCA 2015). Plaintiffs (and others) are creditors of estate created by the assignment. The Assignee, like a federal bankruptcy trustee, may prosecute claims to recover money on behalf of the estate and its creditors as their fiduciary. *See* § 727.108(1), Fla. Stat. (2020).

[1] Fourteen of the Defendants in this case are foreign individuals and entities domiciled in Florida, Georgia, and Tennessee (the "Specially Appearing Defendants"). On April 1, 2021, the Court sustained the Special Appearance of Helen Grammen, but the remaining special appearances are still pending. Because the Specially Appearing Defendants have filed special appearances challenging the Court's personal jurisdiction over them, they do not join the other Defendants in making this Motion.

Significantly, **"only an [A]ssignee has standing to pursue fraudulent transfers, preferential transfers or other derivative claims."** *Moffatt & Nichol, Inc. v. B.E.A. Intern. Corp., Inc., 48 So. 3d 896 (Fla. 3d DCA 2010) (emphasis added); Smith v. Effective Teleservices, Inc., 133 So. 3d 1048 (Fla. 4th DCA 2014)*. Here, the Assignee has filed 39 cases in Florida, Texas, Tennessee, Georgia, California, Connecticut, Nebraska, and Virginia, including nineteen cases in Dallas County, on behalf of the creditors of the estate (including on behalf of Plaintiffs).[2] Plaintiffs' pursuit of their claims in this Court represents "an improper attempt to get to the head of the line" of the other creditors and "an impermissible end-run" of Florida's statutory scheme governing assignments for the benefit of creditors. *Id.* at 901. Plaintiffs lack standing to bring these claims during the pendency of the ABC Proceeding. Accordingly, Defendants respectfully request that the Court dismiss this case for lack of subject matter jurisdiction.

Alternatively, Defendants respectfully ask this Court to stay this litigation until the conclusion of the ABC Proceeding. Allowing this case to proceed before the conclusion of the ABC Proceeding undermines the statutory purpose of those proceedings, which favor an orderly administration of the estate and an equal distribution of assets according to law. Plaintiffs' lawsuit also subjects Defendants to the unfair, unreasonable, and prejudicial possibility of inconsistent judgments and duplicative liability based on the same alleged facts and circumstances. For those reasons, Defendants respectfully ask this Court to grant this Motion.

RELEVANT FACTUAL BACKGROUND

A. The Bailey Judgment

This veil-piercing and fraudulent transfer action arises from a final judgment entered in Florida against non-party Judgment Debtors James St. Louis, Michael W. Perry, EFO Holdings,

[2] In these 39 cases, the Assignee seeks to recover alleged fraudulent transfers from certain subsequent transferees, as explained below. In addition to these 39 cases, the Assignee also filed suit against, among others, the former members of the board of managers of LSI Holdco, LLC, as described in footnote 4 below.

L.P. ("EFO Holdings"), EFO GP Interests, f/k/a EFO Genpar, Inc. ("Genpar"), EFO Laser Spine Institute, Ltd. ("EFO LSI"), Laser Spine Institute, LLC ("LSI"), Laser Spine Medical Clinic, LLC, Laser Spine Physical Therapy, LLC, and Laser Spine Surgical Center, LLC (together, the "Judgment Debtors").[3]

The Bailey Judgment arises from a proceeding filed against the Judgment Debtors in 2006 by Plaintiffs Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., and Laserscopic Medical Clinic, LLC ("Plaintiffs"). In November 2012, a Florida trial court entered a judgment for $1.6 million against the Judgment Debtors after a bench trial. The Judgment Debtors appealed. In February 2016, a Florida Court of Appeals reversed the $1.6 million judgment, noting in its opinion that the evidence supported an out-of-pocket damages or disgorgement damages award, as well as punitive damages.

In January 2017, the Florida trial court entered an amended judgment for $1.6 million, plus punitive damages in the amount of $5.75 million, for a total damages award of $7.35 million. Another appeal ensued. In December 2018, the Florida appellate court again reversed the decision of the trial court and directed that a judgment of $264 million be entered against the Judgment Debtors. The trial court thereafter entered a final judgment on July 3, 2019 (the "Bailey Judgment"), which Plaintiffs now allege totals more than $369 million with post-judgment interest. None of the Defendants in this case, except Dr. James St. Louis, is named in the Bailey Judgment.

B. The Assignee Initiates Litigation for the Benefit of Creditors in Florida.

On March 14, 2019, Judgment Debtor LSI executed and delivered an assignment for the benefit of creditors to Mr. Soneet R. Kapila, the "Assignee" for LSI and 15 of LSI's affiliate entities (collectively, the "LSI Entities"). The Assignee, in turn, filed a complaint in Florida state

[3] *See* Ex. B (Second Amended Final Judgment dated July 3, 2019 (the "Bailey Judgment")).

court, commencing an assignment for the benefit of creditors proceeding pursuant to Chapter 727 of the Florida Statutes (the "ABC Proceeding").[4]

An Assignment for the Benefit of Creditors proceeding is a state court insolvency proceeding administered under Chapter 727 of the Florida Statutes. The ABC statute "provide[s] a uniform procedure for the administration of insolvent estates, and to ensure full reporting to creditors and equal distribution of assets according to priorities as established under this chapter." Fla. Stat. § 727.101. An ABC proceeding is analogous to a Chapter 7 Bankruptcy proceeding in that it provides for the orderly wind down and liquidation of insolvent companies for the benefit of all of the company's creditors. *See Smith v. Effective Teleservices, Inc.,* 133 So. 3d 1048, 1050 (Fla. 4th DCA 2014) (quoting *Hillsborough County v. Lanier*, 898 So. 2d 141, 143 (Fla. 2d DCA 2005)) ("An assignment for the benefit of creditors is an alternative to bankruptcy and allows a debtor to voluntarily assign its assets to a third party [assignee] in order to liquidate the assets to fully or partially satisfy creditors' claims against the debtor"); *see also Akin Bay Co., LLC v. Von Kahle*, 180 So. 3d 1180, 1184 (Fla. 3d DCA 2015) ("Florida's assignment for benefit of creditors statute is intended as an economical and efficient alternative to the FEDERAL BANKRUPTCY ACT").

Like a Chapter 7, an ABC proceeding prevents a "race to the courthouse" by providing an organized framework for creditors to submit claims against an assignor's estate – a process which Plaintiffs are currently participating in as creditors of the estate. In carrying out the purposes of Chapter 727, the statutory Assignee must:

> Collect and reduce to money the assets of the estate, whether by suit in any court of competent jurisdiction or by public or private sale, including but not limited to, prosecuting any tort claims or causes of action that were previously held by the

[4] *See* Ex. C. The Assignee thereafter filed 13 additional lawsuits in Florida against, among other individuals, Defendants William Esping, William Horne, and Robert Grammen on behalf of LSI and the LSI Entities. Those lawsuits asserted claims against those Defendants as former managers and/or officers of the LSI Entities for breach of fiduciary duty, willful misconduct and bad faith, fraudulent transfer, and other claims related to the management of LSI and the LSI Entities (the "Florida D&O Litigation"). *See, e.g.*, Ex. D.

> assignor, regardless of any generally applicable law concerning the nonassignability of tort claims or causes of action.

§ 727.108(1), Fla. Stat. (2020). Plaintiffs (and many others) are creditors of the LSI Entities and have served proofs of claim in the ABC Proceeding.

On June 18, 2019, the Assignee filed an amended complaint in Florida against Judgment Debtor EFO LSI seeking to recover certain distributions as fraudulent transfers under Fla. Stat. §§ 726.105, 726.106, and 726.108.[5] In that case, the Assignee alleges that the managers of LSI and the LSI entities:

- caused LSI and the LSI Entities to incur "in excess of $150,000,000 in debt" (the "Dividend Loan") "on or about July 2, 2015, which indebtedness could not be repaid by the Companies and which caused the Companies to become insolvent" (Ex. E at ¶ 4);

- "authorized and ratified the transfer from LSI Management to Holdco of an amount equal to $110,473,942 of the proceeds of the Dividend Loan and simultaneously therewith, authorized and ratified the almost immediate transfer by Holdco to [EFO LSI] and the other members of the Board of Managers, and other ultimate equity holders/members of the Companies (the 'Dividend Distributions')" (Ex. E at ¶ 49);

Based on those allegations, the Assignee seeks to avoid and recover the Dividend Distributions made to Judgment Debtor EFO LSI in the amount of $41,822,592 on behalf of the creditors of the LSI Entities (including Plaintiffs). The Assignee invoked his right to recover from EFO LSI whether it was a primary or "subsequent transferee" of the "LSI Holdco transfers." Ex. E at ¶ 91.

The Assignee also filed 29 additional fraudulent transfer cases in Florida related to distributions made from the Dividend Loan by LSI Holdco to other individuals and entities.[6] The Assignee sued – among others – certain of the defendants ***in this case,*** including William P.

[5] *See* Ex. E (Amended Complaint for Damages and Demand for Jury Trial).
[6] *See* Ex. F.

Esping, Robert Grammen, William Horne, Horne Management, Inc., James St. Louis, Jill St. Louis, and WH, LLC, all of whom received distributions directly from LSI Holdco. *Id.*

C. The Assignee Initiates Fraudulent Transfer Litigation Against the "Subsequent Transferees."

On March 12, 2021, the Assignee filed 19 lawsuits in Dallas County against certain of the limited partners of Judgment Debtor EFO LSI.[7] Those cases – which are substantially identical to one another – allege the LSI Entities fraudulently transferred $41,822,592 from the proceeds of the Dividend Loan to (nonparty) Judgment Debtor EFO LSI, which in turn subsequently transferred a portion of that Dividend Distribution to each of EFO LSI's limited partners (most of whom are defendants in this case).[8] In these lawsuits, the Assignee alleges one count of fraudulent transfer against each defendant. *Id.* at ¶¶ 81-94. He seeks to avoid and recover the amount of each "subsequent transfer" – *i.e.*, the specific amount of the Dividend Distribution transferred from EFO LSI to each Texas-based limited partner – on behalf and for the benefit of the creditors of the LSI Entities (including Plaintiffs). *Id.*

In addition to these 19 Texas cases, the Assignee also filed 13 cases in Florida, 2 cases in Nebraska, and cases in California, Connecticut, Georgia, Tennessee, and Virginia, all based on the same alleged facts and circumstances.[9] In all of these cases, the Assignee seeks to avoid and recover, on behalf of the creditors of the LSI Entities (including Plaintiffs), the amount of the Dividend Distribution received by each limited partner of Judgment Debtor EFO LSI. Twenty of the individuals and entities named as defendants in these cases filed by the Assignee are also defendants in this case.

[7] *See* Ex. G.
[8] *See, e.g.,* Ex. H at ¶ 5.
[9] *See* Ex. I.

D. The Bailey Litigation in Texas.

On April 29, 2020 – five months *after* the Assignee first filed suit in Florida seeking to avoid the transfers LSI Holdco made to EFO LSI – Plaintiffs filed this lawsuit in Dallas County, which according to Plaintiffs, seeks to "expand[] the resources available for recovery."[10] Third Am. Pet. at ¶ 11. On January 12, 2021, Plaintiffs filed their Third Amended Petition to "clarify" the nature of their legal claims after this Court sustained Defendants' Special Exceptions.[11]

Like the Assignee, Plaintiffs now allege facts and claims based on the Dividend Loan and the Dividend Distributions. For example, Plaintiffs allege:

- "On or about July 2, 2015, W. Esping, R. Grammen, and other members of the Board of Managers caused certain of the LSI entities…to enter into a $150 million credit agreement with a syndicate led by Texas Capital Bank as agent" (Third Am. Pet. at ¶ 126);

- "***The proceeds were then distributed to LSI Holdco, and LSI Holdco distributed its pro rata share to EFO LSI***" (*Id.* at ¶ 128) (emphasis added);

- "Specifically, despite existing and impending financial issues created by their actions, the Board of Managers immediately caused, ***authorized and ratified the transfer from LSI Management to LSI Holdco of an amount***

[10] On March 13, 2020, Plaintiffs filed a substantially similar case in Florida involving the same Plaintiffs, most of the same Defendants, the same underlying facts and circumstances, and most of the same legal claims. *See* Ex. J (First Amended Third-Party Complaint) (alleging claims for fraudulent transfer, breach of fiduciary duty, conspiracy, conversion, unjust enrichment quantum meruit, and partnership or joint venture liability). Plaintiffs filed that case in Florida more than a month before it filed this (largely duplicative) case in this Court.

[11] During the hearing on Defendants' Special Exceptions, Plaintiffs confessed that they "deliberately" failed to allege fraudulent transfer here because "some of these people…were ***already*** sued in Florida for general partnership, fraudulent transfer, and breach of fiduciary duty." Ex. K (Hr'g Tr. dated Oct. 13, 2020) at 35:18-25 (emphasis added); *see also id.* at 34:23-35:9 ("The Court**:** So is Plaintiff alleging in this case that…there were fraudulent transfers from the limited partnership to the limited partners; and, therefore, the limited partners are now liable for the judgment? Is that an allegation here? Mr. Ray: Yes, with a few twists. Yes . . . ***We didn't put that in as a Count, Your Honor. So that's the twist.***") (emphasis added). The Court admonished Plaintiffs to clarify the petition as follows:

> **The Court**: Okay. So then let me stop you there. ***There was a strategic decision made not to bring a cause of action for fraudulent transfer….*** If that's the case then you can't argue to the Court in this hearing that liability on behalf of the limited partners exists because fraudulent transfers…occurred. You can't have it both ways…. That can't be your theory of liability if it's not a cause of action**….** If it's a fraudulent transfer, then go ahead and say it. If it's not then don't rely on it.

Id. 36:1-9,11-12, 23-25. In response, Plaintiffs requested "permission to add [fraudulent transfer] as a cause of action…." *Id.* 36:13-16.

> ***equal to $110,473,942 of the loan proceeds, and simultaneously therewith caused, authorized and ratified the almost immediate transfer by LSI Holdco of such proceeds for the direct or indirect benefit of EFO LSI and its members***, the other members of the Board of Managers, and the other ultimate equity holders/members of LSI Holdco in respect of their membership interests" (*Id*. at ¶ 129) (emphasis added).

Plaintiffs' claims for relief are based on the facts and circumstances surrounding the Dividend Loan and the Dividend Distributions, the same facts and circumstances alleged in the Assignee's complaints. In Count 3 of the Petition – titled "Determination of Sham 'Distribution' Transaction Using Proxies to Fraudulently Transfer Assets – Disregard of Form over Substance in Transfers to Hold the Distributees [*sic*] Liable" – *expressly* alleges that "two entities" fraudulently transferred assets "as illegal dividends and distributions" to Defendants. *Id.* ¶¶ 189-90. Based on those allegations, Plaintiffs seek "a declaration that the Transfers and distributions to [Defendants] were shams, parts of shams, and declare the substance of the sham transactions holds over form." *Id.* at ¶ 191.

In Count 4 of the Third Amended Petition, Plaintiffs seek to recover, among other things, the amounts Defendants received from the Texas Capital Bank Distributions pursuant to the TEXAS UNIFORM FRAUDULENT TRANSFER ACT. *Id.* at ¶ 193. And although Plaintiffs allege a number of other legal claims, all of the claims are based in whole or in part on facts related to the Dividend Loan, the Dividend Distributions, and other allegations also made by the Assignee. *See, e.g., id.* at ¶ 197 (alleging "***EFO LSI distributed over $100 million to the Defendants***, washed through several intermediaries in the sham transaction, and did not receive any value in return"); *Id.* at ¶ 222 (alleging certain Defendants "breached fiduciary duties of loyalty by their self-dealing in using their positions of control ***to cause the Transfers to be made***"); *Id.* at ¶ 224 ("***Distributions were a breach of fiduciary duty***"); ¶ 243 ("***The Transfers can be recovered from any Defendant.***"); *Id.*

at ¶ 248 (alleging the "***the Distribution/Transfers belong to [Plaintiffs]*** as they obtained a disgorgement award, requiring Defendants to disgorge such amounts to Plaintiffs.").

APPLICABLE LEGAL STANDARD

A plea to the jurisdiction challenges the trial court's subject matter jurisdiction over an action. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). It is used to defeat a cause of action without regard to whether the claims asserted have merit. *Id*. Whether a court has subject matter jurisdiction is a question of law. *Texas Dep't of Parks and Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). Where, as here, a plea to the jurisdiction challenges the existence (or non-existence) of jurisdictional facts, the Court must consider relevant evidence submitted by the parties as necessary to resolve the jurisdictional issues raised. *Id.* at 227; *see also Hearts Bluff Game Ranch, Inc. v. State*, 381 S.W.3d 468, 476 (Tex. 2012) ("If evidence central to the jurisdictional issue is submitted, it should be considered in ruling on the plea to the jurisdiction.").

In making its ruling, the Court "must consider only the plaintiffs' pleadings and the evidence pertinent to the jurisdictional inquiry." *Cty. of Cameron v. Brown,* 80 S.W.3d 549, 555 (Tex. 2002). As explained below, "only an assignee has standing to pursue fraudulent transfers, preferential transfers or other derivative claims." *Moffatt & Nichol, Inc. v. B.E.A. Intern. Corp., Inc.*, 48 So. 3d 896, 899 (Fla. Dist. Ct. App. 2010) (emphasis added). Accordingly, this Court lacks subject matter jurisdiction over these claims because Plaintiffs' lack standing.

ARGUMENTS AND AUTHORITIES

A. This Court Should Dismiss the Third Amended Petition Because Plaintiffs Lack Standing to Assert the Claims.

This Court should dismiss the Third Amended Petition because Plaintiffs lack standing to pursue the claims. The standing inquiry "focuses on the question of who may bring an action." *Patterson v. Planned Parenthood,* 971 S.W.2d 439, 442 (Tex. 1998). Courts lack subject-matter

jurisdiction to adjudicate disputes initiated by parties lacking standing. *The M.D. Anderson Cancer Center v. Novak,* 52 S.W.3d 704, 708 (Tex. 2001); *Tex. Ass'n of Business v. Tex. Air Control Bd.,* 852 S.W.2d 440, 443–44 (Tex. 1993). "Because standing is a component of subject[-]matter jurisdiction, we consider [standing issues] as we would a plea to the jurisdiction." *Brown v. Todd,* 53 S.W.3d 297, 305 n.3 (Tex. 2001). Whether a court has subject-matter jurisdiction is a question of law for the Court. *Tex. Dep't of Parks & Wildlife v. Miranda,* 133 S.W.3d 217, 226 (Tex.2004).

Under Florida law, "***only an assignee has standing to pursue fraudulent transfers, preferential transfers or other derivative claims***." *Moffatt* 48 So. 3d at 899. *Moffatt* is squarely on point. In *Moffatt*, a judgment creditor (like Plaintiffs) attempted to sue an entity that received certain fraudulent transfers from a judgment debtor, which had earlier made an assignment for the benefit of creditors in accordance with Florida law. *Id.* at 898. The judgment creditor argued "it was entitled to pursue [fraudulent transfer claims] in its own name and capacity" against the transferee, "separate and distinct from…the Assignee." *Id.* The trial court disagreed and the judgment creditor appealed. *Id.* On appeal, the judgment creditor argued that by seeking to recover from this third-party entity, it did "not seek to reach any assets in the 'possession, custody or control of the assignee'" within the meaning of Florida's assignment statute. *Id.*

The appeals court rejected this argument. It noted that Florida revised its statutory framework to expressly include "claims and causes of action, whether arising by contract or tort" as an "asset" belonging to the assignee. *Id.* at 898-99; Fla. Stat. § 727.103(1). The court concluded that "[u]nder the statutory scheme as it now exists, only an assignee has standing to pursue fraudulent transfers, preferential transfers or other derivative claims." *Id.* at 899. Citing *Moffatt*, a subsequent Florida appellate court explained, "To allow creditors to bring their own fraudulent transfer claims, without the consent of the assignee, would undermine Chapter 727 by depleting

assets of the estate and disregarding the priorities established under that statute." *Smith v. Effective Teleservices, Inc.*, 133 So.3d 1048, 1052 (Fla. Dist. Ct. App. 4d 2014).

The *Moffat* court further noted that Florida's revision to the statute "brings the administration of estates under Florida's Assignment for the Benefit of Creditors law into conformity with the UNITED STATES BANKRUPTCY CODE," which, for more than 50 years, has held as settled law "that only a bankruptcy trustee has standing to bring derivative claims" such as "preferential and fraudulent transfers" against third-party entities. *Id.* at 901 n. 5.[12] Indeed, even where, as here, certain claims might be asserted by the ***both*** the debtor and its creditors, those claims are nevertheless estate property as a matter of law. *In re S. I. Acquisition, Inc.*, 817 F.2d 1142 (5th Cir. 1987) (holding that alter ego claims to recover from corporate officers or directors are property of the estate and any litigation thereof by creditors without the prior approval of the bankruptcy court violates the automatic stay); *see also In re MortgageAmerica Corp.*, 714 F.2d 1266 (5th Cir. 1986); *accord*, *Delgado Oil Co., Inc. v. Torres*, 785 F.2d 857 (10th Cir. 1986) (holding that claims against corporate directors for mismanagement of the corporation leading to preferential transfers could only be brought by the trustee such that the district court was deprived of subject-matter jurisdiction to hear the claims).

The same is true here. Plaintiffs are pursuing fraudulent transfer and other derivative claims belonging to the Assignee, many of which the Assignee is *himself* already prosecuting in Dallas

[12] The ABC statutes are a comprehensive statutory scheme for the administration of insolvent estates and its provisions are analogous to those of the FEDERAL BANKRUPTCY CODE. *See Smith v. Effective Teleservices, Inc.,* 133 So. 3d 1048, 1050 (Fla. 4th DCA 2014) (quoting *Hillsborough County v. Lanier*, 898 So. 2d 141, 143 (Fla. 2d DCA 2005)) ("An assignment for the benefit of creditors is an alternative to bankruptcy and allows a debtor to voluntarily assign its assets to a third party [assignee] in order to liquidate the assets to fully or partially satisfy creditors' claims against the debtor."). For this reason, Florida courts look to federal bankruptcy law for guidance in interpreting the ABC statute. *See, e.g., Akin Bay Co., LLC v. Von Kahle*, 180 So. 3d at 1184 ("Florida's assignment for benefit of creditors statute is intended as an economical and efficient alternative to the FEDERAL BANKRUPTCY ACT. Accordingly, we permit ourselves the liberty of looking to federal bankruptcy law for guidance in interpreting our own statute when it is appropriate to do so"); *see also Assignment for Benefit of Creditors of Miami Perfume Junction, Inc. v. Osborne*, 3D20-1317, 2020 WL 7636020, at *3 (Fla. 3d DCA Dec. 23, 2020) (same).

County and in other states on behalf of Plaintiffs and the other creditors of the LSI Entities. This violates § 727.105, which prohibits "levy, execution, attachment, or the like in respect of any judgment against assets of the estate in the possession, custody, or control of the assignee." Those assets include "claims and causes of action, whether arising by contract or tort," which are vested solely in the Assignee, per § 727.103(1), Fla. Stat.

Like the Assignee, Plaintiffs seek to avoid and recover certain alleged fraudulent transfers based on the Dividend Loan and the Dividend Distributions from the *same* defendants sued by the Assignee on behalf of *all* of the creditors of the LSI Entities. As in *Moffat*, Plaintiffs' claims are "nothing more than a collection action for the purpose of assembling assets to satisfy its own judgment." *Id.* at 900. Indeed, Plaintiffs' stated goal is to expand "the resources available for recovery of a judgment in the original, underlying action." Third Am. Pet. at ¶ 11. Tellingly, the Third Amended Petition is riddled with complaints that Defendants are trying "to hinder, delay, and defraud Plaintiffs' collection efforts" (¶ 62); "defeat judgment collection efforts" (¶ 64); "shield assets from Plaintiffs' collection efforts" (¶ 83); "impede the Plaintiffs' ability to collect on any judgment" (¶ 90); "hinder and delay Plaintiffs' collection efforts" (¶ 92); "defeat judgment collection efforts" (¶ 109); "ensure that Plaintiffs could not ultimately collect any judgment" (¶ 116); "eliminate Plaintiffs' ability to attempt to collect" (¶ 148); "defeat judgment collection efforts" (¶ 163); and "frustrate collection by the Judgment Creditors" (¶ 165(b)(viii)).

As *Moffatt* explains, those like Plaintiffs – *who are creditor beneficiaries of the ABC Proceeding and the Assignee's other lawsuits* – cannot make "an impermissible end-run around the Assignment for the Benefit of Creditors statute" by pursuing these claims independently in Texas for their sole and exclusive benefit. *Moffatt*, 40 So.3d at 901 (describing a similar effort as "an improper attempt to get to the head of the line, in front of all the other creditors"). This Court

should dismiss Plaintiffs' claims for lack of jurisdiction because the right to pursue such claims resides "solely in a duly appointed assignee for the benefit of **all** creditors upon appointment of the assignee." *Moffat* at 900 (emphasis in original). Accordingly, Defendants respectfully ask this Court to grant the Motion and dismiss this case.

B. In the Alternative, this Court Should Stay this Litigation Until the Conclusion of the ABC Proceeding.

In the alternative, Defendants respectfully ask this Court to stay this litigation until the conclusion of the ABC Proceeding in Florida. When an action is pending in another state, Texas courts apply the doctrine of comity, which, while not a constitutional obligation, is a "principle of mutual convenience whereby one state or jurisdiction will give effect to the laws and judicial decisions of another." *Griffith,* 341 S.W.3d at 54. Under the doctrines of comity, judicial efficiency, and fairness, a Texas court may stay its proceeding pending adjudication of the first filed suit pending in another state. *Id.* To obtain a stay in the later action, the court may consider, among other factors, the following: (1) which action was filed first; (2) whether the parties are the same in both actions; and (3) the effect of a judgment in the later action on any order or judgment entered in the prior action. *In re BP Oil Supply, Co.,* 317 S.W.3d at 919. Defendants respectfully ask this the Court to stay this lawsuit until the conclusion of the ABC Proceeding in Florida for the following reasons:

First, the Court should stay this litigation because it undermines the purposes of Florida's Assignment for the Benefit of Creditor statute. The purpose of a Chapter 727 proceeding "is to provide a uniform procedure for the administration of insolvent estates, and to ensure full reporting to creditors and equal distribution of assets…." § 727.101, Fla. Stat. (2020). Plaintiffs are creditors of the LSI Entities and may be entitled to ratable distributions from any recoveries to which the Assignee may be entitled. The Assignee has filed more than thirty-nine cases in Florida, Texas,

Nebraska, California, Tennessee, Connecticut, Georgia, and Virginia to recover amounts transferred from LSI to EFO LSI (and onward) on behalf of ***all*** of the creditors of the LSI Entities.

By pursuing their claims independently, Plaintiffs disrupt the "uniform procedure" contemplated by the Florida statute, attempt to force an "unequal distribution of assets" before the conclusion of the ABC Proceeding, and waste assets potentially available for recovery on behalf of *all* of the ABC creditors. Further, Plaintiffs' pursuit of these claims, if ultimately successful, creates a substantial risk that the other creditors of the ABC Proceeding, even those with equal or higher priority claims, will recover nothing, compromising the Assignee's fiduciary duty to all creditors. Both comity and judicial efficiency requires a stay under these circumstances.

Second, the Court should stay this litigation because of the substantial, unreasonable, and prejudicial risk of inconsistent judgments and duplicative liabilities. Both Plaintiffs and the Assignee make as the basis of their claims, and seek to recover, the same Dividend Distributions made to Judgment Debtor EFO LSI and then to its limited partners (and others). For the reasons stated above, the Court should find that the Assignee has the sole legal standing to assert claims based on the Dividend Loan, the Dividend Distributions, and the facts and circumstances related to those transfers and distributions. But even if the Court disagrees, it should nevertheless stay ***this*** litigation pending the conclusion of the ABC Proceeding. Otherwise, Defendants face the unfair and prejudicial risk of inconsistent judgments related to the same alleged fraudulent transfers; or worse yet, Defendants could be found liable and forced to pay twice for the same alleged transfers, thereby imposing a double liability and, potentially, allowing Plaintiffs a double-recovery in violation of Texas public policy.

Third, the Court should stay this litigation because the amount of Plaintiffs' damages, if any, cannot be determined until the conclusion of the ABC Proceeding. Plaintiffs will recover in

their capacity as creditors of the LSI Entities from any amounts collected by the Assignee. Indeed, the Assignee has *already* settled the Florida D&O Litigation for $9 million, which is awaiting court approval in Florida.[13] A portion of those amounts will offset any alleged damages proven in this case. Accordingly, the Court should stay this litigation until the conclusion of the ABC Proceeding, after which the specific amount of Plaintiffs' damages, if any, can be determined.

Finally, the Court should stay this litigation because, even apart from the ABC Proceeding, Plaintiffs filed a substantially similar litigation in Florida, more than a month before they filed this case. As explained above, Plaintiffs filed a substantially similar case in Florida involving the same plaintiffs, most of the same defendants, the same underlying facts and circumstances, and most of the same legal claims. *See* Ex. J (First Amended Third-Party Complaint) (alleging claims for fraudulent transfer, breach of fiduciary duty, conspiracy, conversion, unjust enrichment quantum meruit, and partnership or joint venture liability). That case is also currently pending in Florida before Judge Farfante, same judge overseeing the ABC Proceeding, and much of the litigation surrounding identified above. For all of these reasons, Defendants respectfully as this Court to stay this case pending the conclusion of the ABC Proceeding.

CONCLUSION

Plaintiffs' attempt to circumvent the ABC Proceeding is "impermissible," "improper," and a violation of Florida's statutory regime governing assignments for the benefit of creditors. For those reasons, and the reasons stated herein, Defendants respectfully ask this Court to dismiss this

[13] *See* Ex. L (Assignee's Motion for Order Approving Settlement). The Assignee's Settlement and Release Agreement further confirms that the Assignee has "***sole legal standing and authority to pursue and settle the Claims*** in accordance with Chapter 727, Florida Statutes, as assignee for the benefit of creditors of the LSI Entities." Ex. M (Settlement Agreement) (defining "Claims" as, among other things, claims for breach of fiduciary duty, willful misconduct and bad faith, and fraudulent transfer) (emphasis added).

case for lack of jurisdiction. Alternatively, Defendants ask this Court to stay this litigation until the conclusion of the ABC Proceeding.

Date: April 14, 2021

Respectfully submitted,

/s/ Christopher J. Schwegmann

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

The undersigned certifies that he conferred with counsel for Plaintiffs and Plaintiffs are opposed to the relief sought by this Motion.

/s/ Christopher J. Schwegmann
Christopher J. Schwegmann

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served upon all counsel of record ***e-serve via e-file Texas*** on this 14th day of April. 2021:

/s/ Christopher J. Schwegmann
Christopher J. Schwegmann

CAUSE NO. DC-20-06211

JOE SAMUEL BAILEY, *et al.*,	§	**IN THE DISTRICT COURT**
Plaintiffs,	§	
v.	§	**162nd JUDICIAL DISTRICT**
JAMES S. ST. LOUIS, *et al.*,	§	
Defendants.	§	**DALLAS COUNTY, TEXAS**

DECLARATION OF CHRISTOPHER J. SCHWEGMANN

Pursuant to Texas Civil Practices and Remedies Code § 132.001, I declare under penalty of perjury that the following is true and correct:

1. My name is Christopher J. Schwegmann, my date of birth is October 8, 1974, and my business address is 2100 Ross Avenue, Suite 2700, Dallas, Texas, 75201. I am fully competent to make this Declaration, am over the age of eighteen, and all statements herein are true and correct and are within my personal knowledge.

2. I am an attorney in good standing at the law firm of LYNN PINKER HURST & SCHWEGMANN, LLP, attorneys for Defendants in the above-captioned case. I submit this Declaration in support of Defendants' Motion to Dismiss for Lack of Jurisdiction, or in the Alternative, Motion to Stay.

3. Attached hereto as Exhibit B is a true and correct copy of the Order for Domestication entered by the 162nd District Court of Dallas County Texas. Attached to the Order is a true and correct copy of the Second Amended Final Judgment.

4. Attached hereto as Exhibit C is a true and correct copy of the Petition Commencing Assignment for Benefit of Creditors.

5. Attached as Exhibit D is a true and correct list of the case names, case numbers, and the jurisdiction of the cases filed by the Assignee against various directors and officers of the LSI Entities.

6. Attached as Exhibit E is a true and correct copy of the Amended Complaint for Damages and Demand for Jury Trial, styled *Soneet R. Kapila, as Assignee v. EFO Laser Spine Institute, Ltd.*, Case No. 19-CA-011463, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.

7. Attached hereto as Exhibit F is a true and correct list of the case names, case numbers, and the jurisdiction of the cases filed by the Assignee against the direct recipients of distributions made from the Dividend Loan by LSI Holdco.

8. Attached hereto as Exhibit G is a true and correct list of the case names, case numbers, and the jurisdiction of the cases filed by the Assignee in Dallas County, Texas.

9. Attached hereto as Exhibit H is a true and correct copy of Plaintiff's Original Petition in the case styled Soneet R. Kapila v. Alvin Holdings, LLC, Cause No. DC-21-03265, pending in the 134th Judicial District, Dallas County, Texas.

10. Attached hereto as Exhibit I is a true and correct list of the case names, case numbers, and the jurisdiction of the cases filed by the Assignee in Florida, California, Connecticut, Georgia, Tennessee, and Virginia.

11. Attached hereto as Exhibit J is a true and correct copy of Plaintiffs' First Amended Third-Party Complaint, styled *Joe Samuel Bailey et al. v. William Esping, et al.*, Case No. 06-CV-

008498, pending in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.

12. Attached hereto as Exhibit K are true and correct copies of certain excerpts from the Court's hearing transcript dated October 13, 2020.

13. Attached hereto as Exhibit L is a true and correct copy of the Assignee's Motion for (A) Order Approving Settlement and Compromise of Claims Against Former Directors and Officers, (B) Order Authorizing Payment of Professional Fees, and (C) Final Judgment as to Settled Claims in Lawsuits.

14. Attached hereto as Exhibit M is a true and correct copy of the Settlement Agreement and General Release between the LSI Entities and certain defendants dated March 24, 2021.

15. I declare under penalty of perjury under the laws of the State of Texas and the United States that the foregoing statements of fact are true and correct to the best of my knowledge, information, and belief.

Executed in Dallas County, State of Texas, on April 14, 2021.

Christopher J. Schwegmann

CAUSE NO. DC-19-10056

JOE SAMUEL BAILEY et al **vs.** **JAMES S ST LOUIS, DO et al**	In the District Court Dallas County, Texas 162nd District Court

ORDER FOR DOMESTICATION

BE IT REMEMBERED that on this date came on to be considered Petitioner's request for domestication of the exemplified and certified Foreign Judgment on file herein and the Court having examined the filings and considered same, is of the opinion that same should be granted.

It is therefore **ORDERED, ADJUDGED** and **DECREED** that the Clerk of this Court be hereby directed to issue all writs and or processes as may be requested by the Petitioner to enforce such judgment, as if the same were a judgment of this Court.

IT IS SO ORDERED.

SIGNED this 29 day of JULY, 2019.

Maricela Moore,
DISTRICT JUDGE

EXHIBIT B

DC-19-10056 I-162nu

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Marcus Suttle, a Deputy Clerk to Pat Frank, Clerk of the Circuit Court of Hillsborough County, State of Florida, having by law the custody of the seal and all the records, books, documents and papers of or pertaining to the Circuit Court, do hereby certify that the above and foregoing is a true and correct copy of:
SECOND AMENDED FINAL JUDGMENT
Case 06-CA-008498, Division L, JOE SAMUEL BAILEY, et al vs. JAMES S. ST. LOUIS, et al
IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Circuit Court, this the 10 day of July 2019.

FILED
2019 JUL 18 AM 11:17
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
DEPUTY
Javier Hernandez

Pat Frank
As Clerk of the Court
Hillsborough County, Florida

By: _____
As Deputy Clerk

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Steven Scott Stephens, one of the Judges of the Circuit Court of the Thirteenth Judicial Circuit of the State of Florida, in and for Hillsborough County, do hereby certify that Pat Frank is the Clerk of the Circuit Court of said County, State of Florida, and the signature attached to the above certificate and attestation, purporting to be of Marcus Suttle, is a Deputy Clerk of the Circuit Court of Hillsborough County, Florida, and as such full faith and credit are due all her acts, and that said attestation is in due form of law and by the proper officer.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Court this the 10 day of Jul, 2019.

_____
Judge of the Circuit Court of the Thirteenth
Judicial Circuit of the State of Florida in and for
Hillsborough County

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Marcus Suttle, a Deputy Clerk to Pat Frank, Clerk of the Circuit Court of Hillsborough County, Florida, having by law the custody of the seal and all the records, books, documents, and papers of or appertaining to the said Circuit Court, do hereby certify that Steven Scott Stephens, whose signature is affixed to the foregoing certificate is one of the Judges of the Circuit Court of the Thirteenth Judicial Circuit of the State of Florida and duly qualified and commissioned, and that said signature is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Court this the 10 day of July, 2019.

Pat Frank
As Clerk of the Court
Hillsborough County, Florida

By: _____
As Deputy Clerk

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT

IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

CIVIL DIVISION

JOE SAMUEL BAILEY, *et al.*,

Plaintiffs,

vs.

JAMES S. ST. LOUIS, *et al.*,

Defendants.

_____/

Case No. 06-08498

Division L

SECOND AMENDED FINAL JUDGMENT

Pursuant to the Court's Order on Non-Jury Trial dated October 9, 2012:

It is ADJUDGED that:

1. Plaintiff Joe Samuel Bailey, whose address is 308 Wallick Drive, Cotter, AR 72626, does have and recover from Defendants James S. St. Louis, D.O., whose address is 4728 N. Habana Avenue, Suite 202, Tampa, FL 33614; Michael W. Perry, M.D., whose address is 5332 Avion Park Drive, Tampa, FL 33607; EFO Holdings L.P., whose principal address is 2828 Routh Street, Suite 500, Dallas, TX 75201; EFO Genpar, Inc., whose principal address is 500 N. Akard Street, Suite 1500, Dallas, TX 75201; and EFO Laser Spine Institute, Ltd., whose principal address is 2828 Routh Street, Suite 500, Dallas, TX 75201, jointly and severally, the sum of $250,000.00, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

2. Plaintiff Joe Samuel Bailey does have and recover from Defendants James S. St. Louis, D.O.; Michael W. Perry, M.D.; EFO Holdings L.P.; EFO Genpar, Inc.; and EFO Laser Spine Institute, Ltd., jointly and severally, the sum of $750,000.00 in punitive damages, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

3. Plaintiffs Laserscopic Spinal Centers of America, Inc., whose address 308 Wallick Drive, Cotter, AR 72626, and Laserscopic Medical Clinic, LLC, whose address is 308 Wallick Drive, Cotter, AR 72626, do have and recover from Defendants James S. St. Louis, D.O.; EFO Holdings L.P.; EFO Genpar, Inc.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC, who address is 5332 Avion Park Drive, Tampa, FL 33607; Laser Spine Medical Clinic, LLC, whose address is 3001 N. Rocky Point Drive E, Suite 380, Tampa, FL 33607; Laser Spine Physical Therapy, LLC, whose address is 3001 N. Rocky Point Drive E, Suite 380, Tampa, FL 33607; and Laser Spine Surgical Center, LLC, whose address is 5332 Avion Park Drive, Tampa, FL 33607, jointly and severally, the sum of $264,000,000.00, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

4. Plaintiffs Laserscopic Spinal Centers of America, Inc., and Laserscopic Medical Clinic, LLC, do have and recover from Defendants James S. St. Louis, D.O.; EFO Holdings L.P.; EFO Genpar, Inc.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC; Laser Spine Medical Clinic, LLC; Laser Spine Physical Therapy, LLC; and Laser Spine Surgical Center, LLC, jointly and severally, the sum of $5,000,000.00 in punitive damages, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

5. Plaintiff Laserscopic Spine Centers of America, Inc., whose address is 308 Wallick Drive, Cotter, AR 72626, does have and recover from Defendants EFO Holdings, L.P.; EFO Genpar, Inc.; James S. St. Louis, D.O.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC; Laser Spine Medical Clinic, LLC; Laser Spine Physical Therapy, LLC; and Laser Spine Surgical Center, LLC, jointly and severally, the sum of $6,831,172.00, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH**.

6. These sums shall bear interest at the rate of 4.75% from October 9, 2012 to December 31, 2016; 4.97% from January 1, 2017 through December 31, 2017; and, 5.72% from January 1, 2018 through December 31, 2018 in accordance with Florida Statute §55.03. Thereafter, on January 1st of each succeeding year until the judgment is paid, the interest rate will adjust in accordance with Florida Statute § 55.03. Accordingly, the prejudgment interest through April 30, 2019 is as follows:

a. On the slander per se claim the damage awarded to Plaintiff Bailey was $250,000, and the amount of prejudgment interest that has accrued is $83,311.00. Plaintiff Bailey was awarded punitive damages in the amount of $750,000.00, and the prejudgment interest on that amount is $249,934.00. Accordingly, the amount of the final judgment with prejudgment interest through April 30, 2019 to Plaintiff Bailey is **$1,333,245.00**, which shall continue to accrue statutory interest. **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

b. On the claims in favor of Plaintiffs Laserscopic Spinal Centers of America, Inc. and Laserscopic Medical Clinic, LLC, they were awarded $264,000,000.00, which has accrued prejudgment interest through April 30, 2019 of $87,976,680.00. Plaintiffs Laserscopic Spinal Centers of America, Inc. and Laserscopic Medical Clinic, LLC

were also awarded punitive damages in the amount of $5,000,000.00, and the prejudgment interest on that amount through April 30, 2019 is $1,666,225.00. Accordingly, the amount of the final judgment with prejudgment interest through April 30, 2019 to Plaintiffs Laserscopic Spinal Centers of America, Inc. and Laserscopic Medical Clinic, LLC is **$358,642,905.00**, which shall continue to accrue statutory interest. **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

c. On the claims in favor of Laserscopic Spine Centers of America, Inc., it was awarded $6,831,172.00; the prejudgment interest through April 30, 2019 on this amount is $2,266,066.00. Accordingly, the amount of the final judgment with prejudgment interest to Plaintiff Laserscopic Spine Centers of America, Inc. through April 30, 2019 is **$9,097,238.00**, which shall continue to accrue statutory interest. **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

7. This Court reserves jurisdiction to award attorney's fees and costs to Plaintiffs.

8. It is further ordered and adjudged that the judgment debtors shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney, within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed. Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment debtors to complete form 1.977, including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney.

9. The Court retains jurisdiction over this action to enter further Orders that are proper and to award further relief, including without limitation, equitable relief, writs of possession, and to conduct proceedings supplementary, to implead third parties, as this Court deems just, equitable, and proper.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this ____ day of April, 2019.

06-CA-008498 7/3/2019 10:00:46 AM

06-CA-008498 7/3/2019 10:00:46 AM

CIRCUIT COURT JUDGE

cc: All Counsel of Record

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE IN MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL THIS_____DAY OF_____, 20_____

PAT FRANK, CLERK

BY_____D.C.

CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

LASER SPINE INSTITUTE, LLC,

Assignor,

Case No.

to

SONEET KAPILA,

Assignee.
_____/

PETITION COMMENCING ASSIGNMENT FOR BENEFIT OF CREDITORS

Soneet Kapila of KapilaMukamal, LLP ("**Assignee**"), as Assignee for the Benefit of Creditors of Assignor, Laser Spine Institute, LLC ("**Assignor**"), by and through his undersigned counsel, and in accordance with Chapter 727, Florida Statute, respectfully shows:

1. This is a Petition for the Assignment for the Benefit of Creditors. This Court has jurisdiction of the proceeding in accordance with the provisions of Florida Statutes §727 *et seq*.

2. Attached as **Exhibit A** is a copy of the Assignment for the Benefit of Creditors (the "**Assignment**") delivered by the Assignor, which designates Soneet Kapila of KapilaMukamal, LLP as the Assignee.

3. The Assignor maintains its principal place of business in Hillsborough County, Florida at 5332 Avion Park Drive, Tampa, FL 33607.

4. The Assignee's office is located at 1000 South Federal Highway, Suite 200, Fort Lauderdale, FL 33316.

EXHIBIT C

5. The Assignor is indebted to creditors and is unable to pay its debts and through this Assignment seeks to provide for payments of its debts within its resources.

6. The Assignor's original verification and Assignee's acceptance are attached as **Exhibit B**.

7. A copy of this Petition, the Assignment, the schedules, oath, and proof of claim form, will be served on all creditors and other interested parties by mail pursuant to the statute, and the Assignee will file a certificate of service.

WHEREFORE, Assignee prays for relief through entry of an Assignment for the Benefit of Creditors.

Dated: March 14th, 2019

Soneet Kapila, Assignee
1000 South Federal Highway, Suite 200
Fort Lauderdale, FL 33316

Kapila v. D&O's

a. Soneet R. Kapila v. Jonathan Lewis
United States District Court, Middle District of Florida
Case No. 8:19-cv-1800

b. Soneet R. Kapila v. Sean Dempsey
United States District Court, Middle District of Florida
Case No. 8:19-cv-1802

c. Soneet R. Kapila v. Mark Andrzejewski
United States District Court, Middle District of Florida
Case No. 8:19-cv-2812

d. Soneet R. Kapila v. William Esping
United States District Court, Middle District of Florida
Case No. 8:20-cv-436

e. Soneet R. Kapila v. Edward DeBartolo
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6817

f. Soneet R. Kapila v. Chris Sullivan
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6820

g. Soneet R. Kapila v. William E. Horne
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6821

h. Soneet R. Kapila v. Robert Basham
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6822

i. Soneet R. Kapila v. Geza Henni
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6823

j. Soneet R. Kapila v. Dr. James St. Louis III
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6880

k. Soneet R. Kapila v. Dr. Michael W. Perry
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-11753

EXHIBIT D

l. Soneet R. Kapila v. Raymond Monteleone
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-11754

m. Soneet R. Kapila v. Robert Grammen
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-11755

CAPITOL SERVICES

CORRESPONDENCE NOTICE

Capitol Services, Inc.
515 E. Park Ave. Floor 2
Tallahassee, FL 32301
Phone: (855) 498-5500 Fax: (800) 432-3622
rassop@capitolservices.com

JULIE KRUPALA
EFO HOLDINGS LP
500 N AKARD ST STE 1500
DALLAS, TX 75201-3302

RECEIVED:	06/25/2020
TRANSMITTAL:	FL-N979656
STATE:	FLORIDA
REP UNIT:	EFO LASER SPINE INSTITUTE, LTD.

The attached notice pertains to the following legal action.

Tile of Case or Action:	SONEET R. KAPILA VS EFO LASER SPINE INSTITUTE, LTD.
Case Number:	19-CA-011463
Court Name:	13TH JUDICIAL CIRCUIT COURT, HILLSBOROUGH COUNTY, FLORIDA

Thank you for choosing Capitol Corporate Services, Inc. as your registered agent.

2-979656.

EXHIBIT E

Filing # 109062041 E-Filed 06/18/2020 01:39:37 PM

IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

SONEET R. KAPILA, as Assignee,

CASE NO. 19-CA-011463
Division L

Plaintiff,

vs.

EFO LASER SPINE INSTITUTE, LTD.,

Defendant.
_____/

AMENDED COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

Plaintiff, Soneet R. Kapila, in his capacity as the Assignee ("**Plaintiff**" and/or "**Assignee**") of Laser Spine Institute, LLC ("**LSI**") and each of its affiliated entities[1] (collectively, the "**Companies**") in the LSI Assignment Case (as defined below) sues EFO Laser Spine Institute, Ltd. ("**Defendant**"), and alleges:

PRELIMINARY STATEMENT

1. This is a case of shameless corporate looting and abuse of authority wreaked by irreparably conflicted management, for which the Defendant received substantial benefit—in the form of millions of dollars fraudulently transferred to it—all at the expense of the Companies and its creditors. The members of management for the Companies stripped, in order to enrich themselves (and Defendant), those Companies of their value on terms that were patently unreasonable and at a time when the Companies faced substantial liabilities. Through this scheme

[1] The Plaintiff also acts as statutory assignee for the benefit of creditors for CLM Aviation, LLC, LSI Holdco, LLC ("**Holdco**"), LSI Management Company, LLC ("**LSI Management**"), Laser Spine Surgery Center of Arizona, LLC, Laser Spine Surgery Center of Cincinnati, LLC, Laser Spine Surgery Center Of Cleveland, LLC, Laser Spine Surgical Center, LLC, Laser Spine Surgery Center Of Pennsylvania, LLC, Laser Spine Surgery Center of St. Louis, LLC, Laser Spine Surgery Center Of Warwick, LLC, Medical Care Management Services, LLC, Spine DME Solutions, LLLC, Total Spine Care, LLC, Laser Spine Institute Consulting, LLC, and Laser Spine Surgery Center of Oklahoma, LLC.

of corporate looting, and the equally-brazen, yet failed, attempt to insulate themselves from liability for their acts and omissions, the Defendant and the other members of the Companies' management have thoroughly ransacked the Companies in a sweeping and now transparent plan to "take money off the table" for themselves and leave its swollen liabilities behind.

2. To discharge their duties, the Companies' management, including actual and *de facto* officers, managers, members and/or members of a board of managers of and for the Companies, were required among other things, to exercise reasonable and prudent supervision over the financial affairs of the Companies. By virtue of such duties, the Companies' management was required to, *inter alia*, (i) exercise diligence in the administration of the affairs of the Companies and in the use and preservation of its property and assets; (ii) conduct the affairs of the Companies in a manner so as to make it possible to provide the highest quality performance of their business, to avoid wasting the Companies' assets, and to maximize the value of the Companies' stock; and (iii) to act in furtherance of the best interests of the Companies, their creditors, and not in furtherance of their own personal benefit or interest.

3. Instead, the Companies' management breached those fiduciary duties and exploited their unfettered control of, and power over, the Companies for their own benefit and for the severe disadvantage of the Companies. Defendant was a direct beneficiary of such breaches as set forth herein as a recipient of fraudulent transfers. As such, the Plaintiff seeks damages against the Defendant as the recipient of and as a result of certain fraudulent transfers made by Holdco and LSI Management to the Defendant.

4. As a backdrop to and part and parcel of the fraudulent transfers made to the Defendant, the following constitutes a non-exhaustive list of the acts and/or omissions by the Companies' management that constituted breaches of their fiduciary duties from and after July

2015 through the filing of the LSI Assignment Case (as defined below): (i) causing the Companies to incur in excess of $150,000,000 in debt (the "**Dividend Loan**") on or about July 2, 2015, which indebtedness could not be repaid by the Companies and which caused the Companies to become insolvent; (ii) causing the Companies shortly thereafter to distribute an amount equal to approximately $110,000,000 of the proceeds of the Dividend Loan to the ultimate equity owners of the Companies in order to "take money off the table" in violation of applicable law and while facing millions of dollars in pending litigation claims; (iii) knowing that the Companies were in default of at least twenty (20) different provisions of the Dividend Loan by no later than November 2016, management not only failed and refused to cause the Companies to pursue claims and causes of action that existed at that time, in favor of the Companies to recover some or all of the proceeds of the Dividend Loan that were fraudulently transferred (including to the Defendant), management instead attempted to release and insulate/exonerate themselves from any liability in connection therewith; (iv) despite being in default of the Dividend Loan, having become increasing insolvent, facing millions of dollars in litigation claims, needing to substantially restate its financial results as of the end of 2015 by lowering the Companies' revenue and EBITDA by in excess of $50 million each, management continued to allow the Companies to pay exorbitant salaries and bonuses and otherwise failed to take appropriate action to address the Companies' financial difficulties, including continuing with the completion of its $56 million custom built corporate and surgical facility in Tampa through calendar year 2016; (v) despite its increased insolvency, the multiple defaults under the Dividend Loan and significant creditor litigation, management failed to cause the Companies to seek protection from its creditors, including through the filing and prosecution of an orderly reorganization and/or insolvency proceeding; (vi) the failure of management to implement and/or follow adequate safeguards and controls in regard to material

business, operational, regulatory functions and legal compliance functions, including the Worker Adjustment and Retraining Notification Act (the "**WARN Act**") compliance; and (vii) the continuation or implementation of self-insurance programs for employees, doctors, and patients at a time that the Companies were insolvent knowing that the Companies were unable to cover their self-insured retention amounts or pay medical bills, leaving those individuals without any health or malpractice coverage when the Companies closed, resulting in claims against the Companies that should have been covered by insurance (individually and collectively, the "**Wrongful Acts**").

5. In connection with the above, on the dates set forth on **Exhibit A** attached hereto, Holdco transferred to the Defendant the amounts listed therein (the "**Holdco Transfers**"), which Transfers are avoidable and recoverable by the Plaintiff as both actual intent and constructive fraudulent transfers under Florida Statutes §§726.105, 726.016, 726.108 and applicable law, including Delaware law (6 Del. C. §1301 *et seq.*). Plaintiff has initiated this litigation within one year of his appointment as the statutory Assignee, which is within one year of when the Assignee discovered or reasonably could have discovered the Holdco Transfers.

6. In addition, LSI Management fraudulently transferred the Holdco Transfers to the Defendant utilizing Holdco as a conduit (the "**LSI Management Transfers**") (sometimes hereinafter, Holdco Transfers and LSI Management Transfers shall be referred to as the "**Transfers**"). The LSI Management Transfers are avoidable and recoverable by the Plaintiff as both actual intent and constructive fraudulent transfers under Florida Statutes §§726.105, 726.016, 726.108 and applicable law. Plaintiff has initiated this litigation within one year of his appointment as the statutory Assignee, which is within one year of when the Assignee discovered or reasonably could have discovered the LSI Management Transfers.

PARTIES, JURISDICTION, AND VENUE

7. Plaintiff is the duly-appointed and acting statutory Assignee for the benefit of creditors of the Companies and has legal standing and authority to prosecute the claims set forth herein.

8. On March 14, 2019, LSI executed and delivered an assignment for the benefit of creditors to the Assignee. The Assignee filed a Petition with the Court on March 14, 2019, commencing an assignment for the benefit of creditors proceeding pursuant to section 727 of the Florida Statutes under Consolidated Case No. 2019-CA-2762 (the "**LSI Assignment Case**").

9. Simultaneous with the filing of the LSI Assignment Case, the Assignee filed fifteen other Petitions commencing an assignment for the benefit of creditors proceeding for each of 15 §the "**Assignment Cases**"): LSI Management; CLM Aviation, LLC; Holdco; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center Of Cleveland, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center Of Pennsylvania, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center Of Warwick, LLC; Medical Care Management Services, LLC; Spine DME Solutions, LLLC; Total Spine Care, LLC; Laser Spine Institute Consulting, LLC; and Laser Spine Surgery Center of Oklahoma, LLC.

10. This is an action in which the matter in controversy exceeds the sum of $30,000.00, exclusive of interest, costs and attorney's fees. Venue and jurisdiction are proper in Hillsborough County, Florida, because Hillsborough County, Florida, is the principal place of business for the Companies; the causes of action accrued in Hillsborough County, Florida; the Defendant conducted significant business in Hillsborough County, Florida; the Transfers were made in Hillsborough County and the torts were committed in Hillsborough County and/or caused harm in

Hillsborough County, Florida. Therefore, this Court has jurisdiction and venue is proper pursuant to Fla. Stat. §26.012, §86.011, §47.011 and §727.

11. All conditions precedent to the filing of this action have been performed, waived, satisfied or have occurred.

12. Defendant is a corporation organized under the laws of the State of Florida. At all relevant times from and after January 1, 2015, Defendant was a member of and held an ownership interest in Holdco. This Court has personal jurisdiction over Defendant because Defendant conducted business in this jurisdiction and was the recipient of the Transfers from Holdco and LSI Management in this jurisdiction that are sought to be avoided and recovered herein.

FACTS COMMON TO ALL COUNTS

A. Formation and Management of LSI, LSI Management and the Companies.

13. In 2005, LSI was formed as a limited liability company organized under the laws of the State of Florida. In 2009, LSI Management was formed as a limited liability company also organized under the laws of the State of Florida.

14. LSI opened its first surgical facility in Tampa, Florida. At that time, it operated as a single-operating room facility focused on spine related orthopedic procedures.

15. During the succeeding years, LSI, as the parent company, formed a number of wholly-owned subsidiaries and began to open additional surgical facilities around the country, including Scottsdale, Arizona (in 2008), Philadelphia, Pennsylvania (in 2009), Oklahoma City, Oklahoma (in 2011), Cleveland, Ohio (in 2014), St. Louis, Missouri (in 2015) and Cincinnati, Ohio (in 2015).

16. At its peak, LSI became a national spine-focused, orthopedic chain performing about 100,000 procedures in facilities in five different states and employing more than 600 individuals.

17. From its inception through early 2015, LSI was by all measures a successful business operation, generating gross revenues in 2010 of approximately $115 million, which revenues increased year over year through 2014 to approximately $268 million. Similarly, LSI's EBITDA increased from approximately $24 million in 2010 to approximately $77 million in 2014. During these years, the members/owners of LSI received substantial distributions on their membership interests.

18. Notwithstanding its apparent success through 2014, the Companies were facing a number of problems, including financial issues and substantial exposure to damages from a number of lawsuits that had been filed against the Companies.

B. The Bailey Litigation.

19. One such litigation was filed in 2006 by Dr. Joe Samuel Bailey and his related entities (the "**Bailey Litigation**"), including Laserscopic Spinal Centers of America, Inc. (collectively, "**LSE**"). In the Bailey Litigation, LSE asserted claims against some of the Companies and others for breach of fiduciary duty, defamation, slander per se, FDUPTA violations, conspiracy and tortious interference.

20. The Bailey Litigation proceeded to a bench trial in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the "**Court**") on the following dates: July 12-23, 2010; September 20-28, 2010; April 29, 2011 and May 9-20, 2011. On October 9, 2012, the Court issued a 131 page memorandum opinion. On November 2, 2012, the Court entered a Final Judgment in favor of the LSE as plaintiff, awarding damages of $1.6 million (the

"**Original Judgment**"). Thereafter, both sides appealed. Upon information and belief, the Companies recognized that the Bailey Litigation was and would be a significant loss for the Companies that could have potentially catastrophic financial ramifications.

21. On February 3, 2016, the Second District Court of Appeals (the "**Second DCA**") issued an opinion reversing the Original Judgment and determined that: (1) LSE could obtain a disgorgement of the Companies' profits irrespective of the amount of LSE's actual damages or whether it suffered any financial loss, (2) the Court's factual findings supported an award of punitive damages, and (3) damages should be awarded for the FDUPTA violations because monetary relief could be awarded to business enterprises in addition to consumers. The Second DCA remanded the case back to the trial court and noted, among other things, that the evidence supported an award of out-of-pocket damages of $6,831,172 and disgorgement damages in the neighborhood of $271 million.

22. On remand, the Court entered an Amended Final Judgment on January 30, 2017, adding an award of punitive damages in the amount of $5,750,000, a FDUPTA damage award of $1,050,000, and confirming the prior damages award of $1.6 million.

23. Another appeal ensued and the Second DCA reversed and remanded again, directing the Court to award out-of-pocket damages of $6,831,172 and holding that the disgorgement damages "at a minimum" are between $264 million to $265 million.

C. Holdco Gains Control of LSI and LSI Management.

24. The Companies' management did not *just* use their control over LSI, LSI Management, and the Companies to loot them of millions of dollars in cash after they had fallen on hard times. They did not *just* grossly enrich themselves to the detriment of LSI, LSI Management, and the Companies at a time when such Companies were insolvent. Indeed,

following the Original Judgment, the managers of LSI, LSI Management, and the Companies concocted a (failed) scheme to insulate themselves from liability.

25. A component of this cover-up was the attempted restructuring of the Companies following the Original Judgment.

26. In December of 2012, which was approximately one month after the Court entered the Original Judgment in the Bailey Litigation against LSI, among others, the Board of Managers caused Holdco to be formed under Delaware law as the new holding company to replace LSI in that capacity.

27. On January 1, 2013, the members of LSI, which was the then-existing holding company, entered into a new operating agreement with Holdco and, among other things, transferred all of their membership interests in LSI to Holdco (the "**2013 LSI Operating Agreement**"), making Holdco the sole member and managing member of LSI. Essentially, the owners of LSI each assigned their interests in LSI to Holdco in exchange for equivalent membership interests in Holdco. As a result of this assignment, Holdco became the sole member and owner of LSI and LSI Management.

28. Under the 2013 LSI Operating Agreement, and as sole member of LSI, Holdco managed, conducted, and controlled the affairs of LSI, and controlled the assets of LSI and the assets of LSI's subsidiaries. The 2013 LSI Operating Agreement does not contain an arbitration provision.

29. Similarly, in 2013, the members of LSI Management entered into a new operating agreement which, among other things, named Holdco as LSI Management's sole member and managing member.

30. From and after January 1, 2013, Holdco became the parent holding company and was the sole manager of LSI and the direct and indirect sole manager of the remainder of the Companies.

31. Holdco, in turn, was dominated by a cabal of managers that comprised a "Board of Managers" of Holdco. Indeed, from and after January 1, 2013, this "Board of Managers" was established at Holdco in order to manage Holdco and its subsidiaries—namely, the Companies.

32. Under Holdco's operating agreement, the business affairs of Holdco and its Company-subsidiaries were to be exercised by the members comprising this Board of Managers.

33. In fact, the members of the Board of Managers controlled all aspects of Holdco and its subsidiary Companies (including, LSI and LSI Management), including, among other things: the property of Holdco and its subsidiary Companies; the prosecution, assignment, transfer, and/or release of any cause of action available to Holdco or its subsidiary Companies; the distribution of monies from Holdco and its subsidiary Companies to the members of Holdco; the procurement of financing on behalf of Holdco and its subsidiary Companies; and the filing of any bankruptcy or other action by Holdco or its subsidiary Companies in order to seek protection from creditors.

34. Thus, since January 1, 2013, Holdco's Board of Managers controlled the complex web of subsidiary Companies (including LSI and LSI Management) that, at that time, comprised the above-referenced national spine-focused, orthopedic chain of facilities that performed about 100,000 procedures in five different states and employed, at one time, more than 600 individuals.

35. Indeed, at all times material to this Amended Complaint, the above corporate restructuring of Holdco simply added a layer of corporate fiction between the members of the Board of Managers, on the one hand, and LSI and LSI Management (as well as the other Companies) on the other hand. To be clear, despite the corporate restructuring of Holdco, the

members of the Board of Managers continued to have and continued to exercise complete and full dominion and control over LSI and LSI Management (as well as the other subsidiary Companies), their day-to-day affairs and operations, and their respective property.

36. At bottom, after this so-called restructuring, the managers of Holdco exercised full dominion and control over Holdco, which in turn exercised full dominion and control over LSI and LSI Management (as well as the other Companies)..

37. As outlined extensively below, members of the Board of Managers used their used their dominion and control over LSI and LSI Management (among other Companies) to bilk whatever value they could obtain from LSI and LSI Management for their own benefit and those related to them and to the severe detriment of LSI, LSI Management and the rest of the Companies.

D. <u>The Dividend Recapitalization, Insolvency, Defaults and Financial Mismanagement.</u>

38. Upon information and belief, LSI admitted that the Companies were experiencing serious deficiencies in and failures of internal controls and accounting procedures during and after 2015.

39. Primarily, LSI needed to write-down approximately $34 million of accounts receivable for fiscal year 2015 and it had to establish a reserve for bad debt of approximately $22.5 million for fiscal year 2015. These write downs and reserves required LSI to restate its financial results for fiscal year 2015. Specifically, LSI's revenue for 2015 was reduced from $322 million to $263.5 million and its EBITDA was reduced from $74.6 million to $16.1 million for the twelve-month period ending December 31, 2015.

40. LSI later admitted that it had a "dire need of immediate liquidity" in 2015, and that it was facing serious financial issues.

41. After the significant loss in the Bailey Litigation, in 2014, the members of the Holdco Board of Managers entertained offers from third parties to purchase equity in the Companies.

42. Ultimately, rather than sell the equity in LSI, LSI Management, and the other Companies, the members of the Board of Managers of Holdco elected to enrich themselves and others related to them by looting the value of LSI, LSI Management, and the Companies through a dividend loan transaction.

43. In fact, according to an internal e-mail from one of the managers to several of the other managers in December 2015, the "*Board decided that our company was too special to sell. Because several members of the Board wanted to 'take some money off the table' we decided to put some debt on the company through a dividend recap instead of selling a piece of the business.*"

44. To that end, in the early part of 2015 and despite the existing and impending financial issues facing the Companies, the Companies approached Texas Capital Bank, who was their then existing senior secured lender, and proposed to borrow a substantial amount of money in order to make dividend/distribution payments to the owners/members of Holdco, including the Defendant.

45. Through the dividend recapitalization loan among the Companies and Texas Capital Bank, the Defendant and the other members of the Board of Managers would leverage the assets of the Companies for their own personal advantage (and those related to them) and to the severe financial disadvantage of the Companies.

46. Thereafter, on or about July 2, 2015, the members of the Board of Managers caused certain of the Companies—namely, LSI, LSI Management, Laser Spine Institute Consulting, LLC and Medical Care Management Services, LLC (collectively, the "**LSI Borrowers**")—to enter into

a $150,000,000 credit agreement (the "**Dividend Loan**") with Texas Capital Bank (the "**Lender**"). The obligations under the Dividend Loan were guaranteed by Holdco and the remainder of the Companies.

47. In connection with the Dividend Loan, the Companies agreed, among other things, to: (a) maintain certain financial covenants; (b) maintain certain cash balances; and (c) maintain its primary depository, purchasing and treasury services with the Lender.

48. The members of the Board of Managers caused substantially all of the Companies' assets to be pledged to the Lender to secure and serve as collateral for the Dividend Loan. The bulk of the proceeds from the Dividend Loan was deposited by the Lender into the bank account of LSI Management.

49. Despite facing existing and impending financial issues, the members of the Board of Managers immediately authorized and ratified the transfer from LSI Management to Holdco of an amount equal to $110,473,942 of the proceeds of the Dividend Loan and simultaneously therewith caused, authorized and ratified the almost immediate transfer by Holdco to the Defendant and the other members of the Board of Managers, and other ultimate equity holders/members of the Companies (the "**Dividend Distributions**").

50. As a direct result of the Dividend Distributions, each of Holdco, LSI, LSI Management, and the other Companies each became insolvent by tens of millions of dollars.

51. Predictably, the financial viability of LSI, LSI Management, and the other Companies deteriorated rapidly thereafter, as shortly after the Dividend Distributions were made, the Companies were unable to meet their obligations under the Dividend Loan.

52. Barely one year later, by at least the middle of 2016, the Companies had committed several defaults under the Dividend Loan, requiring it to be amended together with a waiver of

such defaults from the Lender. On May 26, 2016 and June 9, 2016, the Lender issued notices of default to the LSI Borrowers.

53. In addition, in June 2016, the Companies' deteriorating financial condition caused them to lay off 70 employees, which was about 6% of their workforce.

54. Thereafter, on November 18, 2016, the LSI Borrowers entered into a Limited Waiver and First Amendment to Dividend Loan with the Lender (the "**First Amendment**").

55. Pursuant to the terms of the First Amendment, the Lender listed a total of twenty (20) different defaults that had occurred and were continuing under the Dividend Loan, which defaults the Lender agreed to waive pursuant to certain terms and conditions contained therein.

56. Despite the First Amendment, the Companies' financial condition continued to worsen and deteriorate. In fact, in 2016, the Companies failed to make approximately $7.7 million in payments due to the landlord for the Companies' Tampa facility. In addition, the Companies were facing new competition and declining medical reimbursements, all of which further contributed to financial deterioration of the Companies.

57. Less than one year after the First Amendment, the LSI Borrowers were again in default of the Dividend Loan. Consequently, on September 29, 2017, the LSI Borrowers and the Lender entered into a Limited Waiver and Second Amendment (the "**Second Amendment**"), which Second Amendment listed seven (7) additional defaults under the Dividend Loan. Pursuant to the terms of the Second Amendment, the Lender agreed to waive such additional defaults on the conditions contained therein.

E. The Failure to Pursue Recoveries Regarding the Dividend Distributions and Election to Protect Self-Interests to the Detriment of the Companies.

58. By at least November 2016 and at a time when the Companies were insolvent and experiencing financial distress, the Board Managers, among others, was aware that certain claims

and causes of action existed in favor of the Companies to recover the Dividend Distributions from the recipients thereof.

59. Consistent with the deliberate mishandling (and leveraging) by the members of the Board of Managers of the Companies' assets, and their concomitant disregard of their fiduciary duties to the Companies, the members of the Board of Managers refused to hold the Defendant and others accountable for the patently unreasonable transactions involved in the Dividend Loan and Dividend Distributions.

60. The Board of Managers and others knew or should have known that the Dividend Distributions violated applicable law, and that the recipients thereof would be liable for the Dividend Distributions as a result. In fact, despite having the ability and responsibility to do so, the Board of Managers failed to take appropriate action to timely and fully recover the Dividend Distributions.

61. As a result, and at a time when the Companies' financial condition should have been of paramount importance, the members of the Board of Managers drained the Companies of cash through the Dividend Distributions, caused a severe liquidity squeeze, and refused to take action to recover the value of the Dividend Distributions to ameliorate these dire financial issues.

62. These financial problems severely impacted the Companies' prospects as going concerns, ultimately resulting in the Companies further defaults under the Dividend Loan and ultimate collapse.

63. The members of the Board of Managers completely and willfully failed to pursue the claims and/or causes of action to recover the Dividend Distributions because the Defendant and several of the members of the Board of Managers and those affiliated with them were

recipients of the Dividend Distributions and, therefore, were hopelessly conflicted in respect of pursuing such claims.

F. The Failed Cover-Up.

64. Hoping for a clean escape, the Board of Managers and others not only failed to pursue the Companies' claims against the Defendant for recovery of the Dividend Distributions in 2016; rather, they also knowingly sought to protect and insulate themselves from any claims related thereto in at least two ways. First, they sought releases from the Lender in connection with the Dividend Loan. Second, they also sought to hide the patently unfair and unreasonable manner in which they controlled the affairs of the Companies by manipulating the corporate structure of the Companies.

i. Releases from the Lender.

65. In November of 2016, the members of the Board of Managers continued with their pattern and practice of abusing for their own benefit their control of the Companies. Specifically, with the Companies hemorrhaging cash and repeated defaults, and faced with mounting evidence of the members of the Board of Managers' liability for their actions or omissions, the members of the Board of Managers repeatedly attempted to inoculate themselves from liability and deprive the Companies of the ability to recover against them.

66. In addition to the First Amendment, the Board of Managers and others caused the LSI Borrowers to enter into a certain Release Agreement with the Lender, dated November 18, 2016 (the "**Release Agreement**").

67. Pursuant to the terms of the Release Agreement, among other things, the Lender agreed that it "shall not commence, or directly or indirectly cause or instruct others to commence

any Action against any one or more of the Investors with respect to any claims arising out of or related to the [Dividend Distributions]."

ii. Amendments to Holdco's Operating Agreements

68. Before November of 2016, Holdco's operating agreements contained iterations of the following provisions concerning "Liability of Members of the Board of Managers":

> 3.12 Liability of Members of the Board of Managers.
>
> (a) To the maximum extent permitted by applicable law, except as otherwise provided herein or in any agreement entered into by such Person and the Company, no member of the Board of Managers or any of such Person's Affiliates shall be liable to the Company or to any Member or other holder of any interest in the Company for any act or omission performed or omitted by such Person in its capacity as a member of the Board of Managers taken in accordance with such member of the Board of Manager's implied contractual obligation of good faith and fair dealing; provided that, except as otherwise provided herein, such limitation of liability shall not apply to the extent the act or omission was attributable to such Person's willful misconduct or knowing violation of law or for any breaches of any representations, warranties or covenants by such Person or any of such Person's Affiliates contained herein or in any other agreement with the Company. The Board of Managers may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and, to the maximum extent permitted by applicable law, no member of the Board of Managers or any of such Person's Affiliates shall be responsible for any misconduct or negligence on the part of any such agent appointed by the Board of Managers (so long as such agent was selected in good faith and with reasonable care). The Board of Managers shall be entitled to rely upon the advice of legal counsel, independent public accountants and other experts, including financial advisors, and any act of or failure to act by the Board of Managers in good faith reliance on such advice shall in no event subject the Board of Managers or any member thereof to liability to the Company or any Member.
>
> (b) Notwithstanding any other provision of this Agreement, to the maximum extent permitted by applicable law, whenever the Board of Managers is permitted or required by this Agreement to make a decision, each member of the Board of Managers may consider only those interests and factors that such member of the Board of Managers desires (including its own interests, the interests of its Affiliates and interests and factors that are unrelated to the Company or any Subsidiary thereof), and to the fullest extent permitted by applicable law, is under no duty or obligation to give any consideration to any other interests of, or factors affecting, the Company or its Subsidiaries, the Members, or any other Person or group of Persons.

> (c) To the maximum extent permitted by applicable law, the provisions of this Agreement (including this Section 3.12) completely replace, eliminate and otherwise supplant any duties (including fiduciary duties) and liabilities that a member of the Board of Managers might otherwise have. **Notwithstanding anything to the contrary herein, this Section 3.12 shall not affect the liability or duties of any officer or member of the Board of Managers (or Persons controlling any member of the Board of Managers) of the Company**.

See, e.g., *Limited Liability Company Agreement of LSI Holdco LLC*, dated effective as of January 1, 2013 (emphasis added); *Amended and Restated Limited Liability Company Agreement of LSI Holdco LLC* (the "**Restated Holdco LLC Agreement**"), dated effective as of January 1, 2015 (emphasis added).

69. By its express terms, the Restated Holdco LLC Agreement (and the foregoing provision) did not "affect the liability or duties of" the members of the Board of Managers of Holdco (among others) "[n]otwithstanding anything to the contrary" in the Restated Holdco LLC Agreement. Moreover, the Restated Holdco LLC Agreement did not contain any provisions compelling arbitration of disputes arising under that agreement.[2]

70. However, on the same date as the First Amendment and Release Agreement (November 18, 2016), the Board of Managers, among others, caused certain amendments to be made to the governing corporate documents of Holdco attempting, among things, to specifically exonerate and release themselves from any liability related to the Dividend Distributions.

71. To that end, on November 18, 2016, the members of Holdco executed Holdco's *Second Amended and Restated Limited Liability Company Agreement* (the "**Second Restated Holdco LLC Agreement**").

[2] The Operating Agreement for LSI Management, at all material times, also did not contain any provisions compelling arbitration for disputes arising out of that agreement.

72. Apparently recognizing their exposure to Holdco under the terms of the Restated Holdco LLC Agreement arising from and relating to their acts and/or omissions in conjunction with, among other things, the Dividend Distribution, the members of the Board of Managers of Holdco manipulated their control of Holdco to attempt to absolve themselves from liability in the Second Restated Holdco LLC Agreement by replacing the above-referenced "Liability of Members of the Board of Managers" provision in the Restated Holdco LLC Agreement with the following (the "**Revised Liability and Release Provision**"):

> 3.6 Liability of Members of the Board of Managers.
>
> (a) To the maximum extent permitted by applicable law, except as otherwise provided herein or in any agreement entered into by such Person and the Company, no member of the Board of Managers or any of such Person's Affiliates shall be liable to the Company or to any Member or other holder of any interest in the Company for any act or omission performed or omitted by such Person in its capacity as a member of the Board of Managers taken in accordance with such member of the Board of Manager's implied contractual obligation of good faith and fair dealing; provided, that, except as otherwise provided herein, such limitation of liability shall not apply to the extent the act or omission was attributable to such Person's willful misconduct or knowing violation of law or for any breaches of any representations, warranties or covenants by such Person or any of such Person's Affiliates contained herein or in any other written agreement with the Company or any of its Affiliates. The Board of Managers may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and, to the maximum extent permitted by applicable law, no member of the Board of Managers or any of such Person's Affiliates shall be responsible for any misconduct or negligence on the part of any such agent appointed by the Board of Managers (so long as such agent was selected in good faith). The Board of Managers shall be entitled to rely upon the advice of legal counsel, independent public accountants and other experts, including financial advisors, and any act of or failure to act by the Board of Managers in good faith reliance on such advice shall in no event subject the Board of Managers or any member thereof to liability to the Company or any Member.
>
> (b) Notwithstanding any other provision of this Agreement, to the maximum extent permitted by applicable law, whenever the Board of Managers is permitted or required by this Agreement to make a decision, each member of the Board of Managers may consider only those interests and factors that such member of the Board of Managers desires (including its own interests, the interests of its Affiliates and interests and factors that are unrelated to the Company or any Subsidiary

thereof), and to the fullest extent permitted by applicable law, is under no duty or obligation to give any consideration to any other interests of, or factors affecting, the Company or its Subsidiaries, the Members, or any other Person or group of Persons.

(c) Notwithstanding anything to the contrary contained herein, to the maximum extent permitted by applicable law, whenever in this Agreement or any other agreement contemplated herein or otherwise, the Board of Managers is permitted or required to take any action or to make a decision in its "sole discretion" or "discretion," or that it deems "necessary," "necessary or appropriate," "necessary or desirable" or "necessary, appropriate or advisable," or under a grant of similar authority or latitude, the Board of Managers shall, to the fullest extent permitted by applicable law, make such decision in its sole discretion (regardless of whether there is a reference to "sole discretion" or "discretion"), be entitled to consider such interests and factors as it desires (including the interests of a Unitholder with which the Manager may be affiliated), and shall have no duty or obligation (fiduciary or otherwise) to give any consideration to any interest of or factors affecting the Company, its Subsidiaries or the Members, and shall not be subject to any other or different standards imposed by this Agreement, any other agreement contemplated hereby, under the Act or under any other applicable law or in equity.

(d) To the maximum extent permitted by applicable law, all fiduciary duties of any Manager to the Company or any Member are hereby eliminated. Without limiting the foregoing, each Member hereby waives any claim or cause of action against the present and former Managers, or any of their respective Affiliates, employees, agents, and representatives, for any breach of any fiduciary duty to the Company or its Members by any such Person, including as may result from a conflict of interest between the Company or any of its Subsidiaries and such Person. Subject to compliance with the express terms of this Agreement, a Manager shall not be obligated to recommend or take any action as a Manager that prefers the interests of the Company or any of its Subsidiaries or the other Members over the interests of such Manager or its Affiliates, heirs, successors, assigns, agents or representatives and the Company, and the Members hereby waive all fiduciary duties, if any, of the Board of Managers to the Company and the Members, including in the event of any such conflict of interest. Notwithstanding the foregoing, nothing herein shall eliminate the implied duties of any Manager or Member of good faith and fair dealing under Delaware law.

(e) Without limiting the foregoing, each Member hereby (i) ratifies, approves and consents to all actions taken on or prior to the date hereof by each manager of the Company under the Act, the "Board of Managers" (as defined under the Original Agreement and the A&R Agreement, respectively) in connection with (A) the Distribution made to the Members on or about July 6, 2015, (B) the Senior Credit Agreement and the transactions contemplated thereby, (C) the Convertible Bridge Loan Agreement and the transactions contemplated thereby,

including the conversion of the loans thereunder into Class A Interests and (D) the Rights Offering and (ii) waives and releases any claim or cause of action against the Company, each other Member, the present and former managers, the Managers and the foregoing Board(s) of Managers, and each of their respective Affiliates, employees, agents, and representatives, including without limitation for any breach of express or implied duty (including any breach of any fiduciary duty) to the Company or any of its Members by any such Person, including as may have resulted from a conflict of interest between the Company or any of its Subsidiaries and such Person, in connection with each of the foregoing.

73. Whereas the Restated Holdco LLC Agreement provided expressly that it would not "affect the liability or duties of" the members of the Board of Managers of Holdco (among others) "[n]otwithstanding anything to the contrary," the Revised Liability and Release Provision purports to grant, without any consideration whatsoever the Board of Managers, waivers in respect of all claims or causes of action for any breach of any fiduciary duty to Holdco, including prior breaches of fiduciary duty in connection with the Dividend Distributions and conflicts of interest between Holdco (the "**Cover-Up Transfers**").

74. This machinated provision was designed to deliver the *coup de grâce* to the Companies, leaving them with nothing but empty shells and staggering debt. Indeed, through the foregoing language—which was added after the Dividend Loan, Dividend Distributions, and the Companies' repeated defaults—the members of the Board of Managers attempted to: (A) Eliminate all fiduciary duties they owed to Holdco; (B) Obtain from all other members of Holdco waivers of any claim or cause of action against "the present and former Managers" for any breach of any fiduciary duty to Holdco or its members, including as may result from a conflict of interest; (C) Receive *carte blanche* to prefer their own interests over the interests of Holdco and other members; (D) Obtain *ex post facto* ratification, approval, and consent to "all actions taken on or prior to the date [of the Second Restated Holdco LLC Agreement] for their conduct in conjunction with the Dividend Distribution, the Dividend Loan, and other related transactions; and (E) Obtain

ex post facto releases from Holdco members of claims or causes of action for any breach of express or implied duty (including any breach of any fiduciary duty) to in connection with those transactions.

75. The intent and design of the Release Agreement and these foregoing changes to Holdco's operating agreements was clear: the Board of Managers (A) completely looted LSI, Holdco, and the Companies of their value through the Dividend Loan, Dividend Distributions, and related transactions; (B) realized that they were exposed to liability for this corporate looting; and (C) abused their control and dominion over LSI, Holdco, and the Companies (and their collective assets) in modifying the corporate governance documents in order to absolve themselves from existing liabilities.

76. Importantly, each act and/or omission by the members of the Board of Managers after the Dividend Loan and Dividend Distributions outlined above to insulate themselves from liability and cover up their breaches of fiduciary duty bears on and evidences the fact that the Companies, through the Board of Managers, actually intended to hinder and/or delay the creditors of the Companies through the Dividend Distributions, including the Transfers to the Defendant.

G. <u>The Fraudulent Transfers.</u>

77. In July 2015, Holdco and LSI Management engaged in a series of fraudulent transfers in respect of the Dividend Distributions of in excess of $110 million that are all avoidable and recoverable by Plaintiff under Chapter 726 of the Florida Statutes or under other applicable law, which transfers caused Holdco and LSI Management to become insolvent by tens of millions of dollars.

78. Specifically, in July 2015, almost immediately after receiving the proceeds from the Dividend Loan, the members of the Board of Managers of Holdco caused LSI Management to

transfer to Holdco, as a conduit, in excess of $110 million for the sole and express purpose of transferring such funds to Holdco's members, including the Defendant. On information and belief, the proceeds of the Dividend Loan were deposited initially into LSI Management because LSI Management was not a party to the Bailey Litigation or the judgments entered against LSI in the Bailey Litigation.

79. Thereafter, the Board of Managers and others caused Holdco to make the Transfers to the Defendant.

80. The Defendant received the Transfers set forth on Exhibit A attached hereto on the dates and in the amounts set forth thereon. The Transfers constituted property of LSI Management, Holdco and those Companies that constituted the LSI Borrowers and those Companies that guaranteed the Dividend Loan.

81. Neither LSI Management nor Holdco received any value, let alone any reasonably equivalent value, from the Defendant in exchange for the Transfers.

82. The Transfers were made by Holdco and by LSI Management with the actual intent to hinder and/or delay the creditors of Holdco, LSI Management and the rest of the Companies.

83. At all relevant times herein, as a direct result of the Dividend Loan and Dividend Distributions, LSI Management, Holdco, and rest of the Companies became insolvent by tens of millions of dollars.

84. At all relevant times herein, including at the time the Transfers were made to Defendant, LSI Management, Holdco, and rest of the Companies were engaged in or were about to engage in a business or a transaction for which the remaining assets of LSI Management, Holdco, and the rest of the Companies were unreasonably small in relation to such business or transaction.

85. At all relevant times herein, including at the time the Transfers were made to Defendant, LSI Management, Holdco, and the rest of the Companies intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they became due.

COUNT I
AVOIDANCE AND RECOVERY OF HOLDCO TRANSFERS UNDER FLORIDA AND DELAWARE LAW – CONSTRUCTIVE FRAUD

86. The Plaintiff re-alleges paragraphs 1 through 85 as if fully set forth herein.

87. The Plaintiff sues the Defendant to avoid and recover the Holdco Transfers pursuant to Fla. Stat. §726.101 *et seq.* ("**FUFTA**"), 6 Del. C. §1301 *et seq.* ("**DUFTA**").

88. In connection with the Dividend Loan and Dividend Distribution, the Defendant received the Holdco Transfers from Holdco.

89. Pursuant to FUFTA and DUFTA, the Plaintiff may avoid any transfer of an interest of Holdco in property or any obligation incurred by Holdco that is voidable under applicable law by a creditor holding an unsecured claim.

90. Under both FUFTA and DUFTA, a transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation without receiving reasonably equivalent in value in exchange for the transfer or obligation and the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation.

91. Further, under FUFTA and DUFTA, the Plaintiff may recover, for the benefit of the estate, the value of the property transferred, from (1) the first transferee of such transfer or the entity for whose benefit such transfer was made; and (2) any subsequent transferee of such first transferee.

92. The Holdco Transfers constitute a transfer made by Holdco for which Holdco did not receive reasonably equivalent value from the Defendant in exchange for the same.

93. At the time of the Holdco Transfers, Holdco had creditors holding unsecured claims and was engaged or was about to engage in a business or a transaction for which the remaining assets of Holdco were unreasonably small in relation to the business or transaction, or intended to incur, or believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

94. As a result of the Holdco Transfers described herein, Holdco has been damaged and, pursuant to FUFTA and DUFTA, may avoid and recover the total value of such Transfers from the Defendant.

95. The Defendant was either the first or subsequent transferee of the Holdco Transfers and was otherwise a beneficiary of the Transfers as described herein, for whose benefit the Transfers were made and, as a result, the Plaintiff is entitled to avoid and recover the Transfers as voidable.

WHEREFORE, the Plaintiff demands judgment against Defendant: (i) avoiding the Holdco Transfers and recovering the amount of the Holdco transfers from Defendant; (ii) pre-judgment and post-judgment interest as allowed by law; and (iii) such other and further legal and equitable relief as the Court deems just and proper.

COUNT II
AVOIDANCE AND RECOVERY OF HOLDCO TRANSFERS UNDER FLORIDA AND DELAWARE LAW – CONSTRUCTIVE FRAUD

96. The Plaintiff re-alleges paragraphs 1 through 85 as if fully set forth herein

97. The Plaintiff sues the Defendant to avoid and recover avoidable transfers pursuant to FUFTA and DUFTA.

98. In connection with the Dividend Loan and Dividend Distribution, the Defendant received the Holdco Transfers from Holdco.

99. Pursuant to FUFTA and DUFTA, the Plaintiff may avoid any transfer of an interest of Holdco in property or any obligation incurred by Holdco that is voidable under applicable law by a creditor holding an unsecured claim.

100. Under FUFTA and DUFTA, a transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation without receiving reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation.

101. Further, under FUFTA and DUFTA, the Plaintiff may recover, for the benefit of the estate, the value of the property transferred, from (1) the first transferee of such transfer or the entity for whose benefit such transfer was made; and (2) any subsequent transferee of such first transferee.

102. The Holdco Transfers constitute a transfer made by Holdco for which Holdco did not receive reasonably equivalent value from the Defendant in exchange for the same.

103. At the time of the Holdco Transfers, Holdco had creditors holding unsecured claims and was insolvent, had its insolvency deepened, or became insolvent as a result of such Holdco Transfers and contemporaneous Dividend Distributions.

104. As a result of the Holdco Transfers, Holdco has been damaged and, pursuant to FUFTA and DUFTA, may avoid and recover the total value of such Transfers from the Defendant.

105. The Defendant was either a first or subsequent transferee of the Holdco Transfers, and was otherwise a beneficiary of the Holdco Transfers as described herein, for whose benefit the

Holdco Transfers were made and, as a result, the Plaintiff is entitled to avoid and recover the Holdco Transfers as voidable from the Defendant.

WHEREFORE, the Plaintiff demands judgment against Defendant: (i) avoiding the Holdco Transfers and recovering the amount of the Holdco Transfers from Defendant; (ii) pre-judgment and post-judgment interest as allowed by law; and (iii) such other and further legal and equitable relief as the Court deems just and proper.

COUNT III
AVOIDANCE AND RECOVERY OF HOLDCO TRANSFERS UNDER FLORIDA AND DELAWARE LAW – ACTUAL INTENT

106. The Plaintiff re-alleges paragraphs 1 through 85 as if fully set forth herein

107. The Plaintiff sues the Defendant to avoid and recover avoidable transfers pursuant to FUFTA and DUFTA.

108. In connection with the Dividend Loan and Dividend Distribution, the Defendant received the Holdco Transfers from Holdco.

109. Pursuant to FUFTA and DUFTA, the Plaintiff may avoid any transfer of an interest of Holdco in property or any obligation incurred by Holdco that is voidable under applicable law by a creditor holding an unsecured claim.

110. FUFTA and DUFTA provide that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud any creditor of the debtor.

111. Further, under FUFTA and DUFTA, the Plaintiff may recover, for the benefit of the estate, the value of the property transferred, from (1) the first transferee of such transfer or the

entity for whose benefit such transfer was made; and (2) any subsequent transferee of such first transferee.

112. The Holdco Transfers constitute a transfer made by Holdco with the actual intent to hinder and/or delay the creditors of Holdco.

113. The Holdco Transfers were made to the Defendant.

114. Before the Holdco Transfers, various judgments had been entered against some of the Companies and there was a significant risk that the judgment entered in the Bailey Litigation would be significantly increased. The Dividend Loan, the Dividend Distributions and the Transfers reduced the available funds to satisfy that judgment which hindered and/or delayed those creditors and others. In addition, the Dividend Loan, the Dividend Distributions and the Transfers reduced the assets of the Companies to satisfy the outstanding judgment claims and other creditor claims.

115. The Holdco Transfers occurred shortly after Holdco took on a substantial debt (the Dividend Loan). At the time of the Holdco Transfers, Holdco had unsecured claims and was insolvent, had its insolvency deepened, or became insolvent as a result of the Holdco Transfers and contemporaneous Dividend Distributions.

116. As a result of the Holdco Transfers, Holdco has been damaged and, pursuant to FUFTA and DUFTA, may avoid and recover the total value of such Holdco Transfers from the Defendant.

117. The Defendant was either a first or subsequent transferee of the Holdco Transfers, and was otherwise a beneficiary of the Holdco Transfers as described herein, for whose benefit the Holdco Transfers were made and, as a result, the Plaintiff is entitled to avoid and recover the Holdco Transfers as voidable from the Defendant.

WHEREFORE, the Plaintiff demands judgment against Defendant: (i) avoiding the Holdco Transfers and recovering the amount of the Holdco Transfers from Defendant; (ii) pre-judgment and post-judgment interest as allowed by law; and (iii) such other and further legal and equitable relief as the Court deems just and proper.

COUNT IV
AVOIDANCE AND RECOVERY OF LSI MANAGEMENT TRANSFERS UNDER FLA. STAT. §§726.105(1)(b), 726.108 AND 726.109

118. The Plaintiff re-alleges paragraphs 1 through 85 as if fully set forth herein.

119. The Plaintiff sues the Defendant to avoid and recover the LSI Management Transfers pursuant to FUFTA.

120. In connection with the Dividend Loan, LSI Management transferred monies, namely the LSI Management Transfer, to Holdco as a conduit for the sole and express purpose of transferring such monies to Defendant and others.

121. Pursuant to FUFTA, the Plaintiff may avoid any transfer of an interest of LSI Management in property or any obligation incurred by LSI Management that is voidable under applicable law by a creditor holding an unsecured claim.

122. Section 726.105(1)(b), Florida Statutes, provides:

> (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> * * *
>
> (b) without receiving reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
>
> (1) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(2) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

123. Further, under FUFTA, the Plaintiff may recover, for the benefit of the estate, the value of the property transferred, from (1) the first transferee of such transfer or the entity for whose benefit such transfer was made; and (2) any subsequent transferee of such first transferee.

124. The LSI Management Transfers constituted a transfer made by LSI Management for which LSI Management did not receive reasonably equivalent value from the Defendant in exchange for the same.

125. The LSI Management Transfers were made to the Defendant using Holdco as a mere conduit.

126. At the time of the LSI Management Transfers, LSI Management had creditors holding unsecured claims and was engaged or was about to engage in a business or a transaction for which the remaining assets of LSI Management were unreasonably small in relation to the business or transaction, or intended to incur, or believed or reasonably should have believed that they would incur debts beyond its ability to pay as they became due.

127. As a result of the LSI Management Transfers, LSI Management has been damaged and, pursuant to Fla. Stat. §§ 726.105(1)(b), 726.108 and 726,109, Plaintiff may avoid and recover the total value of such LSI Management Transfers from the Defendant.

128. Defendant was either the first or subsequent transferee of the LSI Management Transfers and was otherwise a beneficiary of these transfers as described herein, or for whose benefit these transfers were made and, as a result, the Plaintiff is entitled to avoid and recover these transfers as voidable.

WHEREFORE, the Plaintiff demands judgment against Defendant: (i) avoiding the LSI Management Transfers and recovering the amount of the LSI Management Transfers from

Defendant; (ii) pre-judgment and post-judgment interest as allowed by law; and (iii) such other and further legal and equitable relief as the Court deems just and proper.

COUNT V
AVOIDANCE AND RECOVERY OF LSI MANAGEMENT TRANSFERS UNDER FLA. STAT. §§726.106(1), 726.108 AND 726.109

129. The Plaintiff re-alleges paragraphs 1 through 85 as if fully set forth herein.

130. The Plaintiff sues the Defendant to avoid and recover avoidable transfers pursuant to FUFTA.

131. In connection with the Dividend Loan and Dividend Distributions, LSI Management transferred monies, namely the LSI Management Transfers, to Holdco as a conduit for the sole and express purpose of transferring monies to Defendant and others

132. Pursuant to FUFTA, the Plaintiff may avoid any transfer of an interest of LSI Management in property or any obligation incurred by LSI Management that is voidable under applicable law by a creditor holding an unsecured claim.

133. Section 726.106(1), Florida Statutes, provides:

> (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation without receiving reasonably equivalent in value in exchange for the transfer or obligation and the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation.

134. Further, under FUFTA, the Plaintiff may recover, for the benefit of the estate, the value of the property transferred from (1) the first transferee of such transfer or the entity for whose benefit such transfer was made; and (2) any subsequent transferee of such first transferee.

135. The LSI Management Transfers constitute transfers made by LSI Management for which LSI Management did not receive reasonably equivalent value from the Defendant in exchange for the same.

136. The LSI Management Transfers were made to the Defendant using Holdco as a mere conduit.

137. At the time of the LSI Management Transfers, LSI Management had creditors holding unsecured claims and was insolvent, had its insolvency deepened, or became insolvent as a result of such LSI Management Transfers and contemporaneous Dividend Distributions.

138. As a result of the LSI Management Transfers described herein, LSI Management has been damaged and, pursuant to Fla. Stat. §§ 726.106(1), 726.108 and 726.109, may avoid and recover the total value of the LSI Management Transfers from the Defendant.

139. The Defendant was either the first or subsequent transferee of the LSI Management Transfers and was otherwise a beneficiary of these transfers as described herein, for whose benefit these transfers were made and, as a result, the Plaintiff is entitled to avoid and recover the transfers as voidable.

WHEREFORE, the Plaintiff demands judgment against Defendant: (i) avoiding the LSI Management Transfers and recovering the amount of the LSI Management Transfers from Defendant; (ii) pre-judgment and post-judgment interest as allowed by law; and (iii) such other and further legal and equitable relief as the Court deems just and proper.

COUNT VI
AVOIDANCE AND RECOVERY OF LSI MANAGEMENT TRANSFERS UNDER FLA. STAT. §§726.105(1)(a), 726.108 AND 726.109

140. The Plaintiff re-alleges paragraphs 1 through 85 as if fully set forth herein.

141. The Plaintiff sues the Defendant to avoid and recover avoidable transfers pursuant to FUFTA.

142. In connection with the Dividend Loan and Dividend Distributions, LSI Management transferred monies, namely the LSI Management Transfers, to Holdco as a conduit for the sole and express purpose of transferring such monies to Defendant and others.

143. Pursuant to FUFTA, the Plaintiff may avoid any transfer of an interest of LSI Management in property or any obligation incurred by LSI Management that is voidable under applicable law by a creditor holding an unsecured claim.

144. Section 726.105(1)(a), Florida Statutes, provides:

> (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> (a) With actual intent to hinder, delay, or defraud any creditor of the debtor.

145. Further, under FUFTA, the Plaintiff may recover, for the benefit of the estate, the value of the property transferred from (1) the first transferee of such transfer or the entity for whose benefit such transfer was made; and (2) any subsequent transferee of such first transferee.

146. The LSI Management Transfers constitute transfers made by LSI Management with the actual intent to hinder and/or delay creditors of LSI Management and the Companies.

147. The LSI Management Transfers were made to the Defendant using Holdco as a mere conduit.

148. Before the LSI Management Transfers, various judgments had been entered against some of the Companies and there was a significant risk that the judgment entered in the Bailey Litigation would be significantly increased. The Dividend Loan, the Dividend Distributions and the LSI Management Transfers reduced the available funds to satisfy that judgment which hindered and/or delayed those creditors and others. In addition, the Dividend Loan, the Dividend

Distributions and the LSI Management Transfers reduced the assets of LSI Management and the Companies to satisfy the outstanding judgment claims and other creditor claims.

149. The LSI Management Transfers occurred shortly after LSI Management and the Companies took on a substantial debt (the Dividend Loan).

150. At the time of the LSI Management Transfers, LSI Management had unsecured claims and was insolvent, had its insolvency deepened, or became insolvent as a result of the LSI Management Transfers and contemporaneous Dividend Distributions.

151. As a result of the LSI Management Transfers, LSI Management and the Companies have been damaged and, pursuant to Fla. Stat., §§ 726.105(1)(a), 726.108 and 726.109, may avoid and recover the total value of the LSI Management Transfers from the Defendant.

152. The Defendant was either a first or subsequent transferee of the LSI Management Transfers, and was otherwise a beneficiary of the LSI Management Transfers as described herein, for whose benefit the LSI Management Transfers were made and, as a result, the Plaintiff is entitled to avoid and recover the LSI Management Transfers as voidable from the Defendant.

WHEREFORE, the Plaintiff demands judgment against Defendant: (i) avoiding the LSI Management Transfers and recovering the amount of those transfers from Defendant; (ii) pre-judgment and post-judgment interest as allowed by law; and (iii) such other and further legal and equitable relief as the Court deems just and proper.

COUNT VII
AVOIDANCE AND RECOVERY OF THE COVER-UP TRANSFERS UNDER FLORIDA AND DELAWARE LAW

153. The Plaintiff re-alleges paragraphs 1 through 85 as if fully set forth herein.

154. The Plaintiff sues the Defendant to avoid and recover the Cover-Up Transfers pursuant to FUFTA and DUFTA.

155. In connection with the Second Restated Holdco LLC Agreement and the Revised Liability and Release Provisions, the Defendant caused Holdco to release, waive, dispose of, and/or part with valuable claims and causes of action against the Defendant and other members of the Board of Managers.

156. Therefore, the Cover-Up Transfers constituted transfers of an interest of Holdco in its property to Defendant.

157. Pursuant to FUFTA and DUFTA, the Plaintiff may avoid any transfer of an interest of Holdco in property or any obligation incurred by Holdco that is voidable under applicable law by a creditor holding an unsecured claim.

158. FUFTA and DUFTA provide that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation: Without receiving reasonably equivalent value in exchange for the transfer or obligation, and the debtor: (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

159. Further, under FUFTA and DUFTA, the Plaintiff may recover, for the benefit of the estate, the value of the property transferred, from (1) the first transferee of such transfer or the entity for whose benefit such transfer was made; and (2) any subsequent transferee of such first transferee.

160. The Cover-Up Transfers constituted a transfer made by Holdco for which Holdco did not receive reasonably equivalent value in exchange for the same. Specifically, the Cover-Up

Transfers were incurred by Holdco and the value of any consideration received by Holdco from the Defendant, if any, was not reasonably equivalent to the value of the obligations incurred by Holdco in connection with this transaction.

161. At the time of the Transfers, the Companies had creditors holding unsecured claims and were engaged or were about to engage in a business or a transaction for which the remaining assets of the Companies were unreasonably small in relation to the business or transaction, or intended to incur, or believed or reasonably should have believed that they would incur, debts beyond its ability to pay as they became due.

162. As a result of the Transfers, the Companies have been damaged and, pursuant to FUFTA and DUFTA, Plaintiff may avoid and recover the total value of such Cover-Up Transfers from the Defendant.

163. Defendant was either the first or subsequent transferee of the Cover-Up Transfers and was otherwise a beneficiary of the Cove-Up Transfers as described herein, or for whose benefit the Transfers were made and, as a result, the Plaintiff is entitled to avoid and recover the Transfers as voidable.

WHEREFORE, the Plaintiff demands judgment against Defendant: (i) avoiding the Cover-Up Transfers and recovering the amount of the LSI Management Transfers from Defendant; (ii) pre-judgment and post-judgment interest as allowed by law; and (iii) such other and further legal and equitable relief as the Court deems just and proper.

COUNT VIII
AVOIDANCE AND RECOVERY OF THE COVER-UP TRANSFERS UNDER FLORIDA AND DELAWARE LAW

164. The Plaintiff re-alleges paragraphs 1 through 85 as if fully set forth herein.

165. The Plaintiff sues the Defendant to avoid and recover avoidable transfers pursuant to FUFTA and DUFTA.

166. In connection with the Second Restated Holdco LLC Agreement and the Revised Liability and Release Provisions, the Defendant caused Holdco to release, waive, dispose of, and/or part with valuable claims and causes of action against the Defendant and other members of the Board of Managers.

167. Therefore, the Cover-Up Transfers constituted transfers of an interest of Holdco in its property to Defendant.

168. Pursuant to FUFTA and DUFTA, the Plaintiff may avoid any transfer of an interest of the Companies in property or any obligation incurred by the Companies that is voidable under applicable law by a creditor holding an unsecured claim.

169. FUFTA and DUFTA provide that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation: without receiving reasonably equivalent value in exchange for the transfer or obligation, and the debtor: (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

170. Further, under FUFTA and DUFTA, the Plaintiff may recover, for the benefit of the estate, the value of the property transferred, from (1) the first transferee of such transfer or the entity for whose benefit such transfer was made; and (2) any subsequent transferee of such first transferee.

171. The Cover-Up Transfers constituted a transfer made by Holdco for which Holdco did not receive reasonably equivalent value in exchange for the same. Specifically, the Cover-Up Transfers were incurred by Holdco and the value of any consideration received by Holdco from the Defendant, if any, was not reasonably equivalent to the value of the obligations incurred by Holdco in connection with this transaction.

172. At the time of the Cover-Up Transfers, the Companies had creditors holding unsecured claims and were insolvent, had their insolvency deepened, or became insolvent as a result of such Cover-Up Transfers.

173. As a result of the Cover-Up Transfers described herein, the Companies have been damaged and, pursuant to FUFTA, DUFTA and TUFTA, Plaintiff may avoid and recover the total value of such Cover-Up Transfers from the Defendant.

174. Defendant was either the first or subsequent transferee of the Cover-Up Transfers and was otherwise a beneficiary of the Cover-Up Transfers as described herein, or for whose benefit the Transfers were made and, as a result, the Plaintiff is entitled to avoid and recover the Transfers as voidable.

WHEREFORE, the Plaintiff demands judgment against Defendant: (i) avoiding the Cover-Up Transfers and recovering the amount of those Transfers from Defendant; (ii) pre-judgment and post-judgment interest as allowed by law; and (iii) such other and further legal and equitable relief as the Court deems just and proper.

COUNT IX
AVOIDANCE AND RECOVERY OF THE COVER-UP TRANSFERS UNDER FLORIDA AND DELAWARE LAW

175. The Plaintiff re-alleges paragraphs 1 through 85 as if fully set forth herein.

176. The Plaintiff sues the Defendant to avoid and recover avoidable transfers pursuant to FUFTA and DUFTA.

177. In connection with the Second Restated Holdco LLC Agreement and the Revised Liability and Release Provisions, the Defendant caused Holdco to release, waive, dispose of, and/or part with valuable claims and causes of action against the Defendant and other members of the Board of Managers.

178. Therefore, the Cover-Up Transfers constituted transfers of an interest of Holdco in its property to Defendant.

179. Pursuant to FUFTA and DUFTA, the Plaintiff may avoid any transfer of an interest of the Companies in property or any obligation incurred by the Companies that is voidable under applicable law by a creditor holding an unsecured claim.

180. FUFTA and DUFTA provide that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay or defraud any creditor of the debtor.

181. Further, under FUFTA and DUFTA, the Plaintiff may recover, for the benefit of the estate, the value of the property transferred, from (1) the first transferee of such transfer or the entity for whose benefit such transfer was made; and (2) any subsequent transferee of such first transferee.

182. The Cover-Up Transfers constitute a transfer made by Holdco with the actual intent to hinder or delay creditors of Holdco.

183. The Cover-Up Transfers were made to the Defendant.

184. Before the Cover-Up Transfers, various judgments had been entered against some of the Companies and there was a significant risk that the judgment entered in the Bailey Litigation would be significantly increased. The Cover-Up Transfers reduced—and, indeed, prevented the recovery of additional—available funds to satisfy that judgment which hindered and delayed those creditors and others. In addition, the Cover-Up Transfers reduced the assets of Holdco to satisfy the outstanding judgment claims and other creditor claims.

185. The Cover-Up Transfers occurred shortly after Holdco and the Companies took on a substantial debt (the Dividend Loan).

186. At the time of the Cover-Up Transfers, Holdco and the Companies had unsecured claims and were insolvent, had their insolvency deepened, or became insolvent as a result of such Cover-Up Transfers.

187. As a result of the Cover-Up Transfers, Holdco and the Companies have been damaged and pursuant to FUFTA and DUFTA may avoid and recover the total value of such Cover-Up Transfers from the Defendant.

188. The Defendant was either the first or subsequent transferee of the Cover-Up Transfers and was otherwise a beneficiary of the Cover-Up Transfers as described herein, for whose benefit the Cover-Up Transfers were made and, as a result, the Plaintiff is entitled to avoid and recover the Cover-Up Transfers as voidable.

WHEREFORE, the Plaintiff demands judgment against Defendant: (i) avoiding the Transfers and recovering the amount of those transfers from Defendant; (ii) pre-judgment and post-judgment interest as allowed by law; and (iii) such other and further legal and equitable relief as the Court deems just and proper.

COUNT X
DECLARATORY RELIEF

189. The Plaintiff re-alleges paragraphs 1 through 85 as if fully set forth herein.

190. This is a claim for declaratory judgment under Chapter 86, Florida Statutes.

191. At the time of the Cover-Up Transfers, Holdco had claims against the Defendant for substantial damages on account of the acts and/or omissions set forth more fully above. On the other hand, the Cover-Up Transfers did not provide Holdco with any meaningful consideration. The Cover-Up Transfers therefore are unenforceable for lack of consideration.

192. In addition, the Cover-Up Transfers are unenforceable because they are unconscionable and violate public policy: the Defendant caused Holdco to enter into and effectuate the Cover-Up Transfers in an attempt to evade liability for his own wrongdoing relating to, and his liability for, among other things, his breaches of fiduciary duties.

193. The Defendant caused Holdco to enter into the Cover-Up Transfers which are unenforceable as a matter of law, and therefore null and void. The Defendant acted in bad faith when he caused Holdco to enter into and effectuate the Cover-Up Transfers without adequate consideration solely to benefit himself to the detriment of Holdco.

194. There is presently a bona-fide, actual, present practical dispute between the Plaintiff and the Defendant as to the enforceability of the transactions and provisions constituting the Cover-Up Transfers.

195. Plaintiff seeks declaratory judgment from the Court that the transactions and provisions constituting the Cover-Up Transfers are unenforceable as a matter of law and are therefore null and void.

WHEREFORE, Plaintiff demands judgment declaring that Cover-Up Transfers are unenforceable as a matter of law and, therefore null and void, and for such further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL AS TO ALL COUNTS OF THE COMPLAINT

Plaintiff hereby demands a trial by jury on all claims, issues and Counts of the Amended Complaint triable by such.

RESERVATION OF RIGHTS

The Plaintiff reserves the right to further amend this Amended Complaint upon completion of his investigation and discovery in order to assert any additional claims for relief against the Defendant as may be warranted under the circumstances.

Dated this 18th day of June 2020.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a on this 18th day of June, 2020, a copy of the foregoing was served via electronic mail and the Florida Court's E-Filing Portal to all parties registered to receive electronic notice and via U.S. Mail to:

EFO Laser Spine Institute, Ltd.
c/o Capital Corporate Service, Inc., Registered Agent
515 E. Park Avenue, 2nd Floor
Tallahassee, FL 32301

EXHIBIT A

EXHIBIT A

Laser Spine Institute ("LSI")

EFO Laser Spine Institute, LTD. Distributions Paid from TCB Account No. [redacted] After July 2015 Recap

	Distribution 07/06/15	Distribution 10/23/15	Distribution 10/23/15	Total Paid After Recap
EFO Laser Spine Institute, LTD.	41,254,731	478,333	89,528	$ 41,822,592

Genovese Joblove & Battista, P.A.
200 East Broward Blvd., Ste. 1110
Fort Lauderdale, FL 33301

06/18/2020
US POSTAGE $001.

ZIP 3
011E11

EFO Laser Spine Institute, Ltd.
c/o Capital Corporate Service, Inc., Registered Agent
515 E. Park Avenue, 2nd Floor
Tallahassee, FL 32301

Case Number	Case Style	Case Status	Filed
19-CA-011752	KAPILA, SONEET R VS ESPING, WILLIAM	Closed	2019-11-17
19-CA-011753	KAPILA, SONEET R. VS PERRY, MICHAEL W.	Open	2019-11-17
19-CA-011754	KAPILA, SONEET R. VS MONTELEONE, RAYMOND	Open	2019-11-17
19-CA-011755	KAPILA, SONEET R. VS GRAMMEN, ROBERT P.	Open	2019-11-17
19-CA-011463	KAPILA, SONEET R. VS EFO LASER SPINE INSTITUTE, LTD.	Open	2019-11-08
19-CA-011465	KAPILA, SONEET R. VS HORNE MANAGEMENT, INC.	Open	2019-11-08
19-CA-011467	KAPILA, SONEET R. VS MMPERRY HOLDINGS, LLLP	Open	2019-11-08
19-CA-011469	KAPILA, SONEET R. VS RDB EQUITIES LIMITED PARTNERSHIP	Open	2019-11-08
19-CA-011471	KAPILA, SONEET R. VS ST. LOUIS, JILL DIANE	Open	2019-11-08
19-CA-011472	KAPILA, SONEET R. VS WH, LLC	Open	2019-11-08
19-CA-011473	KAPILA, SONEET R. VS GRUBER FAMILY HOLDINGS, LLC	Open	2019-11-08
19-CA-011503	KAPILA, SONEET R. VS CTS EQUITIES LIMITED PARTNERSHIP	Open	2019-11-08
19-CA-006887	KAPILA, SONEET R VS DBF-LSI, LLC	Open	2019-06-30
19-CA-006891	KAPILA, SONEET R VS HAMBURG, GLENN	Open	2019-06-30
19-CA-006895	KAPILA, SONEET R VS LASERSCOPIC SPINE SERVICES, INC.	Open	2019-06-30
19-CA-006901	KAPILA, SONEET R VS PHILLIPS, CLINTON	Open	2019-06-30
19-CA-006904	KAPILA, SONEET R VS PRADA INVESTMENT HOLDINGS, LLC	Open	2019-06-30
19-CA-006905	KAPILA, SONEET R VS BERECZKI MANAGEMENT, INC.	Open	2019-06-30
19-CA-006907	KAPILA, SONEET R VS RJPT, LTD.	Open	2019-06-30
19-CA-006908	KAPILA, SONEET R VS MARBL SOS, LTD.	Open	2019-06-30
19-CA-006909	KAPILA, SONEET R VS SLG LSI INVESTMENT, LLC	Open	2019-06-30
19-CA-006817	KAPILA, SONEET R VS DEBARTOLO, EDWARD	Open	2019-06-29
19-CA-006818	KAPILA, SONEET R VS DEMPSEY, SHAWN	Open	2019-06-29
19-CA-006819	KAPILA, SONEET R VS ANDREZEJSKI, MARK	Open	2019-06-29
19-CA-006820	KAPILA, SONEET R VS SULLIVAN, CHRIS	Open	2019-06-29
19-CA-006821	KAPILA, SONEET R VS HORNE, WILLIAM E	Open	2019-06-29
19-CA-006822	KAPILA, SONEET R VS BASHAM, ROBERT	Open	2019-06-29
19-CA-006823	SONEET R KAPILA VS HENNI, GEZA	Open	2019-06-29
19-CA-006824	KAPILA, SONEET R VS LEWIS, JONATHAN	Open	2019-06-29
19-CA-006877	KAPILA, SONEET R VS PILLSBURY, DAVID	Reopened	2019-06-29
19-CA-006880	KAPILA, SONEET R VS DR. JAMES ST. LOUIS III	Open	2019-06-29

EXHIBIT F

KAPILA CASES FILED IN TEXAS

1.	Kapila v. Alvin Holdings, Inc.	DC-21-03265	Judge Tillery	3/12/21
2.	Kapila v. Appreciation Siblings	DC-21-03263	Judge Moye	3/12/21
3.	Kapila v. Brav Ventures LP	DC-21-03268	Judge Redmond	3/12/21
4.	Kapila v. Kirk coleman	DC-21-03280	Judge Moye	3/12/21
5.	Kapila v. EFO Private Equity Fund II, LP	DC-21-03272	Judge Tillery	3/12/21
6.	Kapila v. Eminence Interests, LP	DC-21-03290	Judge Purdy	3/12/21
7.	William Esping, Trustee for the Esping Marital Deduction Trust #2	DC-21-03273	Judge Moye	3/12/21
8.	Kapila v. GAFLP II, Ltd.	DC-21-03275	Judge Whitmore	3/12/21
9.	Kapila v. Hoak Private Equities I, LP	Dc-21-03281	Judge Hoffman	3/12/21
10.	Kapila v. JEK SEP/Property LP	DC-21-03277	Judge Hoffman	3/12/21
11.	Kapila v. Carl Karnes	DC-21-03274	Judge Moye	3/12/21
12.	Kapila v. Anthony Koeijmans	DC-21-03284	Judge Williams	3/12/21
13.	Kapila v. KRE SEP/Property LP	DC-21-03283	Judge Tobolowsky	3/12/21
14.	Kapila v. Robert Payne Lancaster, Sr.	DC-21-03285	Judge Parker	3/12/21
15.	Kapila v. David Owen	DC-21-03271	Judge Goldstein	3/12/21
16.	Kapila v. Edith Smith Executrix for the Geoffrey Laurence Wallace Estate	DC021093276	Judge Tillery	3/12/17
17.	Kapila v. Spinal Tap Partners	DC-21-03286	Judge Tobolowsky	3/12/21
18.	Kapila v. Stanhope Capital Fund I, LP	DC-21-03287	Judge Slaughter	3/12/21
19.	Kapila v. WPE Kids Partners, L.P.	DC-21-03291	Judge Whitmore	3/12/21

FILED
3/12/2021 2:48 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
JAVIER HERNANDEZ DEPUTY

DC-21-03272

CAUSE NO. _____

SONEET R. KAPILA, as Assignee,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	134th
	§	
v.	§	____ JUDICIAL DISTRICT
	§	
EFO PRIVATE EQUITY FUND II, LP,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

Plaintiff, Soneet R. Kapila, in his capacity as the Assignee ("**Plaintiff**" and/or "**Assignee**") of Laser Spine Institute, LLC ("**LSI**") and each of its affiliated entities[1] (collectively, the "**Companies**") in the LSI Assignment Case (as defined below) files this Original Petition against Defendant EFO Private Equity Fund II, LP ("**Defendant**") and respectfully shows this Court as follows:

I.
INTRODUCTION

1. Pursuant to Rule 190.3 of the Texas Rules of Civil Procedure, Plaintiff pleads that discovery be conducted under Level 2. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, Plaintiff seeks monetary relief over $1,000,000.00.

2. This is a case of shameless corporate looting and abuse of authority, which substantially benefitted the Defendant as the recipient and successor transferee of a fraudulent transfer that was initially made by the Companies to EFO Laser Spine Institute, Ltd. ("**EFO LSI**")

[1] The Plaintiff also acts as statutory assignee for the benefit of creditors for CLM Aviation, LLC, LSI Holdco, LLC ("Holdco"), LSI Management Company, LLC ("LSI Management"), Laser Spine Surgery Center of Arizona, LLC, Laser Spine Surgery Center of Cincinnati, LLC, Laser Spine Surgery Center Of Cleveland, LLC, Laser Spine Surgical Center, LLC, Laser Spine Surgery Center Of Pennsylvania, LLC, Laser Spine Surgery Center of St. Louis, LLC, Laser Spine Surgery Center Of Warwick, LLC, Medical Care Management Services, LLC, Spine DME Solutions, LLLC, Total Spine Care, LLC, Laser Spine Institute Consulting, LLC, and Laser Spine Surgery Center of Oklahoma, LLC.

in the amount of $41,822,592 (as well as several others totaling approximately $110 million). At or about the time EFO LSI received that initial fraudulent transfer from the Companies, EFO LSI made a subsequent fraudulent transfer of a portion of such funds to Defendant in the amount of $2,830,782.00. Plaintiff seeks to recover that subsequent fraudulent transfer from the Defendant through this action.

3. In July 2015, the members of management for the Companies caused the Companies to make approximately $110 million in initial fraudulent transfers, which fraudulent transfers stripped the Companies of their value, thereby causing the Companies to become immediately insolvent as a result of their then existing substantial liabilities in order to enrich the members of management and their affiliates, including EFO LSI and Defendant.

4. Through this scheme of corporate looting, and the equally-brazen, yet failed, attempt to insulate themselves from liability for their acts and omissions, the members of the Companies' management have thoroughly ransacked the Companies in a sweeping and now transparent plan to "take money off the table" for themselves and their affiliates, including EFO LSI and the Defendant, and leave its swollen liabilities behind. Defendant, as a subsequent transferee from the initial transferee, EFO LSI, was the beneficiary of the fraudulent transfers made in the first instance from the Companies to EFO LSI.

5. In the context of all of the acts and omissions set forth above and on the dates set forth on **Exhibit A** attached hereto, Holdco transferred to EFO LSI an amount equal to $41,822,592 (the "**Holdco Transfers**"). EFO LSI then made a subsequent transfer of a portion of the Holdco Transfers in the amount of $2,830,782.00 to Defendant on the date(s) set forth on **Exhibit B** (the "**Subsequent Holdco Transfers**"). The Subsequent Holdco Transfers are avoidable and recoverable by the Plaintiff under applicable law. Plaintiff has initiated this

litigation within one year from when the Assignee discovered or reasonably could have discovered the Subsequent Holdco Transfers.

6. In addition, and in the alternative, LSI Management fraudulently transferred the amounts of the Holdco Transfers first to Holdco as a conduit and then to EFO LSI ("**LSI Management Transfers**") (sometimes hereinafter, Holdco Transfers and LSI Management Transfers shall be referred to as the "**Transfers**"). EFO LSI then made a subsequent transfer of a portion of the LSI Management Transfers (through Holdco as a conduit) in the amount of $2,830,782.00 to Defendant as set forth on **Exhibit B** hereto (the "**Subsequent LSI Management Transfers**") (sometimes hereinafter, Subsequent Holdco Transfers and Subsequent LSI Management Transfers, being in the same amount and representing the same transfers, shall be referred to as the "**Subsequent Transfers**"). The Subsequent LSI Management Transfers are avoidable and recoverable by the Plaintiff under applicable law. Plaintiff has initiated this litigation within one year of when the Assignee discovered or reasonably could have discovered the Subsequent LSI Management Transfers.

7. Specifically, unbeknownst to the Plaintiff until recently, EFO LSI made the Subsequent Transfers to Defendant, which Subsequent Transfers are directly traceable to the Holdco Transfers and LSI Management Transfers as they were made to Defendant almost immediately after EFO LSI received such Holdco Transfers and LSI Management Transfers.

8. Specifically, unbeknownst to the Plaintiff until recently, EFO LSI made the Subsequent Transfers to Defendant, which Subsequent Transfers are directly traceable to the Holdco Transfers and LSI Management Transfers as they were made to Defendant almost immediately after EFO LSI received such Holdco Transfers and LSI Management Transfers.

9. On or about March 13, 2020, Plaintiff first became aware of the subsequent transfers by EFO LSI to Defendant.

10. EFO LSI made the Subsequent Transfers to the Defendant and certain other of its partners in furtherance of certain wrongful acts and thereby furthered the Companies' efforts to hinder and/or delay its creditors.

11. Further, although the Plaintiff is the statutory assignee of the Companies, the Plaintiff is not, and has never been, the statutory assignee of EFO LSI and did not have access to information pertaining to either the ownership structure of EFO LSI, or the partners of EFO LSI, or the recipients of distributions (including the Subsequent Transfers).

12. In the absence of the facts and information, the Assignee could not have reasonably discovered, the Subsequent Transfers (and the recipients thereof).

II.
PARTIES

13. Plaintiff is the duly-appointed and acting statutory Assignee for the benefit of creditors of the Companies and has legal standing and authority to prosecute the claims set forth herein.

14. Defendant EFO Private Equity Fund II, LP is a Texas limited partnership, with its principal place of business in Dallas County, Texas, and may be served with process by delivering the citation along with a copy of Plaintiff's Original Petition to Scot O'Brien, 1445 Ross Avenue, Suite 2400, Dallas, Texas 75202.

III.
JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction because no other court has exclusive jurisdiction of the subject matter of these causes and the amount in controversy is within the jurisdictional limits of this Court.

16. This Court has personal jurisdiction over Defendant because Defendant is a Texas entity.

17. Venue is proper in Dallas County, Texas, pursuant to § 15.002(a)(1) and (2) of the Texas Civil Practice and Remedies Code because Dallas County is the county of Defendant's principal office in this state and/or the county in which all, or a substantial part of, the events or omissions giving rise to Plaintiff's claims occurred.

IV.
FACTS APPLICABLE TO ALL CLAIMS

A. Formation and Management of LSI, LSI Management and the Companies.

18. In 2005, LSI was formed as a limited liability company organized under the laws of the State of Florida. In 2009, LSI Management was formed as a limited liability company also organized under the laws of the State of Florida.

19. LSI opened its first surgical facility in Tampa, Florida. At that time, it operated as a single-operating room facility focused on spine related orthopedic procedures.

20. During the succeeding years, LSI, as the parent company, formed a number of wholly-owned subsidiaries and began to open additional surgical facilities around the country, including Scottsdale, Arizona (in 2008), Philadelphia, Pennsylvania (in 2009), Oklahoma City, Oklahoma (in 2011), Cleveland, Ohio (in 2014), St. Louis, Missouri (in 2015) and Cincinnati, Ohio (in 2015).

21. At its peak, LSI became a national spine-focused, orthopedic chain performing about 100,000 procedures in facilities in five different states and employing more than 600 individuals.

22. From its inception through early 2015, LSI was by all measures a successful business operation, generating gross revenues in 2010 of approximately $115 million, which revenues increased year over year through 2014 to approximately $268 million. Similarly, LSI's EBITDA increased from approximately $24 million in 2010 to approximately $77 million in 2014. During these years, the members/owners of LSI—including EFO LSI—received substantial distributions on their membership interests.

23. Notwithstanding its apparent success through 2014, the Companies were facing a number of problems, including financial issues and substantial exposure to damages from a number of lawsuits that had been filed against the Companies.

B. The Bailey Litigation.

24. One such litigation was filed in 2006 by Dr. Joe Samuel Bailey and his related entities (the "**Bailey Litigation**"), including Laserscopic Spinal Centers of America, Inc. (collectively, "**LSE**"). In the Bailey Litigation, LSE asserted claims against some of the Companies and others for breach of fiduciary duty, defamation, slander per se, FDUPTA violations, conspiracy and tortious interference.

25. The Bailey Litigation proceeded to a bench trial in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the "**Bailey Court**") on the following dates: July 12-23, 2010; September 20-28, 2010; April 29, 2011 and May 9-20, 2011. On October 9, 2012, the Bailey Court issued a 131-page memorandum opinion. On November 2,

2012, the Court entered a Final Judgment in favor of the LSE as plaintiff, awarding damages of $1.6 million (the "**Original Judgment**"). Thereafter, both sides appealed.

26. Upon information and belief, the Companies recognized that the Bailey Litigation was and would be a significant loss for the Companies that could have potentially catastrophic financial ramifications.

27. On February 3, 2016, the Second District Court of Appeals in Florida (the "**Second DCA**") issued an opinion reversing the Original Judgment and determined that: (1) LSE could obtain a disgorgement of the Companies' profits irrespective of the amount of LSE's actual damages or whether it suffered any financial loss, (2) the Court's factual findings supported an award of punitive damages, and (3) damages should be awarded for the FDUPTA violations because monetary relief could be awarded to business enterprises in addition to consumers. The Second DCA remanded the case back to the trial court and noted, among other things, that the evidence supported an award of out-of-pocket damages of $6,831,172 and disgorgement damages in the neighborhood of $271 million.

28. On remand, the Court entered an Amended Final Judgment on January 30, 2017, adding an award of punitive damages in the amount of $5,750,000, a FDUPTA damage award of $1,050,000, and confirming the prior damages award of $1.6 million.

29. Another appeal ensued and the Second DCA reversed and remanded again, directing the Court to award out-of-pocket damages of $6,831,172 and holding that the disgorgement damages "at a minimum" are between $264 million to $265 million.

C. Holdco Gains Control of LSI and LSI Management.

30. The Companies' management did not *just* use their control over LSI, LSI Management, and the Companies to loot them of millions of dollars in cash after they had fallen

on hard times and became insolvent. They did not *just* grossly enrich themselves to the detriment of LSI, LSI Management, and the Companies at a time when such Companies were insolvent or became insolvent as a result of approximately $110 million in fraudulent transfers in July 2015. Indeed, following the Original Judgment, the managers of LSI, LSI Management, and the Companies concocted a (failed) scheme to insulate themselves from liability.

31. A component of this cover-up was the attempted restructuring of the Companies following the Original Judgment.

32. In December of 2012, which was approximately one month after the Court entered the Original Judgment in the Bailey Litigation against LSI, among others, the Board of Managers caused Holdco to be formed under Delaware law as the new holding company to replace LSI in that capacity.

33. On January 1, 2013, the members of LSI, which was the then-existing holding company, entered into a new operating agreement with Holdco and, among other things, transferred all of their membership interests in LSI to Holdco (the "**2013 LSI Operating Agreement**"), making Holdco the sole member and managing member of LSI. Essentially, the owners of LSI each assigned their interests in LSI to Holdco in exchange for equivalent membership interests in Holdco. As a result of this assignment, Holdco became the sole member and owner of LSI and LSI Management.

34. Under the 2013 LSI Operating Agreement, and as sole member of LSI, Holdco managed, conducted, and controlled the affairs of LSI, and controlled the assets of LSI and the assets of LSI's subsidiaries.

35. Similarly, in 2013, the members of LSI Management entered into a new operating agreement which, among other things, named Holdco as LSI Management's sole member and managing member.

36. From and after January 1, 2013, Holdco became the parent holding company and was the sole manager of LSI and the direct and indirect sole manager of the remainder of the Companies. At this time, EFO LSI owned the largest percentage of Holdco and, therefore, received the largest share of transfers from Holdco to its members, owners, and/or partners.

37. Holdco, in turn, was dominated by a cabal of managers that included representatives of EFO LSI and comprised a "Board of Managers" of Holdco. Indeed, from and after January 1, 2013, this "Board of Managers" was established at Holdco in order to manage Holdco and its subsidiaries—namely, the Companies.

38. Under Holdco's operating agreement, the business affairs of Holdco and its Company-subsidiaries were to be exercised by the members comprising this Board of Managers.

39. In fact, the members of the Board of Managers controlled all aspects of Holdco and its subsidiary Companies (including, LSI and LSI Management), including, among other things: the property of Holdco and its subsidiary Companies; the prosecution, assignment, transfer, and/or release of any cause of action available to Holdco or its subsidiary Companies; the distributions of monies from Holdco and its subsidiary Companies to the members of Holdco.; the procurement of financing on behalf of Holdco and its subsidiary Companies; and the filing of any bankruptcy or other action by Holdco or its subsidiary Companies seeking protection from creditors.

40. Thus, since January 1, 2013, Holdco's Board of Managers controlled the complex web of subsidiary Companies (including LSI and LSI Management) that, at that time, comprised

the above-referenced national spine-focused, orthopedic chain of facilities that performed about 100,000 procedures in five different states and employed, at one time, more than 600 individuals.

41. Indeed, at all times material to this Petition, the above corporate restructuring of Holdco simply added a layer of corporate fiction between the Board of Managers, on the one hand, and LSI and LSI Management (as well as the other Companies) on the other hand. To be clear, despite the corporate restructuring of Holdco, the members of the Board of Managers continued to have and continued to exercise complete and full dominion and control over LSI and LSI Management (as well as the other subsidiary Companies), their day-to-day affairs and operations, and their respective property.

42. At bottom, after this so-called restructuring, the managers of Holdco exercised full dominion and control over Holdco, which in turn exercised full dominion and control over LSI and LSI Management (as well as the other Companies).

43. As outlined below, the members of the Board of Managers used their control over LSI and LSI Management (among other Companies) and took action with actual intent to hinder and delay creditors of the Companies to divert substantial value from LSI and LSI Management in the form of $110 million in fraudulent transfers for their own benefit or the benefit of their direct and indirect affiliates, all to the severe detriment of LSI, LSI Management, and the rest of the Companies at a time when such Companies were or became insolvent as a result thereof.

D. <u>The Dividend Recapitalization, Insolvency, Defaults and Financial Mismanagement.</u>

44. The Companies were experiencing serious deficiencies in and failures of internal controls and accounting procedures leading up to and during 2015.

45. Primarily, LSI needed to write-down approximately $34 million of accounts receivable for fiscal year 2015 and it had to establish a reserve for bad debt of approximately $22.5

million for fiscal year 2015. These write downs and reserves required LSI to restate its financial results for fiscal year 2015. Specifically, LSI's revenue for 2015 was reduced from $322 million to $263.5 million and its EBITDA was reduced from $74.6 million to $16.1 million for the twelve-month period ending December 31, 2015.

46. LSI later admitted that it had a "dire need of immediate liquidity" in 2015, and that it was facing serious financial issues.

47. After the significant loss in the Bailey Litigation, in 2014, the members of the Holdco Board of Managers entertained offers from third parties to purchase equity in the Companies.

48. Ultimately, rather than sell the equity in LSI, LSI Management, and the other Companies, EFO LSI's principals and the other members of the Board of Managers elected to enrich themselves by looting the value of LSI, LSI Management, and the Companies through a dividend loan transaction.

49. In fact, according to an internal e-mail from one of the managers to several of the other managers in December 2015, the "*Board decided that our company was too special to sell. Because several members of the Board wanted to 'take some money off the table' we decided to put some debt on the company through a dividend recap instead of selling a piece of the business*."

50. To that end, in the early part of 2015 and despite the existing and impending financial issues facing the Companies, the Companies approached Texas Capital Bank, who was their then existing senior secured lender, and proposed to borrow a substantial amount of money in order to make dividend/distribution payments to the owners/members of Holdco, including EFO LSI.

51. Through the dividend recapitalization loan among the Companies and Texas Capital Bank, the Board of Managers leveraged the assets of the Companies for their own personal advantage (and those related to them) and to the severe financial disadvantage of the Companies.

52. Thereafter, on or about July 2, 2015, the Board of Managers caused certain of the Companies—namely, LSI, LSI Management, Laser Spine Institute Consulting, LLC and Medical Care Management Services, LLC (collectively, the "**LSI Borrowers**")—to enter into a $150,000,000 credit agreement (the "**Dividend Loan**") with Texas Capital Bank (the "**Lender**"). The obligations under the Dividend Loan were guaranteed by Holdco and the remainder of the Companies.

53. In connection with the Dividend Loan, the Companies agreed, among other things, to: (a) maintain certain financial covenants; (b) maintain certain cash balances; and (c) maintain its primary depository, purchasing and treasury services with the Lender.

54. The members of the Board of Managers caused substantially all of the Companies' assets to be pledged to the Lender to secure and serve as collateral for the Dividend Loan. The bulk of the proceeds from the Dividend Loan was deposited by the Lender into the bank account of LSI Management.

55. Despite facing existing and impending financial issues, the members of the Board of Managers immediately authorized and ratified the transfer from LSI Management to Holdco of an amount equal to $110,473,942 of the proceeds of the Dividend Loan and simultaneously therewith caused, authorized and ratified the almost immediate transfer by Holdco of all of such monies to the other members of the Board of Managers, other ultimate equity holders/members of the Companies and their affiliates, including to EFO LSI (the "**Dividend Distributions**").

56. As set forth above, unbeknownst to the Plaintiff, who could not have reasonably discovered these transactions until after March 13, 2020, EFO LSI, in 2015, made the Subsequent Transfers to the Defendant after receiving its share of the Dividend Distributions outlined above.

57. As a direct result of the Dividend Distributions, each of Holdco, LSI, LSI Management, and the other Companies each became insolvent.

58. Predictably, the financial viability of LSI, LSI Management, and the other Companies deteriorated rapidly thereafter, as shortly after the Dividend Distributions were made, the Companies were unable to meet their obligations under the Dividend Loan.

59. Barely one year later, by at least the middle of 2016, the Companies defaulted under the Dividend Loan. On May 26, 2016 and June 9, 2016, the Lender issued notices of default to the LSI Borrowers.

60. Later, in June 2016, the Companies' deteriorating financial condition caused them to lay off 70 employees, which was about 6% of their workforce.

61. In addition, in 2016, the Companies failed to make approximately $7.7 million in payments due to the landlord for the Companies' Tampa facility.

E. The Failure to Pursue Recoveries Regarding the Dividend Distributions, and Election to Protect Self-Interests to the Detriment of the Companies.

62. By at least November 2016 and at a time when the Companies were insolvent and experiencing financial distress, the Board of Managers, among others, was aware that certain claims and causes of action existed in favor of the Companies to recover the Dividend Distributions from the recipients thereof.

63. Consistent with the deliberate mishandling (and leveraging) by the members of the Board of Managers of the Companies' assets, and their concomitant disregard of their fiduciary duties to the Companies, the members of the Board of Managers accountable refused to hold EFO

LSI and others (including, for example, the Defendant as a subsequent transferee of the Transfers and recipient of the Subsequent Transfers) accountable for the fraudulent transfers derived from the Dividend Loan and Dividend Distributions.

64. The Board of Managers and others knew or should have known that the Dividend Distributions violated applicable law in that they were fraudulent transfers and that the recipients thereof would be liable to repay for the Dividend Distributions as a result. Despite having the ability and responsibility, as *de facto* managers, members, and/or members of the Board of Managers and for the Companies, to cause the Companies to take appropriate action to timely and fully recover the Dividend Distributions, the Board of Managers and others failed to do so.

65. As a result, and at a time when the Companies' financial condition should have been of paramount importance, the members of the Board of Managers drained the Companies of cash through the Dividend Distributions, caused the Companies to become insolvent, and refused to take action to recover the value of the Dividend Distributions to ameliorate these dire financial issues.

66. These financial problems severely impacted the Companies' prospects as going concerns, ultimately resulting in the Companies further defaults under the Dividend Loan and ultimate collapse.

67. The members of the Board of Managers failed to pursue the claims and/or causes of action to recover the Dividend Distributions because the members of the Board of Managers and those affiliated with them were recipients of the Dividend Distributions and, therefore, were hopelessly conflicted in respect of pursuing such claims.

68. The failure to take such action is evidence of the actual intent of the Companies (through the Board of Managers) to hinder and delay the creditors of the Companies when the Transfers and Subsequent Transfers were first made.

F. The Failed Cover-Up.

69. Hoping for a clean escape, the Board of Managers and others not only failed to pursue the Companies' claims against EFO LSI (and subsequent transferees of EFO LSI, like the Defendant) for recovery of the Dividend Distributions; rather, they also attempted to protect and insulate themselves from any claims related thereto in at least two ways. First, they sought releases from the Lender in connection with the Dividend Loan. Second, they also sought to distance themselves from such willful failures by manipulating the corporate structure of the Companies.

70. Importantly, each act and/or omission by the members of the Board of Managers after the Dividend Loan and Dividend Distributions to insulate themselves from liability and cover up their breaches of fiduciary duty bears on and evidences the fact that the Companies, through the Board of Managers, actually intended to hinder and/or delay the creditors of the Companies through the Dividend Distributions, including the Transfers to EFO LSI and the Subsequent Transfers to Defendant.

G. The Fraudulent Transfers.

71. Holdco and LSI Management engaged in a series of fraudulent transfers in respect of the Dividend Distributions of in excess of $110 million that are all avoidable and recoverable by Plaintiff under applicable law, which transfers caused Holdco and LSI Management to become insolvent by tens of millions of dollars.

72. Almost immediately after receiving the proceeds from the Dividend Loan, the members of the Board of Managers of Holdco caused LSI Management to transfer to Holdco, as a

conduit, in excess of $110 million for the sole and express purpose of transferring such funds to Holdco's members, including EFO LSI. On information and belief, the proceeds of the Dividend Loan were deposited initially into LSI Management because LSI Management was not a party to the Bailey Litigation or the judgments entered against LSI in the Bailey Litigation.

73. Thereafter, the Board of Managers caused Holdco to make the Transfers to EFO LSI.

74. EFO LSI received the Transfers set forth on **Exhibit A** attached hereto in the amounts set forth thereon. The Transfers constituted property of LSI Management, Holdco and those Companies that constituted the LSI Borrowers and those Companies that guaranteed the Dividend Loan.

75. Neither LSI Management nor Holdco received any value, let alone any reasonably equivalent value, from EFO LSI in exchange for the Transfers.

76. The Transfers were made by Holdco and by LSI Management with the actual intent to hinder and/or delay the creditors of Holdco, LSI Management and the rest of the Companies.

77. At all relevant times herein, as a direct result of the Dividend Loan and Dividend Distributions, LSI Management, Holdco, and rest of the Companies became insolvent by tens of millions of dollars.

78. At all relevant times herein, including at the time the Transfers were made, LSI Management, Holdco, and rest of the Companies were engaged in or were about to engage in a business or a transaction for which the remaining assets of LSI Management, Holdco., and the rest of the Companies were unreasonably small in relation to such business or transaction.

79. At all relevant times herein, including at the time the Transfers were made, LSI Management, Holdco, and the rest of the Companies intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they became due.

80. Plaintiff sues Defendant to avoid and recover the Subsequent Transfers pursuant to applicable law.

V.
CAUSES OF ACTION

Avoidance and Recovery of the Subsequent Transfers – Actual Intent Fraud.

81. The Plaintiff re-alleges the foregoing paragraphs as if fully set forth herein.

82. In connection with the Dividend Loan and Dividend Distributions, LSI Management transferred monies, namely the LSI Management Transfers, to Holdco as a conduit for the sole and express purpose of transferring such monies to EFO LSI and others; and, Holdco transferred monies, namely the Holdco Transfers, to EFO LSI on the dates and in the amounts set forth on **Exhibit A**.

83. Thereafter, EFO LSI transferred the Subsequent Transfers in the amount of $2,830,782.00 to the Defendant. The Defendant did not take and/or receive the Subsequent Transfers in good faith, and did not take and/or receive the Subsequent Transfers for a reasonably equivalent value or for any value whatsoever.

84. The LSI Management Transfers and the Holdco Transfers constitute transfers made by LSI Management and Holdco with the actual intent to hinder or delay creditors of LSI Management, Holdco, and the Companies.

85. Under applicable law, the Plaintiff may avoid any transfer of an interest of LSI Management in property that is voidable under applicable law by a creditor holding an unsecured claim.

86. Under applicable law, a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud any creditor of the debtor

87. Further, under applicable law, the Plaintiff may recover, for the benefit of the estate, the value of the property transferred from (1) the first transferee of such transfer or the entity for whose benefit such transfer was made; and (2) any subsequent transferee of such first transferee, including Defendant.

88. Before the LSI Management Transfers, the Companies were facing serious financial and liquidity issues. The Dividend Distributions compounded and substantially worsened the Companies' financial condition in that the Companies had become obligated on the Dividend Loan (including by granting liens on all of their assets), yet approximately $110 million of the Dividend Loan was transferred directly and indirectly to the owners of the Companies and their affiliates (and subsequent transferees, including the Defendant), causing the Companies to become insolvent as a result. The Transfers occurred shortly after LSI Management, Holdco, and the Companies took on a substantial debt (the Dividend Loan).

89. At the time of the LSI Management Transfers and the Holdco Transfers, LSI Management and Holdco had unsecured claims and were insolvent or became insolvent as a result of such Transfers.

90. As a result of the LSI Management Transfers and the Holdco Transfers, LSI Management, Holdco, and the Companies have been damaged.

91. LSI Management fraudulently transferred the LSI Management Transfers to EFO LSI, utilizing Holdco as a conduit, and the Defendant is a subsequent transferee of such transfers

(in the form of transfers from EFO LSI of a portion of the fraudulent transfers EFO LSI received from LSI Management).

92. As alleged above, the Plaintiff did not discover the Subsequent Transfers—including the Subsequent LSI Management Transfers and the Subsequent Holdco Transfers—and could not have reasonably discovered the Subsequent Transfers until March 13, 2020.

93. As a result, the Plaintiff is entitled to avoid and recover the Subsequent Transfers—including the LSI Management Subsequent Transfers and the Holdco Transfers—as voidable from Defendant as the subsequent transferee.

94. Plaintiff demands judgment against the Defendant: (i) avoiding the Subsequent Transfers and recovering the amount of those transfers from Defendant; (ii) pre-judgment and post-judgment interest as allowed by law; and (iii) such other and further legal and equitable relief as the Court deems just and proper.

VI.
JURY DEMAND

Plaintiff demands a trial by jury on all issues and hereby tenders payment of the jury fee.

VII.
CONDITIONS PRECEDENT

All conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

VIII.
STATEMENT OF RELATED CASE

Pursuant to Local Rule 1.08, Plaintiff discloses that this suit is related to the pending case styled *Soneet R. Kapila, as Assignee, v. RJPT, Ltd.,* Cause No. DC-20-04265, in the 160th Judicial District Court, Dallas County, Texas, such that this case may be subject to transfer pursuant to Local Rule 1.07.

IX.
REQUEST FOR RELIEF

Considering these premises, Plaintiff respectfully requests that this Court, upon final disposition of this matter, enter judgment against Defendant for the following relief:

(A) Compensatory damages in an amount to be determined at trial;

(B) Pre-judgment and post-judgment interest on all sums at the maximum rate allowed by law;

(C) Plaintiff's reasonable attorneys' fees and expenses incurred in the filing and prosecution of this action;

(D) All costs of court;

(E) Any and all costs and reasonable attorneys' fees incurred in any and all related appeals and collateral actions (if any); and

(F) Such other relief to which this Court deems Plaintiff is justly entitled.

Respectfully submitted,

/s/ Joshua L Hedrick
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Joel B. Bailey
Texas State Bar No. 24069330
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COUNSEL FOR PLAINTIFF

EXHIBIT A

Laser Spine Institute ("LSI")

EFO Laser Spine Institute, LTD. Distributions Paid from TCB Account No. 1719 After July 2015 Recap

	Distribution 07/06/15	Distribution 10/23/15	Distribution 10/23/15	Total Paid After Recap
EFO Laser Spine Institute, LTD.	41,254,731	478,333	89,528	$ 41,822,592

EXHIBIT B

Laser Spine Institute ("LSI")

EFO Private Equity Fund II, LP - Transfer from EFO Laser Spine Institute, LTD.

	Transfer Amount	
EFO Private Equity Fund II, LP	$	2,830,782

Kapila Non-Texas Cases

Party	Case No.	Jurisdiction
Cypress GP, LLC - General Partner	21-CA-002192	13th Judicial Circuit, Hillsborough County, Florida
Arborwood Naples, LLC	21-CA-002119	13th Judicial Circuit, Hillsborough County, Florida
Bridget Gordman	8:21-cv-105	U.S. District Court, District of Nebraska
Dotty Bollinger	3:21-cv-00083-DCLC-HBG	U.S. District Court, Eastern District of Tennessee (Knoxville)
George Erensen	3:21-cv-00336-JBA	U.S. District Court, district of Connecticut (New Haven)
Helen Grammen	21-CA-002100	13th Judicial Circuit, Hillsborough County, Florida
Horne J, LLC	21-CV-000430-P	Superior Court of Barrow County, Georgia
Horne Tipps Properties, LLC	21-CA-002120	13th Judicial Circuit, Hillsborough County, Florida
Jacobsen Descendants Trust	21-CA-002193	13th Judicial Circuit, Hillsborough County, Florida
James Horne	21-CA-002105	13th Judicial Circuit, Hillsborough County, Florida
John E. Ayres	21-CA-002125	13th Judicial Circuit, Hillsborough County, Florida
Kara Grammen	21-CA-002101	13th Judicial Circuit, Hillsborough County, Florida
Kenneth Gordman	8:21-cv-104	U.S. District Court, District of Nebraska
Lee Weeks	21-CA-002122	13th Judicial Circuit, Hillsborough County, Florida
Louis Amato	21-CA-002118	13th Judicial Circuit, Hillsborough County, Florida

Martin Holmes	21-CA-002126	13th Judicial Circuit, Hillsborough County, Florida
Michael & Yvonne Grammen	21-CA-002115	13th Judicial Circuit, Hillsborough County, Florida
Phillip Garcia	21-CA-002117	13th Judicial Circuit, Hillsborough County, Florida
RIFAM,LLC	37-2021-00011152-CU-FR-CTL	Superior Court of California, County of San Diego
Westfields Investments, LLC	2021-03771	Fairfax County, Virginia

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

JOE SAMUEL BAILEY, LASERSCOPIC SPINAL CENTERS OF AMERICA, INC., LASERSCOPIC MEDICAL CLINIC, LLC, AND LASERSCOPIC SPINE CENTERS OF AMERICA, INC.

Plaintiffs,

Vs.

WILLIAM ESPING, ROBERT GRAMMEN, CYPRESS GP, LLC, WPE KIDS PARTNERS, LP, EFO PRIVATE EQUITY FUND II LP, EMINENCE INTERESTS LP, STANHOPE CAPITAL FUND I, LP, JEK SEP/PROPERTY LP, LEE WEEKS, HPH INVESTMENTS, II, ESPING MARITAL DEDUCTION TRUST #2, HELEN A. GRAMMEN, MICHAEL GRAMMEN & YVONNE GRAMMEN, MASTERDOM VALUE FUND, LTD., ROBERT P. GRAMMEN, KRE SEP/PROPERTY, LP, KARA A. GRAMMEN, LOUIS X. AMATO, SPINAL TAP PARTNERS, APPRECIATION SIBLINGS, GEOFFREY LAURENCE WALLACE ESTATE, WILLIAM HORNE, HORNE J, LLC, HORNE TIPPS PROPERTIES LLC, JAMES W. HORNE, HORNE MANAGEMENT INC., WH, LLC, JUSTIN HORNE, JAMES S. ST. LOUIS, III, JILL ST. LOUIS, JOHN E. AYRES, KENNETH "KIP" GORDMAN, MARTIN HOLMES, EDITH SMITH, WESTFIELDS INVESTMENTS, LLC, KIRK COLEMEN, ANTHONY KOEIJMANS, PAYNE LANCASTER, DAVID OWEN, ALVIN HOLDINGS LLC, BRAV VENTURES LP, N. ROSS BUCKENHAM, ANGIE H. CARLSON, CHARLES LYNCH LANCASTER TRUST, WILLIAM RAY CLARK, STACY R. DANAHY, GEORGE B. ERENSEN, PATRICK FOOTE, GULFSHORE CAPITAL PARTNERS LLC, HUGH P. HENNESY, HOAK PRIVATE

CASE NO. 06-CA-008498
Division L

EXHIBIT J

EQUITIES I, L.P., PETER JACOBSEN, JOHN A. DROSSOS 2000 IRREVOCABLE EXEMPT TRUST, ROD C. JONES, EDWARD F. KIERNAN, MARY SULLINS LANCASTER TRUST, LESTER MORALES, JR., NELDA CAINS PICKENS GRANDCHILDREN'S TRUST, PAYNE LANCASTER IRA, RIFAM, LLC, SAN YSIDRO HOLDINGS LP, JAMES F. STAFFORD, VIREO, LLC, ASHLEY S. WILL FINNEGAN, BE-MAC ASSET MANAGEMENT, INC., PHIL GARCIA, BRIDGET GORDMAN, DOTTY BOLLINGER, RAYMOND MONTELEONE, CHAAC CAPITAL GROUP, LLC, CHRISTOPHER YINGER, CRAIG BURNS, D TROMBLEY 2600-B, LLC, ARBORWOOD NAPLES, LLC, GAFLP II, LTD., JASON JONES, JOHN POLIKANDRIOTIS, JOHN F. SPALLINO, LYNNE M FLAHERTY, TINA M. CHRISTIAENS, VALERIE A MAXAM-MOORE, CARL KARNES, MARY C. TANNER-BROOKS, SYLVIA J GAGLIARDI, WILLIAM K BROOKS, MARBL SOS, LTD., ANAND A GANDHI, JOSHUA C. HELMS, LISA A. MELAMED, ORZO, LLC, JENNIFER KIERNAN, CHARLES L. LANCASTER, AND MARY S. LANCASTER

Defendants.
_____/

FIRST AMENDED THIRD-PARTY COMPLAINT

TABLE OF CONTENTS

INTRODUCTION

The *Bailey* Defendants[1] were not content to simply steal Plaintiffs' proprietary information, solicit their employees and gut their business; from the outset they decided that if Plaintiffs ever obtained vindication for their wrongful conduct, they would ensure it would be exceedingly difficult, if not impossible, to collect on any judgment. In short, the *Bailey* Defendants conspired to ensure that any judgment would be a Pyrrhic victory, at best.

Dating back to 2004, when their illegal activities began, EFO made clear that "EFO would make ten times whatever damages the Plaintiffs might suffer." Order on Non-Jury Trial entered on October 9, 2012 by Judge Nielsen ("Trial Order" or "Order") at 39, ¶ 216. These were the words of Robert Grammen ("Grammen"), an EFO representative/managing partner in 2004, made at the time the *Bailey* Defendants[2] conspired to wrest a unique laser spine surgery business from the Plaintiffs; their illegal conduct was spearheaded by Grammen, William Esping ("Esping"), James St. Louis. D.O. ("St. Louis") and William Horne ("Horne"). After a six-week bench trial, a 131-page Trial Order, two separate appeals resulting in two opinions by the Second District Court of

[1] The Defendants in the *Bailey* Litigation are: James St. Louis, D.O ("St. Louis"), Michael. Perry, M.D. ("Perry"), EFO Holdings, LP ("EFO Holdings"), EFO GP Interests, Inc. f/k/a EFO Genpar, Inc. ("EFO GP Interests"), EFO Laser Spine Institute Ltd. (EFO LSI) and Laser Spine Institute, LLC ("LSI") collectively referred throughout as the "*Bailey* Defendants." The *Bailey* Defendants are distinguished from the Defendants identified in this lawsuit who will be referred to collectively as "Defendants" or the "Fraudulent Transfer Defendants." EFO Holdings, EFO GP Interests and EFO LSI will from time to time be referred to as the "EFO Defendants."

[2] The underlying litigation refers to the *Bailey* Litigation *Joe Samuel Bailey v. James S. Louis, D.O., et. al*., Case No. 06-08498, tried in the Circuit Court for Hillsborough County, Florida.

Appeals that affirmed the extensive factual findings of the trial court, but twice overruled the damages analysis, the denial of the *Bailey* Defendants' efforts at multiple rehearing requests and their Petition for Certiorari to the Florida Supreme Court, Plaintiffs finally obtained justice on July 3, 2019 when the trial court awarded damages including disgorgement, punitive damages and interest totaling over $369 million against the *Bailey* Defendants, jointly and severally.[3] In the more than 15 years that this case was winding through the judicial system, the *Bailey* Defendants paid themselves (and their various interest holders in the case of a corporate defendant) several hundred million dollars in distributions, salaries and bonuses.

Despite the significant judgment entered against them—in an amount known to them as early as 2009 prior to the beginning of the trial—the *Bailey* Defendants have refused to pay Plaintiffs. Worse still, as Plaintiffs have discovered through costly and time-consuming post-judgment collection efforts, the *Bailey* Defendants have used the time during decade long litigation to transfer vast sums of money to themselves, their business associates, their family members and their friends. Their reasoning was obvious: knowing the trial court's factual findings detailing their egregious conduct in the Trial Order would likely result in a substantial damages award at some point, the *Bailey* Defendants were determined to make sure that when that day came, they

[3] Note that Michael Perry, M.D. ("Perry") was found jointly and severally liable for only the defamation damages in the amount of $1,333,245.00, plus post-judgment interest. The matter has been resolved as to Dr. Perry.

will have secreted out all of the proceeds garnered from the theft of Plaintiffs' business, moved those funds through a series of shell games, and then claim no funds remain to pay the Judgment.

This is a lawsuit to recover the tens of millions of dollars that *Bailey* Defendant EFO LSI wrongfully and fraudulently transferred to its partners, including the master minds behind the illegal theft of Plaintiffs' business. In 2015, knowing that an appeal on the damages was pending and an opinion would be forthcoming, EFO LSI and its principals encouraged LSI to use the only remaining value in the company to "recapitalize" so that they (and other interest holders) would illegally obtain what they anticipated would be their last significant pay-out; EFO LSI received $45 million dollars in that "recapitalization" funded by Texas Capital Bank and a consortium of other banks, and then immediately fraudulently distributed that amount to its partners. The purpose and intent was clear: as it had with all earlier distributions totaling tens of millions of dollars, EFO LSI and the other defendants were acting to ensure that the entire value of the company was squeezed out while they could still do so (shrouded in secrecy), and the *Bailey* Plaintiffs would ultimately collect nothing at the end of their long legal journey.

The 2015 distributions occurred while the parties to the *Bailey* Litigation were waiting on the first appellate ruling, ultimately issued in February of 2016. In that opinion, the Second DCA made clear that, if the trial court intended to award disgorgement damages, the award given was "grossly insufficient." *Bailey v. St. Louis*, 196 So. 3d 375, 378 (Fla. App. 2016). On remand, although the trial court issued punitive damages, it entered the same compensatory damages award; a second appeal ensued in early 2017. The Second DCA issued its second opinion on December

28, 2018, and this time, rather than leave it to the trial court, it instructed the trial court to enter the judgment in favor of Plaintiffs for their full ask of nearly $300 million plus pre-judgment interest. In a further effort to kick the can down the road, the *Bailey* Defendants filed multiple rehearing motions and sought review by the Florida Supreme Court. When those efforts failed, a final judgment was finally entered on July 3, 2019.

By this time, however, as Esping and Grammen promised, the *Bailey* Defendants had made good on their promise that Plaintiffs would never recover, and if they did, it would be a small fraction of what they made. In keeping with their earlier vows, the *Bailey* Defendants fraudulently transferred most, if not all, of the substantial distributions including to the individual wrongdoers themselves, *to wit:* Grammen, Esping, St. Louis and Horne and their family members and friends as well as entities they each own, manage and/or control. This, of course, was always part of their illegal scheme. There can be no doubt that they knew that the day of reckoning would be significant, as Plaintiffs sought on appeal the very same amount that they introduced during discovery and at trial: $264 million dollars plus prejudgment interest. Because the *Bailey* Defendants always knew the damages sought by Plaintiffs, they likewise knew as early as 2010 that they needed to drain as much liquidity out of LSI while at the same time keeping the judicial balls in the air as long as possible. The *Bailey* Defendants knew that once those balls fell, it was best if no funds remained accessible to Plaintiffs and they acted accordingly.

BACKGROUND

I. *BAILEY* LITIGATION

A. THE *BAILEY* DEFENDANTS CONSPIRED TO TORTIOUSLY INTERFERE WITH PLAINTIFFS' BUSINESSES RESULTING IN AN AWARD OF DISGORGEMENT AND PUNITIVE DAMAGES AGAINST THEM.

1. Because past is prologue, EFO LSI has continued its fraudulent behavior, this time by illegally dissipating and transfering the LSI generated assets in order to circumvent its obligation to pay its creditors, namely, Plaintiffs. Thus, it is not surprising that the *Bailey* Defendants conduct is once again subject to intense scrutiny.

2. The trial court in the *Bailey* Litigation made exacting factual findings detailing the *Bailey* Defendants' misconduct from the inception of LSI and EFO LSI. Those factual findings remained undisputed despite two separate appeals to the Second DCA and a Petition for Certiorari to the Florida Supreme Court. The Second DCA succinctly summarized the salient findings in its first opinion:

> The trial court found that Joe Samuel Bailey, Ted Suhl, Dr. James St. Louis, and Dr. Michael Perry formed several businesses: Laserscopic Spinal Centers of America, Inc., and Laserscopic Spine Centers of America, Inc. (the parent holding companies), as well as Laserscopic Spinal Centers of Florida, LLC, Laserscopic Surgery Center of Florida, LLC, Laserscopic Medical Clinic, LLC, and Laserscopic Diagnostic Imaging and Physical Therapy, LLC (collectively referred to as Laserscopic Spinal). All four directors had an ownership interest in Laserscopic Spinal, which was organized to provide minimally invasive spinal surgery. Laserscopic Spinal's business model was unique, and Dr. St. Louis was one of between four and ten surgeons in the country who specialized in endoscopic minimally invasive spine surgery.

Laserscopic Spinal began providing services to patients in August 2004. Revenues for the company showed significant growth results between August and October 2004, and the number of surgical procedures performed increased in each of the three months. Between $75,000 and $100,000 in revenue was generated in August 2004, $250,000 in September 2004, and $650,000 in October 2004.

Laserscopic Spinal met with William Esping, the managing director of EFO Holdings L.P., and Robert Grammen, a partner with EFO, about the possibility of EFO providing a loan to Laserscopic Spinal. To obtain the loan, Laserscopic Spinal provided a copy of its business plan to Mr. Esping and Mr. Grammen upon the express and agreed condition that the materials would be kept confidential. Laserscopic Spinal also provided its financial information to EFO and allowed EFO to conduct a due diligence investigation on site. After conducting its due diligence, EFO did not offer a loan to Laserscopic Spinal but instead offered to invest $3,000,000 in Laserscopic Spinal in exchange for fifty-five percent interest in the company, permanent control of the board, and a preferential seven percent return on its invested capital with the agreement that no distributions could be made to other investors until EFO's invested capital was repaid. When Mr. Bailey called Mr. Grammen to discuss EFO's unexpected terms, Mr. Grammen told Bailey that "**you're going to accept this offer or we're going to take your doctors and we're going to take your company. And we're going to go up the street, and we're going to do it ourselves**." EFO made good on its threat.

In order to make Dr. St. Louis and Dr. Perry angry at and suspicious of Mr. Bailey, Mr. Grammen and another individual raised concerns regarding Laserscopic Spinal's expenses, operations, and capitalization without conducting any investigation into such. The records that were provided to EFO during the due diligence period were used by EFO to mislead Dr. St. Louis and Dr. Perry to incorrectly believe that Mr. Bailey was improperly using and misappropriating corporate assets. The trial court found that EFO "intentionally engaged in activities designed to develop a relationship with St. Louis and Perry and cause them to question Bailey's integrity. [It] did this in an effort to leverage [its] position in the negotiations to force a sale of Laserscopic with the support of St. Louis and Perry."

When another individual who had an option to purchase an investor's interest in Laserscopic Spinal refused to sell his option to EFO, Mr.

Grammen threatened that they would lose the company. When the investor stated that he would sue if Mr. Grammen and EFO interfered with the business, Mr. Grammen was not concerned and indicated that **EFO would make ten times whatever damages they might have to pay in a lawsuit**.

Two days after EFO's offer to invest in Laserscopic Spinal, Dr. St. Louis and Dr. Perry told Mr. Bailey that they were leaving Laserscopic Spinal to establish a competing venture with EFO. While Dr. St. Louis and Dr. Perry were owners, officers, directors, and employees of Laserscopic Spinal, they had numerous phone calls with and met privately with Mr. Esping and Mr. Grammen. The trial court found that Dr. St. Louis and Dr. Perry conspired with EFO to establish a competing business. The incorporation documents for the competing business, Laser Spine Institute, LLC, were signed twenty-two days after EFO's offer to invest in Laserscopic Spinal.

Notably, taking Laserscopic Spinal's two physician-officers and setting up a competing business was not all that the Appellees did here. The trial court found that they "made use of Laserscopic's business plan, confidential documents, key personnel including the entire surgical team and other employees, internal forms and documents, and patient leads. Defendants obtained the critical head start and benefit of time and know-how, which gave them a significant advantage in the market." Laser Spine Institute created a business plan, which EFO admitted was a "cut and paste job" of Laserscopic Spinal's confidential business plan that EFO had received during due diligence. Laser Spine Institute then used Laserscopic Spinal's confidential business plan to seek funding from lenders. Laser Spine Institute never created its own comprehensive business plan.

Dr. St. Louis and Dr. Perry falsely told Laserscopic Spinal employees that Mr. Bailey was stealing corporate assets. Dr. St. Louis also told employees that Mr. Bailey had many aliases, was a wanted felon, and had "possible" sexual offenses. The trial court specifically found that all of these allegations were false and, furthermore, "[there was] no evidence that St. Louis and Perry had a good faith belief the statements about Bailey were accurate at the time that they were made."

But it was not enough to gut Laserscopic Spinal, the Appellees deboned it with surgical skill. Dr. St. Louis, Dr. Perry, and EFO paid numerous employees to quit working at Laserscopic Spinal and continued to pay them until Laser Spine Institute was ready to open. Dr. Perry also incited

> employees to quit by falsely telling them that Mr. Bailey was going to fire them. Dr. St. Louis told one employee to stop scheduling surgeries, which directly affected at least ten patients. Laserscopic Spinal's list of patient lists and leads, accounts payable information, and operating room supplies were also misappropriated. As many as thirty to forty patients of Laserscopic Spinal were scheduled for surgery by Laser Spine Institute. Patients of Laserscopic Spinal were sent a notice by Laser Spine Institute stating that their clinic had simply moved locations. Laser Spine Institute created a patient success story advertisement, which actually featured a patient of Laserscopic Spinal.
>
> After Dr. St. Louis and Dr. Perry left Laserscopic Spinal, Mr. Bailey sought to hire another surgeon who specialized in minimally invasive spine surgery. Dr. St. Louis and Dr. Perry contacted that surgeon and discouraged him from joining Laserscopic Spinal. Mr. Grammen also contacted the surgeon and stated that he believed Laserscopic Spinal would fail and offered to pay the surgeon *not* to work for Laserscopic Spinal.

Bailey, 196 So.3d at 380-81 (emphasis added). The Second District crystalized the essence of the trial court's findings and laid bare the truth: the *Bailey* Defendants' illegal scheme to co-opt Plaintiffs' thriving startup made them millionaires many times over just as Grammen had promised. *Id.* at 378 and n.2. The individuals controlling the scheme were Esping, Grammen, St. Louis and Horne, each working individually and through a web of entities manufactured to insulate them from liability and siphon off tens of millions of dollars in LSI distributions while the *Bailey* Litigation was winding its way through the courts.

B. THE FINAL JUDGMENTS AND DAMAGES AWARD.

3. On October 9, 2012, the Court issued the 131-page Trial Order in favor of the Plaintiffs, and on November 2, 2012, the Court entered the initial Final Judgment, albeit for damages that were far below what Plaintiffs had sought and proven at trial. Plaintiffs appealed the

damages award and the failure of the trial court to award punitive damages, and the *Bailey* Defendants filed a cross-appeal although they did not appeal the trial court's factual findings against them.

4. EFO LSI (and LSI), had actual notice that Plaintiffs sought disgorgement damages of $264 million and that the trial court damages award would likely be reversed on appeal because the *Bailey* Defendants failed to challenge the methodology of damages at trial. Because they understood that they were unlikely to change the course of the litigation long term, the Bailey Defendants set about to ensure that when that day came, EFO LSI would have ensconced away well over $100 million in distributions paid out by LSI. In all, EFO LSI alone received at least $134 million in distributions from LSI, which EFO LSI in turn immediately distributed to its partners including Grammen, Horne, St. Louis and Esping, individually or through various corporate forms that each of them owned, managed and/or controlled. This is apart from the many other interest holders paid out by LSI including separate entities owned and/or controlled by Grammen, Esping, Horne and St. Louis.

5. On February 3, 2016, the Second District Court of Appeals issued its opinion in the first appeal, which reversed the Final Judgment and determined that: (1) the trial court's award to Laserscopic Spinal Centers of America, Inc. ("Spinal") and Laserscopic Medical Clinic LLC ("Medical")—if intended to be a disgorgement award—was "grossly insufficient" and that Plaintiffs could obtain a disgorgement of LSI's profits irrespective of the amount actual damages suffered, (2) the trial court's award of out-of-pocket damages to Laserscopic Spine Centers of America, Inc. ("Spine") was inconsistent with the evidence introduced at trial, (3) the factual

findings supported an award of punitive damages, and (4) damages should be awarded for the FDUPTA violations because monetary relief could be awarded to business enterprises in addition to consumers. The Second DCA remanded the case and noted, among other things, that the evidence supported an award of out-of-pocket damages of $6,831,172 and disgorgement damages in the neighborhood of $271 million.

6. On remand, the *Bailey* Defendants did not request a new trial on damages and the trial court issued his new rulings based upon the submissions and argument of counsel. The First Amended Final Judgment was entered on January 30, 2017, adding an award of punitive damages in the amount of $5,750,000, a FDUPTA damage award of $1,050,000, and awarding the very same "disgorgement" damages award of $1.6 million initially awarded in 2012.[4]

7. In early 2017, a second appeal ensued and, on December 28, 2018, the Second DCA reversed and remanded again, this time directing the trial court to award out-of-pocket damages of $6,831,172 to Plaintiff Spine and holding that the disgorgement damages "at a minimum" are between $264 million to $265 million to Plaintiffs Spinal and Medical. The parties did not appeal the punitive damages and defamation damages.

8. Not surprisingly, the *Bailey* Defendants then exhausted every opportunity to delay the entry of a final judgment embodying the Second DCA's opinion including, without limitation: failing to respond to repeated service of drafts of a proposed Second Amended Final Judgment,

[4] The trial Court initially awarded *Bailey* Plaintiff Spine (defined below) $300,000.

filing various post-appeal motions and then an appeal to the Florida Supreme Court, and demanding a hearing before entry of the Second Amended Final Judgment despite the clarity of the Second DCA's opinion. And, after a hearing was obtained (albeit 6 months after the Second DCA opinion) and having never provided any comments to the proposed draft judgment, counsel for the Bailey Defendants appeared at the hearing and argued against the entry of the judgment, continuing their efforts to prevent Plaintiffs from beginning formal and legally authorized efforts at collection of a final judgment. The trial court, after hearing argument, issued the Second Amended Final Judgment on July 3, 2019, and post-judgment discovery began thereafter. Plaintiffs have been forced to expend significant sums in an effort to locate any assets upon which they can collect; as the *Bailey* Defendants intended, they appear to have left their cupboard's bare.

9. Given the allegations in the pleadings, the expert testimony regarding damages and the trial court's extensive factual findings, EFO LSI, its partners and the other *Bailey* Defendants knew or should have known that their participation in the scheme to take the entire value of Plaintiffs' company, lock, stock and barrel would ultimately result in a disgorgement award given that their gains were predicated on their illegal conduct.

10. Indeed, the trial court's factual findings demonstrate that it was probable that the *Bailey* Defendants' illegal conduct would result in any gain being disgorged:

- "The EFO Defendants and the LSI Defendants were engaged in a pattern of unfair and deceptive practices as well as broad-sweeping, anti-competitive conduct. Their intentional and wrongful conduct included the EFO Defendants' solicitation

of St. Louis and Perry, each of whom they knew to be officers, directors and employees of Laserscopic; the EFO and LSI Defendants' inducement of the Laserscopic employees to leave their employment and join the LSI Defendants; the EFO Defendants and LSI Defendants' misappropriation of the assets of Laserscopic including the confidential information, which the LSI Defendant then used in their business; and, the LSI Defendants' false statements about Bailey and Laserscopic to the Department of Health and solicitation of that agency to terminate the surgical licenses at Lasercopic's facility. *Id.* at 96, ¶ 17.

- "In this case, each of the Defendants participated in various ways in the conspiracy, first to try and take over Laserscopic's business, and failing that, to take key employees and corporate assets so that any remaining business could not compete." *Id.* at 100, ¶ 1.

- "Each of the Defendants and the Former Laserscopic Employees were engaged in conspiratorial conduct ranging from misappropriating confidential information including patient lists, secretly looking for an alternative facility while still employed by Laserscopic, soliciting Laserscopic employees to sever their employment with Laserscopic, making false and defamatory statements about Bailey and Laserscopic and other similar conduct for the purpose of establishing the LSI Defendants. Each of these acts supports a claim for the independent tort of

conspiracy in addition to the other claims against each of the Defendants and Defendants are jointly and severally liable." *Id.* at 100, ¶ 3.

- "The EFO Defendants tortiously interfered with Laserscopic's business relationships in several ways. Summarized below are some of the ways detailed in the factual findings. The EFO Defendants interference with the relationship between St. Louis and Perry. The EFO Defendants used the confidential information obtained from Laserscopic and misrepresented the contents of such documents. They engaged in face to face meetings and numerous cellular telephone calls with both St. Louis and Perry, while they knew each of them to be officers, directors, employees and owners of Laserscopic. They engaged in such conduct even after they received notices from…another director with Laserscopic and Laserscopic that the conduct should cease. This conduct was knowing, willful and intentional." *Id.* at 102-103, ¶ 1.

- "St. Louis and Perry interfered with Laserscopic's relationships with its employees…St. Louis and Perry engaged in numerous intentional and willful acts directed at causing the EFO Defendants to choose to establish a competing facility…and participating in meetings with the EFO Defendants' representatives including William Esping, Mr. Grammen and Mr. Surgen for the purpose of inducing them to open a competing facility with them. St. Louis and Perry also directed Laserscopic employees to cancel existing patients for surgery at

Laserscopic so that those surgeries could be performed at the LSI Defendants. Further, they directed employees to take prospective patient lists which were later used by the LSI Defendants to solicit these individuals to have surgery at LSI." *Id.* at 103, ¶ 3.

- "The LSI Defendants, after their formation, actively participated in tortious conduct against Laserscopic and ratified past tortious acts performed on their behalf and for their benefit. The LSI Defendant hired Defendants St. Louis and Perry [and Laserscopic employees] each whom they knew had business relationships with Laserscopic. St. Louis, on behalf of the LSI Defendants, wrote to the State of Florida, suggesting that the license for Laserscopic's facility be cancelled and making statements about Mr. Bailey, the CEO, that would cause the applicable licensing authorities to question the abilities and operational integrity of Laserscopic. The LSI Defendants also contacted patients and prospective patients that they knew to have business relationships with Laserscopic for the purpose of soliciting them for surgery. These are examples of the intentional, willful and wrongful conduct of the LSI Defendants that constitute tortious interference." *Id.* at 103, ¶ 4.

11. These findings, and many more, are codified in the Trial Order, and confirmed by two appellate court opinions. *Bailey*, 196 So. 3d at 383; *Bailey v. St. Louis*, 268 So. 3d 197, 198 (Fla. App. 2018). The *Bailey* Defendants did not appeal the trial court's factual findings, clearly

aware that such an effort would be futile. Thus, while Plaintiffs submit that the *Bailey* Defendants knew far earlier—dating back to when Plaintiffs filed their initial complaint in Florida in September 2006 or, at a minimum, during the trial in 2010, they knew at the latest when the trial court issued the Trial Order establishing the extent of their illegal conduct.

12. Despite the exacting findings of the *Bailey* Defendants' intentional acts and the sweeping damages testimony (predicated on undisputed financial data created by LSI), EFO LSI did nothing to ensure that it could satisfy any judgment, instead choosing to extract tens of millions of dollars from LSI while the *Bailey* Plaintiffs were embroiled in years of litigation. As profits were earned (or access to capital was available) LSI's interest holders immediately siphoned those funds, and those entities and individuals did the same, and so on and so on, in an elaborate effort to avoid accountability.

13. The judicial delays emboldened the *Bailey* Defendants—including EFO LSI—to secret every dollar from their host to prevent the *Bailey* Plaintiffs from ever recovering any of the damages they suffered. Thus, while the prolonged litigation allowed LSI to generate hundreds of millions of dollars in profits, the delay also allowed them time to ensure those amounts would be outside the reach of the *Bailey* Plaintiffs when judgment day arrived.

14. This result was foreshadowed by EFO and Grammen from the beginning: "When Bailey called Mr. Grammen to discuss EFO's unexpected [deal] terms, Mr. Grammen told Bailey that "Billy likes what you're doing, and you're going to accept this offer or we're going to take

your doctors and we're going to take your company. And we're going to go up the street, and we're going to do it ourselves." Trial Order at 35-36, ¶ 196.

15. Grammen later threatened Mr. Miller[5] claiming that even if Plaintiffs won the lawsuit, "we have ways to take care of it" and the consensus was that Grammen did not mean an appeal. *Id.* at 39, ¶ 214.

16. Grammen also stated that "Sam's not going to get anything. I don't think he deserves anything….We're not going to pay him." *Id.* ¶ 215

17. "Mr. Grammen told Mr. Miller that he and his friends were going to lose the company," all in an effort to get Mr. Miller to sell his option to purchase the Spinal interests of another investor. *Id.* at 39, ¶ 216.

18. "When Mr. Miller told [Mr. Grammen] he would sue if Mr. Grammen and EFO interfered with the business Mr. Grammen was not concerned, indicating EFO would make ten times whatever damages the Plaintiff might suffer." *Id.* at 39, ¶ 216.

19. These are just some of the extensive factual findings in the Trial Order establishing their tortious conduct. EFO LSI and each of its partners knew or should have known of the egregious misconduct firmly established by the trial court—findings even they did not appeal. Indeed, these findings were publicly available and were likely discussed by the Board given the

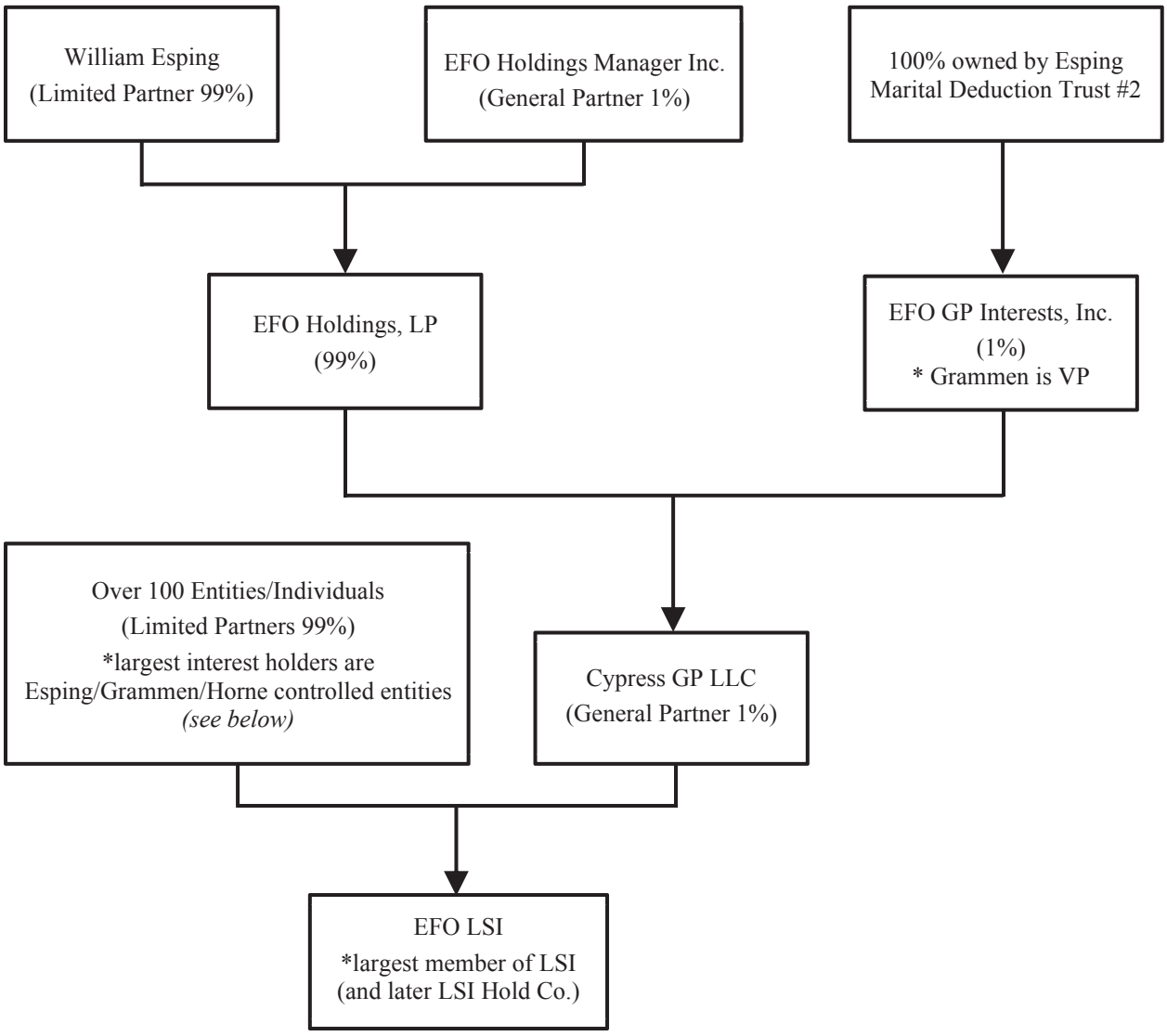
[5] Mr. Miller was an investor with Plaintiffs with a right to purchase the interest of another investor. *Id.* at 33, ¶ 175.

impact they would have on the various companies likely to be affected by a substantial damages award resulting from an appeal.

II. FROM THE INCEPTION, THE EFO DEFENDANTS THREATENED THAT PLAINTIFFS WOULD NEVER RECOVER ANY MONEY.

20. The group of "EFO Defendants" in the *Bailey* Litigation are EFO Holdings, LP ("EFO Holdings"), EFO GP Interests Inc. f/k/a EFO Genpar Inc. ("EFO Genpar") and EFO Laser Spine Institute Ltd. ("EFO LSI"), and they, among others, were found to be jointly and severally liable for the illegal conduct and the resulting damages. These entities are controlled primarily by Esping and Grammen, who were two of the architects of the underlying illegal conduct that rested a once promising start-up from the hands of Plaintiffs.

21. EFO LSI is organized as follows:



22. The initial goal of Grammen, Esping, Horne, St. Louis and others—acting through their various entities—was to force Plaintiffs (excluding Spine, which was the mitigation effort formed by Plaintiffs) to cede control of their up and running business for a fraction of its enterprise value using the leverage they created between Bailey and Ted Suhl (another investor) and their respective business partners and employees including *Bailey* Defendants St. Louis and Perry during the due diligence period. Among other artifices, the *Bailey* Defendants made various defamatory statements about Mr. Bailey, the status and availability of funding for the business and the character of the principals; these tactics were used to create a wedge between Spinal's key employees and Mr. Bailey hoping to pressure him to simply sell out for a pittance of what the company was worth and yield control to the wrongdoers. When those efforts were unsuccessful, Grammen, Esping and Spinal's key employees formed EFO LSI and LSI to make good on their promise to steal the business out from under the Plaintiffs.

23. In short, the *Bailey* Defendants did precisely what they promised: they stole the business and, anticipating a large judgment at some distant time in the future, made sure to drain all of the profits from LSI and its subsidiaries along the way by making huge distributions to themselves and the other investors as well as paying handsome salaries and bonuses to the wrongdoers like Defendant St. Louis and Horne, who were directly involved in the illegal conduct.

24. Their corporate raiding ultimately resulted in LSI filing an Assignment for the Benefit of Creditors ("ABC Proceeding") in March of 2019, just months after the Second DCA's December 28, 2018 opinion.

25. Because the *Bailey* Defendants knew that it was only a matter of time before their illegal acts caught up to them, they were prepared when it did; along the way, among other things, the *Bailey* Defendants formed new entities, creating a labyrinth style corporate structure, moved money around and hired various lawyers and other professionals to defend their actions.

26. The EFO Defendants illegal conduct was not isolated to Plaintiffs or the *Bailey* Litigation. Rather, several of the EFO Defendants and the individuals controlling those companies engaged in similar practices to evade their creditors in other business situations, and were previously found to have engaged in intentional and fraudulent misconduct towards their business partners akin to that alleged in the *Bailey* Litigation.

27. For example, in a similar case, EFO Holdings and Esping were found personally liable (by clear and convincing evidence) for fraud, conspiracy to commit fraud, breach of partnership duties and conspiracy to breach partnership duties. The trier of fact found that the actions were committed with malice by Esping and EFO Holdings. *Bluff Power Partners, LP, et al. v. McComman LFG Processing Management, LLC, et al.*, Case No. DC-09-15690, In the 44th Judicial District Court of Dallas County, Texas.

28. After the jury announced their $13.5 million dollar damages verdict in *Bluff Power*, Esping, who testified to a personal net worth of $120 million, said "Good luck collecting" to the Plaintiff's lawyer as he left the courtroom. https://www.investorpoint.com/news/WASTEMGT/41862758/. Esping was also found to be liable for millions of dollars in punitive damages for his malicious and intentional conduct. This

incident sounds eerily familiar to the conduct in the *Bailey* Litigation, and the *Bailey* Defendants' brazen and wanton conduct demonstrates a knowing and continued practice of defrauding their business partners (and potential business partners); worse still, their conduct confirms that when justice is ultimately served, they will have exhausted all means to ensure that the assets were dissipated. As established by the trial court, the *Bailey* Defendants conduct was conscious and knowing, and the same is true of their efforts to shield the distributions and proceeds they fraudulently obtained from collection.

III. THE PARTIES

A. The Debtors

29. **EFO Laser Spine Institute, Ltd.** ("**EFO LSI**") is a Florida limited partnership formed on December 8, 2004. Its general partner is Cypress GP LLC, a subsidiary or division of EFO Holdings, LP. According to the EFO LSI partnership agreement, it was formed in part for the purpose of "acquir[ing] a membership interest in **Laser Spine Institute, LLC**, a Florida limited liability company" ("**LSI**") (emphasis supplied). At its inception, EFO LSI had a majority interest in LSI. Over time as EFO LSI expanded the number of partners, it decreased its interest in LSI and later LSI Hold Co. LSI was the vehicle that the *Bailey* Defendants created as their copycat business venture based on their theft of Plaintiffs' proprietary business model, trade secrets including their business plan, employees and other valuable confidential information.

30. **EFO Holdings, LP** ("**EFO Holdings**"). In 2012 EFO Holdings, L.P. supposedly had assets over $300 million under management. EFO Holdings was formed to deploy capital on

behalf of the Esping family. Esping is its managing partner. Esping was the 99% limited partner and EFO Holdings Manager Inc. was the 1% general partner. In December 2012, shortly after Plaintiffs obtained their first judgment against the *Bailey* Defendants, EFO Holdings filed for chapter 7 bankruptcy.

31. **EFO GP Interests Inc. f/k/a EFO Genpar Interests Inc.** (**"EFO GP" or "EFO Genpar"**) is the operating entity for EFO Holdings that is the entity through which fees are earned and EFO pays salaries and likely bonuses to its employees. Grammen is the Vice President. EFO GP is the in the general partners of Cypress GP LLC. EFO GP is 100% owned by the Esping Marital Deduction Trust #2, also a partner in EFO LSI that received millions in distributions.

B. The *Bailey* Plaintiffs

32. **Plaintiff Joe Samuel Bailey** ("**Bailey**") was one of the founders of Spinal and was its CEO. Bailey was awarded $1,000,000, pre-judgment interest in the amount of $333,245 plus post-judgment interest against Defendant James S. St. Louis, D.O., Michael Perry, M.D., EFO Holdings LP, EFO Genpar, Inc., EFO LSI, jointly and severally, for defamation. Bailey first became a creditor of the LSI Defendants (defined below) on or before November 8, 2004 when he was first defrauded by fraudulent representation made at the Vinoy hotel (described in detail below).[6]

33. **Laserscopic Spinal Centers of America, Inc.**, (**"Spinal**") is a Nevada Corporation organized by Bailey, Ted Suhl, and *Bailey* Defendants James S. St. Louis and Michael Perry, to

[6] The Trial Court found the LSI Defendants liable for their pre-formation Torts. Order at ¶113.

operate a minimally invasive spinal surgery business. Spinal was and is the parent entity of various subsidiaries but the only one relevant here is Laserscopic Medical Clinic, LLC. Like Bailey, Spinal first became a creditor if the LSI Defendants on or before November 8, 2004.

34. **Laserscopic Medical Clinic, LLC** ("**Medical**") is a Florida limited liability company and a wholly owned subsidiary of Spinal. This entity employed the Laserscopic physicians, including St. Louis and Perry during their tenure with the business. Laserscopic Spinal and Medical Clinic were awarded $269 million, pre-judgment interest in the amount of $89,642,905, plus post-judgment interest against *Bailey* Defendants James S. St. Louis, D.O., EFO Holdings LP, EFO Genpar, Inc., EFO Laser Spine Institute Ltd., LSI, LLC, Laser Spine Medical Clinic LLC, Laser Spine Physical Therapy, LLC, Laser Spine Surgical Center, LLC (LSI and its subsidiaries will be collectively referred to as the "**LSI Defendants**"), jointly and severally. Like Bailey, Medical first became a creditor of the LSI Defendants on or before November 8, 2004.

35. **Plaintiff Laserscopic Spine Centers of America, Inc.** ("**Spine**") is a Nevada corporation. Spine was formed in an attempt to mitigate the conduct of the *Bailey* Defendants and was awarded $6,831,172 in out-of-pocket costs because the *Bailey* Defendants—not satisfied that they had "killed the king," engaged in tortious conduct in an effort to ensure that Plaintiffs' business could not survive even in its weakened state; Spine was also awarded prejudgment interest in the amount of $2,266,066, plus post-judgment interest against *Bailey* Defendants EFO Holdings, LP, EFO Genpar, Inc.; James S. St. Louis, D.O.; EFO LSI, and the LSI Defendants,

jointly and severally. Spine became a creditor of the *Bailey* Defendants when the tortious conduct first occurred described below, in no event later than January of 2006.

C. The Defendants

1. The *Bailey* Defendants

36. The EFO Defendants were insolvent at all times between November 4, 2004 and the present because their obligations to the Plaintiffs exceeded their assets at fair value. Upon information and belief, at various times after the Judgment the EFO Defendants were unable to pay debts as they came due in the ordinary course, rendering them also insolvent under common law insolvency.

37. The EFO Defendants, upon becoming insolvent, owed fiduciary duties to the creditors of their respective entities. Among those duties was a duty of care and duty of loyalty. The EFO Defendants then (as described in detail below) engaged in a series of self-interested transactions with persons or individuals simultaneously in control of the EFO Defendants and the LSI Defendants.

38. The LSI Defendants, upon information and belief, had the following officers, managers, members, directors, control persons or similar fiduciaries:

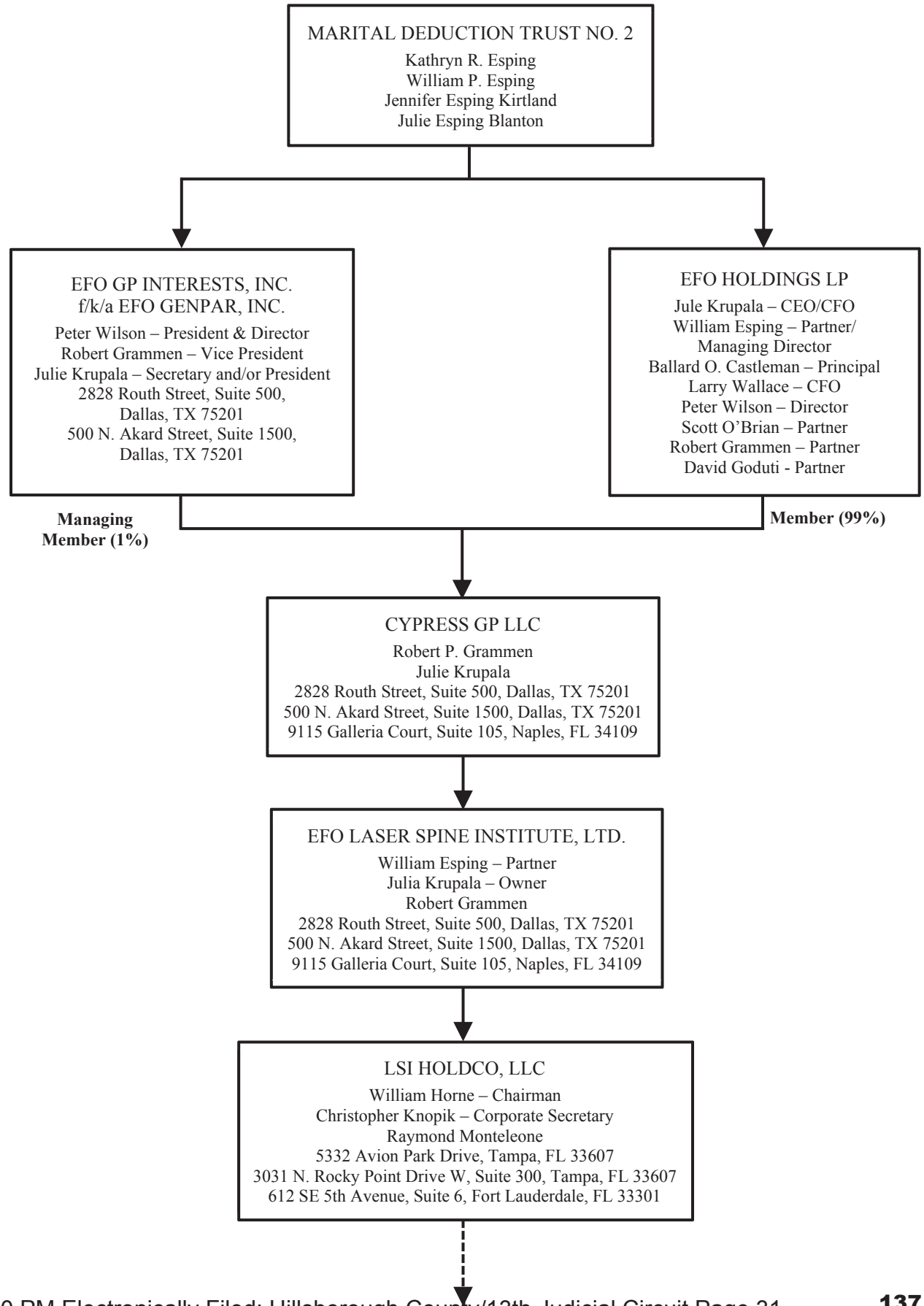
- Laser Spine Surgical Center LLC: Managing Member was Medical Care Management Services, LLC. That entity's Managing Member was Horne Management, Inc. Horne Management's President and Director was William E. Horne. Its Chief Financial Officer was Raymond Monteleone. Laser Spine Medical

Clinic, LLC: Managing Member was Laser Spine Institute, LLC. That entity's Managing Member was LSI Holdco, LLC. LSI Holdco's Chairman was William E. Horne. Other principles were Christopher Knopik (Corporate Secretary) and Raymond Monteleone. LSI Holdco's Managing Member was EFO LSI. EFO LSI's principles included Esping, Grammen and Julie Krupala. EFO LSI's General Partner was Cypress GP LLC, which has Grammen and Julie Krupala as its principles. The Managing Member of Cypress GP is EFO GP Interests, Inc., f/k/a EFO Genpar, Inc. Its principles included Grammen as vice-president, Peter Wilson as director and president (for a portion of time), and Julie Krupala as secretary and president (for a portion of time). The largest member of Cypress GP (99%) was EFO Holdings, LP, which had Julie Krupala as the Chief Executive Order and Chief Financial Officer, Esping as a partner/managing director, and Grammen as a partner.

- Laser Physical Therapy, LLC: Managing Member was Laser Spine Institute, LLC. That entity's Managing Member was LSI Holdco, LLC. LSI Holdco's Chairman was William E. Horne. Other principles were Christopher Knopik (Corporate Secretary) and Raymond Monteleone. LSI Holdco's Managing Member was EFO LSI. EFO LSI's principles included Esping, Grammen and Julie Krupala. EFO LSI's General Partner was Cypress GP LLC, which has Grammen and Julie Krupala as its principles. The Managing Member of Cypress GP is EFO

GP Interests, Inc., f/k/a EFO Genpar, Inc. Its principles included Grammen as vice-president, Peter Wilson as director and president (for a portion of time), and Julie Krupala as secretary and president (for a portion of time). The largest member of Cypress GP (99%) was EFO Holdings, LP, which had Julie Krupala as the Chief Executive Order and Chief Financial Officer, Esping as a partner/managing director, and Grammen as a partner.

39. Through his senior position of ownership, Esping had effective control over all of these entities:


MARITAL DEDUCTION TRUST NO. 2
Kathryn R. Esping
William P. Esping
Jennifer Esping Kirtland
Julie Esping Blanton
EFO GP INTERESTS, INC.
f/k/a EFO GENPAR, INC.
Peter Wilson – President & Director
Robert Grammen – Vice President
Julie Krupala – Secretary and/or President
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William Esping – Partner/
Managing Director
Ballard O. Castleman – Principal
Larry Wallace – CFO
Peter Wilson – Director
Scott O'Brian – Partner
Robert Grammen – Partner
David Goduti - Partner
Managing Member (1%)
Member (99%)
CYPRESS GP LLC
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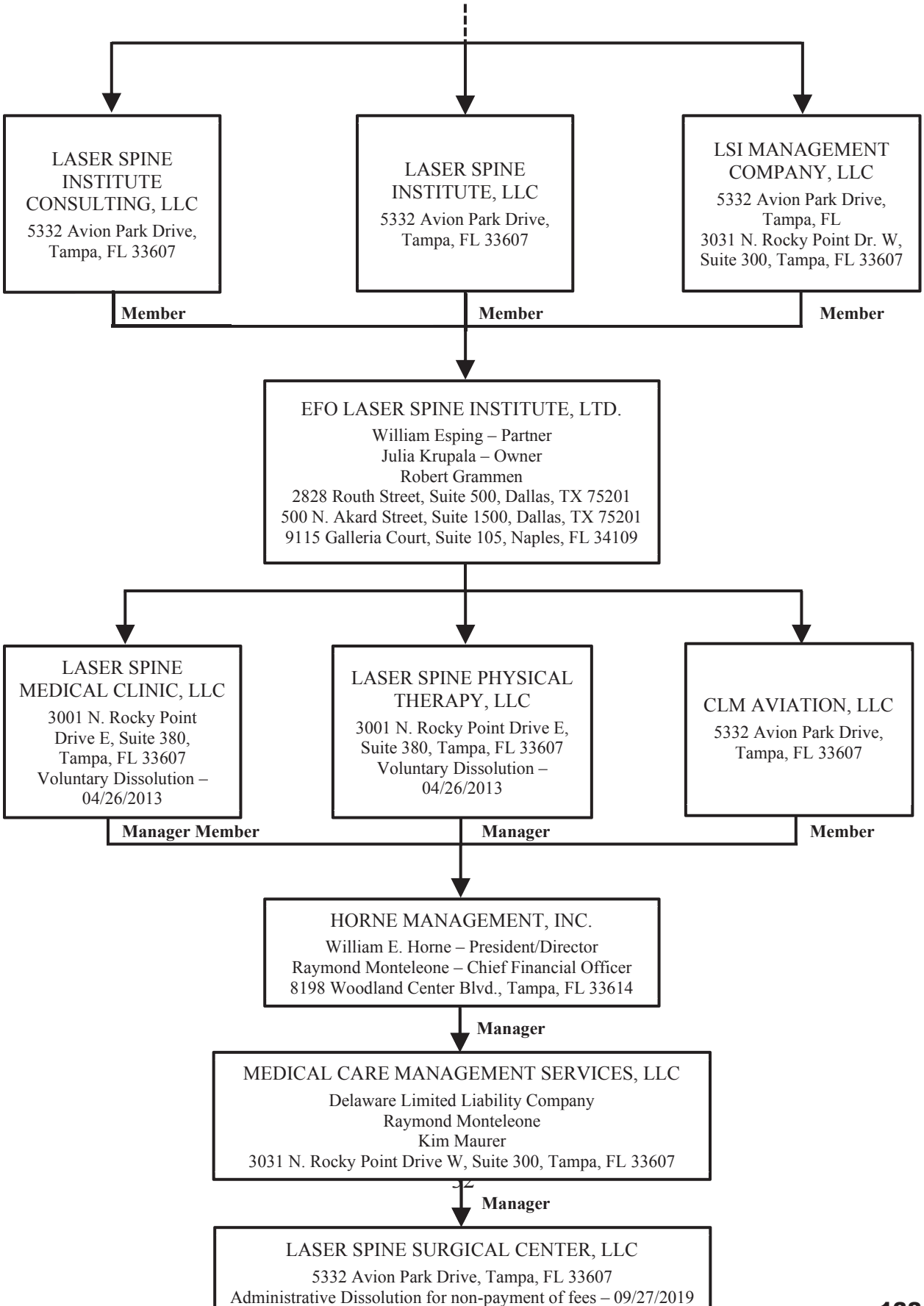
3031 N. Rocky Point Drive W, Suite 300, Tampa, FL 33607
612 SE 5th Avenue, Suite 6, Fort Lauderdale, FL 33301


LASER SPINE INSTITUTE CONSULTING, LLC
5332 Avion Park Drive, Tampa, FL 33607
LASER SPINE INSTITUTE, LLC
5332 Avion Park Drive, Tampa, FL 33607
LSI MANAGEMENT COMPANY, LLC
5332 Avion Park Drive, Tampa, FL
3031 N. Rocky Point Dr. W, Suite 300, Tampa, FL 33607
Member
Member
Member
EFO LASER SPINE INSTITUTE, LTD.
William Esping – Partner
Julia Krupala – Owner
Robert Grammen
2828 Routh Street, Suite 500, Dallas, TX 75201
500 N. Akard Street, Suite 1500, Dallas, TX 75201
9115 Galleria Court, Suite 105, Naples, FL 34109
LASER SPINE MEDICAL CLINIC, LLC
3001 N. Rocky Point Drive E, Suite 380, Tampa, FL 33607
Voluntary Dissolution – 04/26/2013
LASER SPINE PHYSICAL THERAPY, LLC
3001 N. Rocky Point Drive E, Suite 380, Tampa, FL 33607
Voluntary Dissolution – 04/26/2013
CLM AVIATION, LLC
5332 Avion Park Drive, Tampa, FL 33607
Manager Member
Manager
Member
HORNE MANAGEMENT, INC.
William E. Horne – President/Director
Raymond Monteleone – Chief Financial Officer
8198 Woodland Center Blvd., Tampa, FL 33614
Manager
MEDICAL CARE MANAGEMENT SERVICES, LLC
Delaware Limited Liability Company
Raymond Monteleone
Kim Maurer
3031 N. Rocky Point Drive W, Suite 300, Tampa, FL 33607
Manager
LASER SPINE SURGICAL CENTER, LLC
5332 Avion Park Drive, Tampa, FL 33607
Administrative Dissolution for non-payment of fees – 09/27/2019

40. The EFO Defendants, upon information and belief, had the following officers, managers, members, directors, control persons or similar fiduciaries: including Esping, Grammen and Horne, among others.

41. Upon information and belief, none of the self-interested transactions described below were approved solely by disinterested fiduciaries nor were they the subject of a third-party fairness opinion or similar analysis by an independent fiduciary.

2. EFO Related Defendants Controlled by Esping and Grammen

42. **Defendant William Esping** ("**Esping**") is the managing director of EFO Holdings, LP and owns, manages or controls a large number of the Defendants, as identified below. He also owned, managed and/or controlled EFO LSI, LSI and LSI Hold Co.

43. **Defendant Robert Grammen** ("**Grammen**") was and is a limited partner of EFO LSI. As of 2015, he held 4.44261% of the partnership interest in EFO LSI. His address is 19115 Galleria Court, Suite 105, Naples, FL 34109. Grammen received distributions of at least $6,529,453 with $1,995,254 distributed in 2015. Grammen manages, controls and/or owns EFO Holdings, LP and EFO GP Interests, was a founding member of LSI and was on the board of directors of LSI Holdco.

44. **Defendant Cypress GP, LLC** ("**Cypress**") was and is a Texas Limited Partnership and was and is a general partner of EFO LSI. In 2015, it held 0.72116% of the partnership interest in EFO LSI. Its principal place of business is at 500 N. Akard Street, Suite 1500, Dallas, TX 75201-3302. Cypress received distributions of at least $1,230,336 from EFO LSI, with $323,884

distributed in 2015. Cypress is managed by EFO GP Interests Inc. (f/k/a EFO Genpar Inc.), which at all relevant times has been controlled and managed by Grammen and Esping who are both also fiduciaries of EFO LSI and the Bailey Defendants as control persons. At one point, EFO Holdings, LP was a member of Cypress, owning 99% of it.

45. **Defendant WPE Kids Partners, LP** ("**WPE Kids**") was and is a limited partner of EFO LSI. As of 2015, it held 27.0163307% of the partnership interest in EFO LSI. Its principal place of business is at 500 N Akard Street, Suite 1500 Dallas, TX 75201-6651. WPE Kids Partners, LP received distributions of at least $57,626,814 with $12,133,451 distributed in 2015 alone. The general partner of WPE Kids is WPE Holdings, Inc.; Esping is the Vice President and signed the EFO LSI partnership agreement on behalf of WPE Kids. Upon information and belief, Esping owns, controls and/or manages this entity.

46. **Defendant EFO PRIVATE EQUITY FUND II LP** ("**EFO Fund II**") was and is a limited partner of EFO LSI. As of 2015, it held 6.30299% of the partnership interest in EFO LSI. Its principal place of business is at 500 N. Akard Street, Suite 1500 Dallas, TX 75201-6651. EFO Fund II received distributions of at least $9,187,139, with $2,830,782 distributed in 2015. EFO Fund II is located at the same address as EFO Holdings and EFO GP Interests Inc. (f/k/a EFO Genpar Inc.). Upon information and belief, EFO Fund II is controlled, owned and/or managed by Grammen, Esping and/or their surrogates.

47. **Defendant EMINENCE INTERESTS LP** ("**Eminence**") was and is a limited partner of EFO LSI. As of 2015, it held 5.56522% of the partnership interest in EFO LSI. Its

principal place of business is at 500 N. Akard Street, Suite 1500 Dallas, TX 75201-6651. Eminence received distributions of at least $8,553,326, with $2,499,440 distributed in 2015. Eminence is located at the same address as EFO Holdings and EFO GP Interests Inc. (f/k/a EFO Genpar Inc.). Upon information and belief, Eminence is controlled, owned and/or managed by Grammen Esping, Ballard Castleman and/or their surrogates. Eminence Interests, L.P., a Texas limited partnership may own approximately 80% of the interests of EFO Financial Group LLC according to SEC filings.

48. **Defendant Stanhope Capital Fund I, LP** ("**Stanhope**") was and is a limited partner of EFO LSI. As of 2015, it held 4.807710% of the partnership interest in EFO LSI. Its principal place of business is at 500 N. Akard Street, Suite 1500 Dallas, TX 75201-6651. Stanhope received distributions of at least $8,182,028, with $2,159,227 distributed in 2015. Stanhope is located at the same address as EFO Holdings and EFO GP Interests Inc. (f/k/a EFO Genpar Inc.).

49. **Defendant JEK SEP/PROPERTY LP** ("**JEK Property**") was and is a limited partner of EFO LSI. As of 2015, it held 2.40386% of the partnership interest in EFO LSI. Its principal place of business is at 500 N Akard Street, Suite 1500 Dallas, TX 75201-6651. JEK Property received distributions of at least $4,091,010, with $1,079,614 distributed in 2015. Upon information and belief, this entity is likely managed, owned and/or controlled by Jennifer Kirkland, Esping's sister.

50. **Defendant Lee Weeks** ("**Weeks**") was and is a limited partner of EFO LSI. As of 2015, she held 1.20193% of the partnership interest in EFO LSI, with an address at 9180 Galleria

Court, Suite 600, Naples, FL 34109. Weeks received distributions of at least $2,045,512, with $539,807 distributed in 2015. This address is the same address that Grammen, a partner in EFO Holdings LP and EFO GP Interests, uses in Florida to conduct business. Upon information and belief, Grammen previously worked for Weeks at Coral Hospitality in Florida while Weeks was CEO.

51. **Defendant HPH Investments, II** ("**HPH**") was and is a limited partner of EFO LSI. As of 2015, it held 0.13070% of the partnership interest in EFO LSI. Its principal place of business is at 500 N. Akard Street, Suite 1500 Dallas, TX 75201-6651. HPH received distributions of at least $220,842, with $58,699 distributed in 2015. Upon information and belief, this entity is managed, owned and/or controlled by EFO GP Interests, Esping and/or Grammen.

52. **Defendant Esping Marital Deduction Trust #2** ("**Esping Martial Trust**") was and is a limited partner of EFO LSI. As of 2015, it held 0.42020% of the partnership interest in EFO LSI. Its principal place of business is at 500 N Akard Street, Suite 1500, Dallas, TX 75201-6651. Esping Marital Trust received distributions of at least $651,598, with $188,719 distributed in 2015. The Esping Marital Trust is the 100% owner of EFO GP Interests, Inc., a Judgment Debtor. The Vice President of EFO GP Interests is Grammen. The Esping Marital Trust is located at the same address as EFO Holdings and EFO GP Interests Inc. (f/k/a EFO Genpar Inc.). Upon information and belief, Esping owns, controls, benefits from and/or manages this entity.

53. **Defendant Helen A. Grammen** ("**H. Grammen**") was and is a limited partner of EFO LSI. As of 2015, she held 0.15757% of the partnership interest in EFO LSI, with an address

at 11717 Gulf Boulevard, Apt. 546, North Redington Beach, FL 33708. H. Grammen received distributions of at least $244,356, with $70,769 distributed in 2015. Upon information and belief, H. Grammen is the mother of Grammen and is a member of EFO Holdings LP.

54. **Defendants Michael Grammen & Yvonne Grammen** ("**M&Y Grammen**") were and are limited partners of EFO LSI. As of 2015, they held 0.31731% of the partnership interest in EFO LSI, with an address at 10407 Cypress Lakes Preserve Drive, Lake Worth, FL 33467. M&Y Grammen received distributions of at least $432,843, with $142,510 distributed in 2015. Michael Grammen is the brother of Grammen and Yvonne Grammen is his wife.

55. **Defendant Masterdom Value Fund, Ltd.** ("**Masterdom**") was and is a limited partner of EFO LSI. As of 2015, it held 0.183840% of the partnership interest in EFO LSI. Its principal place of business is at 4017 Amherst Avenue, Dallas, TX 75225-7004. Masterdom received distributions of at least $285,857, with $82,565 distributed in 2015 according to the Schedule K1 filing. This entity previously held the same address at 2828 Routh Street, Suite 500, Dallas, TX 75201, as EFO Holdings LP and EFO GP Interests. It now has the same address as Lancaster.

56. **Defendant KRE SEP/Property, LP** ("**KRE Property**") was and is a limited partner of EFO LSI. As of 2015, it held 2.00771% of the partnership interest in EFO LSI. Its principal place of business is at 500 N. Akard Street, Suite 1500, Dallas, TX 75201-6651. KRE Property received distributions of at least $3,177,284, with $901,698 distributed in 2015. KRE Property is located at the same address as EFO Holdings and EFO GP Interests Inc. (f/k/a EFO

Genpar Inc.) and, upon information and belief, is controlled, owned and/or managed by Esping and/or his relatives, Kathryn R. Esping, William Esping's mother

57. **Defendant Kara A. Grammen** ("**K. Grammen**") was and is a limited partner of EFO LSI. As of 2015, she held 0.2% of the partnership interest in EFO LSI. Her address is 15517 Gulf Boulevard, Redington Beach, FL 33708. K. Grammen received distributions of at least $235,993, with $89,822 distributed in 2015. K. Grammen is the sister of Robert Grammen, who manages, controls and owns EFO Holdings, LP, EFO GP Interests and was on the board of directors of LSI Holdco.

58. **Defendant Louis X. Amato** ("**Amato**") was and is a limited partner of EFO LSI. As of 2015, he held 0.42596% of the partnership interest in EFO LSI. His address is 28209 Jewel Fish Ln, Bonita Springs, FL 34135-8639. Amato received distributions of at least $502,625, with $191,308 distributed in 2015. Amato represented EFO Holdings LP, EFO GP Interests and EFO LSI at various times during the *Bailey* Litigation.

59. **Defendant Spinal Tap Partners** ("**STP**") was and is a limited partner of EFO LSI. As of 2015, it held 5.8866193% of the partnership interest in EFO LSI. Its principal place of business is at 500 N Akard Street, Suite 1500, Dallas, TX 75201-6651. STP received distributions of at least $5,903,064, with $2,643,769 distributed in 2015. STP is located at the same address as EFO Holdings and EFO GP Interests Inc. (f/k/a EFO Genpar Inc.) and, upon information and belief, is likely controlled, owned and/or managed by Esping, EFO GP Interests or EFO Holdings, LP.

60. **Defendant Appreciation Siblings** ("**Appreciation**") was and is a limited partner of EFO LSI. As of 2015, it held 0.593% of the partnership interest in EFO LSI. Its principal place of business is at 500 N Akard Street, Suite 1500, Dallas, TX 75201-6651. Appreciation received distributions of at least $604,198, with $266,326 distributed in 2015. Appreciation is located at the same address as EFO Holdings and EFO GP Interests Inc. (f/k/a EFO Genpar Inc.) and, upon information and belief, is likely controlled, owned and/or managed by Esping, EFO GP Interests or EFO Holdings, LP.

61. **Defendant Geoffrey Laurence Wallace Estate** ("**Wallace Estate**"), Edith Smith Executrix, was and is a limited partner of EFO LSI. As of 2015, it held 0.54087% of the partnership interest in EFO LSI, with an address 3400 Chapel Wood Drive, Sunnyvale, TX 75182. The Wallace Estate received distributions of at least $448,814, with $242,914 distributed in 2015. Upon information and belief, the Wallace Estate is an entity likely formed in the name of and/or for the benefit of G. Larry Wallace, who was an officer in EFO Holdings and EFO GP Interests Inc. (f/k/a EFO Genpar Inc.) entities controlled, owned and/or managed by William Esping.

62. **Defendant Payne Lancaster** ("**Lancaster**") was and is a limited partner of EFO LSI. As of 2015, he held 0.77277% of the partnership interest in EFO LSI, with an address at 4017 Amherst Avenue, Dallas, TX 75225. Lancaster received distributions of at least $1,283,838, with $347,063 distributed in 2015. Lancaster was on the management team of EFO Holdings LP. Lancaster was also a manager of Metro 67, one of Esping's companies.

63. **Defendant Charles Lynch Lancaster Trust** ("**Lancaster Trust**") was and is a limited partner of EFO LSI. As of 2015, it held 0.07353% of the partnership interest in EFO LSI. Its principal place of business is at 4017 Amherst Avenue, Dallas, TX 75225. It received distributions of at least $80,997, with $19,030 distributed in 2015. Upon information and belief, this trust is affiliated with Payne Lancaster, who was on the EFO Management team.

64. **Defendant Mary Sullins Lancaster Trust** ("**Lancaster Trust**") was and is a limited partner of EFO LSI. As of 2015, the Lancaser Trust held 0.07353% of the partnership interest in EFO LSI. Its principal place of business is at 4017 Amherst Avenue, Dallas, TX 75225. The Lancaster Trust received distributions of at least $33,025, with $19,036 distributed in 2015. Upon information and belief, this trust is affiliated with Payne Lancaster, former management at EFO Holdings LP.

65. **Defendant Payne Lancaster IRA** ("**Lancaster IRA**") was and is a limited partner of EFO LSI. As of 2015, it held 0.06749% of the partnership interest in EFO LSI. Its principal place of business is at 4017 Amherst Avenue, Dallas, TX 75225. The Lancaster IRA received distributions of at least $ 100,896, with $30,312 distributed in 2015. Upon information and belief, this IRA is affiliated with Payne Lancaster, former management at EFO Holdings LP.

66. **Defendant Charles L. Lancaster** ("**C. Lancaster**") was and is a limited partner of EFO LSI. As of 2015, he held 0.07353% of the partnership interest in EFO LSI, with an address 4017 Amherst Avenue, Dallas, TX 75225. C. Lancaster received distributions of at least $32,677,

with $33,025 distributed in 2015. Upon information and belief, he is likely associated with Payne Lancaster, former management at EFO Holdings LP.

67. **Defendant Mary S. Lancaster** ("**M. Lancaster**") was and is a limited partner of EFO LSI. As of 2015, she held 0.07353% of the partnership interest in EFO LSI, with an address 4017 Amherst Avenue, Dallas, TX 75225. M. Lancaster received distributions of at least $32,677, with $33,025 distributed in 2015. Upon information and belief, she is likely associated with Payne Lancaster, former management at EFO Holdings LP.

3. Horne Controlled Defendants

68. **Defendant William Horne** ("**Horne**") holds a number of ownership, management or controlling interests in the Defendants. He owned, managed and/or controlled EFO LSI, LSI and LSI Hold Co. He was the CEO of LSI and later LSI Hold Co. between 2005 and 2015.

69. **Defendant Horne J, LLC** ("**Horne J**") was and is a limited partner of EFO LSI. As of 2015, it held 1.85542% of the partnership interest in EFO LSI. Its principal place of business is at 1288 Finch Road, Winder, GA 30680. Horne J received distributions of at least $3,149,719, with $833,300 distributed in 2015 according to the Schedule K1 filing. Upon information and belief, this entity is likely owned or controlled by William Horne ("Horne"), former President and CEO of LSI, or by an immediate family member or surrogates of Horne.

70. **Defendant Horne Tipps Properties LLC** ("**Horne Tipps**") was and is a limited partner of EFO LSI. As of 2015, it held 1.146093% of the partnership interest in EFO LSI. Its principal place of business is at 8198 Woodland Center Boulevard, Tampa, FL 33614. Horne

Tipps received distributions of at least $2,708,821, with $514,729 distributed in 2015 according to the Schedule K1 filing. Upon information and belief, this entity is managed, owned and/or controlled by Horne, former President and CEO of LSI, or by immediate family members or surrogates of Horne.

71. **Defendant James W. Horne** ("**James Horne**") was and is a limited partner of EFO LSI. As of 2015, he held 0.2101% of the partnership interest in EFO LSI, with an address at PO Box 8339, Fleming Island, FL 32006. James Horne received distributions of at least $325,798, with $94,359 distributed in 2015. Upon information and belief, James Horne is likely a family member of Horne, former President and CEO of LSI and LSI Holdco.

72. **Defendant Horne Management Inc.** ("**Horne Management**") was and is a limited partner of EFO LSI. As of 2015, it held 1.893444% of the partnership interest in EFO LSI. Its principal place of business is at 8198 Woodland Center Boulevard, Tampa, FL 33614. Horne Management received distributions of at least $2,372,396, with $850,378 distributed in 2015 according. Horne Management is owned, managed and/or controlled by Horne, the former President and CEO of LSI and LSI Holdco.

73. **Defendant WH, LLC** was and is a limited partner of EFO LSI. As of 2015, it held 0.157570% of the partnership interest in EFO LSI. Its principal place of business is 19520 Gulf Boulevard, Unit 402, Indian Shores, FL 33785. WH, LLC received distributions of at least $244,356, with $70,769 distributed in 2015. WH, LLC is owned, managed and/or controlled by Horne, the former President and CEO of LSI and LSI Holdco.

74. **Defendant Justin Horne** ("**Justin Horne**") was and is a limited partner of EFO LSI. As of 2015, he held 0.04105% of the partnership interest in EFO LSI. His address is 1002 Bajada De Avila, Tampa, FL 33613. J. Horne received distributions for at least $42,020 with $18,435 distributed in 2015. Justin. Horne is the son of Horne, the former President and CEO of LSI and LSI Holdco.

75. **Defendant Raymond Monteleone** ("**Monteleone**") was and is a limited partner of EFO LSI. As of 2015, he held 0.40966% of the partnership interest in EFO LSI. His address is 3965 North 32 Terrace, Hollywood, FL 33021. Monteleone received distributions of at least $488,839, with $183,987 distributed in 2015. Monteleone is a former executive and officer at LSI and still has several ongoing business relationships with Horne. Upon information and belief, Monteleone was also Horne's accountant.

4. St. Louis Related Defendants

76. **Defendant James S. St. Louis, III** ("**J**. **St. Louis**") was and is a limited partner of EFO LSI. As of 2015, he held 1.17618% of the partnership interest in EFO LSI, with an address at 7149 Forest Mere Drive, Riverview, FL 33578. J. St. Louis received distributions of at least $4,019,280, with $528,242 distributed in 2015. J. St. Louis is the son of *Bailey* Defendant St. Louis, one of the key employees that defrauded Plaintiffs and one of the architects of the coup from inside Laserscopic Spinal. J. St. Louis was hired by and worked for LSI for many years, additionally reaping significant sums in salary and bonuses, not to mention any LSI interests that he received separately (meaning other than through EFO LSI).

77. **Defendant Jill St. Louis** ("**Jill St. Louis**") was and is a limited partner of EFO LSI. As of 2015, she held 6.00964% of the partnership interest in EFO LSI, with an address at 611 S. FT. Harrison Avenue, #311, Clearwater, FL 33756. Jill St. Louis received distributions of at least $4,708,029, with $2,699,032 distributed in 2015. She is the ex-wife of *Bailey* Defendant St. Louis, although they were married during the conduct alleged in the underlying *Bailey* Litigation.

5. Other Defendants

78. **Defendant John E. Ayres** ("**Ayres**") was and is a limited partner of EFO LSI. As of 2015, he held 1.92978% of the partnership interest in EFO LSI. His address is at 123 East Avenue, Naples, FL 34108. Ayres received distributions of at least $3,641,802, with $866,694 distributed in 2015. Ayres worked with Robert Grammen at Coral Hospitality in Florida.

79. **Defendant Kenneth "Kip" Gordman** ("**Gordman**") was and is a limited partner of EFO LSI. As of 2015, he held 0.60096% of the partnership interest in EFO LSI. His address is at 16756 J Circle, Omaha, NE 68135. Gordman received distributions of at least $1,022,752, with $269,903 distributed in 2015. Gordman was a partner in other EFO controlled entities such as Underground Tank Partners.

80. **Defendant Bridget Gordman** ("**Gordman**") was and is a limited partner of EFO LSI. As of 2015, she held 0.600960% of the partnership interest in EFO LSI. Her address is 16756 J Circle, Omaha, NE 68135. Gordman received distributions of at least $1,022,752, with $269,903 distributed in 2015.

81. **Defendant Martin Holmes** ("**Holmes**") was and is a limited partner of EFO LSI. As of 2015, he held 3.60579% of the partnership interest in EFO LSI, with an address at 50 Beachside Drive, #101, Vero Beach, FL 32963. Holmes received distributions of at least $6,136,516, with $1,619,420 distributed in 2015.

82. **Defendant Edith Smith** ("**Smith**") was and is a limited partner of EFO LSI. As of 2015, she held 0.16676% of the partnership interest in EFO LSI, with an address at 3400 Chapelwood Drive, Sunnyvale, TX 75182. Smith received distributions of at least $282,222, with $74,892 distributed in 2015.

83. **Defendant Westfields Investments, LLC** ("**Westfields**") was and is a limited partner of EFO LSI. As of 2015, it held 1.923% of the partnership interest in EFO LSI. Its principal place of business is 809 Autumn Breeze Court, Herndon, VA 20170, and can be served at the same address. Westfield Investments, LLC received distributions of at least $3,272,809, with $863,691 distributed in 2015.

84. **Defendant Kirk Colemen** ("**Coleman**") was and is a limited partner of EFO LSI. As of 2015, he held 0.58582% of the partnership interest in EFO LSI, with an address at 245 Casa Blanca Avenue, Fort Worth, TX 76107. Coleman received distributions of at least $920,316, with $263,103 distributed in 2015. Starting in May 2015, Coleman was employed at Texas Capital Bank as its Executive Vice President.

85. **Defendant Anthony Koeijmans** ("**Koeijmans**") was and is a limited partner of EFO LSI. As of 2015, he held 0.29291% of the partnership interest in EFO LSI, with an address

at 500 N. Akard Street, Suite 1500 Dallas, TX 75201-6651. Koeijmans received distributions of at least $490,545, with $131,551 distributed in 2015. His address is the same address as EFO LSI, EFO Holdings, LP and EFO GP Interests.

86. **Defendant David Owen** ("**Owen**") was and is a limited partner of EFO LSI. As of 2015, he held 0.24039% of the partnership interest in EFO LSI, with an address at 18208 Preston Road, Suite D9-218, Dallas, TX 75252. Owen received distributions of at least $409,102, with $107,961 distributed in 2015.

87. **Defendant Alvin Holdings LLC** ("**Alvin**") was and is a limited partner of EFO LSI. As of 2015, it held 1.92309% of the partnership interest in EFO LSI. Its principal place of business is at 6029 Mendota Drive, Dallas, TX 75201. Alvin received distributions for at least $3,253,273, with $863,691 distributed in 2015.

88. **Defendant Brav Ventures LP** ("**Brav**") was and is a limited partner of EFO LSI. As of 2015, it held 1.67465% of the partnership interest in EFO LSI. Its principal place of business is at 3912 Wentwood Drive, Dallas, TX 75225-5318. Brav received distributions of at least $2,484,950, with $752,115 distributed in 2015.

89. **Defendant N. Ross Buckenham** ("**Buckenham**") was and is a limited partner of EFO LSI. As of 2015, he held 0.21010% of the partnership interest in EFO LSI, with an address at 3544 Southwestern Boulevard, Dallas, TX 75225. Buckenham received distributions of at least $325,798, with $94,359 distributed in 2015.

90. **Defendant Angie H Carlson** ("**Carlson**") was and is a limited partner of EFO LSI. As of 2015, she held 0.06303% of the partnership interest in EFO LSI, with an address at 3632 Asbury Street, Dallas, TX 75205. Carlson received distributions of at least $97,746, with $28,309 distributed in 2015.

91. **Defendant William Ray Clark** ("**Clerk**") was and is a limited partner of EFO LSI. As of 2015, he held 0.17753% of the partnership interest in EFO LSI, with an address at 6323 Woodland, Dallas, TX 75225. He received distributions of at least $275,293, with $79,734 distributed in 2015.

92. **Defendant Stacy R. Danahy** ("**Danahy**") was and is a limited partner of EFO LSI. As of 2015, she held 0.05252% of the partnership interest in EFO LSI, with an address at 34913 N 25TH Lane, Phoenix, AZ 85086. Danahy received distributions of at least $81,440, with $23,590 distributed in 2015. Danahy was employed by Spinal and was one of the employees solicited by the *Bailey* Defendants to abandon her role to join their illegally manufactured competing venture.

93. **Defendant George B Erensen** ("**Erensen**") was and is a limited partner of EFO LSI. As of 2015, he held 0.262620% of the partnership interest in EFO LSI, with an address at 319 Orchard Street, Greenwich, CT 06830. Erensen received distributions of at least $385,804 with $117,949 distributed in 2015.

94. **Defendant Patrick Foote** ("**Foote**") was and is a limited partner of EFO LSI. As of 2015, he held 0.05252% of the partnership interest in EFO LSI, with an address at 200 4TH

Avenue S #417, St. Petersburg, FL 33701. Foote received distributions of at least $80,331, with $23,590 distributed in 2015. Foote was an employee of LSI.

95. **Defendant Gulfshore Capital Partners LLC** ("**Gulfshore**") was and is a limited partner of EFO LSI. As of 2015, it held 0.04202% of the partnership interest in EFO LSI. Its principal place of business is at C/O Max Mazzone, 2338 Immokalee Road #149, Naples, FL 34110. Gulfshore received distributions of at least $64,275 with $18,872 distributed in 2015.

96. **Defendant Hugh P Hennesy** ("**Hennesy**") was and is a limited partner of EFO LSI. As of 2015, he held 0.04202% of the partnership interest in EFO LSI, with an address at 3953 Maple Avenue, Suite 290, Dallas TX 75201. Hennesy received distributions of at least $65,165, with $18,872 distributed in 2015.

97. **Defendant Hoak Private Equities I, L.P.** ("**Hoak**") was and is a limited partner of EFO LSI. As of 2015, it held 0.6303% of the partnership interest in EFO LSI. Its principal place of business is at Reagan Place at Old Parkland, 3963 Maple Avenue, Suite 450, Dallas TX 75201. Hoak received distributions of at least $977,391, with $283,078 distributed in 2015.

98. **Defendant Peter Jacobsen** ("**Jacobsen**") was and is a limited partner of EFO LSI. As of 2015, he held 1.8909% of the partnership interest in EFO LSI, with an address at 9400 SW Barnes Road #550, Portland, OR 97225. Jacobsen received distributions of at least $2,892,142, with $849,234 distributed in 2015.

99. **Defendant John A. Drossos 2000 Irrevocable Exempt Trust** ("**Drossos Trust**") was and is a limited partner of EFO LSI. As of 2015, it held 0.04202% of the partnership interest

in EFO LSI. Its principal place of business is at 6719 Park Lane, Dallas, TX 75225. The Drossos Trust received distributions of at least $64,275, with $18,872 distributed in 2015.

100. **Defendant Rod C. Jones** ("**Jones**") was and is a limited partner of EFO LSI. As of 2015, he held 0.13656% of the partnership interest in EFO LSI, with an address at 3953 Maple Avenue, Ste. 290, Dallas, TX 75201. Jones received distributions of at least $211,771, with $61,334 distributed in 2015. Jones manages high net worth family offices.

101. **Defendant Edward F. Kiernan** ("**Kiernan**") was and is a limited partner of EFO LSI. As of 2015, he held 0.10505% of the partnership interest in EFO LSI, with an address at 300 E 39th Street, #15C, New York, NY 10016. Kiernan received distributions of at least $274,174, with $75,096 distributed in 2015.

102. **Defendant Lester Morales, Jr.** ("**Morales**") was and is a limited partner of EFO LSI. As of 2015, he held 0.07382% of the partnership interest in EFO LSI, with an address at 7149 Forest Mere Drive, Riverview, FL 33578. Morales received distributions of at least $106,575, with $33,155 distributed in 2015. Morales is a former executive director of LSI.

103. **Defendant Nelda Cains Pickens Grandchildren's Trust** ("**Pickens Trust**") was and is a limited partner of EFO LSI. As of 2015, the Pickens Trust held 0.07353% of the partnership interest in EFO LSI. Its principal place of business is at 3953 Maple Avenue, Suite 290, Dallas, TX 75219. The Pickens Trust received distributions of at least $114,022, with $33,025 distributed in 2015. Nelda Cains Pickens is the widow of T. Boone Pickens.

104. **Defendant RIFAM, LLC** ("**RIFAM**") was and is a limited partner of EFO LSI. As of 2015, it held 0.4202% of the partnership interest in EFO LSI. Its principal place of business is at C/O Brian Riley, 4660 La Jolla Village Drive, San Diego, CA 92122. RIFAM received distributions of at least $651,598, with $188,719 distributed in 2015 according to the Schedule K1 filing. This entity is an Arizona company with its principal place of business in California.

105. **Defendant San Ysidro Holdings LP** ("**Ysidro Holdings**") was and is a limited partner of EFO LSI. As of 2015, it held 0.15757% of the partnership interest in EFO LSI. Its principal place of business is at 4516 Lovers Lane c/o PMB 413, Dallas, TX 75225-6925. Ysidro Holdings received distributions of at least $244,356, with $70,769 distributed in 2015.

106. **Defendant James F. Stafford** ("**Stafford**") was and is a limited partner of EFO LSI. As of 2015, he held 0.05252% of the partnership interest in EFO LSI, with an address at 5407 Bowline Bend, New Port Richey, FL 34652. Stafford received distributions of at least $81,441, with $23,590 distributed in 2015. Stafford is a former employee of LSI, who was solicited away from Spinal along with others by the *Bailey* Defendants.

107. **Defendant Vireo, LLC** ("**Vireo**") was and is a limited partner of EFO LSI. As of 2015, it held 0.1505% of the partnership interest in EFO LSI. Its principal place of business is at C/O David Crowell, 3610 W Jetton Avenue, Tampa, FL 33629. Vireo received distributions of at least $160,664, with $47,180 distributed in 2015.

108. **Defendant Ashley S. Will Finnegan** ("**Finnegan**") was and is a limited partner of EFO LSI. As of 2015, she held 0.07382% of the partnership interest in EFO LSI. Her address is

2725 SW 92nd Terrace, Gainesville, FL 32608. Finnegan received distributions of at least $106,575, with $33,155 distributed in 2015.

109. **Defendant BE-MAC Asset Management, Inc. ("BE-MAC**") was and is a limited partner of EFO LSI. As of 2015, it held 0.07879% of the partnership interest in EFO LSI. Its principal place of business is at 8501 Gunn Highway, Odessa, FL 33556. BE-MAC received distributions of at least $146,352, with $35,388 distributed in 2015 according to the Schedule K1 filing.

110. **Defendant Phil Garcia** ("**Garcia**") was and is a limited partner of EFO LSI. As of 2015, he held 0.38868% of the partnership interest in EFO LSI. His address is 16529 Ivy Lake Drive, Odessa, FL 33556. Garcia received distributions of at least $500,901, with $174,564 distributed in 2015.

111. **Defendant Dotty Bollinger** ("**Bollinger**") was and is a limited partner of EFO LSI. As of 2015, she held 1.02454% of the partnership interest in EFO LSI. Her address is 536 Pinnacle Vista Road, Gatlinberg, TN 37738. Bollinger received distributions of at least $1,219,677 with $460,137 distributed in 2015 according to the Schedule K1 filing. Bollinger is the former General Counsel of LSI, who occupied that role during the *Bailey* trial.

112. **Defendant CHAAC Capital Group, LLC ("CHAAC")** was and is a limited partner of EFO LSI. As of 2015, it held 0.08519% of the partnership interest in EFO LSI. Its principal place of business is 73 Southport Cove, Bonita Springs, FL 34134. CHAAC received distributions of at least $100,527, with $38,262 distributed in 2015.

113. **Defendant Christopher Yinger ("Yinger")** was and is a limited partner of EFO LSI. As of 2015, he held 0.0213% of the partnership interest in EFO LSI. His address is 2310 Hannah Way N., Dunedin, FL 34698. Yinger received distributions of at least $9,565 distributed in 2015.

114. **Defendant Craig Burns ("Burns")** was and is a limited partner of EFO LSI. As of 2015, he held 0.0213% of the partnership interest in EFO LSI. His address is 916 Cypress Cove Way, Tarpon Springs, FL 34688. Burns received distributions of at least $9,565 distributed in 2015.

115. **Defendant D Trombley 2600-B, LLC ("Trombley")** was and is a limited partner of EFO LSI. As of 2015, it held 0.0213% of the partnership interest in EFO LSI. Its principle place of business is 9019 Oak St. NE, St. Petersburg, FL 33702. Trombley received distributions of at least $9,565 distributed in 2015.

116. **Defendant Arborwood Naples, LLC ("Arborwood")** was and is a limited partner of EFO LSI. As of 2015, it held 0.63895% of the partnership interest in EFO LSI. Its principal place of business is 13490 Old Livingston Road, Naples, FL 34109. Arborwood received distributions of at least $753,934, with $286,962 distributed in 2015.

117. **Defendant GAFLP II, LTD. ("GAFLP")** was and is a limited partner of EFO LSI. As of 2015, it held 0.63895% of the partnership interest in EFO LSI, with a registered agent address of ORI, Inc., 2705 Bee Caves Road, Suite 230, Austin, TX 78746. GAFLP received distributions of at least $753,934, with $286,962 distributed in 2015.

118. **Defendant Jason Jones ("J. Jones")** was and is a limited partner of EFO LSI. As of 2015, he held 0.0213% of the partnership interest in EFO LSI. His address is 12724 Stanwyck Circle, Tampa, FL 33626. J. Jones received distributions of at least $9,565 distributed in 2015.

119. **Defendant John Polikandriotis ("Polikandriotis")** was and is a limited partner of EFO LSI. As of 2015, he held 0.01065% of the partnership interest in EFO LSI. His address is PO Box 5218, Edwards, CO 81632. Polikandriotis received distributions of at least $4,782 distributed in 2015.

120. **Defendant John F. Spallino ("Spallino")** was and is a limited partner of EFO LSI. As of 2015, he held 0.0213% of the partnership interest in EFO LSI. His address is 11329 East Raintree Drive, Scottsdale, AZ 85255. Spallino received distributions of at least $9,565 distributed in 2015.

121. **Defendant Lynne M Flaherty ("Flaherty")** was and is a limited partner of EFO LSI. As of 2015, she held 0.01065% of the partnership interest in EFO LSI. Her address is 10320 Abbotsford Dr., Tampa, FL 33626. Flaherty received distributions of at least $4,782 distributed in 2015.

122. **Defendant Tina M. Christiaens ("Christiaens")** was and is a limited partner of EFO LSI. As of 2015, she held 0.01065% of the partnership interest in EFO LSI. Her address is 2203 SE 20th Avenue, Cape Coral, FL 33990. Christiaens received distributions of at least $4,782 distributed in 2015.

123. **Defendant Valerie A Maxam-Moore ("Maxam-Moore")** was and is a limited partner of EFO LSI. As of 2015, she held 0.0213% of the partnership interest in EFO LSI. Her address is 4565 15th Ave N, St. Petersburg, FL 33626. Maxam-Moore received distributions of at least $9,565 distributed in 2015.

124. **Defendant Carl Karnes** ("**Karnes**") was and is a limited partner of EFO LSI. As of 2015, he held 0.96155% of the partnership interest in EFO LSI, with an address is 2201 Winding Hollow Lane, Plano, TX 75093. Karnes received distributions of at least $1,162,659, with $431,850 distributed in 2015.

125. **Defendant Mary C. Tanner-Brooks** ("**Tanner-Brooks**") was and is a limited partner of EFO LSI. As of 2015, she held 0.050282% of the partnership interest in EFO LSI, with an address at PO Box 2012, Riverview, FL 33568. Tanner-Brooks received distributions of at least $51,680, with $22,583 distributed in 2015.

126. **Defendant Sylvia J Gagliardi** ("**Gagliardi**") was and is a limited partner of EFO LSI. As of 2015, she held 0.043099% of the partnership interest in EFO LSI, with an address at 11304 Lake Katherine Circle, Clermont, FL 34711. Gagliardi received distributions of at least $44,297, with $19,356 distributed in 2015.

127. **Defendant William K Brooks** ("**Brooks**") was and is a limited partner of EFO LSI. As of 2015, he held 0.050282% of the partnership interest in EFO LSI, with an address at PO Box 2012, Riverview, FL 33568. Brooks received distributions of at least $51,680, with $22,583 distributed in 2015.

128. **Defendant MARBL SOS, Ltd.** ("**Marbl**") was and is a limited partner of EFO LSI. As of 2015, it held 0.11852% of the partnership interest in EFO LSI. Its principle place of business is 4201 W Parmer Lane, Suite A275, Austin, TX 78727-4115 and may be served on Mark A Flood, 8500 Bluffstone Cove, Suite A101 Austin, TX 78759. MARBL received distributions of at least $113,352, with $53,228 distributed in 2015.

129. **Defendant Anand A Gandhi ("Gandhi")** was and is a limited partner of EFO LSI. As of 2015, he held 0.0142% of the partnership interest in EFO LSI. His address is 5933 Browder Rd., Tampa, FL 33625. Gandhi received distributions of $6,377 distributed in 2015.

130. **Defendant Joshua C. Helms ("Helms")** was and is a limited partner of EFO LSI. As of 2015, he held 0.0142% of the partnership interest in EFO LSI. His address is 4505 Henderson Blvd., Tampa, FL 33629. Helms received distributions of at least $6,377 distributed in 2015.

131. **Defendant Lisa A. Melamed** ("**Melamed**") was and is a limited partner of EFO LSI. As of 2015, she held 0.046970% of the partnership interest in EFO LSI. Her address is 4320 NW 103 Drive, Coral Springs, FL 33065. Melamed received distributions of at least $41,417, with $21,095 distributed in 2015. Melamed represented LSI Holdco as its general counsel.

132. **Defendant Orzo, LLC** ("**Orzo**") was and is a limited partner of EFO LSI. As of 2015, it held 0.16112% of the partnership interest in EFO LSI, with an address at 16327 Palmettoglen Ct., Lithia, FL 33547. Orzo received distributions of at least $151,317, with $72,360 distributed in 2015.

133. **Defendant Jennifer Kiernan** ("**J. Kiernan**") was and is a limited partner of EFO LSI. As of 2015, she held 0.10505% of the partnership interest in EFO LSI, with an address 1462 Pepperwood Drive, Niles, OH 44446. Kiernan received distributions of at least $47,180, with $47,180 distributed in 2015.

134. Unless specifically identified, these Defendants will collectively be referred to as "Defendants" or "Fraudulent Transferees."

IV. JURISDICTION AND VENUE

135. This is an action in which the matter in controversy exceeds the sum of $30,000, exclusive of interest, costs and attorney's fees.

136. Venue and jurisdiction are proper in Hillsborough County, Florida, because Hillsborough County, Florida, is the principal place of business for EFO LSI, which received distributions from LSI—likewise maintaining its principal place of business in Hillsborough County, Florida, at all times material—and then distributed tens of millions of dollars to the Fraudulent Transferees; the causes of action accrued in Hillsborough County, Florida; the Defendants conducted significant business in Hillsborough County, Florida; the transfers were made in Hillsborough County; the Defendants were operating, conducting, engaging in, or carrying on business or business ventures in this state and the Plaintiffs' injuries arose from those operations; and the torts were committed in Hillsborough County and/or caused harm in Hillsborough County, Florida. Therefore, this Court has jurisdiction and venue is proper pursuant to Fla. Stat. §26.012; §47.011; §48.193.

FACTUAL BACKGROUND

I. LSI AND EFO LSI WERE CONTROLLED BY THE SAME GROUP OF PEOPLE BOTH BEFORE AND AFTER THE CORPORATE NAME CHANGE.

137. As established by the trial court in the *Bailey* Litigation and affirmed by the Second DCA, the *Bailey* Defendants—including EFO LSI and LSI—conspired to "gut" Plaintiffs cutting edge business, reaping hundreds of millions of dollars in profits and destroying Spinal and then Spine in the process.

138. For instance, the same group of individuals that formed EFO LSI were also the ones controlling LSI and its subsidiaries (and thereafter LSI Hold Co.) It started when EFO Holdings and EFO Genpar, acting through Esping and Grammen, learned about the *Bailey* Plaintiffs' business when considering providing a loan to Spinal; liking what they saw, the *Bailey* Defendants decided they wanted to steal the business rather than fund it when Mr. Bailey and the existing funder were unwilling to turn the majority interest in the business over to EFO Holdings and EFO Genpar for peanuts.

139. To that end, the EFO Defendants and their principals began by filling the heads of Spinal officers and employees with lies about the principals of Spinal and Medical including outrageous statements regarding their character, including false allegations regarding misappropriation of funds by Mr. Bailey, and misrepresenting the financial wherewithal of the business and the ability to obtain capital. Some of the trial court findings are included, but given the 131-page Trial Order, the findings are merely a sampling.

140. By example, the trial court found:

a. "On November 8, 2004, a meeting was held at the Vinoy Hotel between St. Louis and Perry and EFO representatives, including Mr. Esping and Mr. Grammen…Those in attendance at the Vinoy meeting including St. Louis, his wife [Jill St. Louis], Mr. Esping, Mr. Grammen, and Ballard Castleman . . . ." Order at 46-47, ¶¶ 258 and 260.

b. "The meeting at the Vinoy Hotel was part of a pattern of contact between St. Louis and Perry, on one hand, and the EFO Defendants, on the other, in which the Defendants were conspiring to open a competing surgery center." *Id.* at 47, ¶ 265. And as the *Bailey* Defendants admitted, the people involved in discussions regarding the formation of EFO LSI included Robert Grammen, William Esping, Mike Surgen, and James St. Louis, D.O.

c. EFO LSI was created to hold an interest in LSI. As the EFO LSI Partnership Agreement states: "Section 1.3: Purpose of the Partnership is to acquire a membership interest in Laser Spine Institute, LLC, a Florida limited liability company (the "Company") and to acquire and manage various investment property and to engage in any other activities permissible by a limited partnership under the Act." (PX 928). EFO LSI was initially created in December 2004, shortly after Dr. Perry and Dr. St. Louis resigned from Laserscopic Spinal to create LSI. "Bill Esping approved the formation of EFO LSI." Trial Order at 66, ¶ 393.

d. "As of November 2004, it was decided that EFO, through EFO [LSI], would own 65 percent of LSI, St. Louis would own 25 percent, Perry would own 10 percent and Mr. Surgen would own 5 percent." *Id.* at 49, ¶ 278. Ultimately, "[i]n 2004, EFO LSI owned 55-56% of LSI and St. Louis owned 44-45%" *Id.* at 65, ¶ 386.

e. "The [initial] owners of EFO LSI include Mr. Esping, Mr. Grammen, St. Louis, Mr. Surgen, and various limited partners. The limited partners include Mr. Horne, Perry and Dr. Hamburg. Mr. Esping and his family own approximately 30% of EFO LSI; St. Louis owns approximately 22%; Mr. Grammen owns less than 5%; and Mr. Horne owns about 9%; St. Louis also owns about 4% of LSI." *Id.* at 65-66, ¶ 389.

141. When the EFO LSI partnership agreement was signed, the limited partners were Esping and/or WPE Kids Partners, LP, St. Louis, Mathew B. Milstead, Michael Surgen, Horne, John Ayres, Lee Weeks, CV Karnes Investments, Ltd., SW Pollock Investments, Ltd., Westfield Investments, Ltd., Ballard Castleman, Brian Kueker, Edith Smith, HPH Investments II, Julie Krupala, Nancy McCullough and Grammen.

142. EFO LSI was and at all times material has been controlled by its general partner, Cypress GP, LLC. Cypress GP, LLC is owned (or was at one point) by two other *Bailey* Defendants—EFO Holdings and EFO Genpar.

143. EFO Holdings, which was owned by the general partner, EFO Holdings Manager, Inc. (1%) and the sole limited partner Esping (99%). At least in 2007, EFO Holdings owned a 4.5% limited partner interest in EFO LSI.

144. EFO Genpar is 100% owned by the Esping Marital Deduction Trust #2. The director is Peter Wilson, the President and Secretary is Julie Krupala and the Vice President is Grammen. The Esping Marital Deduction Trust #2 is located at the same address as EFO Holdings and EFO Genpar is, upon information and belief, controlled, owned and/or managed by Esping.

145. Each of the individuals present at the initial formation meetings for LSI and EFO LSI maintained significant ownership interests in LSI and EFO LSI and as a result received millions of dollars in distributions as did their family and friends.

146. In December 2012, within a month after the original final judgment was entered in the *Bailey* Litigation and only two months after the Trial Order was issued, LSI conveniently and purposefully reorganized under a new entity, LSI Holdco (hereinafter "LSI Hold Co" or "Hold Co").

147. Upon information and belief, the purpose of the reorganization was to create roadblocks, delays and procedural hurdles for the *Bailey* Plaintiffs when they sought to recover and to otherwise shield LSI's assets. Once the Trial Order was issued, the *Bailey* Defendants were confronted with hundreds of factual findings outlining their conduct that paralleled a criminal enterprise. The *Bailey* Defendants scrambled to manufacture layers in their corporate structure to fraudulently defeat the *Bailey* Plaintiffs' collection efforts knowing that the case record below was

closed and Plaintiffs could not conduct any further discovery about their dealings until after any final judgment was actually final—many years down the road.

148. Specifically, within weeks of the trial court's issuance of the damning factual findings regarding their egregious conduct, the Board of Managers of LSI formed a new company under Delaware law. Upon information and belief, this restructuring occurred to shield assets. This Board of Managers was controlled by some of the same individuals involved in the original fraudulent conduct—namely, St. Louis, Grammen, Esping and Horne.

149. On January 1, 2013, the members of LSI entered into a new operating agreement with LSI Holdco that, among other things, transferred their membership interests in LSI to Holdco. Essentially, the owners of LSI assigned their respective interests in LSI to LSI Holdco in exchange for the same equivalent membership interests in LSI Holdco. As a result of this assignment, LSI Holdco became the sole member, manager and owner of LSI. LSI Holdco was not a defendant in the *Bailey* Litigation as it was formed after the initial final judgment was entered. There would be no reason to make this structural change other than to make it more difficult for Plaintiffs to ultimately collect when any judgment became final.

150. Under the 2013 LSI Operating Agreement, and as sole member of LSI, LSI Holdco managed, conducted, and controlled the affairs of LSI, and controlled the assets of LSI and the assets of LSI's subsidiaries. The Board of Managers of LSI Hold Co. controlled all aspects of Holdco and LSI and its subsidiary companies.

151. At or about the same time, EFO LSI followed suit and did the same thing. Specifically, EFO LSI joined in the creation of LSI Hold Co., and transferred its interests in LSI to LSI Holdco. Upon information and belief, the same wrongdoers maintained their positions on the Board of Managers of EFO LSI including St. Louis, Grammen, Esping and Horne and continued to maintain their interests in LSI Holdco.

152. Upon information and belief, EFO LSI's decision to transfer its interests to LSI Holdco was made by individuals from the same group that made the decision to transfer LSI's interests to LSI Holdco, namely, St. Louis, Grammen, Esping and Horne among others including those friends and family that they controlled.

153. This corporate restructuring added a layer of corporate fiction between LSI and the interest holders receiving distributions. LSI profits was then rolled up to LSI Holdco and then distributed these amounts to LSI Holdco's members, but, as noted above, because of the timing of its formation, LSI Holdco was not a party to the *Bailey* Litigation.

154. The *Bailey* Defendants hoped this restructuring would allow them to extract the profits undetected given it did not exist until after the initial judgment. The Board of Managers, which included Horne, St. Louis, Grammen and Esping, continued to exercise dominion and control over LSI and other LSI subsidiaries, the day-to-day affairs and operations, and their respective property. Notwithstanding the additional corporate layer, upon information and belief, nothing changed in the operations of LSI's business or its ownership other than that the wrongdoers

saw the writing on the wall given the trial court's extensive factual findings that established their illegal conduct that would ultimately give rise to a tremendous damages award.

155. At the time that EFO LSI restructured its interests and in keeping with their desire to stymie the *Bailey* Plaintiffs' collection efforts, *Bailey* Defendant EFO Holdings filed for bankruptcy in December 2012, barely two months after the Trial Order was issued. Upon information and belief, this restructuring was yet another effort to impede the Bailey Plaintiffs ability to collect on any judgment. Notably, that Texas bankruptcy court preserved all claims for Plaintiffs in the original *Bailey* Litigation and this case.

II. LSI DEVELOPED A MULTI-MILLION DOLLAR SPINAL SURGERY OPERATION AND EFO LSI AND ITS MEMBERS REAPED THE BENEFIT FOR YEARS.

156. After the trial court issued the Trial Order in October of 2012, the *Bailey* Litigation was essentially stayed during the pendency of two separate appeals, with only a brief period where jurisdiction at the trial court level after the first appellate ruling in February of 2016, while the case was remanded and an amended judgment was entered.

157. On remand after the first appeal, other than awarding punitive damages, the trial court issued the same compensatory damages award. Because jurisdiction in the trial court did not exist during the various appeals, Plaintiffs could not conduct discovery as it pertains to the assets of the *Bailey* Defendants, keeping Plaintiffs in the dark until July of 2019, after the entry of the July 3, 2019 final judgment when the cloak was finally removed and jurisdiction returned to the trial court.

158. By all accounts and based upon publicly available information during the various appeals, LSI was a profitable and growing multi-million-dollar operation, raking in hundreds of millions of dollars during the pendency of the *Bailey* Litigation.

159. LSI opened its first surgical facility in Tampa, Florida in 2005, after soliciting away Spinal's key employees, stealing its business plan and otherwise conspiring to put Spinal out of business. The trial court, based upon the information available at the time the case was tried in 2010 and 2011, confirmed LSI's financial success: Trial Order at 68, ¶¶ 403-08.

- In 2005, LSI's revenue was between approximately $3-12 million; in 2006 revenue was $26-$29 million in 2007, LSI's revenue was $64-$65 million in 2008, revenue was $91 million and LSI's revenues for 2009 were projected to be $103 million. Projected revenue for 2010 was $110 million.

- In 2006, LSI's net income was $12-$12.3 million; in 2007, LSI's net income was $30-$31 million; in 2008, LSI's net income was $24-$28.5 million; for 2009, LSI's net income was estimated at $15-27 million.

- LSI'S gross revenues: 2005: $3 million; 2006: $26 million; 2007: $64 million; 2008: $90 million; 2009: $100 million. Projected revenue for 2010 was $110 million. Net profit in 2006 was $12 million; 2007 was $30 million; 2008 was $24 million and 2009 was $15 million.

- LSI's patient totals were as follows: 2005 - 368 patients; 2006 - 1,429; 2007 - 3,072; 2008 – 4,156 with a projection for 2009 of 5,000 patients.

- The approximate number of surgeries performed by LSI, by year, are as follows: 2005 - 60 surgeries; 2006 - 1,400 surgeries; 2007 - 2,200 surgeries; 2008 - 3,400 surgeries; 2009 - 4,100 surgeries; and 2010 - 4,600 surgeries projected.

- And the independent valuations performed of LSI showed incredible financial success:

- The J.P. Morgan Chase valuation document was "created by the management team of Laser Spine Institute, LLC" in 2008. The estimated value of the company based on projections was $320 million.

- Sometime after July 31, 2009, Goldman Sach's valued LSI at between $248 million and $428 million.

- On December 10, 2009, Summit Partners valued LSI at $172 million enterprise value, $476 million equity value, and value to shareholders of $550 million.

- LSI stock has been purchased at various times, giving LSI an enterprise value of $100 million. A recent stock purchase by Mr. Horne was based upon a valuation of LSI of $100 million. Within that same time period, Mr. Horne and Mr. Grammen agreed that the valuation of LSI was $100 million.

160. The trial court's factual findings regarding revenues and profits were based on LSI's own financial data produced in the litigation, admitted into evidence and not disputed by the *Bailey* Defendants at trial. After the Second DCA issued its opinion on December 28, 2019, on the second remand, the trial court awarded Spinal and Medical the disgorgement award of $264 million plus prejudgment interest, as well as $6.8 million to Spine.

161. Plaintiffs now understand that while the case was on appeal the gross revenues for LSI, and therefore LSI Holdco, continued to increase year over year to over $268 million per annum in 2014, with a net income that year of over $71 million. Even though a Financial Statement of LSI Holdco shows losses in net income from 2015-2017, it shows continued huge gross revenues (2015 gross revenue was even $17 million more than 2014, and if the gross revenue rate through the first 2/3 of 2017 continued throughout the rest of that year, the gross revenue for 2017

would have been approximately $322.5 million) and is the evidence of the looting and denuding of these companies drain every last bit of value out of the company so that there would be nothing left for Plaintiffs when they ultimately received a final judgment consistent with the evidence, the applicable law and the findings in the Trial Order. *See* Table below (data taken from that Financial Statement).

162. In 2015-2016, LSI spent $56 million on a 176,000-square-foot headquarters in Tampa, to accommodate 25% more patients. Plaintiffs had no idea prior to 2019 the financial situation at the company was other than what was publicly available.

163. Despite the millions of dollars in revenues and profits, LSI abruptly closed its doors and fired hundreds of employees without warning at the end of February 2019, just two months after the Second DCA issued its appellate opinion in the *Bailey* Litigation. While that was a surprise to Plaintiffs, it was likely not to the *Bailey* Defendants, who were well aware that they were systematically fleecing LSI of its enterprise value and using those amounts (amounts needed for operating capital) to pay themselves and the other investors.

164. Indeed, as Plaintiffs learned afterwards, while the *Bailey* Litigation was winding its way through the judicial system, the members/owners of LSI received tens of millions of dollars in distributions from LSI, including the largest interest holder, EFO LSI.

165. From its inception, EFO LSI—whose partners were originally comprised of only the individuals that committed the wrongful acts in the first instance—had been reaping the profits

of its wrongdoing through its interest in LSI. EFO LSI's initial operating agreement indicates that it was to receive a 65% interest in LSI, although at later points it may have sold some its interests.

166. Nevertheless, EFO LSI's interest in LSI and later in LSI Holdco, translated into nearly a $150 million of distributions to its partners. Upon information and belief, the charts below provide a year-by-year break down of EFO's LSI's yearly distributions directly from LSI and/or LSI Hold Co.:

2006	**2007**	**2008**	**2009**	**2010**
$6,812,614	$12,952,568	$22,447,811	$4,119,643	$6,819,394
2011	**2012**	**2013**	**2014**	**2015**
$3,271,659	$5,582,768	$11,708,195	$16,068,316	$45,040,473

167. Over the course of LSI's existence, EFO LSI pocketed over $130,000,000, purely in distributions from LSI. This amount does not include any salaries or bonuses paid to any of its partners including those paid to St. Louis, Horne or anyone else. By example, in 2009, Horne earned more than $1 million dollars a year in compensation and bonuses.

168. At the time of these distributions, taking into account the true assets and liabilities of LSI at fair value, the *Bailey* Defendants were excising all of the working capital such that LSI was effectively insolvent.

169. The chart below provides a year by year breakdown of LSI (and later LSI Holdco's) yearly distributions to its members, nearly enough to satisfy the final judgment:

2006	2007	2008	2009	2010
$9,266,229	$28,697,503	$47,894,179	$8,236,445	$14,871,803
2011	**2012**	**2013**	**2014**	**2015**
$7,328,396	$13,247,289	$28,153,481	$38,902,232	$118,973,944

170. Between 2006-2014, LSI distributed almost $200 million to LSI and later LSI Holdco's members—many of whom are the same individuals controlling EFO LSI. Upon information and belief, in total $315,571,501 was distributed to LSI members and subsequent transferees (i.e., EFO LSI and its members) between 2006 and 2015.

171. This is simply the profits distributed, not the "exorbitant salaries and bonuses to [officers and] employees while taking no action [to] address the company's debt."[7] Horne, St. Louis and others were included in those not simply receiving distributions but also receiving significant compensation as employees.

172. The distributions to some of the individual *Bailey* Defendants and family members translated to many millions of dollars. For example, in addition to his interest in EFO LSI, Defendant St. Louis individually received over $44 million in distributions directly from LSI and later LSI Holdco, but separately also received additional amounts in distributions paid directly or through family members. These amounts did not include his substantial salary and any bonuses he received while employed by the company as an officer and as a surgeon at LSI, and the salary

[7] https://www.tampabay.com/health/debt-lawsuits-big-spending-led-to-the-death-of-laser-spine-institute-20190722/

and bonuses paid to his family members that obtained employment at LSI. This corporate graft was not limited to St. Louis as the family members of other *Bailey* Defendants were also on the corporate gravy train.

173. To illustrate, Defendant St. Louis' now ex-wife, Defendant Jill Diane St. Louis received over $3 million in distributions directly from LSI and/or LSI Holdco and then another $4.7 million through her interest in EFO LSI, so nearly $8 million dollars individually was paid to her. This also does not include the amounts Defendant St. Louis and his wife received from sales of shares of the interests in LSI over time or loans they received from LSI. And his namesake son, Jimmy, upon information and belief, was also receiving salary, benefits, bonuses and other compensation from the company.

174. Similarly, Defendant Horne, through a series of companies owned or controlled by him, including Horne Management and WH, LLC, collected more than $23 million, above and beyond his distributions from EFO LSI. His son too was receiving salary and other benefits from the company.

175. EFO LSI also improperly transferred millions of dollars of capital contributions back to its members in 2015 through a recapitalization event thereby guaranteeing insolvency. Before and after the recapitalization event, the *Bailey* Defendants were aware that there was a substantial likelihood that the appellate court would issue an opinion that reversed the trial court's damages award given that Plaintiffs' damages went undisputed at trial.

176. Thus, while the *Bailey* Litigation was ongoing, EFO LSI continued to take for themselves the gains that belonged to Plaintiffs—who received their initial entitlement to disgorgement damages in October of 2012.

177. By the time the Plaintiffs obtained the Second Amended Final Judgment on July 3, 2019, EFO LSI had been quietly disbursing more than $130 million to its interest holders, leaving EFO LSI insolvent and unable to pay the Plaintiffs. Or so it claims.

178. This too was a calculated decision, one EFO LSI had been planning for from the start when the litigation was commenced.

III. LSI AND EFO LSI LOOT THE COMPANIES OF EVERY DOLLAR TO PREVENT CREDITORS FROM RECOVERING

A. LSI Reorganized to be Held in LSI Holdco. and EFO LSI Transferred its interests in LSI to LSI Holdco.

179. Despite the millions flowing out of LSI and EFO LSI for years, the *Bailey* Defendants' greed could not be quelled.

180. The directors and officers of LSI and EFO LSI systematically drained every last dollar from the companies, lining their pockets to the greatest extent possible, and making sure that there was nothing available from which the *Bailey* Plaintiffs could collect.

181. As described above, part of *Bailey* Defendants' plan was to create the legal fiction of LSI Holdco and to transfer EFO LSI's interests to LSI Holdco. Another part of the plan was to extract every dollar from LSI (and LSI Holdco) and EFO LSI, leaving each entity insolvent. When EFO LSI had no cash on hand to extract, EFO LSI and LSI Holdco worked together (through the

same group of individuals) to extract any remaining value in LSI Holdco to be distributed to its direct and indirect members through a recapitalization issued and afforded by a $150 million loan from Texas Capital Bank and a consortium of other banks.

B. LSI Holdco and EFO LSI Decide to Enter into a Credit Agreement with Texas Capital Bank for $150 Million.

182. Upon information and belief, LSI internally acknowledged that it was experiencing serious deficiencies in, and failures of, internal financial controls and accounting procedures during and after 2015. This of course would not be surprising in and of itself after LSI had distributed more than $200 million by 2014. Essentially, LSI was distributing any profits as they were made.

183. This practice of shelling out the profits put LSI in a precarious financial position. As Plaintiffs learned during post-judgment discovery, LSI Holdco wrote-down approximately $34 million of accounts receivable for fiscal year 2015 and was forced to establish a reserve for bad debt of approximately $22.5 million for fiscal year 2015. These write downs and reserves required LSI Hold co to restate its financial results for fiscal year 2015.

184. Specifically, the revenue for 2015 was reduced from $322 million to $263.5 million and its EBITDA was reduced from $74.6 million to $16.1 million for the twelve-month period ending December 31, 2015. Indeed, after obtaining the funding for the recapitalization, LSI Holdco thereafter failed to meet its debt service going forward requiring that bank to amend its loan agreements more than once.

185. LSI Holdco, through the *Bailey* Defendants and others, later admitted that it had a "dire need of immediate liquidity" since 2015, and that it was facing serious financial issues.

186. According to an internal e-mail from one of the members of the Board of Managers to several of the other members of the Board of Managers in December 2015, the "*Board decided that our company was too special to sell. Because several members of the Board wanted to 'take some money off the table' we decided to put some debt on the company through a dividend recap instead of selling a piece of the business*."

187. Despite the existing and impending financial issues facing LSI Holdco, about which the Defendants knew or should have known, LSI Holdco approached Texas Capital Bank, their then existing senior secured lender, to borrow a substantial amount of additional money not to bolster the company's operating capital, but, rather, to make distribution payments to the owners/members of LSI Holdco.

188. On June 23, 2014 the Board of Managers of LSI Holdco held an "Emergency Meeting." Present at the meeting in person or telephonically were: Horne (Chairman and representing Horne Management), Esping, Robert Basham, Grammen, Chris Sullivan, Edward De Bartolo, Ray Monteleone (Secretary), James Palermo, Dotty Bollinger (COO), Mark Andrzejewski, Jamie Adams, Mark Marriage, Briley Cienkosz and Josh Helms.

189. Among other topics, on the agenda for this meeting was the discussion "New Senior Debt Facility (For Debt Dividend Recap & Growth Capital)." Grammen led the discussion on this topic. Edward De Bartolo made a motion, seconded by Chris Sullivan, to approve management

pursuing a new senior debt facility with a limit of $270 million, and a recap up to $220 million. The motion authorized "management to execute all necessary documents to facilitate the closure on the new debt facility." The Board passed the motion unanimously.

190. Through this dividend recapitalization loan among certain LSI Holdco controlled entities and Texas Capital Bank, as the leader of a consortium of banks, the Board of Managers leveraged the assets of LSI Holdco and its subsidiaries for their own personal advantage and essentially gutting LSI Holdco and its subsidiaries (and as a result EFO LSI).

191. Thereafter, on or about July 2, 2015, the Defendants and other members of the Board of Managers caused certain of the LSI Holdco entities—namely, LSI, LSI Management, Laser Spine Institute Consulting, LLC and Medical Care Management Services, LLC—to enter into a $150 million credit agreement with Texas Capital Bank. The obligations under the credit agreement were guaranteed by LSI Holdco and the remainder of the LSI entities.

192. In connection with the Credit Agreement, LSI (and other LSI entities) agreed, among other things, to maintain: (a) certain financial covenants; (b) certain cash balances; and (c) its primary depository, purchasing and treasury services with Texas Capital Bank.

193. Through their desire to "take money off the table" and without regard to the impact on the business, the Board of Managers caused substantially all of the Companies' assets to be pledged to Texas Capital Bank to secure and serve as collateral for the credit agreement. The bulk of the proceeds from the credit agreement were deposited by Texas Capital Bank into the bank account of LSI Management. EFO LSI was then distributed its pro rata share.

194. Specifically, despite facing existing and impending financial issues, the Board of Managers immediately authorized and ratified an amount equal to $110,473,942 of the loan proceeds to be distributed; at the same time, it authorized and ratified the transfer of such proceeds for the direct or indirect benefit of EFO LSI and its members, the other members of the Board of Managers.

195. The Board of Managers, which included Horne, Grammen, St. Louis and Esping, did this despite being keenly aware that the company needed working capital and that the *Bailey* Litigation (then on appeal) would likely result in a significant damages award being issued in Plaintiffs' favor.

196. The Board of Managers took this action in July of 2016 knowing that LSI and LSI Holdco faced growing competition and declining medical reimbursements. This information was likewise known to EFO LSI, Grammen, Esping, Horne and St. Louis.

197. As a direct result of these distributions, each of the LSI entities and EFO LSI became insolvent. All of this information was unavailable to Plaintiffs, however, only learning of the corporate fleecing after they obtained a final judgment in July of 2019.

C. LSI and its Subsidiaries Default on the Loan

198. Predictably, the financial viability of LSI and the other LSI Entities and EFO LSI deteriorated rapidly thereafter, as shortly thereafter, none of the entities were able to meet their financial obligations—including LSI's obligations under the credit agreement with the Texas Capital Bank consortium.

199. Barely one year later, by at least as early as the middle of 2016—a year after over $110 million was distributed to its members—LSI defaulted under the credit agreement, requiring the credit agreement to be amended and the lender to waive LSI's defaults. On May 26, 2016 and June 9, 2016, Texas Capital Bank issued notices of default to LSI. These defaults continued thereafter with regularity and LSI simply continued to kick the can down the road as long as it could.

200. In addition, in June 2016, the Companies' deteriorating financial condition caused LSI to lay off 70 employees, which was then about 6% of its workforce.

201. On November 18, 2016, LSI entered into a Limited Waiver and First Amendment to Dividend Loan with Texas Capital Bank ("First Amendment").

202. Pursuant to the terms of the First Amendment, Texas Capital Bank listed a total of twenty (20) different defaults that had occurred and were continuing under the credit agreement, which defaults Texas Capital Bank agreed to waive pursuant to certain terms and conditions contained therein.

203. Despite the First Amendment, the financial condition continued to worsen and deteriorate. In fact, in 2016, LSI failed to make approximately $7.7 million in payments due to the landlord of the Tampa facility.

204. Less than one year after the First Amendment, LSI was again in default of the credit agreement. Consequently, on September 29, 2017, the LSI entities and Texas Capital Bank entered into a Limited Waiver and Second Amendment, which listed seven (7) additional defaults under

the credit agreement ("Second Amendment"). Pursuant to its the terms, Texas Capital Bank agreed to waive the additional defaults on the conditions contained therein.

205. From and after 2015, the Defendants continued to mismanage LSI's operations and finances, causing further financial deterioration and driving LSI and its entities deeper into insolvency. As EFO LSI was managed by many of the same individuals as those controlling LSI Holdco and its subsidiaries, EFO LSI and its members knew or should have known of the deteriorating financial condition. Upon information and belief, EFO LSI and LSI Holdco worked in concert to ensure this result.

206. For example, despite these known financial challenges, in 2015-2016, LSI greatly increased their fixed expenses by adding 3 operational facilities and a multimillion-dollar buildout of its corporate headquarters in Tampa. EFO LSI as LSI's largest interest holder was well aware of the financial challenges as well as the pending *Bailey* appeal.

207. Further as the general partner of EFO LSI, Cypress GP, LLC is owned/managed by the same individuals on the Board of Managers of LSI (i.e., Esping and Grammen), EFO LSI was well aware of and directly involved in LSI's deteriorating financial condition and decision making process.

208. Defendants' plan to loot LSI is evidenced in the management of the company and the continued desire to insulate themselves from liability in the *Bailey* Litigation. By example, in 2014, to extract more liquidity for its interest holders, LSI implemented a self-insurance programs for employees' health insurance and malpractice insurance rather than utilizing traditional

outsourcing that had historically been employed. Looking for ways to stop hemorrhaging cash—having chosen to instead take for themselves the infusion of capital—they chose instead to expose LSI employees to the possibility that necessary coverage for medical care would not be available. Indeed, after LSI became insolvent, it was unable to cover their self-insured retention amounts or pay medical bills, leaving those individuals without any health or malpractice insurance without coverage.

209. LSI's CEO in 2019 claimed that it shuttered because "LSI was unable to secure the financing to meet the banks' requirements. Thus, we had no choice other than to close our doors that afternoon. We deeply regret that, as a result, we were forced to release our employees that afternoon…"[8]

210. This, of course, completely ignores the fact that the closure was the result of greed and the desire to stay ahead of the *Bailey* Plaintiffs, so that there would be no assets from which they would collect. This avarice culminated in the $150 million dividend recap, issued even though Grammen, Esping, Horne and St. Louis each knew that the company would not have the financial ability to repay the loan in light of the judgment. The *Bailey* Defendants—and others including Grammen, Esping, Horne and St. Louis—knew that LSI would likely fail and, importantly, that it would not have the liquidity to pay the amounts owed to Plaintiffs (*Joe Samuel Bailey v. James S. Louis, D.O., et. al*., Case No. 06-08498).

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[8] https://www.bizjournals.com/tampabay/news/2019/03/07/laser-spine-institute-ceo-shares-details-on-why.html

D. EFO LSI and the Defendants knew these transfers of the dividend recap were particularly problematic

1. LSI and EFO LSI Obtained Covenants Not to Sue from Texas Capital Bank in Exchange for Releases from Liability

211. Looking to avoid detection, LSI (and other LSI entities) and EFO LSI sought to protect and insulate themselves from any claims related thereto in at least two ways. First, EFO LSI and others sought releases from Texas Capital Bank in connection with claims that the bank might have against EFO LSI and other distributees in respect of the dividend loan. Second, EFO LSI and others sought to hide and cover-up the patently unfair and unreasonable manner in which they controlled the affairs of LSI by manipulating the corporate structure of LSI.

212. In November of 2016, EFO LSI and the members of the Board of Managers continued their pattern and practice for their own benefit by using their control over LSI to protect and insulate themselves. Specifically, knowing of LSI's repeated defaults under the "recap" loan and faced with mounting evidence of potentially fraudulent transfers and liability of EFO LSI, and members of the Board of Managers' liability for their actions or omissions, EFO LSI and members of the Board of Managers attempted to inoculate themselves from liability and prevent any financial recovery to the *Bailey* Plaintiffs.

213. On November 18, 2016, the members of LSI, LSI Hold Co., including EFO LSI entered into an agreement to release Texas Capital Bank from any claims arising out of the credit agreement. Upon information and belief, at the time these documents were executed, the interest holders of LSI pressed hard to obtain releases for themselves in an effort to avoid exposure when

their fraudulent conduct was uncovered. Although Texas Capital Bank would not agree to a full general release, leveraging their relationship with the bank, they were able to secure a covenant not to sue by the bank to all interest holders (including EFO LSI) for any claim Texas Capital Bank may have against them relating to the dividend loan.

214. The signatories to this agreement included the LSI investors, namely: SLG LSI Investment, LLC, LSI Holdco, EFO LSI, Ltd., Horne Management Inc., MMPerry Holdings, LLP, DBF-LSI, CTS Equities, LP, RJRPT, Ltd, RDB Equities, LP, WH, LLC, Horne Management, Inc.St. Louis, and Grammen.

215. Upon information and belief, the EFO Defendants knew of the potential for a fraudulent transfer suit and so engaged a bankruptcy lawyer who advised on the fraudulent transfer risks. Additionally, upon information and belief, they informed Texas Capital Bank of the potential risk.

2. LSI Holdco Amended its Operating Agreements in an Effort to Limit Liability.

216. On the same day as EFO LSI agreed to release Texas Capital Bank, EFO LSI and LSI Hold Co. together made the decision to limit liability despite their illegal conduct. Upon information and belief, the Board, including many of the same individuals holding majority interests and making controlling decisions for EFO LSI, e.g., Horne, Esping, and Grammen, together made the decision to amend LSI Holdco's operating agreement in an attempt to remove LSI Holdco's fiduciary obligations.

217. Before November of 2016, LSI Holdco's operating agreements contained iterations of the following provisions concerning "Liability of Members of the Board of Managers":

> 3.12 Liability of Members of the Board of Managers.
>
> **(a) Notwithstanding anything to the contrary herein, this Section 3.12 shall not affect the liability** or duties of any officer or member of the Board of Managers (or Persons controlling any member of the Board of Managers) of the Company.

See, e.g., *Limited Liability Company Agreement of LSI Holdco LLC*, dated effective as of January 1, 2013 (emphasis added); *Amended and Restated Limited Liability Company Agreement of LSI Holdco LLC*, dated effective as of January 1, 2015 (emphasis added).

218. By its express terms, the Operating Agreement did not "affect the liability or duties of" the Defendants and other members of the Board of Managers of LSI Holdco (among others) "[n]otwithstanding anything to the contrary."

219. On November 18, 2016, the Defendants through the participation of EFO LSI, among others, caused certain amendments to be made to the governing corporate documents of LSI Holdco attempting, among things, to specifically exonerate and release themselves from any liability related to the distributions that had been wrongfully made.

220. On November 18, 2016, the Defendant and other members of LSI Holdco executed LSI Holdco's *Second Amended and Restated Limited Liability Company Agreement.* EFO LSI and the members of the Board of Managers of Holdco manipulated their control of LSI Holdco to absolve themselves from liability in this amendment by replacing the above- referenced "Liability of Members of the Board of Managers" provision with the following:

> **3.6 Liability of Members of the Board of Managers.**
> a. To the maximum extent permitted by applicable law, all fiduciary duties of any Manager to the Company or any Member are hereby eliminated. Without limiting the foregoing, each Member hereby waives any claim or cause of action against the present and former Managers, or any of their respective Affiliates, employees, agents, and representatives, for any breach of any fiduciary duty to the Company or its Members by any such Person, including as may result from a conflict of interest between the Company or any of its Subsidiaries and such Person. Subject to compliance with the express terms of this Agreement, a Manager shall not be obligated to recommend or take any action as a Manager that prefers the interests of the Company or any of its Subsidiaries or the other Members over the interests of such Manager or its Affiliates, heirs, successors, assigns, agents or representatives and the Company, and the Members hereby waive all fiduciary duties, if any, of the Board of Managers to the Company and the Members, including in the event of any such conflict of interest. Notwithstanding the foregoing, nothing herein shall eliminate the implied duties of any Manager or Member of good faith and fair dealing under Delaware law.

(emphasis added).

221. This Revised Liability and Release Provision purports to grant, without any consideration whatsoever, members of EFO LSI and the other members of the Board of Managers waivers (through the elimination of fiduciary duties) for all claims or causes of action for any breach of any fiduciary duty to LSI Holdco, including prior breaches of fiduciary duty in connection with the distributions and conflicts of interest between LSI Holdco and EFO LSI.

222. These fiduciaries of LSI Holdco (Grammen, Esping, Horne) sought this provision to leave LSI Holdco (and subsequently EFO LSI) with nothing but staggering debt. Indeed, through the foregoing language—which was added after the credit agreement was executed, the distributions made, and defaults thereunder—the Defendants and the other members of the Board of Managers attempted to: (A) Eliminate all fiduciary duties they owed to LSI Holdco; (B) Obtain

from all other members of LSI Holdco waivers of any claims or causes of action against "the present and former Managers" for any breach of any fiduciary duty to LSI Holdco or its members, including as may result from a conflict of interest; (C) Receive *carte blanche* protection to prefer their own interests over the interests of LSI Holdco and other members; (D) Obtain *ex post facto* ratification, approval, and consent to "all actions taken on or prior to the date [of the Second Restated LSI Holdco LLC Agreement] for their conduct in conjunction with the Dividend Distribution, the Dividend Loan, and other related transactions; and (E) Obtain *ex post facto* releases LSI from Holdco members of claims or causes of action for any breach of express or implied duty (including any breach of any fiduciary duty) in connection with those transactions.

223. The intent and design of the Release Agreement and these foregoing changes to LSI Holdco's operating agreements was clear: the Defendants and the other members of the Board of Managers (A) looted LSI, Holdco, and the Companies of their value through the Dividend Loan, Dividend Distributions, and related transactions; (B) realized that they were exposed to tremendous liability for this corporate looting; and (C) abused their control and dominion over LSI, LSI Holdco, and the LSI companies (and their collective assets) by modifying the corporate governance documents in order to try to absolve themselves from existing liabilities.

E. LSI and EFO LSI did not Seek Any Legitimate Assistance in Trying to Restructure the Company

224. Despite being insolvent, and in serious default on the credit agreement from and after mid-2016, LSI and EFO LSI failed to engage restructuring professionals to assist them in

evaluating restructuring alternatives that should have been investigated and pursued as far back as 2016. They had, however, consulted with a bankruptcy lawyer about fraudulent transfers.

225. Rather, LSI did not engage with restructuring counsel until May 2018, long after the company could be salvaged and after the interest holders, including the wrong doers, had taken tens of millions of dollars "off the table" and taken steps to try to inoculate themselves from liability.

226. Even after engaging such counsel at the eleventh hour, LSI then failed to institute any formal bankruptcy or insolvency proceedings for nearly a year after, all the while LSI continued to incur debts, which in turn further deepened and increased their insolvency. The organization failed to take timely steps to address changing market conditions, the distributions and years of draining profits from the company without regarding the working capitalization necessary to ensure the long term viability and otherwise failing to timely consider restructuring options, all of which resulted in LSI's demise.

227. The demise did not impact EFO LSI or the other distributes, however, because they used the time to ensure that they quenched their insatiable thirst for cash, paying themselves several hundred million dollars and exacting for themselves various mechanisms to try to avoid liability when the house came crashing down.

228. All conditions precedent to the filing of this action have been performed, extinguished or were otherwise waived.

229. Plaintiffs have been forced to retain the undersigned counsel and are required to pay the reasonable attorneys' fees and costs.

COUNT I

(Against all Defendants)

AVOIDANCE AND RECOVERY OF THE TRANSFERS UNDER FLA. STAT. §§726.105(1)(b), 726.108 AND 726.109

230. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

231. The Plaintiffs sue the Defendants to avoid and recover the Transfers pursuant to Chapter 726, *et seq.,* Florida Statute.

232. EFO LSI distributed millions of dollars to the Defendants (the "**Transfers**") and did not receive any value in return. A chart of some the Transfers is attached as Exhibit A and incorporated herein by reference. Upon information and belief, the Defendants also received additional unlawful distributions.

233. The Transfers constitute transfers of EFO LSI's property to and for the benefit of the Defendants.

234. Pursuant to Chapter 726, the Plaintiffs may avoid any transfer of an interest of EFO LSI in property or any obligation incurred by EFO LSI that is voidable under applicable law by a creditor holding an unsecured claim.

235. Chapter 726 provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation: without

receiving reasonably equivalent value in exchange for the transfer or obligation, and the debtor: (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

236. EFO LSI was balance sheet insolvent because it owed the Plaintiffs upon the first tortious act. The assets of EFO LSI were at all times less than the amount owing Plaintiffs.

237. Alternatively, the transfer rendered EFO LSI insolvent because the transfer was financed and the incurrence of the indebtedness, coupled with the existing liability to Plaintiffs and others easily outstripped the assets of EFO LSI.

238. Alternatively, the transfer left EFO LSI with an unreasonably small amount of capital to operate because EFO LSI was, after the judgment, unable to operate and forced into liquidation. Had it been properly capitalized, EFO LSI may have been able to operate.

239. EFO LSI received less than reasonably equivalent value in exchange for the Transfers because EFO LSI received nothing in exchange for the Transfers. The Transfers were dividends or insider payments to insiders with no legitimate right to payment as creditors and thus provided no value to LSI or its creditors.

240. At the time of the Transfers, EFO LSI (A) was engaged in a business or transaction, or was about to engage in a business or a transaction, for which any assets or property remaining with EFO LSI after the Transfers were made was unreasonably small in relation to the business or

transaction, or (B) intended to incur, or believed or reasonably should have believed that it was incurring, debts beyond its ability to pay them as they became due.

241. As a result of the transfers, Plaintiffs, as unsecured creditors of EFO LSI, have been damaged and, pursuant to Chapter 726, Plaintiffs may avoid the Transfers in respect of the Defendants.

242. The Defendants were either the first or subsequent transferee of the Transfers and were otherwise beneficiaries of the Transfers as described herein, or for whose benefit the Transfers were made and, as a result, the Plaintiffs are entitled to avoid the Transfers as voidable in respect of the Defendants.

WHEREFORE, the Plaintiffs demand judgment against Defendant: (i) avoiding the Transfers in respect of the Defendants; and (ii) such other and further legal and equitable relief as the Court deems just and proper.

COUNT II

(Against all Defendants)

AVOIDANCE AND RECOVERY OF THE TRANSFERS UNDER FLA. STAT. §§726.106(1), 726.108 AND 726.109

243. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

244. The Plaintiffs sue the Defendants to avoid and recover the Transfers pursuant to Chapter 726, *et seq.,* Florida Statute.

245. EFO LSI distributed millions of dollars to the Defendants (the "**Transfers**") and did not receive any value in return.

246. The Transfers constitute transfers of EFO LSI's property to and for the benefit of the Defendants.

247. Pursuant to Chapter 726, the Plaintiffs may avoid any transfer of an interest of EFO LSI in property or any obligation incurred by EFO LSI that is voidable under applicable law by a creditor holding an unsecured claim.

248. Chapter 726 provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation without receiving reasonably equivalent in value exchange for transfer or obligation and the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation.

249. EFO LSI was balance sheet insolvent because it owed the Plaintiffs upon the first tortious act. The assets of EFO LSI were at all times less than the amount owing Plaintiffs.

250. Alternatively, the transfer rendered EFO LSI insolvent because the transfer was financed and the incurrence of the indebtedness, coupled with the existing liability to Plaintiffs and others easily outstripped the assets of EFO LSI.

251. Alternatively, the transfer left EFO LSI with an unreasonably small amount of capital to operate because EFO LSI was, after the judgment, unable to operate and forced into liquidation. Had it been properly capitalized, EFO LSI may have been able to operate.

252. EFO LSI received less than reasonably equivalent value in exchange for the Transfers because EFO LSI received nothing in exchange for the Transfers. The Transfers were

dividends or insider payments to insiders with no legitimate right to payment as creditors and thus provided no value to LSI or its creditors.

253. As a result of the transfers, Plaintiffs, as unsecured creditors of EFO LSI, have been damaged and, pursuant to Chapter 726, Plaintiffs may avoid the Transfers in respect of the Defendants.

254. The Defendants were either the first or subsequent transferee of the Transfers and were otherwise beneficiaries of the Transfers as described herein, or for whose benefit the Transfers were made and, as a result, the Plaintiffs are entitled to avoid the Transfers as voidable in respect of the Defendants.

WHEREFORE, the Plaintiffs demand judgment against Defendant: (i) avoiding the Transfers in respect of the Defendants; and (ii) such other and further legal and equitable relief as the Court deems just and proper.

COUNT III

(Against all Defendants)

AVOIDANCE AND RECOVERY OF THE TRANSFERS UNDER FLA. STAT. §§726.105(1)(b), 726.108 AND 726.109

255. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

256. The Plaintiffs sue the Defendants to avoid the Transfers pursuant to Chapter 726, *et seq.,* Fla. Stat.

257. EFO LSI distributed over $100 million to the Defendants and returned their capital contributions for their benefit and did not receive any value in return. Therefore, these constitute transfers of an interest of EFO LSI in its property to and for the benefit of the Defendants.

258. Pursuant to Chapter 726, the Plaintiffs may avoid any transfer of an interest of EFO LSI in property or any obligation incurred by EFO LSI that is voidable under applicable law by a creditor holding an unsecured claim.

259. Chapter 726 provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud any creditor of the debtor.

260. The Transfers were made with the actual intent to hinder or delay its creditors. Specifically, the following badges of fraud are present indicating an actual intent to hinder creditors:

a. the transferors consulted with counsel on fraudulent transfer liability and were aware of the voidability of the transaction but did not disclose it to the judgment creditors;

b. the transfers were concealed and no discovery responses described the transfers;

c. a suit was pending that could result in a large judgment;

d. the transfer was to insiders, authorized by insiders, and in violation of corporate governance principles;

e. after the transfers, several persons involved subsequently attempted to shield, conceal or remove assets by acquiring homesteads, having insider liens placed on homesteads, and otherwise shielding the assets;

f. the transfers were timed suspiciously and appear to be based on the impending judgment and collection, not business reasons;

g. these assets transferred were essential business capital of the EFO LSI Defendants;

h. essentially all the value of the EFO LSI entity was transferred out to insiders; and

i. the transfer rendered the transferor insolvent (or was made while the transferor was insolvent) because the transferor pledged substantially all of its assets to make a payment to insiders when it already owed the Plaintiffs.

261. The Transfers were for the benefit of the Defendants.

262. Before the Transfers, there was a significant risk that a judgment would be entered in the *Bailey* Litigation disgorging EFO LSI's wrongful gains. The transfers reduced—and prevented the recovery of additional—available funds to satisfy that judgment, which hindered and delayed EFO LSI's creditors. In addition, the Transfers (including the return of capital contributions) reduced EFO LSI's assets and its ability to satisfy the judgment and other creditor claims.

263. At the time of the Transfers, EFO LSI had unsecured claims and was insolvent, had its insolvency deepened, or became insolvent as a result of the Transfers.

264. As a result of the Transfers, Plaintiffs have been damaged, and pursuant to Chapter 726, may avoid the Transfers with respect to the Defendants.

265. The Defendants are either a first or subsequent transferees of the Transfers, and were otherwise beneficiaries of the Transfers, for whose benefit the Transfers were made and, as a result, the Plaintiffs are entitled to avoid the Transfers as voidable with respect to the Defendants. Each of Esping, Grammen, and Horne were actively acting in concert with each other and EFO LSI to hide the LSI Holdco assets, conceal evidence of the improper transfer, and then act to paper over the duties they had breached.

WHEREFORE, the Plaintiffs demand judgment against Defendants: (i) avoiding the Transfers with respect to the Defendants; and (ii) such other and further legal and equitable relief as the Court deems just and proper.

COUNT IV

(against Defendant William Esping)

BREACH OF FIDUCIARY DUTY

266. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

267. As an officer, director, manager, member and/or control person of EFO LSI Defendant Esping and the *Bailey* Defendants owed duties to the creditors of the EFO LSI Defendants and *Bailey* Defendants. Those duties include a duty of loyalty and duty of care. Those duties expanded to include creditors of the entity when the entity became insolvent. As set forth above, the Plaintiffs became creditors when the first tortious act was committed.

268. Accordingly, Esping owed fiduciary duties to the Plaintiffs on or before November 2004. Yet, Esping then authorized the following self-interested transactions described above, including but not limited to the Transfers.

269. These transactions were not objectively fair to EFO LSI and damaged EFO LSI and the creditors of that entity for the following reasons:

a. The transactions resulted in less working capital being available for the entity and thus the entity was unable to operate properly and pay claims effectively;

b. The transactions resulted in reduced assets available to satisfy the claims of creditors and/or unreasonably reduced the working capital of EFO LSI;

c. The accounting for the transaction, especially for transactions incorrectly booked as intercompany receivables, decreased the creditworthiness, investment options and bankability of the entity and resulted in injury to the entity by interfering with future operations;

d. Eventually these breaches of duty caused EFO LSI to cease operations and fail to pay its creditors.

270. There was no disclosure of the transactions, and creditors were effectively prevented from discovering the transactions, because the judgment debtors (ESO LSI and the Bailey *Defendants*) did not supplement any discovery requests, despite obligations to do so under the law. The Plaintiffs could not have reasonably discovered the breaches of Esping earlier than May of 2019. The actions of Esping were concealed.

271. The injuries to EFO LSI are no less than the amount transferred from the entity, and likely more, as the improper self-interested transaction reduced the ability of the entity to

operate. Esping, Grammen, and Horne each worked in concert to hide the LSI Holdco assets, conceal the transfer that moved the assets, and then attempt to paper over their breaches of duty.

WHEREFORE, Plaintiffs demand an entry of judgment against Esping for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT V

(against Defendant Robert Grammen)

BREACH OF FIDUCIARY DUTY

272. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

273. As an officer, director, manager, member and/or control person of EFO LSI Defendant Grammen and the *Bailey* Defendants owed duties to the creditors of the EFO LSI Defendants and *Bailey* Defendants. Those duties include a duty of loyalty and duty of care. Those duties expanded to include creditors of the entity when the entity became insolvent. As set forth above, the Plaintiffs became creditors when the first tortious act was committed.

274. Accordingly, Grammen owed fiduciary duties to the Plaintiffs on or before November 2004. Yet, Grammen then authorized the self-interested transactions described above, including but not limited to the Transfers, the modifications of the Operating Agreement, the refusal to supplement discovery and active concealment of the Transfers and loan, the modifications to the Credit Agreement (also concealed) and the deliberate delay in filing the ABC Proceeding.

275. These transactions were not objectively fair to EFO LSI and damaged EFO LSI and the creditors of that entity for the following reasons:

a. The transactions resulted in less working capital being available for the entity and thus the entity was unable to operate properly and pay claims effectively;

b. The transactions resulted in reduced assets available to satisfy the claims of creditors;

c. The accounting for the transaction, especially for transactions incorrectly booked as intercompany receivables, decreased the creditworthiness, investment options and bankability of the entity and resulted in injury to the entity by interfering with future operations;

d. Eventually these breaches of duty caused EFO LSI to cease operations and fail to pay its creditors.

276. There was no disclosure of the transactions, and creditors were effectively prevented from discovering the transactions, because the judgment debtor (ESO LSI and the *Bailey* Defendants) did not supplement any discovery requests, despite obligations to do so. The Plaintiffs could not have reasonably discovered the breaches of Grammen earlier than May of 2019. The actions of Grammen were concealed. Additionally, several of the Bailey Defendants have refused to disclose their assets as required by an order of this Court, evidencing that the active concealment is continuing.

277. The injuries to EFO LSI are no less than the amount transferred from the entity, and likely more, as the improper self-interested transaction reduced the ability of the entity to operate.

WHEREFORE, Plaintiffs demand an entry of judgment against Grammen for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT VI

(against Defendant William Horne)

BREACH OF FIDUCIARY DUTY

278. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

279. As an officer, director, manager, member and/or control person of EFO LSI Defendant Horne and the *Bailey* Defendants owed duties to the creditors of the EFO LSI Defendants and *Bailey* Defendants. Those duties include a duty of loyalty and duty of care. Those duties expanded to include creditors of the entity when the entity became insolvent. As set forth above, the Plaintiffs became creditors when the first tortious act was committed.

280. Accordingly, Horne owed fiduciary duties to the Plaintiffs on or before November 2004. Yet, Horne then authorized the self-interested transactions described above, including but not limited to the Transfers, the modifications of the Operating Agreement, the refusal to supplement discovery and active concealment of the Transfers and loan, the modifications to the Credit Agreement (also concealed) and the deliberate delay in filing the ABC Proceeding.

281. These transactions were not objectively fair to EFO LSI and damaged EFO LSI and the creditors of that entity for the following reasons:

a. The transactions resulted in less working capital being available for the entity and thus the entity was unable to operate properly and pay claims effectively;

b. The transactions resulted in reduced assets available to satisfy the claims of creditors

c. The accounting for the transaction, especially for transactions incorrectly booked as intercompany receivables, decreased the creditworthiness, investment options and bankability of the entity and resulted in injury to the entity by interfering with future operations;

d. Eventually these breaches of duty caused EFO LSI to cease operations and fail to pay its creditors.

282. There was no disclosure of the transactions, and creditors were effectively prevented from discovering the transactions, because the judgment debtors (ESO LSI and the Bailey *Defendants*) did not supplement any discovery requests, despite obligations to do so under the law. The Plaintiffs could not have reasonably discovered the breaches of Horne earlier than May of 2019. The actions of Horne were concealed. Additionally, several of the Bailey *Defendants* have refused to disclose their assets as required by an order of this Court, evidencing that the active concealment is continuing.

283. The injuries to EFO LSI are no less than the amount transferred from the entity, and likely more, as the improper self-interested transaction reduced the ability of the entity to operate.

WHEREFORE, Plaintiffs demand an entry of judgment against Horne for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT VII

(against Defendant William Esping)

BREACH OF DUTY OF LOYALTY

284. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

285. As an officer, director, manager, member and/or control person of EFO LSI Defendant Esping and the *Bailey* Defendant owed duties to the creditors of the EFO LSI and the *Bailey* Defendants, including the duty of loyalty. Those duties expanded to include creditors of the entity when the entity became insolvent. As set forth above, the Plaintiffs became creditors when the first tortious act was committed.

286. Accordingly, Esping owed a duty of loyalty to the Plaintiffs on or before November 2004. Yet, Esping then authorized the following self-interested transactions described above, including but not limited to the Transfers, the modifications of the Operating Agreement, the refusal to supplement discovery and active concealment of the Transfers and loan, the modifications to the Credit Agreement (also concealed) and the deliberate delay in filing the ABC Proceeding.

287. These transactions were not objectively fair to EFO LSI and damaged EFO LSI and the creditors of that entity for the following reasons:

a. The transactions resulted in less working capital being available for the entity and thus the entity was unable to operate properly and pay claims effectively;

b. The transactions resulted in reduced assets available to satisfy the claims of creditors

c. The accounting for the transaction, especially for transactions incorrectly booked as intercompany receivables, decreased the creditworthiness, investment options and bankability of the entity and resulted in injury to the entity by interfering with future operations;

d. Eventually these breaches of duty caused EFO LSI to cease operations and fail to pay its creditors.

288. There was no disclosure of the transactions, and creditors were effectively prevented from discovering the transactions, because the judgment debtor (ESO LSI and the Bailey *Defendants*) did not supplement any discovery requests, despite obligations to do so. The Plaintiffs could not have reasonably discovered the breaches of Esping earlier than May of 2019. The actions of Esping were concealed. Additionally, several of the Bailey *Defendants* have refused to disclose their assets as required by an order of this Court, evidencing that the active concealment is continuing.

289. The injuries to EFO LSI are no less than the amount transferred from the entity, and likely more, as the improper self-interested transaction reduced the ability of the entity to operate.

WHEREFORE, Plaintiffs demand an entry of judgment against Esping for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT VIII

(against Defendant Robert Grammen)

BREACH OF DUTY OF LOYALTY

290. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

291. As an officer, director, manager, member and/or control person of EFO LSI Defendant Grammen and the *Bailey* Defendant owed duties to the creditors of the EFO LSI and the *Bailey* Defendants, including the duty of loyalty. Those duties expanded to include creditors of the entity when the entity became insolvent. As set forth above, the Plaintiffs became creditors when the first tortious act was committed.

292. Accordingly, Grammen owed a duty of loyalty to the Plaintiffs on or before November 2004. Yet, Grammen then authorized the following self-interested transactions described above, including but not limited to the Transfers, the modifications of the Operating Agreement, the refusal to supplement discovery and active concealment of the Transfers and loan, the modifications to the Credit Agreement (also concealed) and the deliberate delay in filing the ABC Proceeding.

293. These transactions were not objectively fair to EFO LSI and damaged EFO LSI and the creditors of that entity for the following reasons:

a. The transactions resulted in less working capital being available for the entity and thus the entity was unable to operate properly and pay claims effectively;

b. The transactions resulted in reduced assets available to satisfy the claims of creditors

c. The accounting for the transaction, especially for transactions incorrectly booked as intercompany receivables, decreased the creditworthiness, investment options and bankability of the entity and resulted in injury to the entity by interfering with future operations;

d. Eventually these breaches of duty caused EFO LSI to cease operations and fail to pay its creditors.

294. There was no disclosure of the transactions, and creditors were effectively prevented from discovering the transactions, because the judgment debtors (ESO LSI and the Bailey *Defendants*) did not supplement any discovery requests, despite obligations to do so. The Plaintiffs could not have reasonably discovered the breaches of Grammen earlier than May of 2019. The actions of Grammen were concealed. Additionally, several of the Bailey *Defendants* have refused to disclose their assets as required by an order of this Court, evidencing that the active concealment is continuing.

295. The injuries to EFO LSI are no less than the amount transferred from the entity, and likely more, as the improper self-interested transaction reduced the ability of the entity to operate.

WHEREFORE, Plaintiffs demand an entry of judgment against Grammen for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT IX

(against Defendant William Horne)

BREACH OF DUTY OF LOYALTY

296. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

297. As an officer, director, manager, member and/or control person of EFO LSI Defendant Horne and the *Bailey* Defendant owed duties to the creditors of the EFO LSI and the *Bailey* Defendants, including the duty of loyalty. Those duties expanded to include creditors of the entity when the entity became insolvent. As set forth above, the Plaintiffs became creditors when the first tortious act was committed.

298. Accordingly, Horne owed a duty of loyalty to the Plaintiffs on or before November 2005. Yet, Horne then authorized the following self-interested transactions described above, including but not limited to the Transfers, the modifications of the Operating Agreement, the refusal to supplement discovery and active concealment of the Transfers and loan, the modifications to the Credit Agreement (also concealed) and the deliberate delay in filing the ABC Proceeding.

299. These transactions were not objectively fair to EFO LSI and damaged EFO LSI and the creditors of that entity for the following reasons:

a. The transactions resulted in less working capital being available for the entity and thus the entity was unable to operate properly and pay claims effectively;

a. The transactions resulted in reduced assets available to satisfy the claims of creditors

b. The accounting for the transaction, especially for transactions incorrectly booked as intercompany receivables, decreased the creditworthiness, investment options and bankability of the entity and resulted in injury to the entity by interfering with future operations;

c. Eventually these breaches of duty caused EFO LSI to cease operations and fail to pay its creditors.

300. There was no disclosure of the transactions, and creditors were effectively prevented from discovering the transactions, because the judgment debtors (ESO LSI and the Bailey *Defendants*) did not supplement any discovery requests, despite obligations to do so. The Plaintiffs could not have reasonably discovered the breaches of Horne earlier than May of 2019. The actions of Horne were concealed. **Additionally, several of the Bailey *Defendants* have refused to disclose their assets as required by an order of this Court, evidencing that the active concealment is continuing.**

301. The injuries to EFO LSI are no less than the amount transferred from the entity, and likely more, as the improper self-interested transaction reduced the ability of the entity to operate.

WHEREFORE, Plaintiffs demand an entry of judgment against Horne for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT X
(against All Defendants)

CONSPIRACY TO COMMIT BREACH OF FIDUCIARY DUTY AND BREACH OF DUTY OF LOYALTY

302. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

303. As part of their efforts to collect on the underlying judgment, Plaintiffs acquired at auction all causes of action held by each of the EFO Defendants against any of their owners, officers, directors, managers, partners for any breach of fiduciary duty. This cause of action is brought by Plaintiffs both in their individual capacity and on behalf of the EFO Defendants as so acquired.

304. Esping, Grammen, Wilson, Krupala and Horne were officers, directors, managers and otherwise agents of the *Bailey* Defendants, and as such had fiduciary duties and duties of loyalty and care to EFO LSI. These duties included duties to avoid intentional misconduct or knowing violations of the law that could result in liability for the business entities that they were involved with. In breach of these duties, Esping, Grammen, Wilson, Krupala and Horne caused the EFO Defendants to violate the FDUPTA, tortiously interfere with Plaintiffs' business relationships, defamation, and misappropriation of confidential trades secrets, resulting in damages being assessed against the EFO Defendants. Additionally, they directed EFO LSI to take actions that benefit themselves and the Defendants at the Plaintiffs' expense. EFO LSI knowingly participated in this breach, which harmed Plaintiffs.

305. Because of EFO LSI's involvement and Defendants' involvement, EFO LSI made multi-million dollars in distributions to Defendants and has become insolvent and unable to pay the debt it owes to its creditors, including Plaintiffs.

306. Also, Esping, Grammen, Wilson, Krupala and Horne breached their duties to EFO LSI by the above-referenced self-interested transactions, including but not limited to the following:

a. Transferring money between each of their entities and EFO LSI without obtaining a reasonable benefit to EFO LSI.

b. Failing to properly keep records of their actions with each other.

c. Failing to disclose their actions though obligated to under the discovery rules.

d. Making self-interested decisions on corporate governance, such as taking loans to pay themselves, modifying Credit Agreements to limit their personal risk, and changing corporate governance to avoid liability to EFO LSI and thus harming EFO LSI's ability to recover.

WHEREFORE, Plaintiffs demand an entry of judgment against Defendants for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT XI

(against all Defendants)

CONVERSION

307. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

308. The Court awarded Plaintiffs disgorgement damages resulting from EFO LSI's tortious conduct. The money received from EFO LSI as a result of its tortious conduct belonged to Plaintiffs.

309. Without authority or consent, Defendants knowingly, unlawfully, and intentionally misused and misappropriated the disgorged funds, with the intent to indefinitely or permanently deprive Plaintiffs of property.

310. Defendants, despite knowing that the disgorged amounts were properly owned by Plaintiffs as determined by the Court, Defendants intentionally diverted and redistributed those funds to themselves.

311. As a direct result of Defendants' misconduct, Plaintiffs have suffered damages.

WHEREFORE, Plaintiffs demand an entry of judgment against Defendants for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT XII

(against all Defendants)

UNJUST ENRICHMENT

312. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

313. The Court awarded Plaintiffs disgorgement damages resulting from EFO LSI tortious conduct. The money received from EFO LSI as a result of its tortious conduct belonged to Plaintiffs.

314. The Defendants were not entitled to the disgorgement amounts as the Court had determined that the they were the result of intentional misconduct against the Plaintiffs and constituted a wrongful gain.

315. As a result, the amount subject to disgorgement was a benefit conferred directly upon the Defendants. And the Defendants did not provide any value for the benefit to the Plaintiffs.

316. The Defendants, knowing money distributed from EFO LSI were subject to disgorgement or likely to be subject to disgorgement but nevertheless knowingly and voluntarily accepted.

317. Under the circumstances, it would be inequitable for Defendants to retain the benefit without paying the value.

WHEREFORE, Plaintiffs demand an entry of judgment against Defendants for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT XIII

(against all Defendants)

QUANTUM MERUIT

318. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

319. Under Florida law, when the law does not grant a remedy, a court may fashion an equitable one. This count is in the alternative to the extent other counts alleged do not grant a remedy at law for the wrongs alleged.

320. The Court awarded Plaintiffs disgorgement damages resulting from EFO LSI tortious conduct. The money received from EFO LSI as a result of its tortious conduct and the resulting Court Order, the Plaintiffs were the beneficial owners of the disgorged amounts and any amounts distributed to Defendants by EFO LSI. Plaintiffs are entitled to those disgorged amounts distributed to Defendants.

321. As stated above and throughout, the Plaintiffs are entitled to recover for the benefits conferred on Defendants and EFO LSI by virtue of the *Bailey* Defendants' wrongful gains that were distributed in part or in whole to the Defendants.

322. Defendants further used these distributed amounts as part of their joint venture, taking the benefit of those assets without paying for them.

323. The Defendants were not entitled to the disgorgement amounts as the Court had determined that the they were the result of intentional misconduct against the Plaintiffs and constituted a wrongful gain.

WHEREFORE, Plaintiffs demand an entry of judgment against Defendants for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT XIV

(against Defendants Esping, Grammen and Horne)

PARTNERSHIP OR JOINT VENTURE LIABILITY

324. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

325. Defendants Esping, Grammen and Horne formed an ordinary partnership or joint venture because each of these defendants, working in conjunction with EFO LSI, LSI and their respective affiliated entities, did without limitation, one or more of the following:

a. As alleged above, they had the intent to act for a common benefit and hold themselves as out as a team for a common purpose;

b. Each member of the partnership sacrificed and contributed towards a partnership or joint venture goal;

c. Members of the partnership held themselves out as representatives of each other, or the venture;

d. Esping, Grammen and Horne with EFO LSI, LSI and their respective affiliated entities expressed an intent to be partners or enter into a joint venture; and

e. Esping, Grammen and Horne with EFO LSI, LSI and their respective affiliated entities regularly contributed money or property to their partnership or joint venture.

326. Plaintiffs should be able to collect from each member of the partnership or joint venture for their debts.

WHEREFORE, Plaintiffs demand an entry of judgment against Defendants for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

DEMAND FOR JURY TRIAL AS TO ALL COUNTS OF THE COMPLAINT

Plaintiffs hereby demand a trial by jury on all claims, issues, and Counts of the Complaint triable by such.

RESERVATION OF RIGHTS

The Plaintiffs reserve the right to further amend this Complaint upon completion their investigation and discovery in order to assert any additional claims for relief against the Defendants as may be warranted under the circumstances.

Respectfully submitted,

By: /s/ *Jennifer G. Altman*
Jennifer G. Altman, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 5, 2020, a true and correct copy of the foregoing was electronically filed via the Florida Courts Electronic Filing Portal, which well serve a Notice of Filing via the Court's e-service system on all Counsel of Record.

Respectfully submitted,

By: /s/ *Jennifer G. Altman*
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REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES
TRIAL COURT CAUSE NO. 20-06211

JOE SAMUEL BAILEY, ET AL	)	IN THE DISTRICT COURT
	)	
vs.	)	DALLAS COUNTY, TEXAS
	)	
JAMES S. ST. LOUIS, ET AL	)	162ND JUDICIAL DISTRICT

DEFENDANTS' SPECIAL EXCEPTIONS

On the 13th day of October, 2020, the following proceedings came on to be held in the above-titled and -numbered cause before the Honorable Maricella Moore, Judge Presiding, held remotely via Zoom in accordance with the Supreme Court of Texas' First Emergency Order Regarding the COVID-19 State of Disaster, Section 2 in Dallas, Dallas County, Texas.

Proceedings reported by computerized stenotype machine.

APPEARANCES

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Holdings and EFO LSI. And with knowledge of what was going on, money from Laser Spine Institute was funneled as a distribution to the first partnership, the second partnership, and then on to family members of this --

THE COURT: So those are fraudulent transfer allegations?

MR. RAY: There are -- actually, Your Honor, they're -- yes, they're, uh, allegations of all sorts of wrongdoing, is the way we see it.

THE COURT: Okay. But hold on -- but I wanna --

MR. RAY: Yes.

THE COURT: Sometimes when there is such an allegation of so much wrongdoing, it helps the Court if I can take them one at a time because it allows me to really analyze the legal theory behind it. And I know that you-all have been living this case, obviously, for a long time, and there's a lot of zealous argumentation, but it -- but for me to look at it from a -- as a matter of law, it helps for me just to take it apart.

So is Plaintiff alleging in this case that there are fraudulent transfers that -- that -- pre- -- that there were fraudulent transfers from the

limited partnership to the limited partners; and, therefore, the limited partners are now liable for the judgment? Is that an allegation here?

MR. RAY: Yes, with a few twists. Yes.

THE COURT: Okay. So there is -- so --

MR. RAY: We didn't put that in as a count, Your Honor. So that's the twist.

THE COURT: Well, if it wasn't in there for a count, then this is why there are special exceptions. So, I guess, what Defendants are asking is if you're alleging that a fraudulent transfer occurred, then it needs to say that in the petition so that Defendants know whether or not they need to file a dispositive motion on a fraudulent transfer claim.

MR. RAY: I understand that, Your Honor, and I do think I owe you an explanation for why we deliberately did not say general partnership, fraudulent transfer, breach of fiduciary duty. We didn't say that because some of these people, as Mr. Schwegmann has pointed out, were already sued in Florida for general partnership, fraudulent transfer, and breach of fiduciary duty.

THE COURT: Okay. So then let me stop you there. There was a strategic decision made not to bring a cause of action for fraudulent transfer, breach of fiduciary duty claim. If that's the case, then you can't argue to the Court in this hearing that liability on behalf of the limited partners exists because fraudulent transfers or breaches of fiduciary duty occurred. You can't have it both ways.

MR. RAY: We have alleged --

THE COURT: That can't be your theory of liability if it's not a cause of action.

MR. RAY: Then, Your Honor, I guess your -- I guess, what I need to do is ask for permission to add that as a cause of action because in the Florida case, just for full disclosure --

THE COURT: Well, I don't know where you guys -- I don't know where you guys are in your scheduling order and your pleading requirements, but this is, I think, a perfect example of why special exceptions exists. Because it sounds like Defendants are asking for just this clarity: What are you alleging? If it's a fraudulent transfer, then go ahead and say it. If it's not, then don't rely on it.

STATE OF TEXAS

COUNTY OF DALLAS

I, Sheretta L. Martin, Official Court Reporter in and for the 162nd District Court of Dallas, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and -numbered cause, all of which occurred remotely via Zoom, in accordance with the Supreme Court of Texas' First Emergency Order Regarding the COVID-19 State of Disaster, Section 2, and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted, tendered in an offer of proof or offered into evidence.

I further certify that the total cost for the preparation of this Reporter's Record is $ 280 and was paid/will be paid by Defendant .

WITNESS MY OFFICIAL HAND on this, the 26th day of October , 2020.

Sheretta L. Martin

Sheretta L. Martin, TxCSR 6678
Official Court Reporter
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CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780
Assignors,	Consolidated Case No: 2019-CA-2762
To:	
Soneet Kapila, Assignee.	Division L

_____/

ASSIGNEE'S MOTION FOR (A) ORDER APPROVING SETTLEMENT AND COMPROMISE OF CLAIMS AGAINST FORMER DIRECTORS AND OFFICERS, (B) ORDER AUTHORIZING PAYMENT OF PROFESSIONAL FEES, AND (C) FINAL JUDGMENT AS TO SETTLED CLAIMS IN LAWSUITS

TO CREDITORS AND OTHER INTERESTED PARTIES
NOTICE OF OPPORTUNITY TO OBJECT

PLEASE TAKE NOTICE that, pursuant to Section 727.111(4), Florida Statutes, the Assignee and Court may consider the instant motion to compromise without further notice or hearing unless a creditor or party in interest files an objection within 21 days from the date this motion to compromise is served. If you object to the relief requested in this motion, you must file your objection with the Clerk of Court for Hillsborough County, Florida at 800 E. Twiggs Street, Tampa, Florida 33602,

and serve a copy on the Assignee's attorney, Edward J. Peterson, Stichter, Riedel, Blain & Postler, P.A., 110 E. Madison Street, Suite 200, Tampa, Florida 33602, and any other appropriate person.

A hearing on this motion is scheduled for **April 19, 2021, at 3:00 p.m.**, before the Honorable Darren D. Farfante via Zoom (need to provide zoom info).

You should read these papers carefully and discuss them with your attorney if you have one. If you do not file an objection within the time permitted, the Assignee and the Court will presume that you do not oppose the granting of the relief set forth in this motion, will proceed to consider the motion at the hearing, and may grant the relief requested.

Soneet R. Kapila, as assignee (the "**Assignee**") for the benefit of creditors for Laser Spine Institute, LLC ("**LSI**") and fifteen (15) of LSI's affiliates[1] (collectively the "**LSI Entities**"), by and through his undersigned attorneys, files this motion seeking the entry of (a) an order approving the settlement and compromise reached between the Assignee and the former managers and/or officers of the LSI Entities, including specifically Jonathan Lewis, Sean Dempsey, Mark Andrzejewski, William Esping, Edward DeBartolo, Chris Sullivan, William E. Horne, Robert Basham, Geza Henni, Dr. James St. Louis III, Dr. Michael W. Perry, Raymond Monteleone, and Robert Grammen (collectively, the "**Defendants**"), and (b) an order approving the payment of fees to the Assignee's special litigation counsel, Genovese Joblove & Battista, P.A. ("**Genovese Joblove**") and Rocke, McLean & Sbar ("**Rocke McLean**"), and (c) a final judgment as to settled Claims in the Lawsuits (each as defined below). In support of this motion (the "**Motion**"), the Assignee states as follows:

Background

1. On March 14, 2019, LSI executed and delivered an assignment for the benefit of creditors to the Assignee. The Assignee filed a Petition with the Court on March 14, 2019,

[1] LSI's affiliates are: LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC (the "**Affiliated Companies**").

commencing an assignment for the benefit of creditors proceeding pursuant to Chapter 727 of the Florida Statutes (the "**LSI Assignment Case**").

2. Simultaneous with the filing of the LSI Assignment Case, the Assignee filed fifteen other Petitions commencing the following assignment for the benefit of creditors proceedings for the Affiliated Companies of LSI (the "**Affiliated Assignment Cases**," and together with the LSI Assignment Case, the "**Assignment Cases**"): LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC (each, an "**Assignor**" and collectively, the "**Assignors**").

3. Upon his appointment, the Assignee and his special litigation counsel conducted a fulsome investigation of the claims and causes of action that existed in favor of the Assignee. Based on that investigation, the Assignee, through his special litigation counsel, filed the following thirteen lawsuits (collectively referred to as the "**Lawsuits**") against the Defendants:

a. Soneet R. Kapila v. Jonathan Lewis
United States District Court, Middle District of Florida
Case No. 8:19-cv-1800

b. Soneet R. Kapila v. Sean Dempsey
United States District Court, Middle District of Florida
Case No. 8:19-cv-1802

c. Soneet R. Kapila v. Mark Andrzejewski
United States District Court, Middle District of Florida
Case No. 8:19-cv-2812

d. Soneet R. Kapila v. William Esping
United States District Court, Middle District of Florida
Case No. 8:20-cv-436

e. Soneet R. Kapila v. Edward DeBartolo
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6817

f. Soneet R. Kapila v. Chris Sullivan
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6820

g. Soneet R. Kapila v. William E. Horne
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6821

h. Soneet R. Kapila v. Robert Basham
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6822

i. Soneet R. Kapila v. Geza Henni
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6823

j. Soneet R. Kapila v. Dr. James St. Louis III
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6880

k. Soneet R. Kapila v. Dr. Michael W. Perry
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-11753

l. Soneet R. Kapila v. Raymond Monteleone
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-11754

m. Soneet R. Kapila v. Robert Grammen
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-11755

4. The Lawsuits, in some cases through multiple amendments, assert claims against the Defendants as former managers and/or officers of the Assignors for multiple wrongful acts, including claims for breaches of duties owed to the Assignors; aiding and abetting breaches of

fiduciary duty; willful misconduct and bad faith; breach of fiduciary duty and the duty of loyalty; failing to exercise diligence in the administration of the affairs of the Assignors and in the use and preservation of their property and assets; failing to conduct the affairs of the Assignors in a manner so as to make it possible to provide the highest quality performance of their business; failing to avoid wasting the Assignors' assets; failing to maximize the value of the Assignors for the benefit of all those having an interest in the Assignors;; avoidance and recovery of alleged fraudulent transfers (as to certain Defendants); failing to act in the best interests of the Assignors and their creditors, failing to comply with the Worker Adjustment and Retraining Notification Act, and failing to obtain adequate insurance coverage for the Assignors and improperly implementing or continuing self-insurance programs for professional liability insurance, medical malpractice insurance, and employees' health insurance (collectively, the "**Claims**"). The Defendants vigorously disputed the Assignee's allegations in each Lawsuit, moving to dismiss and raising numerous defenses.

5. On January 24, 2020, the four Defendants in the federal Lawsuits filed motions to dismiss the Assignee's amended complaint. On July 17, 2020, the United States District Court, Middle District of Florida, entered an order granting in part the motions to dismiss and permitting the Assignee leave to file second amended complaints. After the second amended complaints were filed, on August 21, 2020, the four Defendants in the federal Lawsuits moved to dismiss the second amended complaints. Those motions remain pending. In addition, each of the Defendants in the nine state court Lawsuits have filed motions to dismiss, which remain pending.

6. Preliminarily, the Assignee and Defendants identified at least 21 fact witnesses whose testimony would be required in connection with the Lawsuits. In addition, more than 20 non-parties were subpoenaed to produce documents in connection with the Lawsuits.

7. Document production in the Lawsuits was not complete but the parties and non-parties had already gathered and/or produced over 30,000 documents.

Relief Requested

8. After engaging in lengthy and good faith settlement discussions, including through two separate mediation sessions with sophisticated third party mediators, the Assignee and the Defendants, together with their insurance carriers, reached an agreement on the terms of a settlement and compromise of the Claims asserted in the Lawsuits (the "**Settlement**"). In connection therewith, the Assignee and the Defendants have entered into a written Settlement Agreement which is attached hereto as **Exhibit A** (the "**Settlement Agreement**").

9. Pursuant to this Motion, the Assignee seeks the entry of an order approving the Settlement in accordance with the terms of the Settlement Agreement. In the context of a Chapter 727 assignment, the Assignee has the sole authority and standing to prosecute the Claims and enter into the Settlement. *Moffatt & Nichol, Inc. v. B.E.A. International Corp, Inc., 48 So.3d 896, 899 (Fla. 3d. DCA 2010)* (finding that an assignee is the only party who has standing to pursue and settle fraudulent transfer, preferential transfer and other derivative claims); *Smith v. Effective Teleservices, Inc.*, 133 So.3d 1048, 1053 (Fla. 4th DCA 2014) (same).

10. The key terms of the Settlement are as follows:[2] (i) the Defendants shall pay or cause to be paid to the Assignee the total sum of $9,000,000, (ii) the Assignee and the Defendants will provide mutual general releases to each other, subject to the reservation of certain claims and causes of action for the avoidance and recovery of fraudulent transfers, as more specifically described in the Settlement Agreement, (iii) the Assignee will dismiss with prejudice each of the

[2] The foregoing is a summary only of the terms of the Settlement Agreement. The terms of the Settlement Agreement shall control in the event of any inconsistencies.

Lawsuits against the Defendants, and (iv) the Court will enter a final judgment in this action confirming that the dismissals with prejudice of the Lawsuits totally dispose of the entire Lawsuits as to the Defendants, as contemplated by Rule 9.110(k), Fla. R. App. P.

Basis for Relief

11. The statutory framework provided for assignment for the benefit of creditors cases authorizes the Court to approve the Settlement Agreement. Section 727.109 of the Florida Statutes specifically empowers the Court to enter an order approving "the compromise or settlement of a controversy" upon motion by the Assignee. Fla. Stat. § 727.109(7). Further, the Court is authorized to "[e]xercise any other powers that are necessary to enforce or carry out the provisions of this chapter." Fla. Stat. § 727.109(15).

12. Although the assignment statutes provide for court approval of settlements proposed by an assignee, the statutes do not set forth any specific criteria for approving settlements. The Assignee submits that analogous bankruptcy principles should guide this Court's evaluation of the Settlement Agreement. "State courts often look to federal bankruptcy law for guidance as to legal issues arising in proceedings involving assignments for the benefit of creditors." *Moecker v. Antoine*, 845 So. 2d 904, 912 n.10 (Fla. 1st DCA 2003).

13. It is generally recognized that the law favors compromise of disputes over litigation. *In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993) (Paskay, C.J.). Some bankruptcy courts have held that a proposed settlement should be approved unless it yields less than the lowest amount that the litigation could reasonably produce. *In re Holywell Corp.*, 93 B.R. 291, 294 (Bankr. S.D. Fla. 1988) (Weaver, J.). In *In re Justice Oaks II, Ltd.*, 898 F.2d 1544 (11th Cir. 1990), *cert. denied* 498 U.S. 959, (1990), the court enunciated certain factors which must be considered in determining whether to approve a compromise. These factors include the following:

(i) The probability of success in the litigation;

(ii) The difficulties, if any, to be encountered in the matter of collection;

(iii) The complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and

(iv) The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id.

14. ***The Probability of Success in Litigation***. The terms of the Settlement Agreement satisfy the above *Justice Oaks* factors. The first factor of probability of success weighs in favor of approval of the Settlement Agreement when considered with the remaining factors. While the Assignee is confident in the merits of the Claims asserted, there is no certainty in litigation, including on appeal. Under the Settlement Agreement, the Claims are being resolved, thereby eliminating the risk and expense of prosecuting the Claims and, in turn, will allow the parties and the Court to avoid protracted litigation in which the Defendants would continue to vigorously defend such Claims with the benefit of being paid defense costs from the insurance policies in place. The litigation would require a number of factual determinations that would likely preclude summary judgment and require a trial, including expert testimony.

15. ***The Collection Factor***. The second factor involving difficulties in collection weighs heavily in favor of approval of the Settlement Agreement because the insurance coverage is based on "wasting" or declining balance policies that are reduced dollar for dollar with the expenditure of defense costs by the Defendants. Without insurance coverage, there is substantial doubt as to the collectability of any judgment that might be obtained against the Defendants. Therefore, in the Assignee's business judgment, the difficulty in collection factor was a critical component supporting the Settlement Agreement and weighs heavily in favor of approval of the Settlement Agreement.

16. ***Complexity of Litigation***. The third factor of the complexity of the litigation weighs in favor of approval of the Settlement Agreement. Specifically, the Claims, which arise from the alleged actions of the Defendants as officers and managers of the Assignors under both Florida and Delaware law, are complex in nature, and will likely require a trial on the merits and expert testimony of multiple experts. In view of the foregoing, the complexity of the Claims would result in multi-year litigation and a significant investment in legal and professional fees and costs with no assurances of success or collection.

17. ***Paramount Interests of Creditors***. The last factor as to whether the Settlement is in the paramount interest of creditors weighs in favor of approval of the Settlement. The Assignee believes that the creditors of the Assignment Cases will support the approval of this Motion and the Settlement Agreement. The Settlement assures that unsecured creditors will receive a distribution. Therefore, the Assignee believes that the Settlement Agreement is in the best interest of the creditors of the Assignment Estates.

18. For the foregoing reasons, the Assignee submits that the Settlement satisfies the *Justice Oaks* factors and falls well above the lowest point in the range of reasonableness and, accordingly, should be approved.

Approval of Fees

19. On June 24, 2019, the Assignee filed a *Motion to Employ Genovese Joblove & Battista, P.A. and Rocke, McLean & Sbar, P.A. as Special Litigation Counsel and to Pay Fees on a Contingency Fee Basis* (the "**Employment Motion**"). On July 29, 2019, the Court entered an order granting the Employment Motion on the terms set forth in the Contingency Fee Contract (the "**Contract**") attached hereto as **Composite Exhibit B** and further provided that any payment of compensation was subject to final approval by the Court.

Since that time, the Assignee's special litigation counsel have investigated claims and causes of action available to the Assignee and filed and pursued the thirteen Lawsuits. In those Lawsuits, the Assignee's special litigation counsel have responded to multiple motions to dismiss, prepared and filed amended pleadings, engaged in extensive discovery productions, worked closely with expert witnesses who have prepared and served expert reports, and engaged in intensive settlement discussions and formal mediation.

20. The fact-intensive claims against the former officers and managers in the thirteen Lawsuits involved different forums, voluminous documents, and complex issues of corporate governance requiring analysis under both Florida and Delaware law, and the use of multiple expert witnesses, including experts in corporate governance and accounting with respect to evaluation of assets specific to the healthcare industry and the determination of insolvency. The Assignee's special litigation counsel both specialize in the handling of complex business disputes involving insolvent entities and were specifically approved by the Court to represent the Assignee.

21. The combined efforts of the Assignee's special litigation counsel secured an aggregate settlement payment of $9,000,000.00.

22. In the aggregate, under the terms of the Contract approved by the Court, the total contingency fee to be paid to Genovese Joblove and Rocke McLean is $2,050,800, and by agreement between such law firms is to be allocated with $1,025,400 paid to Genovese Joblove and $1,025,400 paid to Rocke McLean.

23. Section 727.109(10) empowers the Court to "[a]pprove reasonable fees and the reimbursement of expenses for the assignee and all professional persons retained by the assignee, upon objection of a party in interest or upon the court's own motion." The Assignee requests authority to pay the professional fees and costs set forth above. The fees to be paid equate to a

23% contingency fee, which is eminently reasonable given the complexity of the Lawsuits, the risk involved, the delay in payment and in light of the excellent results achieved.[3]

Final Judgment

24. In connection with the approval of the Settlement, the Assignee seeks the entry of a final judgment in this action confirming that the dismissals with prejudice of the Lawsuits totally dispose of the entire Lawsuits as to the Defendants, as contemplated by Rule 9.110(k), Fla. R. App. P.

WHEREFORE, the Assignee respectfully requests that this Court enter an order, in substantially the form of the order attached hereto as **Exhibit C**, (i) granting this Motion, (ii) approving the Settlement pursuant to Section 727.109(7) of the Florida Statutes, (iii) approving the payment of the professional fees requested herein, (iv) granting such other and further relief as is just and proper, and (v) that this Court enter Final Judgment confirming that the dismissals with prejudice of the Lawsuits totally dispose of entire Lawsuits as to the Defendants.

/s/ Edward J. Peterson

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Counsel for Assignee

[3] The contingency fee limitations provided for in Rule 4-1.5(f) of the Rules Regulating the Florida Bar do not apply to commercial litigation cases. The Commentary to Rule 4-1.5 specifically states that "Rule 4-1.5(f) should not be construed to apply to actions or claims seeking property or other damages arising in the commercial litigation context. In any event, the Court held a hearing on June 27, 2019 wherein the contingency fee agreement was specifically approved by the Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been furnished on this 26th day of March, 2021 by the Court's electronic system to all parties receiving electronic service and by either U.S. mail or electronic mail to the parties listed on the Limited Notice Parties list attached.

/s/ Edward J. Peterson
Edward J. Peterson

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Laser Spine Institute, LLC	Case No. 2019-CA-2762
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LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780
Assignors,	Consolidated Case No. 2019-CA-2762
to	
Soneet Kapila,	Division L
Assignee.	

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EXHIBIT A

ASSIGNEE'S MOTION FOR (A) ORDER APPROVING SETTLEMENT AND COMPROMISE OF CLAIMS AGAINST FORMER DIRECTORS AND OFFICERS, (B) ORDER AUTHORIZING PAYMENT OF PROFESSIONAL FEES, AND (C) FINAL JUDGMENT AS TO SETTLED CLAIMS IN LAWSUITS

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This is a Settlement Agreement and General Release ("Agreement") effective as of the date signed by the last party ("Effective Date"), by and between Soneet R. Kapila (the "Assignee" or "Plaintiff"), in his capacity as the Assignee of Laser Spine Institute, LLC ("LSI") and each of the following affiliated entities (collectively, the "Companies"): CLM Aviation, LLC; LSI Holdco, LLC; LSI Management Company, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of Cleveland, LLC; Laser Spine Surgery Center, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Warwick, LLC; Medical Care Management Services, LLC; Spine DME Solutions, LLC; Total Spine Center, LLC; Laser Spine Institute Consulting, LLC; and Laser Spine Surgery Center of Oklahoma, LLC (LSI and the Companies are collectively referred to as the "LSI Entities") and Mark Andrzejewski, Sean Dempsey, William Esping, Jonathan Lewis, Robert Basham, Edward DeBartolo, Robert Grammen, William Horne, Ray Monteleone, Michael Perry, James St. Louis III, Chris Sullivan and Geza Henni (collectively referred to as "Defendants"). The parties to this Agreement are individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, on March 14, 2019, LSI executed and delivered an assignment for the benefit of creditors to the Assignee. Also on March 14, 2019, the Assignee filed a Petition with the Circuit Court for Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Consolidated Case Number 2019-CA-2762 pursuant to section 727 of the Florida Statutes (the "LSI Assignment Case").

WHEREAS, simultaneous with the filing of the LSI Assignment Case, the Assignee filed 15 other Petitions commencing an assignment for the benefit of creditors proceeding for each of the 15 Companies (such 15 assignment cases and the LSI Assignment Case are collectively referred to as the "Assignment Case").

WHEREAS, Plaintiff, as assignee of the LSI Entities, filed the following 13 lawsuits (collectively referred to as the "Lawsuits") against Defendants:

a. Soneet R. Kapila v. Jonathan Lewis
United States District Court, Middle District of Florida
Case No. 8:19-cv-1800

b. Soneet R. Kapila v. Sean Dempsey
United States District Court, Middle District of Florida
Case No. 8:19-cv-1802

c. Soneet R. Kapila v. Mark Andrzejewski
United States District Court, Middle District of Florida
Case No. 8:19-cv-2812

d. Soneet R. Kapila v. William Esping
United States District Court, Middle District of Florida

Case No. 8:20-cv-436

e. Soneet R. Kapila v. Edward DeBartolo
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6817

f. Soneet R. Kapila v. Chris Sullivan
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6820

g. Soneet R. Kapila v. William E. Horne
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6821

h. Soneet R. Kapila v. Robert Basham
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6822

i. Soneet R. Kapila v. Geza Henni
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6823

j. Soneet R. Kapila v. Dr. James St. Louis III
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-6880

k. Soneet R. Kapila v. Dr. Michael W. Perry
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-11753

l. Soneet R. Kapila v. Raymond Monteleone
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-11754

m. Soneet R. Kapila v. Robert Grammen
Thirteenth Judicial Circuit, Hillsborough County, Florida
Case No. 19-CA-11755

WHEREAS, the Lawsuits, in some cases through multiple amendments, assert that the Assignee is the duly-appointed and acting statutory assignee for the benefit of creditors of the LSI Entities.

WHEREAS, the Lawsuits, in some cases through multiple amendments, assert claims against Defendants as former managers and/or officers of the Companies for multiple wrongful acts, including claims for breaches of duties owed to the Companies; aiding and abetting breaches of fiduciary duty; willful misconduct and bad faith; breach of fiduciary duty and the duty of loyalty; failing to exercise diligence in the administration of the affairs of the Companies and in the use and preservation of their property and assets;

failing to conduct the affairs of the Companies in a manner so as to make it possible to provide the highest quality performance of their business; failing to avoid wasting the Companies' assets; failing to maximize the value of the Companies for the benefit of all those having an interest in the Companies; avoidance and recovery of alleged direct fraudulent transfers (as to certain Defendants); failing to act in the best interests of the Companies and their creditors, failing to comply with the Worker Adjustment and Retraining Notification Act; and failing to obtain adequate insurance coverage for the Companies and improperly implementing or continuing self-insurance programs for professional liability insurance, medical malpractice insurance, and employees' health insurance (collectively, the "Claims"). Defendants dispute Plaintiff's allegations in each Lawsuit.

WHEREAS, the Parties agree that the Assignee has sole legal standing and authority to pursue and settle the Claims in accordance with Chapter 727, Florida Statutes, as assignee for the benefit of creditors of the LSI Entities.

WHEREAS, the Parties are represented by counsel, recognize their respective rights and obligations, seek to avoid the costs, expenses and uncertainty of additional litigation, and have agreed to settle the Lawsuits and, except as specifically limited herein in respect of the Preserved Claims (as defined below), Plaintiff agrees to waive and release all matters and disputes against the Defendants and all former managers and officers of the Companies, including all Claims that were asserted or which could have been asserted in the Lawsuits, as set forth in paragraph 5 below.

WHEREAS, the Parties have signed this Agreement of their own free will and volition, with full recognition and understanding of their respective rights and obligations under, and the legal effect of, this Agreement;

NOW, THEREFORE, in consideration of the promises, terms and conditions contained herein, and other good and valuable consideration, the Parties stipulate and agree as follows:

TERMS

1. Recitals. The recitals to this Agreement are true and correct and expressly incorporated into this Agreement as mutually stipulated facts between the Parties.

2. Settlement Payment. Within 30 days from the date of the "Final Order," as defined in Paragraph 4 below, Defendants agree to pay or cause to be paid to Plaintiff the total sum of Nine Million Dollars ($9,000,000.00) by wire transfer delivered to Plaintiff pursuant to wire transfer instructions to be provided by Plaintiff (the "Settlement Payment"). If the Final Order is not issued by October 1, 2021, the Defendants will place or cause the Settlement Payment to be placed in an interest bearing escrow account with counsel for the Defendants pending issuance of the Final Order.

3. Approval of Agreement by the Circuit Court. The Circuit Court for the Thirteenth Judicial Circuit, Hillsborough County, Florida is presiding over the Assignment Case (the "Circuit Court"). The Parties agree that this Agreement is subject to and conditioned on

the approval of the Circuit Court upon the filing of a motion. Plaintiff agrees to file a motion with the Circuit Court requesting approval of this Agreement (the "Approval Motion") along with a proposed Order and Final Judgment approving the Agreement in the form and content of Exhibit A attached hereto (the "Approval Order") within five business days of the Effective Date, and to diligently prosecute the Approval Motion. The Defendants agree that they will support and not oppose entry of the Approval Order and that they will support the Assignee's efforts to obtain the Final Order.

4. Binding Effect and Final Order. This Agreement shall be binding on the Parties, including the LSI Entities, on the Effective Date, subject only to entry of the Approval Order by the Circuit Court and the Approval Order becoming a Final Order, which Final Order shall be deemed to occur in either of the following ways:

a. The Circuit Court has entered the Approval Order and the time to appeal, petition for an extraordinary writ, or move for reargument or rehearing of the Approval Order has expired (which the parties agree is 30 days from the date of rendition of the Approval Order) and no timely appeal, petition for an extraordinary writ, or motion for reargument or rehearing of the Approval Order has been filed.

   Under this circumstance, the parties agree that the Approval Order is now a Final Order and that payment shall be made in accordance with Section 2.

b. The Circuit Court has entered the Approval Order and an appeal, petition for an extraordinary writ, or motion for reargument or rehearing of the Approval Order has been filed, and such filing or proceeding has been voluntarily withdrawn or resolved by the highest court (or any other tribunal having appellate jurisdiction over the Approval Order) to which the Approval Order was appealed, or to which a petition for an extraordinary writ was taken, or from which reargument or rehearing was sought, and the Approval Order has not been reversed, vacated, stayed, modified or amended, and the time to take any further appeal, petition, or motion has expired without such actions having been taken.

   Under this circumstance, the parties agree that the Approval Order is now a Final Order and that payment shall be made in accordance with Section 2.

Nothing in this Agreement shall prevent the Parties from agreeing to waive the requirement of a Final Order if the party appealing the Approved Order has not obtained a stay pending appeal.

5. General Release.

Except for the Preserved Claims (as defined below) and subject to and strictly conditioned on Plaintiff's receipt of the Settlement Payment as set forth above, and in consideration of the foregoing, receipt and sufficiency of which is hereby acknowledged, Plaintiff, on behalf of himself as Assignee and the LSI Entities, and each of their respective directors, officers, managers, members, shareholders,

attorneys, employees, agents, representatives, beneficiaries, predecessors, successors, or assigns (collectively, the "Assignee Releasors"), hereby irrevocably, unconditionally and forever release, waive and discharge the Defendants and all former managers and officers of the LSI Entities, and each of their attorneys, agents and insurers (collectively, the "Defendant Releasees") from any and all Claims asserted in the Lawsuits, and all Claims that could have been asserted in the Lawsuits, including, without limitation, any claims for breach of fiduciary duty for any wrongful acts, any claims for breach of the duty of loyalty, any claims for aiding and abetting breaches of fiduciary duty or the duty of loyalty, any claims for conspiracy, any claims for negligence or breach of contract, any statutory claims, and any claims for mismanaging any of the Companies in any way, including any claims for failing to obtain adequate insurance coverage for the Companies and implementing or continuing self-insurance programs for professional liability insurance, medical malpractice insurance, and employee health insurance.

In addition and subject to the Preserved Claims (as defined below), the Assignee Releasors hereby irrevocably and unconditionally forever release, waive and discharge the fraudulent transfer claims (i) that were asserted against Robert Grammen, James St. Louis, and Raymond Monteleone in those certain lawsuits set forth on Exhibit B attached hereto, and (ii) any other fraudulent transfer claims or other claims that seek the recovery of any distributions, or the value of any distributions (as damages or otherwise), made directly by any of the LSI Entities to any individual former managers and officers of the Companies that could have been asserted against any and all other individual former managers and officers of the Companies.

Notwithstanding the foregoing and notwithstanding anything herein to the contrary, the releases and covenant not to sue contained herein from the Assignee Releasors to the Defendant Releasees do not and shall not include or release (i) any claims and causes of action based on fraudulent transfer theories or otherwise, including without limitation, claims for the avoidance and recovery of a transfer of money or property made by the LSI Entities to or against any corporate entity (which refers to any form of entity, whether it is an LLLP, an LLC, an Ltd., an Inc., an L.P., or any other form of entity), including the claims and causes of action asserted in those certain pending fraudulent transfer lawsuits brought by Plaintiff and set forth on Exhibit C attached hereto (collectively, the "FT Claims"), (ii) any claims or causes of action based on alleged fraudulent transfers against Jill St. Louis, Glen Hamburg or Clinton Phillips, each of whom have been sued individually by Plaintiff in the lawsuits set forth on Exhibit D hereto and (iii) any claims or causes of action by Plaintiff to avoid and recover any subsequent transfers arising from, related to or resulting from the FT Claims against any immediate, mediate or subsequent transferee of such FT Claims (whether filed, pending or not) and whether against one or more former managers or officers of the LSI Entities, it being understood that there are no limitations being imposed by this Agreement on Plaintiff's right to collect against any person or entity, whether based on subsequent transferee liability or otherwise, on any judgment that may be obtained in respect of the FT Claims (collectively, the claims and causes of action set forth in this paragraph shall

be referred to as the "Preserved Claims"). Neither this paragraph nor the Agreement impacts, impairs, waives or in any way releases any defense, claim or counterclaim that the Defendant Releasors (defined below), any corporate entity, or any former officer or manager of the LSI Entities may have to the Preserved Claims.

Nothing in this Agreement is intended to relieve the Defendants of any of their obligations set forth within this Agreement.

Except for the Preserved Claims (as defined above) and subject to and strictly conditioned on Plaintiff's receipt of the Settlement Payment as set forth above, the Assignee Releasors covenant and agree not to pursue or prosecute any suit, claim, action, or proceeding seeking recovery against or from any Defendant Releasees arising out of or relating to any one or more of the matters released, waived and discharged in this paragraph 5.

Subject to and strictly conditioned on Plaintiff's receipt of the Settlement Payment as set forth above, and in consideration of the foregoing, receipt and sufficiency of which is hereby acknowledged, effective as of the filing of the Dismissal with Prejudice as set forth in paragraph 6 of this Agreement, each Defendant, on behalf of himself, and each of their respective attorneys, agents and insurers (collectively, the "Defendant Releasors"), hereby irrevocably, unconditionally and forever release, waive and discharge the Assignee, his attorneys, agents, and professionals (collectively, the "Assignee Releasees") from any and all claims asserted or that could have been asserted by the Defendants in the Lawsuits. Notwithstanding the foregoing, no Defendant Releasor is releasing any defense to any filed or to be filed Preserved Claims, including all defenses as a mediate or subsequent transferee. All defenses, counterclaims and third party claims are preserved and in no way impacted or impaired by this Agreement.

6. Dismissal with Prejudice. The Parties agree to dismiss with prejudice all claims in the Lawsuits by filing Joint Stipulations for Dismissal with Prejudice within five business days from Plaintiff's receipt of the Settlement Payment.

7. Termination of Agreement. If the Circuit Court does not approve this Agreement in its entirety, then any Party may promptly withdraw his or its acceptance of this Agreement by written notice to the other Parties. Further, and notwithstanding any other provision of this Agreement, if a Final Order has not been obtained within two years of the date of the Approval Order, then any Party may terminate this Agreement upon written notice to the other Parties, at which time this Agreement shall be deemed null and void and the Parties shall revert back to the *status quo ante*. In the event of a termination pursuant to this paragraph or if the Approval Order is reversed or remanded in connection with any appeal and the Agreement is not thereafter approved after reversal or remand, then the Parties agree that any limitations period (whether in law or equity, including statute of limitations, statute of repose, laches or any other time based defense) applicable to any of the Claims in each Lawsuit shall be tolled beginning on the Effective Date through and including the 30th day after (i) the date upon which the written notice of termination is sent, or (ii) the date of a final order not approving the Agreement. For the avoidance of doubt, the foregoing tolling provision is intended to preserve the Parties' Claims as they existed

as of the Effective Date; it is not intended to resurrect claims that are barred as of the Effective Date. In the event of an appeal of the Approval Order, the Parties agree to use their collective best efforts to maintain the pendency of the Lawsuits in their respective courts.

8. No Admission of Liability. The Parties understand and agree that neither this Agreement nor any of the undertakings referenced in this Agreement constitute any admission of liability or otherwise, which is expressly denied.

9. Attorneys' Fees. The Parties understand and agree that each Party shall bear its own costs and attorney's fees incurred in the Lawsuits and in connection with this Agreement and resolution of this matter.

10. Paragraph Headings. The headings of the paragraphs of this Agreement are inserted only for the purpose of convenience of reference and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Agreement or any part or portion thereof, nor shall they otherwise be given any legal effect.

11. Choice of Law and Venue. This Agreement shall be governed by the laws of the State of Florida, and venue for any action to enforce or interpret this Agreement shall lie in the Assignment Case pending before the Circuit Court for the Thirteenth Judicial Circuit, Hillsborough County, Florida.

12. Authorization, Acknowledgement, Interpretation, and Entirety. By each signature to this Agreement, each undersigned warrants that he or she is duly and fully authorized to execute and deliver this instrument for and on behalf of the entity or organization for which that person signs. Each Party has reviewed and participated in the drafting of this Agreement, and received the advice of their own independent, respective counsel. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement. Each person signing below represents and warrants that such person has been duly authorized to execute this Agreement, and that upon execution hereof, the Agreement shall be a valid, legal and fully binding agreement upon all parties to this Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior agreements on the subject matter hereof, and is the only binding agreement of settlement among the Parties.

13. Modification. This Agreement cannot be modified, changed or revised except in a writing signed by the Parties.

14. Counterparts. This Agreement may be executed in counterparts. Each counterpart shall constitute an original document and evidence of the execution of this Agreement by the Party signing such counterpart. The combination of the counterparts shall constitute one agreement, which shall not be effective and binding on any Party unless and until a counterpart has been signed by each Party to this Agreement. Electronically transmitted copies of signature pages will have the full force and effect of original signed pages.

15. No Other Representation. Each Party acknowledges that it has freely decided to enter into this Agreement of its own will and without relying on any representation of any other party, other than those expressly set forth in this Agreement.

16. Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be ruled invalid or unenforceable by a court of competent jurisdiction, and solely as to any Parties who have not withdrawn their acceptance of this Agreement under Paragraph 7, the remainder of this Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect to which it is invalid or unenforceable), shall not be affected thereby, and each and every other term, provision and condition of this Agreement shall be enforceable to the fullest extent permitted by law.

In witness whereof, the parties have set their hands as of the dates indicated below.

Dated: March 25, 2021

By: _____
Soneet R. Kapila, Assignee

Dated: March ___, 2021

By: _____
Mark Andrzejewski

Dated: March ___, 2021

By: _____
Sean Dempsey

Dated: March ___, 2021

By: _____
William Esping

Dated: March ___, 2021

By: _____
Jonathan Lewis

Dated: March ___, 2021

By: _____
Robert Basham

Dated: March 22, 2021

By: _____
Edward D. Bartolo

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In witness whereof, the parties have set their hands as of the dates indicated below.

Dated: March ___, 2021 By:_____
Soneet R. Kapila, Assignee

Dated: March 22, 2021 By:_____
Mark Andrzejewski

Dated: March ___, 2021 By:_____
Sean Dempsey

Dated: March ___, 2021 By:_____
William Esping

Dated: March ___, 2021 By:_____
Jonathan Lewis

Dated: March ___, 2021 By:_____
Robert Basham

Dated: March ___, 2021 By:_____
Edward DeBartolo

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In witness whereof, the parties have set their hands as of the dates indicated below.

Dated: March ___, 2021 By:_____
Soneet R. Kapila, Assignee

Dated: March ___, 2021 By:_____
Mark Andrzejewski

Dated: March 22, 2021 By:_____
Sean Dempsey

Dated: March ___, 2021 By:_____
William Esping

Dated: March 22, 2021 By:_____
Jonathan Lewis

Dated: March ___, 2021 By:_____
Robert Basham

Dated: March ___, 2021 By:_____
Edward DeBartolo

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In witness whereof, the parties have set their hands as of the dates indicated below.

Dated: March ___, 2021 By:_____
Soneet R. Kapila, Assignee

Dated: March ___, 2021 By:_____
Mark Andrzejewski

Dated: March ___, 2021 By:_____
Sean Dempsey

Dated: March 24, 2021 By:_____
William Esping

Dated: March ___, 2021 By:_____
Jonathan Lewis

Dated: March ___, 2021 By:_____
Robert Basham

Dated: March ___, 2021 By:_____
Edward DeBartolo

15. No Other Representation. Each Party acknowledges that it has freely decided to enter into this Agreement of its own will and without relying on any representation of any other party, other than those expressly set forth in this Agreement.

16. Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be ruled invalid or unenforceable by a court of competent jurisdiction, and solely as to any Parties who have not withdrawn their acceptance of this Agreement under Paragraph 7, the remainder of this Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect to which it is invalid or unenforceable), shall not be affected thereby, and each and every other term, provision and condition of this Agreement shall be enforceable to the fullest extent permitted by law.

In witness whereof, the parties have set their hands as of the dates indicated below.

Dated: March ___, 2021 By:_____
Soneet R. Kapila, Assignee

Dated: March ___, 2021 By:_____
Mark Andrzejewski

Dated: March ___, 2021 By:_____
Sean Dempsey

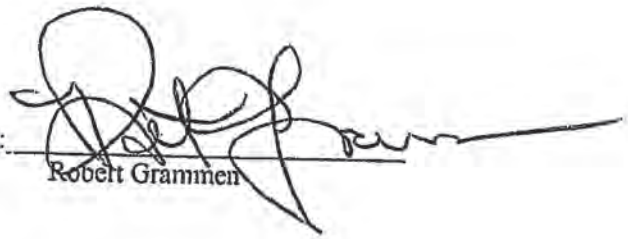
Dated: March ___, 2021 By:_____
William Esping

Dated: March ___, 2021 By:_____
Jonathan Lewis

Dated: March 22, 2021 By:_____
Robert Basham

Dated: March ___, 2021 By:_____
Edward DeBartolo

Dated: March 23, 2021

By: 
Robert Grammen

Dated: March ___, 2021

By: _____
William Horne

Dated: March ___, 2021

By: _____
Ray Montelcone

Dated: March ___, 2021

By: _____
Michael Perry

Dated: March ___, 2021

By: _____
James St. Louis III

Dated: March ___, 2021

By: _____
Chris Sullivan

Dated: March ___, 2021

By: _____
Geza Henni

Dated: March ___, 2021

By:_____
Robert Grammen

Dated: March 23, 2021

By: William E. Horne
William Horne

Dated: March ___, 2021

By:_____
Ray Monteleone

Dated: March ___, 2021

By:_____
Michael Perry

Dated: March ___, 2021

By:_____
James St. Louis III

Dated: March ___, 2021

By:_____
Chris Sullivan

Dated: March ___, 2021

By:_____
Geza Henni

Dated: March ___, 2021 By:_____
Robert Grammen

Dated: March ___, 2021 By:_____
William Horne

Dated: March 22, 2021 By:_____
Ray Monteleone

Dated: March ___, 2021 By:_____
Michael Perry

Dated: March ___, 2021 By:_____
James St. Louis III

Dated: March ___, 2021 By:_____
Chris Sullivan

Dated: March ___, 2021 By:_____
Geza Henni

Dated: March ___, 2021

By:_____
Robert Grammen

Dated: March ___, 2021

By:_____
William Horne

Dated: March ___, 2021

By:_____
Ray Monteleone

Dated: March 22, 2021

By:_____
Michael Perry

Dated: March ___, 2021

By:_____
James St. Louis III

Dated: March ___, 2021

By:_____
Chris Sullivan

Dated: March ___, 2021

By:_____
Geza Henni

Dated: March ___, 2021

By:_____
Robert Grammen

Dated: March ___, 2021

By:_____
William Horne

Dated: March ___, 2021

By:_____
Ray Monteleone

Dated: March ___, 2021

By:_____
Michael Perry

Dated: March 24, 2021

By:_____
James St. Louis III

Dated: March ___, 2021

By:_____
Chris Sullivan

Dated: March ___, 2021

By:_____
Geza Henni

Dated: March ___, 2021

By:_____
Robert Grammen

Dated: March ___, 2021

By:_____
William Horne

Dated: March ___, 2021

By:_____
Ray Monteleone

Dated: March ___, 2021

By:_____
Michael Perry

Dated: March ___, 2021

By:_____
James St. Louis III

Dated: March 22, 2021

By:_____
Chris Sullivan

Dated: March ___, 2021

By:_____
Geza Henni

Dated: March ___, 2021 By: _____
Robert Grammen

Dated: March ___, 2021 By: _____
William Horne

Dated: March ___, 2021 By: _____
Ray Monteleone

Dated: March ___, 2021 By: _____
Michael Perry

Dated: March ___, 2021 By: _____
James St. Louis III

Dated: March ___, 2021 By: _____
Chris Sullivan

Dated: March 12, 2021 By: _____
Geza Henni

EXHIBIT A
APPROVAL ORDER

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Laser Spine Institute, LLC[1]	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780
Assignors,	Consolidated Case No. 2019-CA-2762
to	
Soneet Kapila,	Division L
Assignee.	

_____/

ORDER GRANTING ASSIGNEE'S MOTION FOR (A) ORDER APPROVING SETTLEMENT AND COMPROMISE OF CLAIMS AGAINST FORMER DIRECTORS AND OFFICERS, (B) ORDER AUTHORIZING PAYMENT OF PROFESSIONAL FEES, AND FINAL JUDGMENT AS TO SETTLED CLAIMS IN LAWSUITS

THESE CASES came before the Court for hearing on April 19, 2021, at 3:00 p.m. (the "**Hearing**") upon the *Assignee's Motion for (A) Order Approving Settlement and Compromise of*

[1] On April 8, 2019, the Court entered an order administratively consolidating this case with the assignment cases of the following entities: LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC (collectively, the "**Assignment Estates**").

Claims Against Former Directors and Officers, (B) Order Authorizing Payment of Professional Fees and (C) Final Judgment as to Settled Claims in the Lawsuits (the "**Compromise Motion**") filed by Soneet R. Kapila as Assignee.[2]

The Court, having considered the Compromise Motion, the Settlement Agreement, the record in the Assignment Cases, and argument of interested parties, finds and concludes as follows:[3]

A. This Court has jurisdiction to hear and consider the Compromise Motion, the proposed settlement, and the compromise.

B. Notice has been provided to creditors of the Assignment Estates (defined below), as required by Section 727.111(4), Florida Statutes.

C. Due, proper, and sufficient notice of the Compromise Motion and of the hearing on the Compromise Motion was given to creditors and parties in interest. Such notice was proper, adequate, and satisfied the requirements of Sections 727.109(7) and 727.111(4), Florida Statutes.

D. In the context of a Chapter 727 assignment, the Assignee has the sole authority and standing to prosecute the Claims being resolved and enter into a Settlement in connection therewith. *Moffatt & Nichol, Inc. v. B.E.A. International Corp, Inc., 48 So.3d 896, 899 (Fla. 3d. DCA 2010)* (finding that an assignee is the only party who has standing to pursue and settle fraudulent transfer, preferential transfer and other derivative claims); *Smith v. Effective Teleservices, Inc.*, 133 So.3d 1048, 1053 (Fla. 4th DCA 2014) (same).

E. The settlement and compromise embodied in the Settlement Agreement falls within

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[2] Capitalized terms not defined in the Order shall have the meaning set forth in the Compromise Motion.

[3] The findings of fact and conclusions of law stated in this Order shall constitute the Court's findings of fact and conclusions of law. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed. To the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.

the reasonable range of possible litigation outcomes and reflects the Assignee's appropriate exercise of his business judgment.

F. The settlement and compromise embodied in the Settlement Agreement is in the best interests of creditors and the estates created by the filing of the Assignment Cases (the "**Assignment Estates**") because the settlement will generate a substantial recovery to the Assignment Estates and will avoid the substantial risk, delay, and expense associated with the continued litigation and likely appeals of the Claims being settled.

G. The terms of the Settlement Agreement, including without limitation, the Settlement Payment and mutual releases provided for in the Settlement Agreement, are above the lowest level in the range of reasonableness and in all respects satisfy the standards set forth in *Wallis v. Justice Oaks II, Ltd.* (*In re Justice Oaks II, Ltd.*), 898 F.2d 1544, 1549 (11th Cir. 1990), for approval of a compromise of a controversy on behalf of the Assignment Estates.

H. Dismissal with prejudice of the Lawsuits against the Defendants will dispose of separate and distinct causes of action that are not interdependent with other pleaded claims in this proceeding and this Order will totally dispose of the entire Lawsuits as to the Defendants in this proceeding, as contemplated by Rule 9.110(k), Fla. R. App. P.

Based on the findings above and for the reasons stated in the Compromise Motion and on the terms of the Settlement Agreement, which shall constitute the decision of the Court, it is

ORDERED as follows:

1. The Compromise Motion is granted.

2. The Settlement Agreement is approved in all respects. The failure to specifically describe or include any particular provision of the Settlement Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the

Settlement Agreement be approved and so ordered in its entirety.

3. The Parties are authorized and directed to implement and comply with the terms and conditions of the Settlement Agreement.

4. Payment of Settlement Amount. Within thirty (30) days from the date of the "Final Order" as defined in paragraph 4 of the Settlement Agreement, Defendants agree to pay or cause to be paid to Plaintiff the total sum of Nine Million Dollars ($9,000,000.00) by wire transfer delivered to Plaintiff pursuant to wire transfer instructions to be provided by Plaintiff (the "**Settlement Payment**").

5. Releases. The releases set forth in the Settlement Agreement are approved.

6. Dismissal of Lawsuits. The Parties agree to dismiss with prejudice the Lawsuits being settled under the Settlement Agreement by filing Joint Stipulations for Dismissal with Prejudice in such Lawsuits within five business days from Plaintiff's receipt of the Settlement Payment.

7. Final Judgment. The dismissal with prejudice of the Lawsuits against the Defendants disposes of separate and distinct causes of action that are not interdependent with other pleaded claims in this proceeding and this Order totally disposes of the entire Lawsuits as to the Defendants in this proceeding. Accordingly, the Court hereby enters this Final Judgment as to such Claims against the Defendants.

8. Retention of Jurisdiction. The Court retains jurisdiction to enforce this Order, to give effect to the compromise, and to resolve any issues or claims that arise out of or impact this Order or compromise.

9. Approval of Contingency Fees. The Court approves a total contingency fee to Genovese Joblove & Battista, P.A. and Rocke McLean & Sbar in the amount of $2,050,800. Pursuant to the agreement between such firms, the Assignee is authorized to pay from the Settlement Payment $1,025,400 to Genovese Joblove & Battista, P.A. and $1,025,400 to Rocke McLean & Sbar.

10. Counsel for the Assignee shall serve this Order and Final Judgment upon all interested parties and their counsel, including the creditors of the Assignment Estates.

DARREN FARFANTE
Circuit Court Judge

Copies to: Counsel of record

EXHIBIT B

1. Robert Grammen
    a. Soneet R. Kapila, as Assignee v. Robert Grammen, Case No. 19-CA-011755, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.
2. James St. Louis
    a. Soneet R. Kapila, as Assignee v. Dr. James St. Louis III, Case No. 19-CA-006880, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.
3. Raymond Monteleone
    a. Soneet R. Kapila, as Assignee v. Raymond Monteleone, Case No. 19-CA-011754, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.

EXHIBIT C

1. EFO Laser Spine Institute, Ltd.
    a. Soneet R. Kapila, as Assignee v. EFO Laser Spine Institute, Ltd., Case No. 19-CA-011463, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.
2. SLG LSI Investment, LLC
    a. Soneet R. Kapila, as Assignee v. SLG Investment, LLC, Case No. 19-CA-006909, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.
3. DBF-LSI, LLC
    a. Soneet R. Kapila, as Assignee v. DBF-LSI, LLC, Case No. 19-CA-006887, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.
4. RJPT, Ltd.
    a. Soneet R. Kapila, as Assignee v. RJPT, LTD., Case No. 19-CA-006907, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.

5. Horne Management, Inc.

    a. Soneet R. Kapila, as Assignee v. Horne Management, Inc., Case No. 19-CA-011465, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.

6. MMPerry Holdings, LLLP

    a. Soneet R. Kapila, as Assignee v. MMPerry Holdings, LLLP, Case No. 19-CA-011467, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.

7. CTS Equities, LP

    a. Soneet R. Kapila, as Assignee v. CTS Equities Limited Partnership, Case No. 19-CA-011503, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.

8. RDB Equities, LP

    a. Soneet R. Kapila, as Assignee v. RDB Equities Limited Partnership, Case No. 19-CA-011469, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.

9. WH, LLC

   a. Soneet R. Kapila, as Assignee v. WH, LLC, Case No. 19-CA-011472, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.

10. Laserscopic Spine Services, Inc.

   a. Soneet R. Kapila, as Assignee v. Laserscopic Spine Services, Inc., Case No. 19-CA-006895, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.

11. Bereczki Management, Inc.

   a. Soneet R. Kapila, as Assignee v. Bereczki Management, Inc., Case No. 19-CA-006905, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.

12. Marbl SOS, Ltd.

   a. Soneet R. Kapila, as Assignee v. MARBL SOS LTD., Case No. 19-CA-006908, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.

EXHIBIT D

1. Jill Diane St. Louis
    a. Soneet R. Kapila, as Assignee v. Jill Diane St. Louis, Case No. 19-CA-011471, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.
2. Glen Hamburg
    a. Soneet R. Kapila, as Assignee v. Glen Hamburg, Case No. 19-CA-006891, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.
3. Clinton Phillips
    a. Soneet R. Kapila, as Assignee v. Clinton Phillips, Case No. 19-CA-006901, in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division.

EXHIBIT B

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT

IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

CIVIL DIVISION

JOE SAMUEL BAILEY*, et al*.,

Plaintiffs,

vs.

JAMES S. ST. LOUIS, *et al*.,

Defendants.

_____/

Case No. 06-08498

Division L

SECOND AMENDED FINAL JUDGMENT

Pursuant to the Court's Order on Non-Jury Trial dated October 9, 2012:

It is ADJUDGED that:

1. Plaintiff Joe Samuel Bailey, whose address is 308 Wallick Drive, Cotter, AR 72626, does have and recover from Defendants James S. St. Louis, D.O., whose address is 4728 N. Habana Avenue, Suite 202, Tampa, FL 33614; Michael W. Perry, M.D., whose address is 5332 Avion Park Drive, Tampa, FL 33607; EFO Holdings L.P., whose principal address is 2828 Routh Street, Suite 500, Dallas, TX 75201; EFO Genpar, Inc., whose principal address is 500 N. Akard Street, Suite 1500, Dallas, TX 75201; and EFO Laser Spine Institute, Ltd., whose principal address is 2828 Routh Street, Suite 500, Dallas, TX 75201, jointly and severally, the sum of $250,000.00, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH**.

2. Plaintiff Joe Samuel Bailey does have and recover from Defendants James S. St. Louis, D.O.; Michael W. Perry, M.D.; EFO Holdings L.P.; EFO Genpar, Inc.; and EFO Laser Spine Institute, Ltd., jointly and severally, the sum of $750,000.00 in punitive damages, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH**.

3. Plaintiffs Laserscopic Spinal Centers of America, Inc., whose address 308 Wallick Drive, Cotter, AR 72626, and Laserscopic Medical Clinic, LLC, whose address is 308 Wallick Drive, Cotter, AR 72626, do have and recover from Defendants James S. St. Louis, D.O.; EFO Holdings L.P.; EFO Genpar, Inc.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC, who address is 5332 Avion Park Drive, Tampa, FL 33607; Laser Spine Medical Clinic, LLC, whose address is 3001 N. Rocky Point Drive E, Suite 380, Tampa, FL 33607; Laser Spine Physical Therapy, LLC, whose address is 3001 N. Rocky Point Drive E, Suite 380, Tampa, FL 33607; and Laser Spine Surgical Center, LLC, whose address is 5332 Avion Park Drive, Tampa, FL 33607, jointly and severally, the sum of $264,000,000.00, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH**.

4. Plaintiffs Laserscopic Spinal Centers of America, Inc., and Laserscopic Medical Clinic, LLC, do have and recover from Defendants James S. St. Louis, D.O.; EFO Holdings L.P.; EFO Genpar, Inc.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC; Laser Spine Medical Clinic, LLC; Laser Spine Physical Therapy, LLC; and Laser Spine Surgical Center, LLC, jointly and severally, the sum of $5,000,000.00 in punitive damages, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH**.

5. Plaintiff Laserscopic Spine Centers of America, Inc., whose address is 308 Wallick Drive, Cotter, AR 72626, does have and recover from Defendants EFO Holdings, L.P.; EFO Genpar, Inc.; James S. St. Louis, D.O.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC; Laser Spine Medical Clinic, LLC; Laser Spine Physical Therapy, LLC; and Laser Spine Surgical Center, LLC, jointly and severally, the sum of $6,831,172.00, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH**.

6. These sums shall bear interest at the rate of 4.75% from October 9, 2012 to December 31, 2016; 4.97% from January 1, 2017 through December 31, 2017; and, 5.72% from January 1, 2018 through December 31, 2018 in accordance with Florida Statute §55.03. Thereafter, on January 1st of each succeeding year until the judgment is paid, the interest rate will adjust in accordance with Florida Statute § 55.03. Accordingly, the prejudgment interest through April 30, 2019 is as follows:

a. On the slander per se claim the damage awarded to Plaintiff Bailey was $250,000, and the amount of prejudgment interest that has accrued is $83,311.00. Plaintiff Bailey was awarded punitive damages in the amount of $750,000.00, and the prejudgment interest on that amount is $249,934.00. Accordingly, the amount of the final judgment with prejudgment interest through April 30, 2019 to Plaintiff Bailey is **$1,333,245.00**, which shall continue to accrue statutory interest. **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

b. On the claims in favor of Plaintiffs Laserscopic Spinal Centers of America, Inc. and Laserscopic Medical Clinic, LLC, they were awarded $264,000,000.00, which has accrued prejudgment interest through April 30, 2019 of $87,976,680.00. Plaintiffs Laserscopic Spinal Centers of America, Inc. and Laserscopic Medical Clinic, LLC

were also awarded punitive damages in the amount of $5,000,000.00, and the prejudgment interest on that amount through April 30, 2019 is $1,666,225.00. Accordingly, the amount of the final judgment with prejudgment interest through April 30, 2019 to Plaintiffs Laserscopic Spinal Centers of America, Inc. and Laserscopic Medical Clinic, LLC is **$358,642,905.00**, which shall continue to accrue statutory interest. **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

c. On the claims in favor of Laserscopic Spine Centers of America, Inc., it was awarded $6,831,172.00; the prejudgment interest through April 30, 2019 on this amount is $2,266,066.00. Accordingly, the amount of the final judgment with prejudgment interest to Plaintiff Laserscopic Spine Centers of America, Inc. through April 30, 2019 is **$9,097,238.00**, which shall continue to accrue statutory interest. **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

7. This Court reserves jurisdiction to award attorney's fees and costs to Plaintiffs.

8. It is further ordered and adjudged that the judgment debtors shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney, within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed. Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment debtors to complete form 1.977, including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney.

9. The Court retains jurisdiction over this action to enter further Orders that are proper and to award further relief, including without limitation, equitable relief, writs of possession, and to conduct proceedings supplementary, to implead third parties, as this Court deems just, equitable, and proper.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this ____ day of April, 2019.

06-CA-008498 7/3/2019 10:00:46 AM

CIRCUIT COURT JUDGE

cc: All Counsel of Record

EXHIBIT C

(excluding exhibits)

NO. DC-20-06211

JOE SAMUEL BAILEY, ET AL., *Plaintiffs*	§	IN THE DISTRICT COURT OF
VS.	§	DALLAS COUNTY, TEXAS
JAMES S. ST. LOUIS, ET AL., *Defendants*	§	162ND JUDICIAL DISTRICT

PLAINTIFFS' THIRD AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Joe Samuel Bailey ("Bailey"), Laserscopic Spinal Centers of America, Inc. ("Laserscopic Spinal"), Laserscopic Spine Centers of America, Inc. ("Laserscopic Spine"), and Laserscopic Medical Clinic, LLC ("Laserscopic Medical") (collectively, "Plaintiffs" or "Judgment Creditors"), Plaintiffs and Judgment Creditors in this cause, suing the following: William P. Esping, individually and as one of the trustees of the Esping Marital Deduction Trust No. 2 ("W. Esping"), Kathryn R. Esping, individually and as one of the trustees of the Esping Marital Deduction Trust No. 2 ("K. Esping"), Jennifer Esping Kirtland, individually and as one of the trustees of the Esping Marital Deduction Trust No. 2 ("Kirtland"), Julie Esping Blanton, individually and as one of the trustees of the Esping Marital Deduction Trust No. 2 ("Blanton"), Esping Marital Deduction Trust No. 2 ("Marital Trust"), by and through its trustees, W. Esping, K. Esping, Kirtland and Blanton, Peter Wilson ("Wilson"), Robert P. Grammen ("R. Grammen"), Julie Krupala ("Krupala"), Cypress GP, LLC ("Cypress GP"), William Horne ("W. Horne"), Horne J, LLC ("Horne LLC"), Horne Tipps Properties, LLC ("Horne Tipps"), WPE Kids Partners, LP ("WPE Kids"), WPE Holdings, Inc. ("WPE Holdings"), JEK Sep/Property, LP ("JEK"), Stanhope Capital Fund I, LP ("Stanhope"), EFO Private Equity Fund II, LP, ("EFO Equity Fund II"), Eminence Interests, LP ("Eminence"), Helen A. Grammen ("H. Grammen"), Michael Grammen ("M. Grammen"), Yvonne Grammen ("Y. Grammen"), James W. Horne ("James

Horne"), Horne Management Inc. ("Horne Management"), Masterdom Value Fund, Ltd. ("Masterdom"), Dotty Bollinger ("Bollinger"), KRE Sep/Property, LP ("KRE"), Justin Horne ("J. Horne"), Kara A. Grammen ("K. Grammen"), Spinal Tap Partners ("Spinal Tap"), Appreciation Siblings ("Appreciation"), , Jill St. Louis ("J. St. Louis."), Geoffrey Laurence Wallace Estate, by and through its executrix, Edith Smith ("Wallace Estate"), WH, LLC ("WH"), EFO Holdings Manager, Inc. ("EFO Manager"), EFO Management, LLC ("EFO Management"), Louis X. Amato ("Amato") (collectively "Defendants" unless otherwise specifically identified), and the following "Financier Defendants", who are also made defendants herein: EFO/Davenport Partners, LP ("EFO Davenport"), EFO New Frontiers, L.P. ("EFO New Frontiers"), Alpina Lending, LP ("Alpina"), EFO Residential Partners LP ("EFO Residential"), Enel Champs Partners LP ("Enel Champs"), Lubrication Partners LP ("Lubrication Partners"), Green Series LLC ("Green Series"), Cypflo Management LLC ("Cypflo"), JBJ Lending Company ("JBJ"), Metro 67 Partners LLC ("Metro 67"), Metro 67 Partners LP, 67 Madison Partners LP, Madison Redevelopment LP, Madison UP Investors LP, Sibling Rivalry Partners, LP ("Sibling Rivalry"), and Entity Manager, Inc. ("Entity Manager"), and the EFO General Partnership. In support thereof, Plaintiffs show the Court the following:

I. DISCOVERY LEVEL

1. Plaintiffs believe that Rule 621a applies to all discovery in this proceeding in aid of judgment, but alternatively request that discovery be conducted under Level 3 pursuant to Tex. R. Civ. P. 190.1. As a practical matter, the court should enter an order to coordinate and stage discovery in the interests of efficient administration of justice.

II. RULE 47 STATEMENT

2. Plaintiffs seek relief based on a monetary judgment over $1,000,000 and are seeking relief in a process in aid of the judgment domesticated in this court, but if Rule 47 applies,

Plaintiffs seek monetary relief over $1,000,000. The relief sought and damages sought are within the jurisdictional limits of the Court.

III. PARTIES AND SERVICE OF CITATION

3. *Plaintiffs*:

A. Bailey is an individual residing in Arkansas, who is the owner of a judgment against EFO Holdings, L.P. ("Holdings"), EFO GP Interests, Inc., f/k/a EFO Genpar, Inc. ("Genpar") and EFO Laser Spine Institute, Ltd. ("EFO LSI") (collectively "EFO Debtors"), Laser Spine Institute, LLC, Laser Spine Medical Clinic, LLC, Laser Spine Physical Therapy, LLC and Laser Spine Surgical Center, LLC. Laser Spine Institute, LLC, Laser Spine Medical Clinic, LLC, Laser Spine Physical Therapy, LLC and Laser Spine Surgical Center, LLC (collectively, the LSI Debtors" unless otherwise specifically identified), St. Louis, and Michael W. Perry, M.D. ("Perry").

B. Laserscopic Spinal is a corporation duly formed and existing under the laws of the State of Nevada, registered to do business in the State of Florida, and whose place of business was in the State of Florida, which is the owner of a judgment against the EFO Debtors, St. Louis, and the LSI Debtors.

C. Laserscopic Medical is a limited liability company duly formed and existing under the laws of the State of Florida, registered to do business in the State of Florida, and whose place of business was in the State of Florida, which is the owner of a judgment against the EFO Debtors, St. Louis, and the LSI Debtors.

D. Laserscopic Spine is a corporation duly formed and existing under the laws of the State of Nevada, registered to do business in the State of Florida, and whose place of business was in the State of Florida, which is the owner of a judgment against the EFO Debtors, St. Louis, and the LSI Debtors. All individuals and entities named in A through D against whom Plaintiffs have recovered judgments are collectively called "Judgment Debtors" herein unless otherwise

specifically identified. Plaintiffs acquired causes of action of the Judgment Debtors by writ of execution from this Court and, as described herein, assert them in this suit against Defendants.

E. Laserscopic Spinal, Laserscopic Medical and Laserscopic Spine are collectively called "Laserscopic."

F. The judgment was obtained in Case No. 06-08498, the 13th Judicial Circuit Court of Hillsborough County, Florida (the "Underlying Litigation").

4. *Defendants*:

A. W. Esping is an individual residing at 5521 Deloache Avenue, Dallas, Texas 75220-2219, and has already appeared and answered herein. His place of business is 500 N. Akard Street, Suite 1500, Dallas, Texas 75201 ("Esping Headquarters" or "Esping HQ"). Because W. Esping is part of the entire scheme complained of at almost every level, the allegations against him are set forth in detail throughout this petition, including (among other things) his roles in the EFO General Partnership and the Esping Enterprise, his breaches of duty and active concealment of assets from creditors, including Plaintiffs.

B. K. Esping is an individual residing at 701 Kings Town Drive, Naples, Florida 34102-7830 and has filed a special appearance herein. K. Esping is also the W. Esping's mother. The Distributions to K. Esping from EFO LSI were fraudulent transfers and improper and she knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but she accepted those amounts having no legal right to the same.

C. Kirtland is an individual residing at 3505 Turtle Creek Blvd, #15d, Dallas, Texas 75219, and has already appeared and answered herein. Kirtland is also W. Esping's sister. The Distributions to her from EFO LSI were fraudulent transfers and improper and she knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent

transfer scheme, but she accepted those amounts having no legal right to the same as part of the Esping Enterprise.

D. Blanton is an individual residing at 4036 Glenwick Lane, Dallas, Texas 75205, and has already appeared and answered herein. Blanton is also W. Esping's sister. The Distributions to her from EFO LSI were fraudulent transfers and improper and she knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but she accepted those amounts having no legal right to the same.

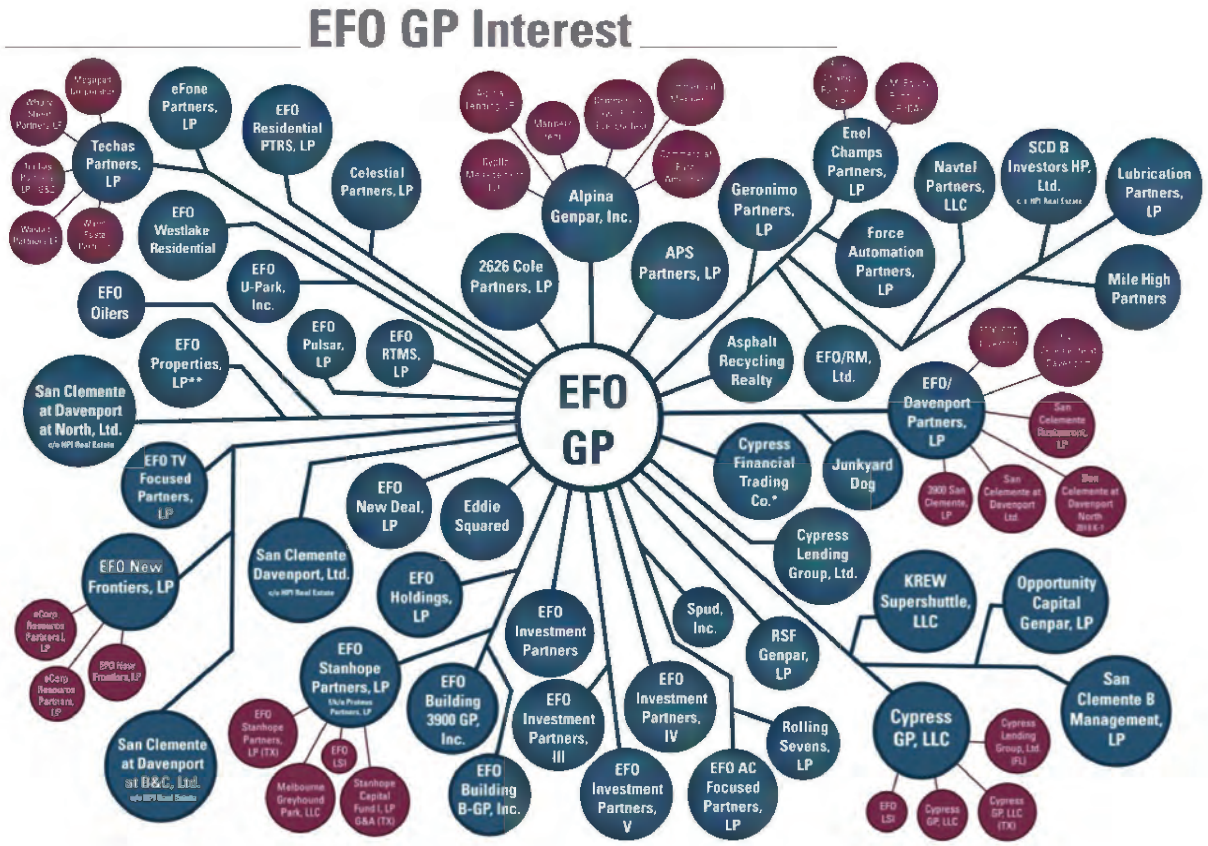
E. Marital Trust is an entity established pursuant to provisions of the United States Internal Revenue Code and has already appeared and answered herein. It is sued by and through its trustees, W. Esping, K. Esping, Kirtland and Blanton. Marital Trust is the 100% owner of Genpar, which is the managing member of Cypress GP, which is the general partner of EFO LSI. The Vice President of Genpar is R. Grammen. Marital Trust is located at the same address as Holdings and Genpar, i.e. the Esping HQ. Upon information and belief, W. Esping, K. Esping, Kirtland and/or Blanton own, control, benefit from and/or manage this entity, and this entity, along with each of the named individuals worked in concert with W. Esping, Krupala, Wilson, R. Grammen and others as described herein to commit the wrongful acts orchestrated at the Esping HQ and elsewhere in the Dallas area.

a. W. Esping used the entity before and after the illegal distributions described below, and as part of the EFO general partnership's efforts to hinder, delay, or defraud the judgment creditors by funneling illegal distributions to and holding assets for the Esping family members, including funds obtained by breach of a fiduciary duty and funds subject to the disgorgement judgment.

b. The trustee(s) of the Trust knew the dividends and distributions were illegal because W. Esping is also a control person of the entity making the distributions. As the person who actually committed the fraud against the judgment creditors that caused the litigation, W. Esping, trustee of the Marital trust, knew in May 2015 that the disgorgement award was likely, that the funds received from the loan described herein would likely be subject to a constructive trust, and that the transaction to pay distributions was an unfair self-interested transaction, yet he had the Marital Trust receive the distribution anyway as a mechanism to further the conspiracy to shield assets.

c. The Marital Trust owned Genpar. Through the Martial Trust's actual control of Genpar (a judgment debtor) the Marital Trust controlled each of the affiliates and related companies, including their transfers of properties, transfers interests in various EFO-related affiliates, and in providing sham loans through intercompany transfers. These were used in the conspiracy to shield assets and as part of the EFO general partnership.

d. To obscure the inter-company relationships and transfers further, W. Esping and Krupala, working through the Marital Trust as actual control persons, failed to disclose any comprehensive information relating to the limited partners of these entities to determine whether the inter-company transfers are occurring to insiders and/or relatives and whether these inter-related companies are really controlled by the same group of individuals. To date, despite refusals from the various EFO entities to produce documents, through independent investigations, Plaintiffs have identified approximately 100 entities in which Genpar has an interest in (or recently transferred an interest) that are part of "EFO". Below is a chart identifying *a fraction* of the entities unearthed so far, all controlled and/or owned by the Marital Trust and its trustees, especially W. Esping, in some form:



e. Because Marital Trust is owned, managed, and/or controlled by W. Esping and is part of the Esping Enterprise (Defined in Count 2), his knowledge is imputed to Marital Trust including the allegations made by Plaintiffs that the profits of LSI belong to Plaintiffs, who sought and obtained a disgorgement damages award, which was affirmed twice on appeal.

f. The 2015 Distributions (defined below) were illegally transferred by EFO LSI to Marital Trust, who had knowledge that the funds belonged to Plaintiffs, and Marital Trust accepted those amounts having no legal right to the same.

F. Wilson is an individual residing in Dallas County, Texas, and has already appeared and answered herein. Wilson took an active role in several of the wrongful acts complained of (as discussed below), acting as a participant in the actions orchestrated from the Esping HQ. At one

point, Wilson acted as an officer of Genpar, taking on a fiduciary role for the millions of dollars accessed by Genpar in Dallas accounts. Even after Holdings was under the control of a chapter 7 trustee and EFO Holdings, L.P. allegedly ceased to exist, Wilson represented that he could act for Holdings and (with Krupala and Esping) diverted business and money from the judgment debtors in breach of fiduciary duty. Wilson sought new deals for Holdings and is responsible for many of the actions of EFO Management, described above. Wilson received distributions and knew or should have known they were illegal, subject to a constructive trust, and/or part of a conspiracy to conceal assets as described herein. When Wilson started with "EFO" in 2011, he was provided a spreadsheet of the Holdings assets from Krupala indicating that, in 2006 included over $300 million. Also, later in 2011, Krupala represented that Holdings had less than $2,000 in assets under oath. Wilson knew or should have known that "EFO" was a conspiracy to defraud when the fraud judgment issued in 2012 and should have known that transfers of "accelerated dividends" in 2015 were an actual fraud on the Plaintiffs as creditors and breached fiduciary duties to the Judgment Debtors.

G. R. Grammen is an individual residing in Florida, but who maintained a business office at the Esping HQ as recently as 2019 and has filed a special appearance herein. R. Grammen managed, controlled and/or was a part owner of Holdings and Genpar, is the Vice-President of Genpar, was a founding member of LSI and was on the board of directors of LSI Holdco, and directly participated in the actions discussed herein orchestrated by him, Krupala, Wilson and W. Esping from the Esping HQ. Because R. Grammen is part of the entire scheme complained of at almost every level, the allegations against him are set forth in detail throughout this petition.

H. Krupala is an individual residing in Dallas County, Texas, and has already appeared and answered herein. As noted above, Krupala was described by W. Esping as "our CFO" of the

EFO "umbrella" or "name" (the EFO General partnership) and a partner. Krupala participated directly and materially in substantially every action involving the transfer of money, accounting for transfers, and creating the "records" of the entities to facilitate the schemes implemented from the Esping HQ by her, R. Grammen, Wilson, and W. Esping. Krupala is, or has been, an officer of each of the EFO Debtors and many, if not all, of the other entities officing at the Esping HQ. Krupala was the center of the EFO conspiracy and EFO general partnership described herein. Because Krupala is part of the entire scheme complained of at almost every level, the allegations against her are set forth in detail throughout this petition.

I. Cypress GP is a limited liability company, duly formed and existing under the laws of the State of Florida, and its principal place of business is in Texas. It has already appeared and answered herein. Cypress GP is managed by Genpar, which at all relevant times has been controlled and managed by R. Grammen and W. Esping. At one point, Holdings was a member of Cypress, owing 99% of it, but Plaintiffs cannot yet confirm whether that is still the case. Cypress GP was controlled by Krupala and W. Esping and is liable for the acts of the EFO general partnership described herein as a member/conduit for partnership action to conceal assets and work for the other EFO entities. It is also liable for its wrongful participation in the asset siphoning from LSI of funds subject to the disgorgement judgment, the self-interested transactions, and the fraudulent transfer of assets. Because Cypress GP is owned, managed, and/or controlled by W. Esping and is part of the Esping Enterprise, his knowledge is imputed to Cypress GP including the allegations made by Plaintiffs that the profits of LSI belong to Plaintiffs, who sought and obtained a disgorgement damages award, which was affirmed twice on appeal. The Distributions to Cypress GP from EFO LSI were fraudulent transfers and improper and Cypress GP knew that the funds

belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but it accepted those amounts having no legal right to the same.

J. W. Horne is an individual who at all applicable times was an owner of and the manager of LSI and LSI Holdco and has filed a special appearance herein. He is also an owner and manager of Horne J, Horne LLC, Horne Tipps, Horne Management, and WH, which each are owners of EFO LSI as described below. W. Horne, Horne J, Horne LLC, Horne Tipps, Horne Management and WH (in active concert with the relatives of W. Horne) all participated in the wrongful acts described herein of Horne, orchestrated from the Esping HQ. Horne helped direct the Distributions, which he knew or should have known were breaches of fiduciary duty and part of a conspiracy to conceal assets from the creditors of LSI after the judgment and oral argument. As described below, W. Horne participated in the board of managers and in other executive roles in the self-interested transactions described. Because W. Horne is part of the entire scheme complained of herein, the allegations about him are set forth in detail throughout this petition.

K. Horne J is a limited liability company duly formed and existing under the laws of the State of Georgia and has filed a special appearance herein. Upon information and belief, this entity is owned or controlled by W. Horne, former President and CEO of LSI, or by immediate family members or surrogates of W. Horne acting in active concert with him, who used the entity in the schemes and wrongful acts described herein, orchestrated from the Esping HQ. Because Horne J is owned, managed and/or controlled by W. Horne and is part of the Esping Enterprise, his knowledge is imputed to Horne J including the allegations made by Plaintiffs that the profits of LSI belong to Plaintiffs, who sought and obtained a disgorgement damages award, which was affirmed twice on appeal. The Distributions to Horne J from EFO LSI were fraudulent transfers and improper and Horne J. knew or should have known that the funds belonged to Plaintiffs, were

in breach of duty, and part of a fraudulent transfer scheme, but it accepted those amounts having no legal right to the same.

L. Horne Tipps is a limited liability company duly formed and existing under the laws of the State of Florida and has filed a special appearance herein. Upon information and belief, this entity is managed, owned and/or controlled by W. Horne, former President and CEO of LSI, or by immediate family members or surrogates of W. Horne acting in active concert with him, who used the entity in the schemes and wrongful acts described herein, orchestrated from the Esping HQ. Because Horne Tipps is owned, managed and/or controlled by W. Horne and is part of the Esping Enterprise, his knowledge is imputed to Horne Tipps including the allegations made by Plaintiffs that the profits of LSI belong to Plaintiffs, who sought and obtained a disgorgement damages award, which was affirmed twice on appeal. The Distributions to Horne Tipps from EFO LSI were fraudulent transfers and improper and Horne Tips knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but it accepted those amounts having no legal right to the same.

M. WPE Kids is an entity formed and doing business in the State of Texas, with its principal place of business at the Esping HQ, and has already appeared and answered herein. WPE Kids received illegal distributions of at least $57,626,814 with $12,133,451 distributed in 2015 alone as part of the conspiracy to shield assets by members of the EFO general partnership. The alleged general partner of WPE Kids is WPE Holdings, Inc.; W. Esping is the Vice President of, and signed the EFO LSI partnership agreement on behalf of, WPE Kids. W. Esping actually knew or should have known that the distributions made after the fraud judgment in 2012 would be subject to a constructive trust from a disgorgement judgment. The actions of WPE Kids were directed by W. Esping and his relatives (who were in active concert with him) as part of his scheme to conceal

assets and launder illegal dividends. Because WPE Kids is owned, managed, and/or controlled by W. Esping and is part of the Esping Enterprise, his knowledge is imputed to WPE Kids including the allegations made by Plaintiffs that the profits of LSI belong to Plaintiffs, who sought and obtained a disgorgement damages award, which was affirmed twice on appeal. The Distributions to WPE Kids from EFO LSI were fraudulent transfers and improper and it knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but WPE Kids accepted those amounts having no legal right to the same. Because knowledge of its control persons is imputed, WPE Kids knew it was the transferee or subsequent transferee of an actual fraudulent transfer, holding funds it knew were traceable to the Distributions and subject to constructive trust based on the underlying judgment for disgorgement.

N. JEK is an entity formed and doing business in the State of Texas, with its principal place of business at the Esping HQ and has already appeared and answered herein. Upon information and belief, this entity is likely managed, owned and/or controlled by Kirtland, who is, W. Esping's sister. However, JEK is actually controlled mostly by W. Esping and Krupala, who move money around within the EFO general partnership as part of the scheme to conceal assets and launder illegal dividends. JEK was used to take assets from the LSI Debtors subject to the disgorgement judgment and to hinder, delay, and defraud the Plaintiffs as judgment creditors, as more fully set forth herein.

a. JEK was and is a limited part of EFO LSI. As of 2015, it held 2.40386% of the partnership interest in EFO LSI.

b. JEK is integrated into and part of the same QuickBooks software that each of the Esping related entities uses, which shares only one license and the same

administrator, Krupala, who moves funds into and out of the various EFO related entities without legal or factual support.

c. JEK received distributions of at least $4,091,010 (the "JEK Illegal Payments") from EFO LSI, but JEK knew or should have known those funds belong to Plaintiffs as JEK is part of the Esping Enterprise or EFO General Partnership.

d. W. Esping is intimately familiar with the Bailey Litigation, which resulted in the $369 million dollar judgment against the Judgment Debtors. Esping testified in the trial in the Bailey Litigation, and the trial judge made express findings about the intentional and illegal conduct of Esping and the EFO Judgment Debtors, which findings support the claims brought by Plaintiffs in the Bailey Litigation.

e. Because knowledge of its control persons is imputed, JEK knew it was the transferee or subsequent transferee of an actual fraudulent transfer, holding funds it knew were traceable to the Distributions and subject to constructive trust based on the underlying judgment for disgorgement.

f. The JEK Illegal Payments were illegally transferred by EFO LSI to JEK, who had knowledge that the funds belonged to Plaintiffs, and JEK accepted those amounts having no legal right to the same.

O. Stanhope is an entity doing business in the State of Texas, with its principal place of business at the Esping HQ, and has already appeared and answered herein. Stanhope is located at the same address as Holdings and Genpar, i.e. the Esping HQ. Upon information and belief, Stanhope is controlled, owned and/or managed by R. Grammen (who had an office at the Esping HQ), and is also used by W. Esping and/or their surrogates as part of W. Esping and R. Grammen's scheme to conceal assets and launder illegal dividends. Because Stanhope is owned, managed,

and/or controlled by R. Grammen and is part of the Esping Enterprise, his knowledge is imputed to Stanhope including the allegations made by Plaintiffs that the profits of LSI belong to Plaintiffs, who sought and obtained a disgorgement damages award, which was affirmed twice on appeal. The Distributions to Stanhope from EFO LSI were fraudulent transfers and improper and it knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but it accepted those amounts having no legal right to the same.

P. EFO Equity Fund II is an entity domiciled in Texas and has already appeared and answered herein. EFO Equity Fund II is located at the same address as Holdings and Genpar, i.e. the Esping HQ. Upon information and belief, EFO Equity Fund II is controlled, owned and/or managed by R. Grammen, W. Esping and/or their surrogates as part of R. Grammen and W. Esping's scheme described below, including to conceal assets, and launder illegal dividends. Because EFO Equity Fund II is owned, managed, and/or controlled by W. Esping and is part of the Esping Enterprise, his knowledge is imputed to EFO Equity Fund II including the allegations made by Plaintiffs that the profits of LSI belong to Plaintiffs, who sought and obtained a disgorgement damages award, which was affirmed twice on appeal. The Distributions to EFO Equity Fund II from EFO LSI were fraudulent transfers and improper and it knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but it accepted those amounts having no legal right to the same.

Q. Eminence is an entity domiciled in Texas and has already appeared and answered herein. Eminence is located at the same address as Holdings and Genpar, i.e., the Esping HQ.

Upon information and belief, Eminence is controlled, owned and/or managed by R. Grammen, W. Esping, and/or their surrogates.[1]

a. Eminence was and is a limited part of EFO LSI. As of 2015, it held 5.56522% of the partnership interest in EFO LSI.

b. Eminence is integrated into and part of the same QuickBooks software that each of the Esping related entities uses, which shares only on license and the same administrator, Krupala, who moves funds into and out of the various EFO related entities without legal or factual support.

c. Eminence received distributions of at least $8,553,326 (the "Eminence Illegal Payments") from LSI, but Eminence knew or should have known those funds belong to Plaintiffs as Eminence is part of the Esping Enterprise.

d. Eminence is controlled, owned and/or managed by R. Grammen and W. Esping and/or their surrogates. Because knowledge of its control persons is imputed, Eminence knew it was the transferee or subsequent transferee of an actual fraudulent transfer, holding funds it knew were traceable to the Distributions and subject to constructive trust based on the underlying judgment for disgorgement.

e. Eminence, a Texas limited partnership, is believed to own approximately 80% of the interests of EFO Financial Group, LLC (another entity that is part of the Esping Enterprise) according to SEC filings.

f. Both Esping and Grammen are intimately familiar with the Bailey Litigation, which resulted in the $369 million dollar judgment against the Judgment

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[1] An option agreement filed with the SEC lists William Esping selling shares of WCA Waste Corporation owned by Eminence Interests LP, JEK Sep/Property, LP, JBJ Lending Company, all partners in EFO LSI. *See* https://www.sec.gov/Archives/edgar/data/1282398/000095012309061575/c92430exv99w4.htm

Debtors. Both Esping and Grammen testified in the trial in the Bailey Litigation, and the trial judge made express findings about the intentional and illegal conduct of both Esping and Grammen that underlie the claims brought by Plaintiffs in the Bailey Litigation.

g. Because Eminence is an alter ego of Esping and Grammen, and they manage and operate Eminence, their knowledge is imputed to Eminence including the allegations made by Plaintiffs that the profits of LSI belong to Plaintiffs, who sought and obtained a disgorgement damages award, which was affirmed twice on appeal.

h. The Eminence Illegal Payments were illegally transferred by tor EFO LSI to Eminence, who had knowledge that the funds belonged to Plaintiffs, and Eminence accepted those amounts having no legal right to the same.

R. H. Grammen is an individual residing in Florida and has filed a special appearance herein. Upon information and belief, H. Grammen is the mother of R. Grammen, and is a limited partner of Holdings and/or EFO LSI. The Distributions to R. Grammen's relatives from EFO LSI were fraudulent transfers and improper and each knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but each accepted those amounts having no legal right to the same.

S. M. Grammen is an individual residing in Florida and has filed a special appearance herein. M. Grammen is the brother of R. Grammen, and Y Grammen is his wife. The Distributions to R. Grammen's relatives from EFO LSI were fraudulent transfers and improper and each knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but each accepted those amounts having no legal right to the same.

T. Y. Grammen is an individual residing in Florida and has filed a special appearance herein. Y. Grammen is the wife of M. Grammen, who is the brother of R. Grammen. All of the

relatives of R. Grammen were believed to be acting as his shills to facilitate his actions described below or, in the alternative, acted as active participants. Upon information and belief the R. Grammen relatives took actions, signed documents, accepted distributions, and otherwise acted as set forth below merely at the direction of R. Grammen as his stand-ins and not for their own purposes, thereby participating in the schemes and wrongful acts described herein, orchestrated from the Esping HQ. Because R. Grammen's knowledge is imputed to H. Grammen, M. Grammen, and Y. Grammen as shills, including the allegations made by Plaintiffs that the profits of LSI belong to Plaintiffs, who sought and obtained a disgorgement damages award, which was affirmed twice on appeal. The Distributions to R. Grammen's relatives from EFO LSI were fraudulent transfers and improper and each knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but each accepted those amounts having no legal right to the same.

U. James Horne is an individual residing in Florida and has filed a special appearance herein. Upon information and belief, James Horne is likely a relative of W. Horne, former President and CEO of LSI and LSI Holdco. As with the R. Grammen relatives, it is believed that James Horne was a mere shill for the will of W. Horne to facilitate his actions and schemes described below, thereby participating in the schemes and wrongful acts described herein, orchestrated from the Esping HQ. Because W. Horne's knowledge is imputed to James Horne as a shill, including the allegations made by Plaintiffs that the profits of LSI belong to Plaintiffs, who sought and obtained a disgorgement damages award, which was affirmed twice on appeal. The Distributions to James Horne from EFO LSI were fraudulent transfers and improper and he knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but he accepted those amounts having no legal right to the same.

V. Horne Management is a corporation and has filed a special appearance. Horne Management is owned, managed and/or controlled by W. Horne, the former President and CEO of LSI and LSI Holdco and was used as a tool by him to facilitate the wrongful actions described below, orchestrated from the Esping HQ. Because Horne Management is owned, managed, and/or controlled by W. Horne and is part of the Esping Enterprise, his knowledge is imputed to Horne Management including the allegations made by Plaintiffs that the profits of LSI belong to Plaintiffs, who sought and obtained a disgorgement damages award, which was affirmed twice on appeal. The Distributions to Horne Management from EFO LSI were fraudulent transfers and improper and it knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but it accepted those amounts having no legal right to the same.

W. Masterdom is an entity domiciled in Texas and has already appeared and answered herein. It was voluntarily terminated on December 13, 2019, possibly as part of the effort to shield assets from creditors.

a. Masterdom was and is a limited part of Judgment Debtor EFO LSI. As of 2015, it held .0183840% of the partnership interest in Judgment Debtor EFO LSI. Its principal place of business is 4017 Amherst Avenue, Dallas, TX 75225-7004. Masterdom previously resided at the Esping HQ when it was located 2828 Routh Street, Suite 500, Dallas, TX 75201.

b. Masterdom received distributions of at least $285,857 (the "Masterdom Illegal Payments") from Judgment Debtor EFO LSI, but Masterdom knew or should have known those funds belong to Plaintiffs because, upon information and belief, Masterdom

is part of the Esping Enterprise or EFO General Partnership as it is managed and controlled Esping and/or his surrogates.

c. Esping is intimately familiar with the Bailey Litigation, which resulted in the $369 million dollar judgment against the Judgment Debtors. Esping testified in the trial in the Bailey Litigation, and the trial judge made express findings about the intentional and illegal conduct of Esping and the EFO Judgment Debtors, which findings support the claims brought by Plaintiffs in the Bailey Litigation.

d. Because, upon information and belief, Masterdom is owned, managed and/or controlled by W. Esping and is part of the Esping Enterprise. Because knowledge of its control persons is imputed, the Distributions to Masterdom from EFO LSI were fraudulent transfers and improper and it knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but it accepted those amounts having no legal right to the same.

e. Masterdom Illegal Payments were illegally transferred by Judgment Debtor EFO LSI to Masterdom, who had knowledge that the funds belonged to Plaintiffs, and Masterdom accepted those amounts having no legal right to the same.

X. Upon information and belief Bollinger worked in the Dallas area or for Dallas entities at the time of many of the events described herein, and worked to facilitate actions complained of in Texas, and has filed a special appearance herein. Bollinger, despite not being licensed to practice law in either Texas or Florida, called herself the "General Counsel" of LSI, and she occupied that role as counsel and fiduciary during the Underlying Litigation. She became the COO of LSI. Bollinger provided critical advice and assistance to W. Esping, Krupala, Wilson and R. Grammen that helped them execute the scheme to funnel money from the EFO Debtors and

take the actions complained of herein orchestrated from the Esping HQ. Bollinger directed her communications to her Texas clients, including, but not limited to EFO LSI, W. Esping, Wilson and Krupala, to an office in Texas and received payments (including the distribution described below) from a Dallas-based bank based on complex syndicated loans and finance transaction(s) governed by Texas law originated in Texas. The Distributions to Bollinger from EFO LSI were fraudulent transfers and improper and Bollinger knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, and Bollinger accepted those amounts having no legal right to the same.

Y. KRE is a limited partnership duly formed and existing under the laws of the State of Texas and has already appeared and answered herein. KRE is located at the same address as Holdings and Genpar, i.e. the Esping HQ, and, upon information and belief, is controlled, owned and/or managed by W. Esping and/or K. Esping as part of the EFO general partnership which includes its participation in the scheme of asset siphoning from LSI of funds subject to the disgorgement judgment, receiving the benefit of self-interested transactions by W. Esping and Krupala that breached fiduciary duties, and the fraudulent transfer of assets—all as further described herein.

a. KRE was and is a limited part of EFO LSI. As of 2015, it held 2.00771% of the partnership interest in EFO LSI.

b. KRE is integrated into and part of the same QuickBooks software that each of the Esping related entities uses, which shares only one license and the same administrator, Krupala, who moves funds into and out of the various EFO related entities without legal or factual support.

c. KRE received distributions of at least $3,177,284 (the "KRE Illegal Payments") from EFO LSI, but KRE knew or should have known those funds belong to Plaintiffs as KRE is part of the Esping Enterprise. KRE is owned by W. Esping's mother, but, upon information and belief, is managed and controlled W. Esping and/or his surrogates.

d. W. Esping is intimately familiar with the Bailey Litigation, which resulted in the $369 million dollar judgment against the Judgment Debtors. Esping testified in the trial in the Bailey Litigation, and the trial judge made express findings about the intentional and illegal conduct of Esping and the EFO Judgment Debtors, which findings support the claims brought by Plaintiffs in the Bailey Litigation.

e. KRE is owned, managed and/or controlled by W. Esping and is part of the Esping Enterprise. Because knowledge of its control persons is imputed, Distributions to KRE from EFO LSI were fraudulent transfers and improper and it knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but it accepted those amounts having no legal right to the same.

f. The KRE Illegal Payments were illegally transferred by EFO LSI to KRE, who had knowledge that the funds belonged to Plaintiffs, and KRE accepted those amounts having no legal right to the same.

Z. Justin Horne is an individual who invested in one or more of the EFO Debtors, and was advised by his relative, W. Horne, and acted in active concert with him based on his advice and special relationship. He has filed a special appearance herein. Justin Horne is the son of W. Horne, the former President and CEO of LSI and LSI Holdco. As with the R. Grammen relatives, it appears that Justin Horne was a mere shill for the will of W. Horne to facilitate his actions and

schemes described below, thereby participating in the schemes and wrongful acts described herein, orchestrated from the Esping HQ. Because W. Horne's used to Justin Horne as a shill and W. Horne knew of the allegations made by Plaintiffs that the profits of LSI belong to Plaintiffs, who sought and obtained a disgorgement damages award, which was affirmed twice on appeal. The Distributions to him from EFO LSI were fraudulent transfers and improper and he knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but he accepted those amounts having no legal right to the same.

AA. K. Grammen is the sister of R. Grammen, who manages, controls, and owns Holdings, and Genpar (as Vice-President) and was on the board of directors of LSI Holdco and worked in active concert to advise and control K. Grammen to facilitate R. Grammen's actions complained of herein and the scheme orchestrated and activated from the Esping HQ. R. Grammen's used K. Grammen as a shill and R. Grammen actually knew of the allegations made by Plaintiffs that the profits of LSI belong to Plaintiffs, who sought and obtained a disgorgement damages award, which was affirmed twice on appeal. The Distributions to her from EFO LSI were fraudulent transfers and improper and she knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but she accepted those amounts having no legal right to the same.

BB. Spinal Tap is a general partnership formed and domiciled in Texas and has already appeared and answered herein. It is located at the same address as Holdings and Genpar, i.e. the Esping HQ, and is controlled, owned and/or managed by Krupala and Entity Manager. According to the general partnership agreement, "This Partnership (defined below) is comprised of officers, directors, shareholders, agents, affiliates and employees ('Key Employees') of EFO Holdings, L.P., a Texas limited partnership, its general partner and their subsidiaries and affiliates

(collectively, 'EFO')." As a general partnership of Key Employees, the Key Employees were personally liable for the debts of the partnership. The purpose of this general partnership was to act as a conduit for illegal dividends from LSI. Spinal Tap, and its general partners held a fiduciary relationship with the Judgment Debtors and breached that duty by forming the partnership and acting in self-interested unfair transactions with the Judgment Debtors. Under their control, Spinal Tap participated in asset siphoning from LSI of funds subject to the disgorgement judgment, the self-interested transactions benefitting Esping and the EFO conspiracy, and the fraudulent transfer of assets to conceal them from creditors. The Distributions to Spinal Tap from EFO LSI were fraudulent transfers and improper and it knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but it accepted those amounts having no legal right to the same.

CC. Appreciation is be a Texas general partnership with Cypress GP and Entity Manager as general partners and, upon information and belief, certain relatives of W. Esping as partners that were not disclosed by counsel in response to discovery and responses to requests for disclosure. It has already appeared and answered herein and, as a general partnership, is liable for the acts of the partnership which include the participation in the asset siphoning from LSI of funds subject to the disgorgement judgment, the self-interested transactions, and the fraudulent transfer of assets. Appreciation was operated by Krupala in conjunction with Entity Manager as part of "EFO" and Krupala knew or should have known the distributions it received after 2012 were subject to a disgorgement judgment and constructive trust. Appreciation received funds in the distributions from 2015 that were part of an actual attempt to defraud creditors by accelerating dividends and paying them out of LSI when Appreciation knew or should have known (because of the nature of the litigation and the size of the investment) that the dividend was illegal and part

of a scheme to take frustrate collection by the litigants. Appreciation is located at the same address as Holdings and Genpar, i.e. the Esping HQ, and, upon information and belief, is an alias or artifice for Esping family members used to funnel money from the EFO Debtors to insiders of LSI and the EFO Debtors. The Distributions to Appreciation from EFO LSI were fraudulent transfers and improper and it knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but it accepted those amounts having no legal right to the same.

DD. St. Louis was served in the original petition, did not answer, and has been defaulted. All allegations against him in the original petition are deemed admitted and a judgment has issued against him from this court.

EE. J. St. Louis is an individual who actively worked with her then-husband St. Louis on issues relating to the transfer of money and worked as his shill or proxy to facilitate the actions complained of herein. She has filed a special appearance. J. St. Louis was married to St. Louis during many of the wrongful acts committed by both of them alleged in the Underlying Litigation. J. St. Louis participated in and ratified the wrongful actions described below, which was developed and implemented from the Esping HQ. The Distributions were fraudulently transferred by EFO LSI to J. St. Louis as part of the fraudulent transfer scheme and as a breach of duty of her husband. The Distributions to her from EFO LSI were fraudulent transfers and improper and she knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but she accepted those amounts having no legal right to the same.

FF. Wallace Estate, by and through Edith Smith Executrix, has already appeared and answered. Upon information and belief, Wallace Estate is the probate representative of G. Larry

Wallace, who was an officer[2] in Holdings and Genpar and other entities controlled, owned and/or managed by W. Esping. G. Larry Wallace, when alive, actively worked to facilitate the Esping Enterprise, including designing the transfers, consulting with Bollinger, working with R. Grammen and taking the other described actions from the Esping HQ. The Distributions to Mr. Wallace were fraudulent transfers. Accordingly, when alive, Mr. Wallace knew or should have known that his receipt of the Distributions was in breach of duty, part of a fraudulent transfer scheme, and subject to the claims of the Plaintiffs for disgorgement.

GG. WH is a limited liability company and has filed a special appearance herein. WH is owned, managed and/or controlled by W. Horne, the former President and CEO of LSI and LSI Holdco who acted to direct WH and use it to facilitate the wrongful actions orchestrated from the Esping HQ, described below. Because WH is owned, managed and/or controlled by W. Horne and is part of the Esping Enterprise, his knowledge is imputed to WH including the allegations made by Plaintiffs that the profits of LSI belong to Plaintiffs, who sought and obtained a disgorgement damages award, which was affirmed twice on appeal. The Distributions to WH from EFO LSI were fraudulent transfers and improper and it knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but it accepted those amounts having no legal right to the same.

HH. EFO Manager is a corporation that has already appeared and answered herein. Upon information and belief, it is an alias of Holdings, alter ego of Holdings, acting for Holdings and impersonating Holdings, accepting the liabilities of Holdings directly, and/or it has been the general partner of Holdings and a limited partner in EFO LSI. W. Esping and Krupala use EFO Manager as a mechanism to keep funds siphoned from the LSI Debtors as distributions (and subject

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[2] G. Larry Wallace signed as President of Genpar.

to the disgorgement award) and cause the other entities controlled by EFO Manager to accept and redistribute funds to related entities and people using the schemes described herein. EFO Manager operates entirely as a shell for the EFO conspiracy/partnership and conducts no actual business itself.

II. The "EFO General Partnership" is a general partnership consisting of the persons who operate out of the Esping HQ, described in greater detail in Count 1. As Mr. Esping remarked "EFO Holdings" is just a "name" and an "umbrella", and for EFO, Mr. Esping explained "Julie Krupala is our CFO". "EFO" is the name of the general partnership W. Esping formed for the Esping Enterprise. EFO, W. Esping would explain, means "Esping Family Office". The EFO partnership may be served by serving Krupala, a partner and CFO. The members of the EFO General Partnership are integrated into and part of the same QuickBooks software that each of the Esping related entities uses, which shares only one license and the same administrator, Krupala, who moves funds into and out of the various EFO related entities without legal or factual support.

JJ. WPE Holdings is a corporation that has already appeared and answered herein. It is the general partner of WPE Kids. Upon information and belief, W. Esping owns, manages and controls WPE Holdings and uses it as a mechanism to keep funds siphoned from the LSI Debtors as distributions (and subject to the disgorgement award) and causes WPE Kids to accept and redistribute funds to related entities and people using the schemes described herein. Because WPE Holdings is controlled by W. Esping, it knew that these transfers were part of a fraudulent transfer scheme to conceal assets from the Plaintiffs, in breach of fiduciary duties owed to the creditors and the Judgment Debtors, and WPE Holdings was an active partner of the EFO General Partnership and Esping Enterprise. WPE Holdings is integrated into and part of the same QuickBooks software that each of the Esping-related entities uses, which shares only one license

and the same administrator, Krupala, who moves funds into and out of the various EFO-related entities without legal or factual support.

KK. EFO Management is an entity that has already appeared and answered herein. Upon information and belief, it is an alias of Holdings, alter ego of Holdings, acting for Holdings and impersonating Holdings, accepting the liabilities of Holdings directly, and/or it acted as a general partner of Holdings, part of the EFO General Partnership and Esping Enterprise such that, under any of those, it should be liable for the judgment against Holdings and liable with the other partners in the EFO General Partnership and members of the Esping Enterprise:

a. Krupala and W. Esping used EFO Management to funnel value and assets from (at least) Holdings and Genpar, who had already been sued. For example, though W. Esping and Krupala were fiduciaries of Holdings and Genpar, they had the lease at EFO HQ on Routh St. improperly taken over by EFO Management—even diverting over $60,000 in cash to EFO Management on a lease refund.

b. Additionally, Holdings had received ad-hoc payments from other members of the EFO partnership/conspiracy described herein, but when EFO Management was formed, a new contract for management services was signed by some of the Defendants, and funds owing to Holdings were siphoned off to EFO Management. Even though they were fiduciaries of EFO Management and the Judgment Debtors, W. Esping and Krupala did not disclose these transfers of value in the bankruptcy schedules.

c. The purpose of EFO Management was to take over for Holdings and act as a new conduit to shield assets and assist with the self-interested transactions approved by W. Esping and Krupala (and others, as described herein).

d. EFO Management has held itself out as "EFO Holdings" and "EFO" to obtain the benefit of the name EFO Holdings and divert opportunities from EFO Holdings ("Holdings"), a judgment debtor. For example, in 2018 (7 years after Krupala testified EFO Holdings, L.P. ceased to operate) EFO Holdings, L.P. was to make a loan to a company AIOTAL, Inc. (or its affiliate EPSoft, Inc.). Instead, upon information and belief, EFO Management made the loan as the transaction was taken over at the request of Wilson, Krupala, or Esping.

e. Additionally, EFO Management participated in the distributions as an active member of the conspiracy to siphon money from the LSI Debtors, going so far as to subordinate rights under a contract for management fees to facilitate the loan (described herein) in 2015 to loot the LSI Debtors, then agree in 2016 to forego any payments from the LSI Debtors. If EFO Management were not part of the EFO conspiracy (described below) to loot LSI, why would it forego payment?

f. As part of the sharing expenses of the EFO partnership, EFO Management pays the legal expenses of other members of the partnership/conspiracy (including those of Amato, and Wallace estate and even J. St. Louis). If they are not related, why would it do that?

g. EFO Management was created and used as a stand-in for EFO Holdings, L.P. to take opportunities and business for the benefit of the partnership and to hide money as fraudulent transfers. R. Grammen engaged counsel for EFO Holdings, but Krupala said "I prefer not to use it" and said to use EFO Management instead. Between members of "EFO", the identities of EFO Holdings and EFO Management were fungible.

h. EFO Management has assisted in the breach of fiduciary duties described below by becoming the new focal point for "EFO" related activity and self-interested transactions that were not objectively fair to the Judgment Debtors EFO LSI, Holdings, or Genpar or their creditors.

i. EFO Management held itself out externally—to the outside world—as either EFO Holdings or the successor of EFO Holdings, L.P. EFO Management took over the webpages of EFO Holdings (including, by example, EFOHoldings.net and EFOHoldings.com) and operated them. In Florida, Mr. O'Brien (an agent of EFO Management), swore that Gulf Greyhound Park was owned by EFO Holdings, L.P. The email addresses of all EFO personnel used the EFOHoldings.net domain, even when working for EFO Management. EFO Management on the web page of efoholdigns.com claimed to be EFO Holdings, L.P.

j. On or about September 6, 2019, a $2,288 payment was made to EFO Management LLC for bills from 2011, 2012 and 2013, from Lubrication Partners (also controlled by Krupala and Esping) under the guise of paying for "invoices" that are nine years old. This, in fact, is part of the partnership/conspiracy pattern of looting EFO entities that are in distress to harm creditors using fake invoices.

k. EFO Management took possession of the computers bought by EFO Holdings, L.P. from, among others, PC Connection. EFO Management has held itself out as EFO Holdings, L.P., including having Wilson (an officer) use the title "EFO Holdings, L.P.", while actually roping in prospects for the EFO General Partnership and EFO Management.

LL. Amato is an individual who is licensed to practice law in Florida, but who acted as the counsel of Holdings, Genpar and EFO LSI at the Esping HQ in Dallas where he was not licensed to practice. At various times during the underlying litigation, he advised his various clients at the Esping HQ and it is believed that his advice assisted R. Grammen and W. Esping in making decisions about the scheme and actions described below. Amato directed his communications to his Texas clients to an office in Texas and received payments (including the distribution described below) from a Dallas-based bank based on complex syndicated loans and finance transaction(s) governed by Texas law and originated in Texas. Amato was aware of the distributions (described below) that siphoned off all the value of the LSI Debtors, during the rehearing on damages where old evidence (before the distribution) was presented to the court, Amato did not inform the trial court of this changed fact. Upon information and belief, Amato worked actively with W. Esping and Krupala individually and—though also counsel for the Judgment Debtors—his legal advice was used by the insiders of the Judgment Debtors and the EFO General Partnership. For example, Amato issued a March 7, 2019 invoice to EFO Holdings even though EFO Holdings, L.P. (per Krupala) ceased to exist. Amato, like others, was working for "EFO" or the Esping Enterprise and worked with co-conspirators to conceal assets from creditors. As a counsel during the underlying litigation, Amato actually knew of the fraudulent transfer and the disgorgement judgement when he received a Distribution from the transaction to siphon the value from the LSI Debtors. He knew or should have known the Distribution was an illegal dividend and fraudulent Transfer but worked with W. Esping, Krupala and the others to transfer the money (as described herein). Amato holds funds in constructive trust for the judgement creditors for the reasons described below.

MM. EFO Davenport was and may still be a partner of Genpar. Its principal place of business is at Esping HQ and can be served through registered Agent Scot W. O'Brien, 1445 Ross Avenue, Suite 2400, Dallas, TX 75202. EFO Davenport was and is still located at the same address as Holdings and Genpar. Upon information and belief, EFO Davenport is controlled, owned and/or managed by Genpar, R. Grammen, W. Esping, and/or their surrogates. Upon information and belief, over $37 million moved through EFO Davenport from a real estate property sold in 2018. After the $369 million judgment was entered on July 3, 2019, EFO Davenport transferred almost $560,000 out of its Texas Capital Bank account, with checks going out on July 11, 2019. Genpar is no longer on the list of distributes and partners for EFO Davenport and Green Series LLC was replaced as its general partner upon information and belief sometime after the final judgment was entered. EFO Davenport continued to transfer funds in August 2019 and again in October 2019 after the judgment was entered. Because knowledge of the control persons is imputed to the entity, EFO Davenport knew that these transfers were part of a fraudulent transfer scheme to conceal assets from the Plaintiffs, in breach of fiduciary duties owed to the creditors and the Judgment Debtors, and that it was an active partner of the EFO General Partnership and Esping Enterprise. EFO Davenport is integrated into and part of the same QuickBooks software that each of the Esping related entities uses, which shares only one license and the same administrator, Krupala, who moves funds into and out of the various EFO-related entities without legal or factual support.

NN. EFO New Frontiers was and may still be a partner of Genpar. Its principal place of business is at Esping HQ and can be served through registered Agent Scot W. O'Brien, 1445 Ross Avenue, Suite 2400, Dallas, TX 75202. Upon information and belief, EFO New Frontiers is controlled, owned and/or managed by Genpar, R. Grammen, W. Esping, and/or their surrogates. For example, about $5 million was contributed to this entity as of June 2015. WPE Kids

contributed about $3.69 million into EFO New Frontiers and upon information and belief these monies were transferred from distributions from EFO LSI. About $550,000 was received via wire on January 20, 2017 and was transferred out at the same time to an unknown entity. Because knowledge of the control persons is imputed to the entity, EFO New Frontiers knew that this transfer was part of a fraudulent transfer scheme to conceal assets from the Plaintiffs, in breach of fiduciary duties owed to the creditors and the Judgment Debtors, and that it was a partner of the EFO General Partnership and Esping Enterprise. EFO New Frontiers is integrated into and part of the same QuickBooks software that each of the Esping related entities uses, which shares only one license and the same administrator, Krupala, who moves funds into and out of the various EFO-related entities without legal or factual support.

OO. Alpina was and may still be a partner of Genpar. Its principal place of business is at Esping HQ and can be served through registered agent CAPITOL CORPORATE SERVICES, INC., 1 202 SOUTH MINNESOTA STREET, Carson City, NV, 89703. Alpina was and is still located at the same address as Holdings and Genpar.

a. W. Esping controls Alpina and makes "loans" to other EFO-related entities at the Esping HQ that are not real loans. For loans to other entities W. Esping controls that are self-interested transactions, the "loans" are not based on objective creditworthiness and are unfair or sometimes are mere instrumentalities.

b. Alpina was used improperly by W. Esping for self-interested transactions such as having Alpina pay for W. Esping's membership at an exclusive members-only golf club in Dallas where, upon information and belief, several meetings occurred in furtherance of the conspiracy/general partnership. Alpina was used by W. Esping to shuffle money

between controlled companies he owned to benefit the "EFO" partnership/conspiracy/enterprise and shield assets from creditors.

c. Acting as a go-between for W. Esping, Alpina received, as fraudulent transfers or transfers subject to disgorgement/constructive trust, multiple contributions from WPE Kids (who itself received fraudulent transfers as Distributions, described herein) totaling $29 million as noted on an April 4, 2018 balance sheet and $3,000 in windup costs. WPE Kids made contributions to Alpina of:

- $1 million in October 2013;
- $1 million on September 30, 2014;
- $280,000 on January 17, 2015;
- $280,000 on February 25, 2015;
- $280,000 on March 30, 2015;
- $280,000 on April 30, 2015;
- $280,000 on May 29, 2015;
- $280,000 on June 30, 2015;
- $280,000 on July 31, 2015;
- $280,000 on August 31, 2015;
- $280,000 on September 24, 2015;
- $280,000 on October 26, 2015;
- $280,000 on November 25, 2015;
- $1.9 million in January 2016; and
- $1.3 million on April 15, 2016.

d. Because knowledge of its control persons is imputed, Alpina knew that these transfers were part of a fraudulent transfer scheme to conceal assets from the Plaintiffs, in breach of fiduciary duties owed to the creditors and the Judgment Debtors, and that it was a partner of the EFO General Partnership and Esping Enterprise. Alpina is integrated into and part of the same QuickBooks software that each of the Esping related entities uses, which shares only one license and the same administrator, Krupala, who moves funds into and out of the various EFO-related entities without legal or factual support.

e. The Distributions, first to WPE Kids then to Alpina, from EFO LSI were fraudulent transfers and improper and the subsequent transfers to Alpina were such that W. Esping knew or should have known that the funds belonged to Plaintiffs, were in breach of duty, and part of a fraudulent transfer scheme, but Alpina accepted those amounts having no legal right to the same.

PP. EFO Residential was and may still be a partner of Genpar. Its principal place of business is at Esping HQ and can be served through registered Agent Scot W. O'Brien, 1445 Ross Avenue, Suite 2400, Dallas, TX 75202.

a. EFO Residential was part of W. Esping and Krupala's plan to operate collectively with shell companies and shuffle money to conceal assets from creditors. It acted at the direction of W. Esping, Wilson and Krupala for the benefit of "EFO" without regard to its own benefit, regularly engaging in self-interested transactions with the other EFO entities.

b. Some examples of questionable and fraudulent transfers include the following. On or about May 28, 2015, $3.5 million was transferred from WPE Kids and those funds were then transferred the same day to Metro 67 Partners LLC. On or about June 30, 2016, $3.6 milling was transferred into EFO Residential and wired out the same day. On or about April 8, 2016 and April 15, 2016, $8.8 million was transferred into EFO Residential and wired out the same day.

c. EFO Residential also received transfers of $240,000 on March 29, 2016, and a $205,000 wire transfer on September 14, 2017. Madison Redevelopment LP distributed $12.4 million in distributions in 2016 to EFO Residential. On April 15, 2016 (again, after the first appellate opinion) two deposits were made, one for $4 million (67

Madison Partners LP) and the other for $3.9 million. On the same date the following transfers out occurred to WPE Kids for $4,000,000.00 and $3,938,924.75. At the same time in March of 2016, knowing of the negative appellate decision, a wire in the amount of $8,183,363.58 was received for the sale of Metro 67 Apartments, which was reduced by $3,320,835.81 relating to Metro Parking Garage, leaving a total profit of $4,862,527.77.

d. There was a wire transfer of $4 million out on April 15, 2016 to EFO Residential Partners as a distribution to an unknown entity. Because knowledge of the control persons is imputed to the entity, EFO Residential knew that these transfers were part of a fraudulent transfer scheme to conceal assets from the Plaintiffs, in breach of fiduciary duties owed to the creditors and the Judgment Debtors, and that it was a partner of the EFO General Partnership and Esping Enterprise. EFO Residential is integrated into and part of the same QuickBooks software that each of the Esping related entities uses, which shares only one license and the same administrator, Krupala, who moves funds into and out of the various EFO-related entities without legal or factual support.

QQ. Enel Champs was and may still be a partner of Genpar. Its principal place of business is at Esping HQ and can be served through registered agent Scot W. O'Brien, 1445 Ross Avenue, Suite 2400, Dallas, TX 75202. Enel Champs was and is still located at the same address as Holdings and Genpar. Upon information and belief, Enel Champs is controlled, owned and/or managed by Genpar, R. Grammen, W. Esping, and/or their surrogates and transfers funds into and out of this entity. For example, Enel Champs receiving transfers totaling about $4.3 million into a Titan Securities Brokerage Account for the EFO General Partnership. As part of the Esping Enterprise the shield assets, Enel Champs began its attempts to wind down in March 2019, three months after the appellate ruling in December 2018. Enel Champs knew that its actions were part

of a fraudulent transfer scheme to conceal assets from the Plaintiffs, in breach of fiduciary duties owed to the creditors and the Judgment Debtors, and it was a partner of the EFO General Partnership and Esping Enterprise. Enel Champs is integrated into and part of the same QuickBooks software that each of the Esping related entities uses, which shares only one license and the same administrator, Krupala, who moves funds into and out of the various EFO-related entities without legal or factual support.

RR. Lubrication Partners was and may still be a partner of Genpar. Its principal place of business is at Esping HQ and can be served through registered agent, Scot W. O'Brien, 1445 Ross Avenue, Suite 2400, Dallas, TX 75202. Lubrication Partners was part of the scheme to conceal assets from the chapter 7 trustee of Holdings and the creditors of the EFO Debtors. For example, when W. Esping wanted to cash out the entity on or about August 6, 2019, a $2,288 payment was made to EFO Management LLC for bills from 2011, 2012 and 2013, which appears that Lubrication Partners is fraudulently transferring funds under the guise of paying for "invoices" that are nine years old. Lubrication Partners knew that its actions were part of a fraudulent transfer scheme to conceal assets from the Plaintiffs, in breach of fiduciary duties owed to the creditors and the Judgment Debtors, and it was a partner of the EFO General Partnership and Esping Enterprise. It was is integrated into and part of the same QuickBooks software that each of the Esping related entities uses, which shares only one license and the same administrator, Krupala, who moves funds into and out of the various EFO-related entities without legal or factual support.

SS. Green Series is managed by its managing member, Defendant JBJ Lending Company. "JBJ" presumably are the initials for Jenny, Billy, and Julie, the three Esping siblings. Its principal place of business is at Esping HQ and can be served through registered agent, Scot W. O'Brien, 1445 Ross Avenue, Suite 2400, Dallas, TX 75202.

a. Genpar has a general partner interest, a limited partner interest, and/or is the parent corporation of wholly-owned subsidiaries in more than 100 different "EFO" related entities; indeed, in many cases, EFO GP—despite knowing its assets are subject to Plaintiffs' collection efforts—recently transferred certain of its interests in these "EFO" related entities to yet another EFO controlled entity: Green Series. These entities are operated either directly or through another shell entity and are corporate fictions created by the same cast of characters that defrauded Plaintiffs, to wit: W. Esping and R. Grammen.

b. Genpar had or has a limited partner interest in San Clemente at Davenport – North Ltd. On April 12, 2019, Genpar purportedly transferred its limited partner interests from San Clement at Davenport – North Ltd. to Green Series, LLC – San Clemente at Davenport North Series for $3,000. The property itself is worth, according to the Austin property records, over $104,000,000. Notably, EFO GP has some interest in San Clemente at Davenport – North Ltd. and was transferred by Special Warranty Deed to 3700 San Clemente LLC in 2014—while this case was still on appeal, and it does not appear possible that the transfer is an arms-length transaction (rather than an insider transaction) given the paltry amount that was exchanged for this interest.[3]

c. Similarly, 3900 San Clemente is a property assessed at over $90,000,000 in Austin, Texas.[4] In yet another multi-million dollar property transfer, Genpar was involved, upon information and belief, with the sale or transfer of this property. The property at 3900 San Clemente was transferred to an entity called WCOT/Hill San Clemente LP in 2010—during the pendency of the trial in this matter. And then transferred again from WCOT/Hill

[3] http://propaccess.traviscad.org/clientdb/Property.aspx?prop_id=754227 (last visited January 11, 2021).

[4] http://propaccess.traviscad.org/clientdb/Property.aspx?prop_id=754224 (last visited January 11, 2021).

San Clemente LP to San Clemente Office Partners on June 20, 2017. Upon information and belief, Genpar continues to maintain an interest in the property. JBJ Lending owns 100% of Green Series LLC according to the Texas Comptroller.

d. Green Series has W. Esping and/or Krupala in actual control of the entity and was created to shuffle money to and from other EFO entities for the improper purpose of assisting in the concealment of assets from creditors and self-interested fiduciary transactions.

e. Green Series knew that its actions were part of a fraudulent transfer scheme to conceal assets from the Plaintiffs, in breach of fiduciary duties owed to the creditors and the Judgment Debtors, and it was a partner of the EFO General Partnership and Esping Enterprise. Green Series is integrated into and part of the same QuickBooks software that each of the Esping related entities uses, which shares only one license and the same administrator, Krupala, who moves funds into and out of the various EFO-related entities without legal or factual support.

f. Upon information and belief, it received funds originating from the money taken from the LSI entities as Distributions that are subject to the disgorgement judgment and fraudulent transfer scheme and as such hold funds in a constructive trust.

TT. Cypflo was and may still be a partner of Genpar. Its principal place of business is at Esping HQ and can be served through registered agent, Scot W. O'Brien, 1445 Ross Avenue, Suite 2400, Dallas, TX 75202. Cypflo was and is still located at the same address as Holdings and Genpar. Cypflo has had W. Esping and/or Krupala in actual control of the entity and was created to shuffle money to and from other EFO entities for the improper purpose of assisting in the concealment of assets from creditors and self-interested fiduciary transactions. On or about in

January 2017, a $2.5 million wire came from TWC Assoc Profit Sharing & Trust and a wire went out Defendant Alpina Lending. Further, bank records show that hundreds of thousands of dollars going in and out in 2019 from Cypflo but all the checks are illegible. Lastly, Cypflo may own a large marina property in at 17990 San Carlos Blvd, Ft. Myers, FL and also own 10 Clay Properties LLC, condos in Florida, which was recently listed for sale for $4.2 million. Cypflo knew that its actions were part of a fraudulent transfer scheme to conceal assets from the Plaintiffs, in breach of fiduciary duties owed to the creditors and the Judgment Debtors, and it was a partner of the EFO General Partnership and Esping Enterprise. Cypflo is integrated into and part of the same QuickBooks software that each of the Esping related entities uses, which shares only one license and the same administrator, Krupala, who moves funds into and out of the various EFO-related entities without legal or factual support. Upon information and belief, it received funds originating from the money taken from the LSI Debtors as Distributions that are subject to the disgorgement judgment and as such hold funds in a constructive trust.

UU. JBJ was and may still be the managing member of Defendant Green Series LLC, which is the successor/transferee from Genpar. Its principal place of business is at Esping HQ and can be served through registered agent, Scot W. O'Brien, 1445 Ross Avenue, Suite 2400, Dallas, TX 75202. JBJ was and is still located at the same address as Holdings and Genpar. JBJ has had W. Esping and/or Krupala in actual control of the entity and was created to shuffle money to and from other EFO entities for the improper purpose of assisting in the concealment of assets from creditors and self-interested fiduciary transactions as described in the Green Series related transactions. JBJ acts with Alpina as a "piggy bank" of W. Esping. JBJ knew that its actions were part of a fraudulent transfer scheme to conceal assets from the Plaintiffs, in breach of fiduciary duties owed to the creditors and the Judgment Debtors, and it was a partner of the EFO General

Partnership and Esping Enterprise. JBJ is integrated into and part of the same QuickBooks software that each of the Esping-related entities uses, which shares only one license and the same administrator, Krupala, who moves funds into and out of the various EFO-related entities without legal or factual support. Upon information and belief, it received funds originating from the money taken from the LSI entities as distributions that are subject to the disgorgement judgment and as such hold funds in a constructive trust.

VV. Metro 67 has its principal place of business at Esping HQ and can be served through registered agent, Scot W. O'Brien, 1445 Ross Avenue, Suite 2400, Dallas, TX 75202. Metro 67 was and is still located at the same address as Holdings and Genpar. Metro 67 has had W. Esping and/or Krupala in actual control of the entity and was created to shuffle money to and from other EFO entities for the improper purpose of assisting in the concealment of assets from creditors and self-interested fiduciary transactions. Upon information and belief, Metro 67 Partners is controlled, owned and/or managed by Genpar, R. Grammen, W. Esping, and/or their surrogates and transfers funds into and out of this entity. Some examples of transfers include a $5.8 distribution in 2015. Madison Redevelopment LP transferred to EFO Residential LP $3.7M in 2016. A $12.4 million distribution was made in 2016 to EFO Residential Partners LP. Metro 67 is, along with 67 Madison partners, Metro 67 Partners LP, Madison Redevelopment LP, and Madison UP Investors LP, part of the Esping Enterprise and EFO General Partnership. Upon information and belief, they are integrated into and part of the same QuickBooks software that each of the Esping related entities uses, which shares only one license and the same administrator, Krupala, who moves funds into and out of the various EFO-related entities without legal or factual support. These entities were where W. Esping secreted money away as investments to conceal them from the Plaintiffs and those similarly situation. Because knowledge of its control persons

is imputed, when they received funds originating from the money taken from the LSI Debtors as Distributions that subject to the disgorgement judgment and fraudulent transfer liability, each hold such funds in a constructive trust. Each is subsequent transferee of a fraudulent transfer, holding funds traceable to the Distributions who knew or should have known the assets were subject to fraudulent transfer claims.

WW. 67 Madison Partners has its principal place of business at Esping HQ and can be served through registered agent, Scot W. O'Brien, 1445 Ross Avenue, Suite 2400, Dallas, TX 75202. Upon information and belief, 67 Madison Partners is controlled, owned and/or managed by Genpar, R. Grammen, W. Esping, and/or their surrogates and transfers funds into and out of this entity. Some examples of transfers include a $1.4M wire in and out in May 2015 that, upon information and belief, is part of the fraudulent distributions described below.

XX. Metro 67 Partners LP has its principal place of business at Esping HQ and can be served through registered agent, Scot W. O'Brien, 1445 Ross Avenue, Suite 2400, Dallas, TX 75202. Metro 67 Partners LP was and is still located at the same address as Holdings and Genpar. Upon information and belief, Metro 67 Partners LP is controlled, owned and/or managed by Genpar, R. Grammen, W. Esping, and/or their surrogates and transfers funds into and out of this entity.

YY. Madison Redevelopment LP has its principal place of business is at Esping HQ and can be served through registered agent, Scot W. O'Brien, 1445 Ross Avenue, Suite 2400, Dallas, TX 75202. Madison Redevelopment LP was and is still located at the same address as Holdings and Genpar. Upon information and belief, Madison Redevelopment LP is controlled, owned and/or managed by Genpar, R. Grammen, W. Esping, and/or their surrogates and transfers funds into and out of this entity. On June 30, 2016, also after the first appellate decision, a deposit was

made by wire in the amount of $3,613,025.90 from Madison Redevelopment, LP and then amounts were immediately distributed to W. Esping for $3,631,181.00.

ZZ. Madison UP Investors LP has its principal place of business is at Esping HQ and can be served through registered agent, Scot W. O'Brien, 1445 Ross Avenue, Suite 2400, Dallas, TX 75202. Madison UP Investors LP as and is still located at the same address as Holdings and Genpar. Upon information and belief, Madison UP Investors LP is controlled, owned and/or managed by Genpar, R. Grammen, W. Esping, and/or their surrogates and transfers funds into and out of this entity. $2.3M is noted on a K1 distributed to Madison UP Investors LP from Metro 67 Partners LLC.

AAA. Sibling Rivalry is a general partnership and co-liable for the debts of the partners incurred during the investment, including, upon information and belief, the members of the Esping family that directed the concealment of assets and assisted in the self-interested transactions to siphon funds away from the LSI Debtors described beknow. It has its principal place of business is at Esping HQ and can be served through registered agent, Scot W. O'Brien, 1445 Ross Avenue, Suite 2400, Dallas, TX 75202. Upon information and belief, Sibling Rivalry is controlled, owned and/or managed by Genpar, R. Grammen, W. Esping, and/or their surrogates and transfers funds into and out of this entity. On July 12, 2018, a deposit for $7,206,145.86 received from 3700 San Clemente LLC was transferred to a money market account, an on August 8, 2018 it was transferred back and then distributed $112,599.30 to Sibling Rivalry. Because knowledge of the control persons is imputed to the entity, Sibling Rivalry knew that these transfers were part of a fraudulent transfer scheme to conceal assets from the Plaintiffs, in breach of fiduciary duties owed to the creditors and the Judgment Debtors, and that it was a partner of the EFO General Partnership and Esping Enterprise. Sibling Rivalry is integrated into and part of the same QuickBooks software

that each of the Esping related entities uses, which shares only one license and the same administrator, Krupala, who moves funds into and out of the various EFO-related entities without legal or factual support.

BBB. Entity Manager, Inc. is a Texas corporation controlled by W. Esping and Krupala (as corporate Secretary) and operated out of the Esping HQ for the purpose of coordinating between and controlling various "EFO" entities as part of their common conspiracy and general partnership. When W. Esping (as a representative of the EFO Debtors) was found to have committed fraud, Esping used the Entity Manager as a conduit of control for the various members of "EFO" under its control. Rather than acting independently, Entity Manager acts as a hub for the entire EFO network, making self-interested transactions between members of EFO at the direction of W. Esping and Krupala that are often not objectively fair to at least one entity. In some instances of related transactions, Entity Manager acted for both borrower and lender in the unfair transaction. Thus, Entity Manager was part of the breach of duties of Krupala, W. Esping and others as described later herein.

5. All of the entities owned and/or controlled by W. Esping, K. Esping, Kirtland, Blanton and/or Marital Trust were in active concert with (or mere shills for) W. Esping in acting to effectuate the wrongful actions in the scheme developed and implemented by W. Esping (and others) significantly from the Esping HQ.

6. The individuals and entities identified in paragraphs A through BBB above will collectively be referred to as the "Defendants" unless otherwise specified. The entities identified in paragraphs MM through AAA above will additionally be referred to as "Financier Defendants."

IV. JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction over this case because the underlying judgment is before this court and this is a process and proceeding in aid of judgment under Rule 621, and also because the amount in controversy is above the minimum jurisdiction of the Court.

8. The Court has personal jurisdiction over each Defendant for the reasons stated herein (both the paragraphs above and below), which paragraphs are incorporated herein to the extent required by the rules. Each Defendant has had sufficient contact with Texas and the matters alleged herein that this Court may properly exercise jurisdiction over the Defendants.

9. Venue is proper in this Court because significant actions in furtherance of the scheme described below occurred in Dallas County, Texas, and the acts giving rise to this suit occurred in large part in the Dallas area, including the improper distributions, actions to conceal, actions at the Esping HQ and other significant elements of the actions giving rise to the cause of action occurred in or around Dallas. Finally, venue is proper in this court because the judgment enforced is being enforced by the court under Rule 621, which is an independent source of venue.

10. While the torts and revocable transfers occurred across state lines by means of wires and the mail, there is a significant nexus with the state of Texas to impose liability on the Defendants because of the actions described below, many of which happened in Texas, in concert with those in Texas, resulted in injuries in Texas and/or transfers to or from Texas.

11. Disregarding the corporate forms to pierce the corporate veil and impose liability directly on wrongdoers and their agents is not a cause of action itself, but a means of expanding the resources available for recovery, which may be brought after recovery of a judgment in the original, underlying action. *Gallagher v. Bintliff*, 740 S.W.2d 118, 119 (Tex. App.—Austin 1987, writ denied). As such, any statute of limitations against Defendants was tolled by the action against the EFO Debtors, until the judgment against the EFO Debtors became final on July 3, 2019.

Matthews Constr. Co., Inc. v. Rosen, 796 S.W.2d 692, 692-94 (Tex. 1990) ("[I]f we were to apply limitations under these circumstances, it would effectively permit the corporate form to be used as a 'cloak for fraud.' . . . . We will not permit the law to be used for unlawful ends." *Id.* at 694.)

12. Furthermore, the Texas Supreme Court has delayed any filing deadlines and effectively tolled any statute of limitations: "Any deadline for the filing or service of any civil case is tolled from March 13, 2020, until June 1, 2020, unless extended by the Chief Justice of the Supreme Court." Eighth Emergency Order Regarding the COVID-19 State of Disaster, Misc. Docket No. 20-9051 (Tex. April 1,2020). The judgement was domesticated in this court on July 29, 2019. This is a proceeding in aid of the domesticated judgment. Therefore, this suit is timely brought.

V. FACTUAL BACKGROUND OF THE THEFT OF LASERSCOPIC

13. At the time of the actions complained of, Defendants were active in the control and ownership of Holdings,[5] Genpar,[6] and EFO LSI, either as owners (shareholders, members and/or partners), agents/shills of a relative in control who told them to act, and/or in positions of managerial or other agency positions (officers, directors, managers, general partners, agents, representatives, and/or other employees) of the EFO Debtors and/or acted as one or more of the EFO Debtors' affiliates or insiders as defined at 11 U.S.C. § 101(2) and Tex. Bus. & Com. Code § 24.002(7) and applicable case law.

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[5] At one point, Holdings was owned by EFO Manager as the general partner (1%), and W. Esping as the sole limited partner (99%). At another point, it was owned by Genpar as the general partner (1%) and Marital Trust as the sole limited partner (99%). Plaintiffs are not certain of its current ownership structure other than it is owned or controlled directly or indirectly by W. Esping, entities owned or controlled by him or his family members or surrogates.

[6] Genpar is currently wholly owned by Marital Trust.

14. The EFO Debtors, along with, and at the direction of, others including, but not limited to, W. Esping, R. Grammen, W. Horne, St Louis, Krupala, Wilson and Wallace, individually and collectively, stole the Plaintiffs' business, and instituted a competing business (LSI) that made hundreds of millions of dollars between 2006 and 2019. Their improper conduct resulted in a judgment in favor of Plaintiffs against St. Louis, the LSI Debtors and the EFO Debtors, jointly and severally, on July 3, 2019, for a total of $369,073,388.00, for disgorgement, punitive damages, and pre-judgment interest, together with currently accruing post-judgment interest in accordance with Fla. Stat. § 55.03.

15. Defendants looted and denuded the EFO Debtors of their assets by distributing those assets to themselves and others in violation of Texas' business statutes. The distributions received by Defendants were wrongful under TEX. BUS. ORGS. CODE ANN. § 153.112[7] because the EFO Debtors were insolvent at the time of the distributions or the distributions made the entities insolvent in violation of TEX. BUS. ORGS. CODE ANN. § 153.210(a).[8] Defendants illegal scheme to co-opt Plaintiffs' thriving start up made them millionaires many times over just as R. Grammen had promised. While the individuals controlling this scheme were W. Esping, R. Grammen, St.

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[7] TEX. BUS. ORGS. CODE ANN. § 153.112. Receipt of Wrongful Distribution

A limited partner who receives a distribution that is not permitted under Section 153.210 is not required to return the distribution unless the limited partner knew that the distribution violated the prohibition of Section 153.210. This section does not affect an obligation of the limited partner under the partnership agreement or other applicable law to return the distribution.

[8] TEX. BUS. ORGS. CODE ANN. § 153.210. Limitation on Distribution

(a) Unless the distribution is made in compliance with Chapter 11, a limited partnership may not make a distribution to a partner if, immediately after giving effect to the distribution and despite any compromise of a claim referred to by Sections 153.203 and 153.204, all liabilities of the limited partnership, other than liabilities to partners with respect to their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the partnership assets. The fair value of property that is subject to a liability for which recourse of creditors is limited shall be included in the partnership assets for purposes of this subsection only to the extent that the fair value of that property exceeds that liability.

Louis and W. Horne, all of the Defendants, each working individually and through a variety of entities intended to create a corporate fiction to insulate themselves from liability, have used the EFO Debtors for illegal purposes described herein, as part of a sham to perpetrate fraud, (or as an alias, general partners, or otherwise) to enrich themselves at the expense of Plaintiffs, as found by the Florida trial court and appellate court in the underlying suit, discussed below. The distributions made to each of the Defendants that were owners of EFO LSI are shown in the following table:

Owner	% Ownership	2015 Distribution	Total Distributions
Marital Trust	0.42020%	$188,719	$651,598
R. Grammen	4.44261%	$1,995,254	$6,529,453
Cypress GP	0.72116%	$323,884	$1,230,336
Horne J	1.85542%	$833,300	$3,149,719
Horne Tipps	1.146093%	$514,729	$2,708,821
WPE Kids	27.0163307%	$12,133,451	$57,626,814
JEK	2.40386%	$1,079,614	$4,091,010
Stanhope	4.807710%	$2,159,227	$8,182,028
EFO Equity Fund II	6.30299%	$2,830,782	$9,187,139
Eminence	5.56522%	$2,499,440	$8,553,326
H. Grammen	0.15757%	$70,769	$244,356
M. and Y. Grammen	0.31731%	$142,510	$432,843
James Horne	0.2101%	$94,359	$325,798
Horne Management	1.893444%	$850,378	$2,372,396
Masterdom	0.183840%	$82,565	$285,857
Bollinger	1.02454%	$460,137	$1,219,677
KRE	2.00771%	$901,698	$3,177,284
Justin Horne	0.04105%	$18,435	$42,020
K. Grammen	0.2%	$89,822	$235,993
Spinal Tap	5.8866193%	$2,643,769	$5,903,064
Appreciation	0.593%	$266,326	$604,198
St. Louis	1.17618%	$528,242	$4,019,280
Jill St. Louis	6.00964%	$2,699,032	$4,708,029
Wallace Estate	0.54087%	$242,914	$448,814
WH	0.157570%	$70,769	$244,356
Amato	0.42596%	$191,308	$502,625

16. Defendants were not merely qualified investors who received distributions because they applied their own investment acumen and independent activity as investors. Instead, these Defendants were for the most part friends and family of W. Esping, R. Grammen, St. Louis and W. Horne, who, as best Plaintiffs can discern, received their respective interest in EFO LSI without paying any consideration whatsoever. Any, because of their close proximity to the wrong doers, they know or should have known that the distributions that they received were the product of a disgorgement award that was initially issued in 2012, and then after two appeals, ultimately resulted in the judgment. Defendants, by their actions or inactions, including by accepting the distribution when they knew or should have known of the Bailey litigation and the claims raised therein, actively involved in plotting the looting of the EFO Debtors and LSI. Defendants either knew or should have known that the distributions were part of illegal and improper conduct and thereafter that the funds garnered from that conduct were improperly obtained. But Defendants failed to take any action to ensure that such funds were not improperly dissipated, and likewise failed to take affirmative steps to ensure that such amounts were preserved for Plaintiffs. Instead, Defendants agreed with and explicitly approved of, and controlled, the illegal and improper conduct and illegal distributions. Some of the relatives of R. Grammen, W. Esping, St. Louis and W. Horne were acting as convenient shills, proxies, go-betweens, or agents in this scheme.

A. Start-up of Laserscopic and Initial Efforts to Obtain Financing

17. Bailey and others formed the initial Laserscopic entities (Laserscopic Spinal and Laserscopic Medical) in 2004. Order on Non-Jury Trial, dated October 9, 2012, (Ex. A attached hereto)[9] at pp. 15-16, ¶¶ 76-79 ("Trial Order") (seq. pp. 145-46).[10]

18. The Laserscopic entities revenues showed strong growth during the first few months of operations before the business was gutted by the illegal conduct outlined herein. Bailey was and is a principal in those entities. In August 2004, the revenue generated by the business was between $75,000-100,000; it rose to $250,000 in September 2004, and to $650,000 in October 2004. *Bailey v. St. Louis*, 196 So. 375, 380 (Fla. 2d DCA 2016). "Laserscopic was running well; patients were happy and success rates were good on surgery outcomes; medical issues and billing were being handled correctly." Ex. A p.19, ¶ 99 (seq. p. 149).

19. "In April 2004 there was a meeting with the EFO executives [W. Esping and R. Grammen[11]] at the Ritz-Carlton in Naples, Florida, about the possibility of EFO providing Laserscopic with funding in the form of a loan." *Id.* at p. 26, ¶ 138 (seq. p. 156). Before W. Esping and R. Grammen met with Bailey in April 2004, the EFO Debtors did not know either the medical or the business side of minimally invasive spine surgery. *Id.* at p. 25, ¶ 132 (seq. p. 155).

20. Both W. Esping and R. Grammen told Bailey that EFO was considering an investment in Laserscopic, although the EFO Debtors had had no prior experience in funding

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[9] References in these court documents to "EFO" mean EFO Holdings L.P. References to "EFO Genpar" mean EFO GP Interests, Inc, f/k/a EFO Genpar, Inc. References to "Spinal" mean Laserscopic Spinal Centers of America, Inc. References to "Spine" mean Laserscopic Spine Centers of America, Inc. References to "Laserscopic" include all of the Laserscopic entities combined. Ex. A at pp. 2-4, ¶¶ 1 fn.1, 2, 7, and 10-11 (sequential pp. 132-34).

[10] To comply with Dallas County Civil Court Rule 2.04, an additional parenthetical identifying the sequential page number of this petition is used for the exhibits to distinguish from the page number of the original documents.

[11] At the time, W. Esping was the managing director of Holdings, and R. Grammen was a partner with Holdings.

health-care related businesses. *Id.* "To obtain the loan, Laserscopic provided EFO with a copy of Laserscopic's business plan. … [EFO, R. Grammen and W. Esping] agreed to keep the business plan confidential." *Id.* at p. 26, ¶ 138 (seq. p. 156).

21. "The Laserscopic Business Plan was distributed to the EFO representatives at this meeting, and prior to the distribution, the EFO representatives were told that the Laserscopic Business Plan was confidential. … The EFO representatives acknowledged and accepted responsibility to maintain the confidentiality of the Laserscopic Business Plan." *Id.* at pp.26-27, ¶ 139 (seq. p. 156-57). "Bailey provided the materials to the EFO representatives because he believed they would maintain the material and the information in confidence." *Id.* at p.27, ¶ 140 (seq. p. 157). The Laserscopic Business Plan and confidential business information was provided to the W. Esping and R. Grammen on the express and agreed condition that the materials would be kept confidential. *Id.* at p. 27, ¶ 141 (seq. p. 157).

22. R. Grammen, along with another representative (Michael Surgen) of Holdings, began conducting due diligence on behalf of Holdings. *Id.* at p. 28, ¶¶ 145-46 (seq. p. 158).

23. "In April of 2004, EFO proposed funding Laserscopic by a loan that was to be guaranteed by [W. Esping]. The April 2004 EFO term sheet provided that Laserscopic would receive funding in the form of a loan of up to $1.8 million for the initial center, with EFO receiving a 10% non-dilutable interest in Spinal as well as 10% of any future prospective medical facilities that Spinal opened." *Id.* at p. 28, ¶ 147 (seq. p. 158). This proposal was rejected by Plaintiffs. *Id.* at p. 28, ¶ 149 (seq. p. 158).

B. **EFO Deep Due Diligence**

24. After the initial Laserscopic entities began their business in August 2004, Bailey contacted Holdings about providing funding to those entities. *Id.* at pp. 29-30, ¶ 157 (seq. pp. 159-

60). In late September 2004, Bailey and R. Grammen exchanged emails about potential terms of a possible deal.

25. The initial communications included terms such as: "Any investment by EFO would require Board control until such time that EFO is paid off in full with its return" and "Sam and Dr. St. Louis shall provide personal guarantees for any loans made by EFO." *Id.* These emails made no mention of a majority ownership or permanent control by Holdings or Genpar. *Id.* and at p. 33, ¶ 180 (seq. p. 163).

26. Due diligence began onsite on October 21, 2004 and was completed by October 27, 2004. *Id.* at ¶ 182.

27. "When conducting due diligence in Fall 2004, [R. Grammen], on behalf of EFO, agreed that the confidential documents received from Laserscopic would be maintained as confidential, even without a written confidentiality agreement …. Laserscopic permitted EFO to conduct due diligence on site at Laserscopic." *Id.* at p. 30, ¶¶ 158-59 (seq. p. 160).

28. During due diligence, "… Laserscopic's financial information was provided to EFO, and included a general ledger and proforma budgets. … During the October 2004 due diligence, EFO had limited questions for and no communications with Bailey prior to presenting the October 27, 2004 term sheet. … [R. Grammen] was EFO's agent with regard to actions taken during due diligence. … At the time it performed due diligence, EFO knew that St. Louis and Perry were owners, officers, and directors of Laserscopic, as well as employees. … As a result of due diligence performed on behalf of EFO in 2004 into Laserscopic, EFO officials determined that they wanted to invest in Laserscopic." *Id.* at pp. 30-31, ¶¶ 159-65 (seq. pp. 160-61).

29. R. Grammen concluded that the Laserscopic entities had excellent medical service to offer with an excellent staff and a sufficient facility. *Id.* at p. 34, ¶ 184 (seq. p. 164). R.

Grammen discussed this with W. Esping, and they decided that Holdings would make an offer. *Id.* at ¶ 185.

30. After due diligence was completed, R. Grammen called Bailey and told him that W. Esping liked the business and that Holdings was "getting everything together." W. Esping told him that the offer would be "around 15% of the company [in the form of a loan] with a preferred return on investment." W. Esping told Bailey to stop looking for financing. *Id.* at p. 35, ¶ 193 (seq. p. 165).

31. As noted above, the email from R. Grammen to Bailey, dated September 27, 2004, provided some initial terms of a deal, but did not include any mention of a majority ownership interest in Laserscopic Spinal or that EFO would require permanent control over the board. In actuality, the opposite was true.

32. On October 27, 2004, Holdings conveyed, and Bailey received, a term sheet offering to invest $3,000,000 in exchange for a 55% interest, permanent board control, and a preferential seven percent return on its invested capital; the term sheet further provided that no distributions could be made to other investors until Holdings' invested capital was repaid. *Id.* at ¶ 195. Bailey's ownership interest would be significantly reduced from 34% to 10%, transferring that interest to EFO along with the acquisition of Ted Suhl's entire 34% interest. *Id.* at p. 34, ¶ 187 (seq. p. 164).

33. At that time Bailey and Laserscopic Spinal were looking for a loan for the business, not to sell the majority interest in the company. Bailey would not have agreed to allow Holdings to conduct on-site due diligence under these circumstances. *Id.* at pp. 34-36, ¶¶ 185-86, 192-95, and 198 (seq. pp. 164-66).

C. EFO's Theft of Laserscopic's Business

34. The same group of individuals that formed EFO LSI were also the ones controlling LSI and its subsidiaries (and thereafter LSI Hold Co.) It started when Holdings and Genpar, acting through Esping and Grammen, learned about the *Bailey* Plaintiffs' business when considering providing a loan to Laserscopic; liking what they saw, the *Bailey* Defendants decided they wanted to steal the business rather than fund it when Mr. Bailey and the existing funder were unwilling to turn the majority interest in the business over to Holdings and Genpar for peanuts. "When Bailey called [R. Grammen] to discuss EFO's unexpected terms, [R. Grammen] told Bailey that 'Billy [W. Esping] likes what you're doing, and **you're going to accept this offer or we're going to take your doctors and we're going to take your company. And we're going to go up the street, and we're going to do it ourselves**.'" *Id.* at pp. 35-36, ¶ 196 (seq. pp. 165-66); *Bailey*, 196 So. 2d at 380; *Bailey v. St. Louis*, 268 So. 3d 197, 201 (Fla. 2d DCA 2018) (emphasis added).

35. In its ruling, the trial court found that "EFO conspired to tortuously interfere with Laserscopic when [R. Grammen] called [Bailey] and threatened him to accept EFO's offer." Ex. A. at p. 36, ¶ 197 (seq. p. 166).

36. The trial court, in its Order on Non-Jury Trial, concluded that Holdings' representatives, including but not limited to R. Grammen and W. Esping, began a conspiracy to take personnel from Laserscopic and to defame Bailey to the doctors working with Laserscopic. *Id.* at p. 37, ¶ 204 (seq. p. 167).

37. Specifically, it was established at trial that part of the conspiracy was to raise totally unfounded, undocumented, and false concerns regarding expenses, operational issues and capitalization to the doctors and employees in order to cause them to question Bailey and the financial viability of the company. *Id.* at p. 40, ¶ 222 (seq. p. 170). Between October 16 and

November 30, 2004, there were 122 telephone calls between St. Louis and Surgen, R. Grammen, or both, some of which lasted more than 40 minutes. Dr. Perry had 55 calls between him and either R. Grammen or Surgen during the same period. *Id.* at p. 46, ¶ 257 (seq. p. 176). Between October 29 and November 15, 2004, St. Louis had 31 cell phone calls with R. Grammen, four with W. Esping, and 24 calls with Surgen, but only two with Bailey. Dr. Perry had 19 calls with R. Grammen and 22 with Surgen, but none with Bailey. *Id.* at p. 40, ¶ 223 (seq. p. 170). This was all at a time when St. Louis and Perry were officers, directors, and employees of the company.

38. Many of the calls to R. Grammen and Surgen were lengthy, on weekends and late into the evenings. *Id.* R. Grammen told St. Louis that Bailey had written checks to himself for thirty thousand dollars and another one for forty or fifty thousand, although the statements were not true. *Id.* at p. 44, ¶ 244 (seq. p. 174).

39. After a lengthy trial, the trial court determined that "[t]he EFO Defendants intentionally engaged in activities designed to develop a relationship with St. Louis and Perry and cause them to question Bailey's integrity. They did this in an effort to leverage their position in the negotiations to force a sale of Laserscopic with the support of St. Louis and Perry." *Id.* When those efforts were unsuccessful, R. Grammen, W. Esping, St. Louis and Perry formed EFO LSI and LSI to make good on their promise to steal the business out from under the Plaintiffs.

40. All three of Laserscopic's doctors (St. Louis, Dr. Perry and Dr. Hamburg) secretly agreed to go with the W. Esping group (including the EFO Debtors and R. Grammen). *Id.* at pp. 36-37, ¶ 203 (seq. pp. 166-67).

41. Mr. Suhl, who owned 34% of Laserscopic, explicitly told R. Grammen to cease all contact with Laserscopic Spinal employees. *Id.* at p. 38, ¶¶ 210-11 (seq. p. 168).

42. Because their attempted coup was not panning out, the EFO Debtors' (i.e., W. Esping and R. Grammen) simply made good on their promise to move forward with their own facility and not negotiate further unless Plaintiffs came begging to do the deal. R. Grammen continued to contact St. Louis and others while they were employed by Laserscopic entities despite the directive by Mr. Suhl and Bailey to cease all such communications as they were developing plans to create a new venture. *Id.* at pp. 38-39, ¶¶ 210-13 (seq. pp. 168-69).

43. Mr. Miller, another potential investor, testified at trial that "Bob Grammen called me and said that they would win a lawsuit. I told him they might not. **He said even if you do win, we have ways to take care of it**. I said, I know you will appeal it. **He said I don't mean that. I said you just threatened me.**" Mr. Miller then told R. Grammen that he would put R. Grammen's and Holdings' names in his safe deposit box, "and if something happens to me, then they'll know who to call first." *Id.* at p. 39, ¶ 214 (seq. p. 169) (emphasis added).

44. "EFO was attempting to dilute the interest of Bailey by taking steps to control Mr. Suhl's ownership stake in Laserscopic and Mr. Miller's option to purchase that stake …. Although he had no prior relationship with Mark Miller, in the fall of 2004, [R. Grammen] telephoned Mr. Miller multiple times. In the first conversation, [R. Grammen] offered Mr. Miller $500,000 to purchase the option Mr. Miller held on Mr. Suhl's 34 percent ownership stake in Laserscopic. Mr. Miller refused the offer…. A few days later [R. Grammen] called again and repeated the offer, which Mr. Miller again rejected. During the conversation, Mr. Miller asked about Bailey. [R. Grammen] told him, 'Sam's not going to get anything. I don't think he deserves anything.' And 'We're not going to pay him.'" *Id.* at ¶ 215.

45. "[R. Grammen] tried a third time to get Mr. Miller to sell his option to EFO for $500,000. Mr. Miller again refused. [R. Grammen] told Mr. Miller that he and his friends were

going to lose the company. … When Mr. Miller told him he would sue if [R. Grammen] and EFO interfered with the business **[R. Grammen] was not concerned indicating EFO would make ten times whatever damages the Plaintiff might suffer.**" *Id.* at ¶ 216; *Bailey*, 196 So. 3d at 380-81; *Bailey*, 268 So. 3d at 201-02. R. Grammen repeated his threat at a later point. Ex. A at p. 40, ¶ 217. R. Grammen also falsely told Mr. Miller that Bailey stole $100,000 in plane expenses from Laserscopic Spinal. *Id.* at p. 53, ¶ 301 (seq. p. 183).

46. After the due diligence visit to Laserscopic, and several weeks before he resigned, St. Louis began to delay and cancel surgeries, and had some prospective patients moved over to have the procedure at what would be their newly created venture: the LSI Debtors. LSI was the vehicle that the EFO Debtors, W. Esping, W. Horne, St. Louis and R. Grammen created as their copycat business venture based on their theft of Plaintiffs' proprietary business model, trade secrets including their business plan, employees and other confidential information. "During this same time St. Louis was attending closed door meetings with Perry [another Laserscopic physician] and also with [R. Grammen] and Mr. Surgen. *Id.* at p. 45, ¶¶ 253-54 (seq. p. 175).

47. On November 8, 2004, while they were still owners, officers, directors, and employees of Laserscopic Spinal ("All of the Defendants were aware of this fact"), St. Louis and Dr. Perry met with Holdings' representatives, including W. Esping and R. Grammen at the Vinoy Hotel. *Id.* at p. 46, ¶ 258 (seq. p. 176).

48. "There were two meetings at the Vinoy Hotel in November 2004 attended by [W. Esping]. The first one was attended by [R. Grammen], [W. Esping], St. Louis, Perry and Ballard Castleman. Mrs. St. Louis attended the second one." *Id.* at p. 47, ¶ 262 (seq. p. 177). "This was also the period of time when Defendants first began discussions about the formation of LSI." *Id.* at p. 46, ¶ 259 (seq. p. 176). "The meeting at the Vinoy Hotel was part of a pattern of contact

between St. Louis and Perry, on one hand, and the EFO Defendants, on the other, in which the Defendants were conspiring to open a competing surgery center." *Id.* at p. 47, ¶ 265 (seq. p. 177).

49. "Perry and St. Louis began discussions with EFO regarding the development of a new competing surgical center while both were employees, owners, officers, and directors of, Laserscopic. Contemporaneously, St. Louis was saying that he and the others had already decided to join in with EFO." *Id.* at ¶ 264. "Some time prior to November 4, 2004, St. Louis and Perry and the EFO Debtors agreed to form the LSI Defendants[12] and began active steps to organize the business. Each of the Defendants[13] conspired to create LSI." *Id.* at p. 48, ¶ 267 (seq. p. 178). The conspiracy began prior to November 4, 2004 and continued thereafter. It culminated in the formation of the various LSI-related defendants and their continued operations through the present." *Id.* at ¶ 268.

50. R. Grammen wrote an email to his lawyer, Eric Kimball, dated November 3, 2004, stating: "Our goal at the moment is to move forward to a new facility without them unless they come begging back for us to save their deal." "[R. Grammen] admitted that 'without them' meant 'without Bailey and Mr. Suhl.'" *Id.* at p. 49, ¶ 273 (seq. p. 179).

51. "The Defendants decided to form their business and St. Louis and Perry determined they would sever their relationship with Laserscopic in early November of 2004 at the latest. Defendants engaged in numerous secret meetings and conversations prior to and after this time in preparation for opening their competing business." *Id.* at pp. 49-50, ¶ 279 (seq. p. 179-80). EFO

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[12] As used in the Trial Order, LSI Defendants means EFO LSI, Laser Spine Institute, LLC, Laser Spine Medical Clinic, LLC, Laser Spine Physical Therapy, LLC, and Laser Spine Surgical Center, LLC. Ex. A at 4, ¶ 8, n.4 (sequential p. 107).

[13] As used in the Trial Order, Defendants means the EFO Debtors, LSI Defendants, St. Louis, and Michael Perry. Ex. A at 3-5, ¶¶ 8-16.

LSI was created to hold an interest in LSI. As the EFO LSI Partnership Agreement states: "Section 1.3: Purpose of the Partnership is to acquire a membership interest in Laser Spine Institute, LLC, a Florida limited liability company (the "Company") and to acquire and manage various investment property and to engage in any other activities permissible by a limited partnership under the Act." "Bill Esping approved the formation of EFO LSI." *Id.* at 66, ¶ 393 (seq. p. 196). "As of November 2004, it was decided that EFO, through [EFO LSI], would own 65 percent of LSI, St. Louis would own 25 percent, Perry would own 10 percent and Mr. Surgen would own 5 percent." *Id.* at p. 49, ¶ 278 (seq. p. 179). "[T]he Defendants made use of Laserscopic's business plan, confidential documents, key personnel including the entire surgical team and other employees, internal forms and documents, and patient leads. Defendants obtained the critical head start and benefit of time and know-how, which gave them a significant advantage in the market." *Id.* at p. 51, ¶ 284 (seq. p. 151).

52. "St. Louis stopped performing surgery at Laserscopic on November 11, 2004, and prior to that, instructed Laserscopic employees to cancel scheduled surgeries. … St. Louis formally resigned … by letter dated November 15, 2004." *Id.* at ¶ 286.

53. As the Florida Second District Court of Appeals said: "[I]t was not enough to gut Laserscopic Spinal, the [EFO Debtors and LSI Defendants] deboned it with surgical skill." *Bailey*, 196 So. 3d at 381. As part of their conspiracy, and with the hopes that Laserscopic would fail, the EFO Debtors, W. Esping and R. Grammen, and with their support, St. Louis and Dr. Perry, took active steps to incite employees to leave that company, including guaranteeing payment, and making payments to such employees in the interim between them leaving the Laserscopic entities and the start-up of the new LSI businesses. Ex. A at pp. 55, 59, 60-61; ¶¶ 317-18, 338-41, and 348 (seq. pp. 185, 189, 190-91).

54. In June 2004, Laserscopic Spinal leased its surgery facility from Park Place Property, LLC, which was owned by Kevin McCallum. *Id.* at p. 6, ¶ 27 (seq. p. 136) and pp. 71-72, ¶ 419 (seq. pp. 201-02). "Approximately one month before St. Louis resigned his employment at Laserscopic, EFO representatives including [R. Grammen] and Mr. Surgen met with Mr. McCallum. … EFO representatives approached Park Place Properties saying they were interested in leasing space at the Park Place facility. … Mr. McCallum gave the EFO representatives a tour of the remaining space on the south side of the facility." *Id.* at p. 72, ¶ 421 (seq. p. 202).

55. "Afterwards, the EFO representatives inquired of Mr. McCallum about the remaining unleased portion of the facility. … EFO representatives asked whether Laserscopic was a viable and financially sound company. … The questions included whether Laserscopic was paying its rent and how much of Laserscopic's rental space EFO could incorporate into its space if Laserscopic was behind on its rent. … Mr. McCallum explained to the EFO representatives that Laserscopic was paying its rent." *Id.* at ¶ 422. "The EFO representatives then asked Mr. McCallum if they could take over the entire building. EFO representatives told Mr. McCallum that Laserscopic was not going to succeed. They also said that EFO was prepared to purchase the building from him and that they wanted the facility. *Id.* at ¶ 423. "The EFO representatives told Mr. McCallum that he could 'join a winning team, or . . . end up with an empty building in the near future, without a tenant.'" *Id.* at ¶ 424.

56. "LSI created a Business Plan dated December 5, 2004, which EFO admitted was a 'cut and paste job' of Laserscopic's confidential business plan that EFO had received during due diligence." *Id.* at p. 61, ¶ 354 (seq. p. 191). "LSI used Laserscopic's ideas, concepts, and financial data in the LSI Business Plan to solicit and obtain financing." *Id.* at p. 62, ¶ 357 (seq. p. 192).

57. The LSI Debtors also used Laserscopic Spinal's patient lists, leads, accounts payable information, information pertaining to Laserscopic Spinal's operating room supplies and operations, including scheduling Laserscopic Spinal's patients for surgery at LSI. *Id.* at p. 63, ¶¶ 367-72 (seq. p. 193).

58. "On January 20, 2005, Perry sent [R. Grammen] and Mr. Surgen a timeline document that was prepared for Laserscopic. … This timeline Action List covered the startup process that included financing, finding a facility, finding the right equipment, attorney and legal issues, human resources, liability and malpractice, administration, regulation, hospital relationships, facility and purchasing, information management and marketing, needed to start a minimally invasive spine surgery business." *Id.* at p. 64, ¶ 375 (seq. p. 194). "Mr. Surgen copied the Laserscopic Action List and created an LSI Action List, and emailed it to [R. Grammen], and others." *Id.* at ¶ 376.

59. During the applicable time period up to the date of the Trial Order, Genpar was the general partner of and agent for Holdings. The other partners included R. Grammen, W. Esping, Payne Lancaster and Ballard Castleman. The owners of EFO LSI were: W. Esping and his family, approximately 30%; St. Louis, approximately 22%; R. Grammen, as a limited partner less than 5%; and W. Horne about 9%. Mr. Surgen, Dr. Perry, and Dr. Hamburg also owned some interest therein. W. Esping approved the formation of EFO LSI. In 2004, EFO LSI owned 55-56% of LSI and St. Louis owned 44-45%. The LSI Advisory Committee, which functioned as a corporation's board of directors, included W. Horne, W. Esping, R. Grammen, Dr. Perry and others. *Id.* at pp. 65-66, ¶¶ 382-89 and 393 (seq. pp. 195-96).

D. Expansion of LSI

60. As a result of this conspiracy to steal Plaintiffs' business, the new companies founded by W. Esping, R. Grammen, St. Louis and Holdings (EFO LSI and LSI) grew at an exponential rate, which growth actually belonged to Plaintiffs given EFO's and the individuals' conspiratorial conduct. The growth found by the Florida trial court (*Id*. at p. 68, ¶¶ 403-406) (seq. p. 198), which case was tried in 2010 and 2011, is set forth in the following table:

Year	Number of Patients	Number of Surgeries	Gross Revenues (Millions)	Net Income (Millions)
2005	368	60	$ 3.0	$ 0.0
2006	1,429	1,400	26.0	12-12.3
2007	3,072	2,200	64.0	30-31.0
2008	4,156	3,400	90.0	24-28.5
2009	Projected 5,000	4,100	100.0	Estimated 15-27
2010	No finding	Projected 4,600	Projected 110.0	No finding

61. Since Ex. A was entered in 2012, there were no findings regarding income beyond those set forth above as the case was principally on appeal. After the Trial Order was entered in October of 2012, there was an appeal to the Second District Court of Appeals principally on damages. The appellate opinion was not issued until February of 2016; the opinion made clear that the damages awarded were grossly insufficient. There was a brief period of remand, and then a second appeal to the appellate court when the trial court awarded the same damages. The second appellate opinion was issued in December of 2018, which instructed the trial court to issue a final judgment consistent with the final judgment that was ultimately entered on July 3, 2019, totaling nearly $400 million dollars. The LSI Debtors shuttered a few months thereafter. During the intervening period, the EFO Debtors used the time to drain all of the company's assets and otherwise create a web of interrelated companies and asset shifting in order to make it as difficult as possible for the Plaintiffs to ever collect on any judgment.

62. As discussed below, within two months of the October 2012 Trial Order, the EFO Debtors and the LSI Debtors took further steps to insulate themselves from judgment and continued their efforts to denude the Judgment Debtors. Specifically, Holdings filed bankruptcy in December of 2012, although the evidence Plaintiffs have uncovered shows that people affiliated with Esping nonetheless continue to use the name "EFO Holdings" to operate even today. Further, in the same time period, the LSI Debtors—as directed by W. Esping, R. Grammen, St. Louis and W. Horne—formed LSI Holdco in an effort to shield the LSI assets since LSI Holdco was not a defendant in the Underlying Action. EFO LSI (and Defendants) then exchanged their interests in LSI to LSI Holdco. These actions by Defendants were designed to hinder, delay, and defraud Plaintiffs' collection efforts after the initial appeal.

63. Documents produced by EFO Debtors show continuing prosperity for EFO Debtors and the LSI Debtors, as reported through LSI Holdco, until the looting by the distributions in 2015 (Financial Statement of LSI Holdco, LLC, EFOLSI003356; Ex. B attached hereto) (seq. p. 269):

Year	Gross Revenues (Millions)	Net Income (Millions)
2012	$ 150.850	$ 27.525
2013	206.330	46.135
2014	268.679	71.319
2015	285.428	(5.379)
2016	246.341	(66.974)
2017 (through 8/31)	215,550	(61.865)

64. The losses in net income from 2015-17, despite continued huge gross revenues (2015 gross revenue was even $17 million more than 2014, and if the gross revenue rate through the first 2/3 of 2017 continued throughout the rest of that year, the gross revenue for 2017 would have been approximately $322.5 million), is evidence of the looting and denuding of these companies to defeat judgment collection efforts as they knew based on the Trial Order, and then

the first appellate opinion, that when the second appellate order was entered, the judgment against them would be significant. Because of the risk of a negative outcome in the Litigation, in 2015, the owners of LSI chose to take out a loan and "recapitalize" by using the proceeds of the loan to drain $120 million from LSI that should have been used for working capital. This "recapitalization" essentially sealed the fate of the LSI Debtors and led to the company shuttering.

65. By comparison, at the time of the trial, there were various valuations prepared of LSI. "The J.P. Morgan Chase valuation document was 'created by the management team of Laser Spine Institute, LLC' in 2008. … The estimated value of the company based on projections was $320 million." Ex. A. at p. 68, ¶ 407 (seq. p. 198). "LSI stock has been purchased at various times, giving LSI an enterprise value of $100 million. … A recent stock purchase by Horne was based upon a valuation of LSI of $100 million. Within that same period, Horne and [R. Grammen] agreed that the valuation of LSI was $100 million." *Id.* at ¶ 408. On December 10, 2009, Summit Partners established the enterprise value of LSI at $172 million, $476 million equity value, and value to shareholders of $550 million. Ex. D at DO7432-33 (attached hereto) (seq. pp. 312-13). The LSI Debtors were successful up until the 2015 recapitalization.

E. **Findings of Wrongdoing**

66. "EFO acknowledged that certain of the types of behaviors engaged in by EFO would be inappropriate and unethical. Interfering with an investment target, by either offering or enticing the owners and directors of the target business to leave the target business to start another, constitutes a violation of EFO's rules of conduct. … Offering a job to an officer, director, or employee of a company on which EFO is conducting due diligence …; contacting the landlord of a target business and urging the landlord to evict the target business from its leased space . . .; contacting a target business's landlord and suggesting that the landlord evict the business in order

for EFO to start a new competing business in that the leased premises or inducing an investment target's owners and directors to resign from EFO's investment target to join a competitor created by EFO are all violations of EFO's rules of conduct…." Ex. A. at p. 27, ¶ 143 (seq. p. 157). "EFO acknowledged that as a lender, when given confidential information during the evaluation process for a business loan, it would hold that information confidential …." *Id.* at ¶ 144.

67. Since W. Esping, R. Grammen, St. Louis, and W. Horne were personally involved in those wrongdoings, they had personal knowledge of the wrongdoings of the EFO Debtors, and personally participated therein. These individuals were also involved in the day-to-day operations of LSI and/or otherwise sat on the board, so they were intimately familiar with the success of the business as well as the status of the Litigation brought by Bailey and Laserscopic, in which they participated and often testified.

68. K. Esping, Kirtland and Blanton are siblings of W. Esping, and are jointly involved with him in Marital Trust, which is a limited partner of EFO LSI and the sole shareholder of Genpar. As such, they and Marital Trust had knowledge of the wrongdoings and ratified them. Cypress GP, WPE Kids, JEK, Stanhope, EFO Equity Fund II, Eminence, Masterdom, KRE, Spinal Tap, Appreciation, EFO Manager, and EFO Management are businesses that are owned and controlled by W. Esping, R. Grammen, and various family members. These entities constitute a portion of the Esping "Empire". They were each general or limited partners in EFO LSI and/or members of Cypress GP, which itself is the general partner of EFO LSI. As such, they were on notice of the wrongdoings and had the authority to stop them, but instead participated in the control of EFO LSI and Cypress GP, thereby they authorized and ratified the wrongdoings.

69. Additionally, during the pertinent time period, Wilson, Krupala, Bollinger, Amato, and Larry Wallace (predecessor in interest of Wallace Estate) were officers, directors and/or

otherwise in managerial positions with the EFO Debtors (and in the case of Bollinger, she was the General Counsel and, for a time, the COO of LSI) and the other business entity Defendants, and therefore were personally involved in the wrongdoings set forth above and below.

70. H. Grammen, M. Grammen, Y. Grammen, and K. Grammen are relatives of R. Grammen, and limited partners in EFO LSI. As such, each was on notice of the wrongdoings and could have moved to stop them, but instead were shills for R. Grammen and thereby participated in the control of EFO LSI through its principal office in Dallas, Texas, thereby they authorized and ratified the wrongdoings.

71. Horne J., Horne Tipps, WH, and Horne Management are business entities owned and controlled by W. Horne and are limited partners of EFO LSI. Since W. Horne was personally involved with the wrongdoings and was the long-time CEO of LSI, these entities were on notice of the wrongdoings, participated in the control of EFO LSI through its principal office in Dallas, Texas, thereby they authorized and ratified them. James Horne and Justin Horne are relatives of W. Horne and limited partners in EFO LSI, and as such were on notice of the wrongdoings and could have taken steps to stop them, but instead were shills for W. Horne and thereby they participated in the control of EFO LSI through its principal office in Dallas, Texas, thereby they authorized and ratified the wrongdoings.

72. J. St. Louis is the former wife of St. Louis (and was married to him at the time of much of the wrongdoing), and a limited partner in EFO LSI. As such, she was on notice of the wrongdoings, was a shill for St. Louis and thereby participated in the control of EFO LSI through its principal office in Dallas, Texas, thereby she authorized and ratified the wrongdoings.

73. Indeed, the trial court found that "[t]he EFO Defendants and the LSI Defendants were engaged in a pattern of unfair and deceptive practices as well as broad-sweeping, anti-

competitive conduct. Their intentional and wrongful conduct included the EFO Defendants' solicitation of St. Louis and Perry, each of whom they knew to be officers, directors and employees of Laserscopic; the EFO and LSI Defendants' inducement of the Laserscopic employees to leave their employment and join the LSI Defendants; the EFO Defendants and LSI Defendants' misappropriation of the assets of Laserscopic including the confidential information, which the LSI Defendant then used in their business; and, the LSI Defendants' false statements about Bailey and Laserscopic to the Department of Health and solicitation of that agency to terminate the surgical licenses at Laserscopic's facility." *Id.* at 96, ¶ 17 (seq. p. 226).

74. "In this case, each of the Defendants participated in various ways in the conspiracy, first to try and take over Laserscopic's business, and failing that, to take key employees and corporate assets so that any remaining business could not compete." *Id.* at 100, ¶ 1 (seq. p. 230).

75. "Each of the Defendants and the Former Laserscopic Employees were engaged in conspiratorial conduct ranging from misappropriating confidential information including patient lists, secretly looking for an alternative facility while still employed by Laserscopic, soliciting Laserscopic employees to sever their employment with Laserscopic, making false and defamatory statements about Bailey and Laserscopic and other similar conduct for the purpose of establishing the LSI Defendants. Each of these acts supports a claim for the independent tort of conspiracy in addition to the other claims against each of the Defendants and Defendants are jointly and severally liable." *Id.* at 100, ¶ 3 (seq. p. 230).

76. "The EFO Defendants tortiously interfered with Laserscopic's business relationships in several ways. Summarized below are some of the ways detailed in the factual findings. The EFO Defendants interference with the relationship between St. Louis and Perry. The EFO Defendants used the confidential information obtained from Laserscopic and

misrepresented the contents of such documents. They engaged in face to face meetings and numerous cellular telephone calls with both St. Louis and Perry, while they knew each of them to be officers, directors, employees and owners of Laserscopic. They engaged in such conduct even after they received notices from Mr. Suhl, another director with Laserscopic . . . and Laserscopic that the conduct should cease. This conduct was knowing, willful and intentional." *Id.* at 102-103, ¶ 1 (seq. pp. 232-33).

77. "St. Louis and Perry interfered with Laserscopic's relationships with its employees…St. Louis and Perry engaged in numerous intentional and willful acts directed at causing the EFO Defendants to choose to establish a competing facility… and participating in meetings with the EFO Defendants' representatives including William Esping, Mr. Grammen and Mr. Surgen for the purpose of inducing them to open a competing facility with them. St. Louis and Perry also directed Laserscopic employees to cancel existing patients for surgery at Laserscopic so that those surgeries could be performed at the LSI Defendants. Further, they directed employees to take prospective patient lists which were later used by the LSI Defendants to solicit these individuals to have surgery at LSI." *Id.* at 103, ¶ 3 (seq. p. 233).

78. "The LSI Defendants, after their formation, actively participated in tortious conduct against Laserscopic and ratified past tortious acts performed on their behalf and for their benefit. The LSI Defendant hired Defendants St. Louis and Perry [and Laserscopic employees] each whom they knew had business relationships with Laserscopic. St. Louis, on behalf of the LSI Defendants, wrote to the State of Florida, suggesting that the license for Laserscopic's facility be cancelled and making statements about Mr. Bailey, the CEO, that would cause the applicable licensing authorities to question the abilities and operational integrity of Laserscopic. The LSI Defendants also contacted patients and prospective patients that they knew to have business relationships with

Laserscopic for the purpose of soliciting them for surgery. These are examples of the intentional, willful and wrongful conduct of the LSI Defendants that constitute tortious interference." *Id.* at 103, ¶ 4 (seq. p. 233).

79. Thus, while Plaintiffs submit that Defendants knew far earlier—dating back to 2006 when Plaintiffs filed their initial complaint or, thereafter, given the trial began in 2010 (and ended in May of 2011) and the evidence supporting the allegations introduced at that time—Defendants knew or should have known of the potential for a large judgment when the Trial Order was issued.

80. The trial court in Florida found that these actions by the EFO Debtors and the LSI Debtors—each of whom acted through R. Grammen, St. Louis, W. Horne and W. Esping--amounted to the following violations of law: Defamation (*Id.* at pp. 90-93, ¶¶ 1-5 and 1-11) (seq. pp. 220-23); Florida Deceptive and Unfair Trade Practices ACT (FDUTPA), Fla. Stat. § 501.203 (the court initially limited the monetary relief, but the court of appeals reversed that holding and remanded to the trial court for a determination of damages; *Id.* at pp. 93-97, ¶¶ 1-19 and 1-7; Bailey, 196 So. 3d at 382-83); Conspiracy (Ex. A at pp. 97-100, ¶¶ 1-9 and 1-4) (seq. pp. 227-30); Tortious Interference (*Id.* at pp. 100-04, ¶¶ 1-10 and 1-8) (seq. pp. 230-34); and Misappropriation of Trade Secrets and Confidential Information (*Id.* at pp. 104-09, ¶¶ 1-13 and 1-10) (seq. pp. 234-39). In so finding, the trial court confirmed that W. Esping, W. Horne, St. Louis and R. Grammen used the business entities, including but not limited to the EFO Debtors and the LSI Debtors, for an illegal purpose and as a sham to perpetrate a fraud.

F. Attempts to Avoid Judgment Collection

81. Given the allegations in the Florida pleadings, the expert testimony regarding damages and the trial court's extensive factual findings, the EFO Debtors and the Defendants knew or should have known that their participation in the scheme to take the entire value of Plaintiffs'

company, lock, stock and barrel, would ultimately result in a disgorgement award given that any gains were predicated on their illegal conduct and they did not dispute that disgorgement was an appropriate remedy (they disputed liability).

82. While the initial trial court judgment awarded Plaintiffs only $1.6 million, the Florida Second District Court of Appeals reversed that amount, twice,[14] and remanded to the trial court requiring an increase that resulted in the Second Amended Final Judgment totaling $369,073,388, together with post-judgment interest in accordance with Fla. Stat. 55.03. The Appellate Court found that the actions of the EFO Debtors, the LSI Debtors, W. Esping and R. Grammen were so egregious that it reversed and remanded to require the award of punitive damages. Bailey, 196 So. 3d at 379-83.

83. In December 2012, within a month after the trial judge issued its 131-page Trial Order that included the devasting factual findings, some of which are set forth above, the LSI Debtors conveniently reorganized. Upon information and belief, the purpose of the reorganization was to create roadblocks for the Plaintiffs when they sought to recover on their judgment and to otherwise attempt to shield its assets. It essentially created another layer in the corporate structure. Notably, the defendants in the underlying litigation did not take these steps before, perhaps believing that they would prevail; when that did not happen and those defendants were confronted with dozens upon dozens of factual findings outlining their illegal enterprise in the Trial Order, they scrambled to create another layer in the corporate structure at a time when the record was sealed and Plaintiffs could not add LSI Holdco as a party after the trial. The clear purpose of this newly created entity was an attempt to shield assets from Plaintiffs' collection efforts.

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[14] *Bailey*, 196 So. 3d at 383; *Bailey*, 268 So. 3d at 202-03.

84. Specifically, within weeks of the trial court's issuance of the damning factual findings, the Board of Managers of LSI formed LSI Holdco under Delaware law. The Board of Managers included some of the same individuals involved in the original fraudulent conduct, namely St. Louis, R. Grammen, W. Esping and W. Horne.

85. On January 1, 2013, the members of LSI, the original holding company, entered into a new operating agreement with LSI Holdco that, among other things, transferred all of their membership interests in LSI to LSI Holdco. The owners of LSI assigned their respective interests in LSI to LSI Holdco in exchange for equivalent membership interests in LSI Holdco. As a result of this assignment, LSI Holdco became the sole member, manager and owner of LSI.

86. Under the 2013 LSI Operating Agreement, and as sole member of LSI, LSI Holdco managed, conducted, and controlled the affairs of the LSI Debtors, and controlled the assets of LSI and the assets of LSI's subsidiaries. The Board of Managers of LSI Holdco controlled all aspects of LSI Holdco and LSI and its subsidiary companies.

87. EFO LSI, from its principal office at the Esping HQ, under the direction of W. Esping, J. Krupala, St. Louis, R. Grammen, and W. Horne, participated in the creation of LSI Holdco and transferred its interests in LSI to LSI Holdco. Upon information and belief, the same wrongdoers maintained their positions on the Board of Managers of EFO LSI in Dallas, Texas, including St. Louis, R. Grammen, W. Esping and W. Horne and/or were officers of the companies and continued to maintain their interests in LSI Holdco.

88. EFO LSI's decision to transfer its interests to LSI Holdco was made by individuals from the same group that made the decision to transfer LSI's interests to LSI Holdco, to wit: St. Louis, R. Grammen, W. Esping and W. Horne, among others, and was made in Dallas, Texas.

89. This corporate restructuring added a layer of corporate fiction between LSI and the interest holders who were receiving distributions, meaning that LSI began rolling up its profits to LSI Holdco and then distributed these amounts to LSI Holdco's members including EFO LSI; Defendants hoped this restructuring would allow them to siphon off all of the profits since LSI Holdco was not a defendant in the underlying litigation (as it was only created *after* the trial and the Trial Order was entered). The Board of Managers, which included W. Horne, St. Louis, R. Grammen and W. Esping, continued to exercise dominion and control over LSI and LSI Management (as well as the other subsidiary companies), the day-to-day affairs and operations, and their respective property. Notwithstanding the additional layer added, nothing changed in the operations of LSI's business or its ownership other than that the wrongdoers now understood that the trial court made extensive factual findings establishing their illegal and fraudulent conduct.

90. At the same time, Holdings filed for bankruptcy on December 19, 2012, in the Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 12-37936-hdh-7, again barely two months after the Trial Order was issued and in a further effort to impede the Plaintiffs ability to collect on any judgment.

91. By Order entered by that court on August 10, 2015, the bankruptcy court ordered that the proceedings therein would not affect Plaintiffs' claims in the Florida suit except that any money paid to Plaintiffs through the bankruptcy proceedings would constitute a setoff to the Florida claims. Agreed Order Granting Motion to Approve Chapter 7 Trustee's Motion to Compromise (Ex. C attached hereto) (seq. pp. 298-301).

92. Holdings ostensibly filed bankruptcy (and J. Krupala claims it ceased to be), to hinder and delay Plaintiffs' collection efforts when the litigation was over and the judgment became final. Krupala and counsel for Holdings represented to Judgment Creditors, the

bankruptcy court, the Florida court and the Texas courts that it ceased all business in 2012. In truth, Holdings continues to conduct business, sometimes using aliases of one or more Defendants, and sometimes being used as an alias.

93. Further, Holdings, according to information from Holdings' books, held and operated interests in various entities after 2012, including Cypress GP. Krupala denies this today. Yet, Judgment Creditors discovered that persons have represented, under oath or in public filings, that Holdings operated a racetrack and casino. People claiming to be acting for Holdings associated with Esping issued press releases for Holdings. Holdings was filing tax returns and sending reports to banks (concurrent with the bankruptcy). Holdings purported to hire (and someone paid) lawyers to advise it. Holdings runs a webpage (efoholdings.net (© 2020)). Holdings appears to be running an email server for the Esping HQ. Holdings is keeping books and generally holding itself out as a business despite having filed bankruptcy in 2012 and ceasing to exist. Specifically, in filings in the Florida Court, the Plaintiffs identified the following issues that contradict the claim Holdings ceased to exist—all of these which J. Krupala denies as misnomers, mistakes, or *de minimis*:

a. A person claiming to act for Holdings represented that Holdings owned and operated Melbourne Greyhound Park in 2019. Melbourne Greyhound Park is a dog racing park and casino in Brevard County Florida. The casino includes Club 52, a "Vegas-style poker room and VIP area." Last year, the greyhound racetrack alone grossed over $4 million dollars. http://www.myfloridalicense.com/dbpr/pmw/documents/Cardroom2019-2020.pdf. In July 2007, The owner of 1100 N. Wickham Rd., Melbourne, FL, (the location of the racetrack) filed a notice of commencement of renovation; in that same year, Holdings filed a notice of termination of notice of commencement of improvement of a renovation of one of the poker rooms. For years, and even after the bankruptcy proceeding, at least one person claiming to represent Holdings held out to regulators and the public that Holdings was the owner of Melbourne Greyhound Park LLC. For example, a September 2018 notice of commencement of improvements was recorded by Holdings at 1100 N. Wickham Road, Melbourne, FL. This document was signed by James O'Brien as President/CEO of Holdings,

long after the bankruptcy filing and after the case was closed by the Trustee in January of 2016. Even as late as January 2019, (seven years after the bankruptcy filing, and three years after the bankruptcy was closed), Holdings recorded a notice of improvement to real property confirming that it owns Melbourne Greyhound Park. The filing was again signed by James O'Brien as President of Holdings and Holdings was listed as the owner.

b. Holdings' books and records also indicate that it held interests in a number of other companies that it has failed to disclose to the Trustee or the Judgment Creditors (claiming instead that Holdings has not been operational since 2012). In 2012, when it filed for bankruptcy, Holdings' officer (Krupala) declared under oath that Holdings maintained that it had no "stock and interests in incorporated or unincorporated businesses" and likewise claimed "no interests in partnerships or joint ventures." This, however, is contradicted by their own contemporaneously maintained corporate books and records—records maintained by the very same person who made the statement under oath, Krupala. Specifically, between 2012 and 2016, Holdings maintained the following interests in partnerships that Judgment Creditors have discovered were listed as owned on Holdings books and records during the relevant period[15]:

- APS Partners, LP
- Bluffview Holdings, LP
- CCA Ring Fund, LP
- Cypress GP, LLC
- EFO Financial Group, LLC
- EFO Laser Spine Institute
- EFO NYMEX
- Family Access Exchange, LP
- KRE/MDT2, GP
- NTE Aviation SW 23063/23251, LLC
- Opportunity Capital Genpar, LP
- Redhawk Capital Management, LP
- Rolling Sevens, LP
- RSF Genpar II
- RSF Genpar III
- Trinidad Realty Group, LP
- Waste Corp. of America, LLC

None of the QuickBooks files or other documents showing Holdings' ownership of these entities were voluntarily produced by the control persons of Holdings. This, of course, raises concerns that not only were these

[15] J. Krupala claims Holdings' records are not correct in this respect.

documents not turned over to the Judgment Creditors but also concealed during the bankruptcy from the Trustee.

c. Over the years, Judgment Debtor LSI procured loans and lines of credit from Texas Capital Bank ("TCB") and in so doing was required to submit information to TCB relating to its ownership. For example, in July 2013 (after the bankruptcy filing), in the Credit Approval Summary for LSI Holdco LLC, Holdings, and W. Esping's role with Holdings, was a prominent feature of the original loan documents that led TCB to provide LSI Hold Co. with a $30 million revolving line of credit. This representation to TCB is a year *after* Holdings filed for bankruptcy and several months before Holdings filed its *Amended* Statement of Financial Affairs. Nowhere in the original statement or in the amended schedules did Holdings' officers or control persons advise the bankruptcy court or Trustee that Holdings was a 42% owner of EFO LSI, or that they had told the Bank that.

d. According to records, Holdings holds a 99% limited partnership in Cypress GP (and Genpar as its general partner). Indeed, as mentioned above, through at least 2016, Holdings' books and records still recorded it owning the interest in Cypress GP. As of 2019, Cypress GP continued to own a 0.72% interest in EFO LSI. Based on records reviewed to date, this interest represented at least $1.2 million in distributions from EFO LSI. This interest in Cypress GP was not disclosed to the Trustee nor has Holdings identified whether Cypress GP (an entity in existence since 2001) has any other assets. No officer or control person of Holdings has even acknowledged the existence of the ownership, much less provided to Plaintiffs information on where the money/assets are now, when and to whom they were transferred and any evidence that such transfers occurred for reasonable value.

e. In addition to the above, the officers and control persons of Holdings misrepresented its intangible assets. In their bankruptcy schedules, Holdings' officer claimed the entity had no "patents, copyrights, and other intellectual property." This too appears to be false. Holdings, despite its representations, has maintained certain cyber assets that have not been identified or disclosed. Holdings believes that these assets are significant enough to continue using them even after bankruptcy. See its website: www.efoholdings.net. Notably, this is an asset that belongs to the bankruptcy estate, but Holdings' website continues to claim ownership; it even claims a 2020 copyright for "EFO Holdings." *Id.* Holdings' website proclaims multi-million-dollar land acquisitions and loans by the company. *Id.* Clearly, the control persons of Holdings should be forced to appear and explain why the company they have repeatedly said holds no assets is on the internet holding itself out to the public as owning these assets. If the assets exist, like the Holdings © 2020 website claims, where are the multi-million-dollar assets? Additionally, Holdings continues to use all "EFO Holdings" email addresses as assets that remain operational, e.g.,

jkrupala@efoholdings.net; besping@efoholdings.net; mstewart@efoholdings.net; info@efoholdings.net. On information and belief, these email addresses and the goodwill of Holdings are currently used by the control persons of Holdings and the EFO Debtors to obtain new business, convey assets, consult with "asset protection" professionals to conceal assets, and take other actions to circumvent the Judgment. Thus, despite Holdings' representations to this Court that it has not operated since 2012, it continues to use a webpage and email addresses and hold itself out to the public as an operational entity—moreover an *investment* entity—and those control persons of Holdings benefit to this day from assets that they repeatedly failed to disclose. The control persons of Holdings have been carefully moving assets among the other entities they control as a "shell game" to avoid Judgment Creditors' collection efforts. As further evidence, note that the Holdings webpage is regularly updated, and email addresses are commonly used by people at the Esping HQ.

f. Even after the chapter 7 bankruptcy proceedings, according to tax records, EFO LSI continued to operate as EFO Laser Spine c/o of EFO Holdings, L.P. This was long after Holdings lost the ability to operate apart from its chapter 7 trustee. These are not simply internal mistakes; rather, these are affirmative representations made to the IRS by professional fiduciaries who knew what they were doing. These representations were made to third parties and at least one federally insured lender, Texas Capital Bank. This is the same information that LSI Hold Co. provided to TCB to obtain multi-million-dollar loans over the years. For instance, in 2013 (after the bankruptcy), LSI Hold Co. provided ownership information to TCB relating to Holdings' interest in LSI Hold Co. and confirming that EFO LSI owned 42.1860%. Similarly, Esping's company WPE Kids Partners LP (one of the largest interest holders in EFO LSI) received information from TCB care of EFO Holdings, as late as 2019. TCB_00000440. These are not mere scriveners' errors. These are carefully crafted representations to banks by insiders with professional education and training who understand the importance of their filings. The representation to the IRS was made with the assistance of Krupala. The control persons of Holdings knew that these representations to parties and the public have consequences. Krupala was aware of the penalties associated with failure to disclose assets to a bankruptcy court and Trustee or the fraudulent concealment of assets from the bankruptcy court. The penalty is stated right next to her signature line.

g. Based upon the information available to Plaintiffs, Holdings continues to maintain the healthcare plan for Genpar employees. In documents produced by Genpar, Holdings was the entity that renewed healthcare for its employees at least through 2017 and perhaps thereafter. But recall, these officers of Holdings represented to both the Florida and Texas courts that Holdings has not operated since 2012. Indeed, they told the courts the Chapter 7 Trustee took over and liquidated Holdings. The contemporaneous evidence confirms that Holdings is actively deceiving the

Trustee, the Florida and Texas courts, and Judgment Creditors. What this evidence confirms—and the evidence that Plaintiffs have introduced relating to the other EFO Debtors—is that these entities are fungible, with W. Esping, Wilson, R. Grammen, and Krupala using them interchangeably with no regard to their distinct business forms.

h. When Holdings filed for chapter 7 bankruptcy in 2012 it was thereafter barred from conducting business except as authorized under court orders issued under 11 U.S.C. §721 and 704—which orders never issued. Yet, Holdings continues to receive invoices from vendors and lawyers, and to pay them, further evidencing that it continues to operate. Not surprisingly, even Holdings' bankruptcy counsel recognizes that the dissolution and closure of Holdings was treated by the control persons as nothing more than a corporate fiction. In June 2019—right before the entry of the Judgment, Holdings' bankruptcy counsel, Pronske & Kathman, issued invoices to Holdings/EFO LSI relating to "Potential Fraudulent Transfer Issue…", evidencing both their knowledge that they were engaged in fraudulent transfer activities and that Holdings was still operational. Other law firms providing continued services to Holdings invoiced that entity as well. There would be no need to give legal advice to an entity that was no longer in existence and conducting business. Notably, Holdings' bankruptcy counsel, while advising on the fraudulent transfer aspects of the case, did not file a motion under 11 U.S.C. §350(b) and/or Bankruptcy Rule 5010.

i. Those Esping entities working maintain a public presence and even issue press releases in the name of EFO Holdings, LP. For example, on its webpage Holdings quoted the following from 2016: "'We like what they are proposing,' said Brian Keuker, *spokesman for EFO Holdings, an affiliate of the building's owner, Cypress Lending Group*. 'We believe it is the highest and best use for the property and that these are the guys who can go and get this thing done.'" (Emphasis supplied). There are numerous website references on behalf of Holdings. Despite all of the indicia that Holdings operates, and that W. Esping is operating it, Holdings represented to both the Florida and Texas courts that it does not operate and, therefore, has no obligation to respond to discovery or otherwise participate in post-judgment proceedings. In short, all of this goes to show the individuals controlling Holdings do so for their own benefit, without regard to the entity's form.

94. Defendants' plan to loot LSI is evidenced in the management of the company and the continued desire to insulate themselves from liability in the *Bailey* Litigation. As an additional example, in 2014, to extract more liquidity for its interest holders, LSI implemented a self-insurance program for employees' health insurance and malpractice insurance rather than utilizing

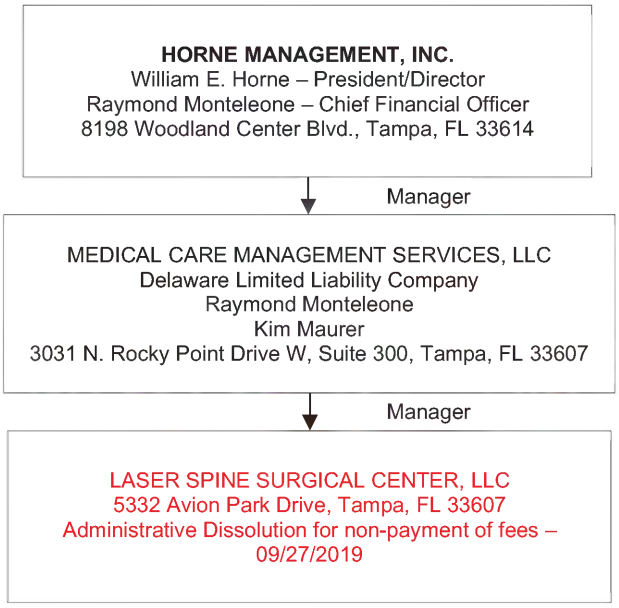
traditional outsourcing that had historically been employed. Looking for ways to stop hemorrhaging cash—having chosen to instead take for themselves the infusion of loan money—they decided to expose LSI employees to the possibility that necessary coverage for medical care would not be available. Indeed, after LSI became insolvent, it was unable to cover their self-insured retention amounts or pay medical bills, leaving those individuals without any health or malpractice insurance without coverage.

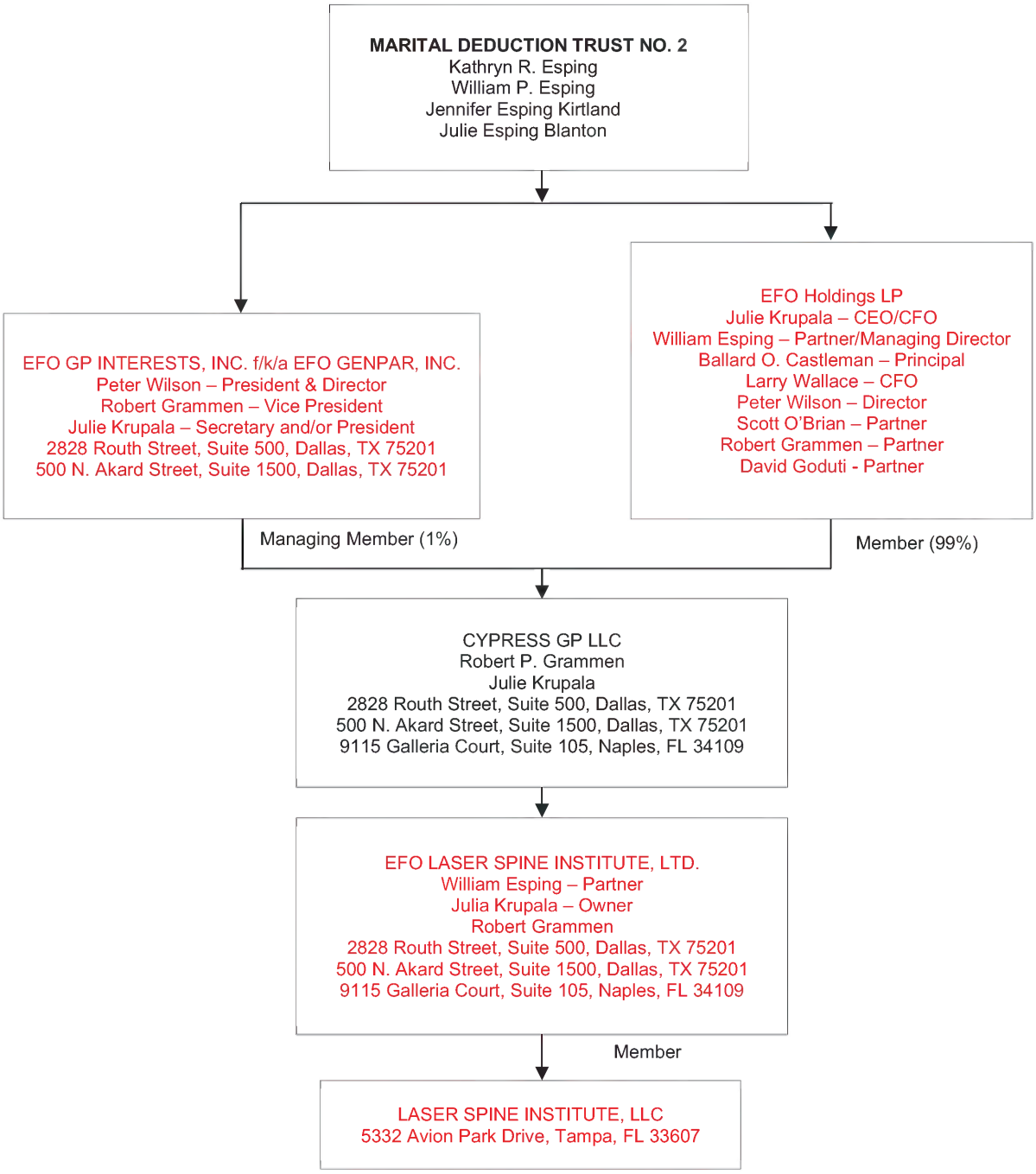
95. Despite the exacting findings of the Judgment Debtors' intentional acts and the sweeping damages testimony (predicated on financial data created by LSI that was undisputed), EFO LSI, and the individuals and entities in control of it, including each of the Defendants herein, took no steps to ensure that it would be able to satisfy all or even any significant part of any judgment. They did the exact opposite. Instead, choosing to quietly extract 120 million dollars from LSI and LSI Holdco in 2015 alone, while ensuring that the Plaintiffs were embroiled in years of litigation. The judicial delay facilitated Defendants' and EFO LSI's, and the individuals and entities in control of it, including all of the Defendants herein, ability to secret every dollar from their host in hopes of preventing Plaintiffs from ever recovering the damages they suffered. The prolonged litigation allowed LSI and LSI Holdco to generate years of profits and keep it outside the reach of Plaintiffs. This result was telecast by Holdings and R. Grammen from the beginning: "When Bailey called [R. Grammen] to discuss EFO's unexpected [deal] terms, [R. Grammen] told Bailey that "Billy likes what you're doing, and you're going to accept this offer or we're going to take your doctors and we're going to take your company. And we're going to go up the street, and we're going to do it ourselves." Ex. A at 35-36, ¶ 196 (seq. pp. 165-66).

96. Once Defendants realized the potential scope of exposure to the EFO Debtors, arguably as early as 2010 when the trial began, Defendants nonetheless continued the use of the

EFO Debtors for their illegal purposes and a series of sham transactions as part of the sham to perpetrate a fraud. Indeed, the EFO Debtors began a process of looting, stripping and denuding the EFO Debtors to reduce the assets that might be subject to execution of a judgment, and for their own enrichment and benefit, hoping to use the corporate shells of the EFO Debtors to protect the assets that Defendants took from the EFO Debtors for their own benefit.

97. To explain how Defendants proceeded to accomplish this scheme to hide assets through sham transactions, it is necessary to understand the relationships between the business entities and individuals involved. The flow diagrams below depict the relationship of the pertinent entities involved.




MARITAL DEDUCTION TRUST NO. 2
Kathryn R. Esping
William P. Esping
Jennifer Esping Kirtland
Julie Esping Blanton
EFO GP INTERESTS, INC. f/k/a EFO GENPAR, INC.
Peter Wilson – President & Director
Robert Grammen – Vice President
Julie Krupala – Secretary and/or President
2828 Routh Street, Suite 500, Dallas, TX 75201
500 N. Akard Street, Suite 1500, Dallas, TX 75201
EFO Holdings LP
Julie Krupala – CEO/CFO
William Esping – Partner/Managing Director
Ballard O. Castleman – Principal
Larry Wallace – CFO
Peter Wilson – Director
Scott O'Brian – Partner
Robert Grammen – Partner
David Goduti - Partner
Managing Member (1%)
Member (99%)
CYPRESS GP LLC
Robert P. Grammen
Julie Krupala
2828 Routh Street, Suite 500, Dallas, TX 75201
500 N. Akard Street, Suite 1500, Dallas, TX 75201
9115 Galleria Court, Suite 105, Naples, FL 34109
EFO LASER SPINE INSTITUTE, LTD.
William Esping – Partner
Julia Krupala – Owner
Robert Grammen
2828 Routh Street, Suite 500, Dallas, TX 75201
500 N. Akard Street, Suite 1500, Dallas, TX 75201
9115 Galleria Court, Suite 105, Naples, FL 34109
Member
LASER SPINE INSTITUTE, LLC
5332 Avion Park Drive, Tampa, FL 33607

98. Over 100 individuals and entities constitute the limited partners, owning 99% of EFO LSI. Of those, the largest percentages are owned by W. Esping/R. Grammen/W. Horne owned and controlled entities and relatives.

99. The individuals in the managing positions of these entities, and their positions are:

a. W. Esping, K. Esping, Kirtland and Blanton are the owners, managers, trustees and beneficiaries of Marital Trust. W. Esping is and/or was the 99% owner of Holdings. Additionally, W. Esping is the key decision maker involved with most, if not all, of the other entities that Plaintiffs will refer to as the Esping Empire. W. Esping was and is the manager and/or de facto manager of each of the entities identified as being part of the Esping Empire and each of these individuals participated in the control of the EFO Debtors through the Esping HQ in Dallas. They likewise participated in the wrongdoings of those entities, and each benefited from those wrongdoings.

b. Marital Trust owns all of the shares of stock in Genpar and has an ownership interest in Holdings; it is also a limited partner of EFO LSI.

c. Genpar is the Managing Member of, and owns 1% of, Cypress GP. Holdings owned and/or currently owns, the other 99% of Cypress GP. Cypress GP is the general partner of, and part owner of, EFO LSI. EFO LSI is a member, owning a substantial percentage of LSI Holdco, which in turn owns LSI. Each of these entities are part of the Esping Empire.

d. Wilson was a director of Genpar from June 1, 2017 to the present and President of Genpar from July 2, 2015 to June 1, 2017, including the period when the distributions were made by EFO LSI. As president of Genpar, which was the managing member of Cypress GP, the general partner of EFO LSI at the time of the distributions, Wilson authorized the distributions. As the director of Genpar, Wilson has continued the efforts to use the business entities in the Esping Empire as a sham to perpetrate a fraud by hiding assets. He was also a director of Holdings at some point in time. As such, he participated in the control of the EFO Debtors through their headquarters at the Esping HQ in Dallas, and the wrongdoings of those entities, and benefited from those wrongdoings.

e. R. Grammen is a Vice-President of Genpar and has been in managerial capacities pertaining to the other EFO Debtors. He is second only to W. Esping in decision making authority as pertains to the transactions involved in this matter. H. Grammen, M. Grammen, Y. Grammen, and K. Grammen are all relatives of R. Grammen, and are each a limited partner in EFO LSI, acted as shills for R. Grammen, and as such each of these individuals participated in the control of the EFO Debtors through the Esping HQ in Dallas, and the wrongdoings of those entities, and benefited from those wrongdoings.

f. Krupala has been the President of Genpar from June 1, 2017 to the present, and the Secretary of Genpar from July 2, 2015 to the present, including the period of time when the distributions were made by EFO LSI. As secretary of Genpar, which was the managing member of Cypress GP, the general partner of EFO LSI at the time of the distributions, Krupala participated in making the distributions. As the president of Genpar, Krupala has continued the efforts to use the business entities in the Esping Empire as a sham to perpetrate a fraud by hiding assets. She has also been the CEO and/or CFO of Holdings. It is believed that she has had other managerial positions and ownership interests in EFO LSI. As such, she participated in the control of the EFO Debtors at the Esping HQ in Dallas, and the wrongdoings of those entities, and benefited from those wrongdoings.

g. Larry Wallace, the predecessor in interest to the Wallace Estate, had been the CFO of Holdings. It is believed that he had other managerial positions and ownership interests in the other EFO Debtors. As such, he participated in the control of the EFO Debtors and the wrongdoings of those entities through their headquarters at the Esping HQ and benefited from those wrongdoings.

h. W. Horne was the manager of the LSI entities after its improper formation. Horne J, LLC, Horne Tipps, WH, and Horne Management, are business entities owned and controlled by W. Horne, and are limited partners in EFO LSI. James Horne and Justin Horne are relatives of W. Horne and are also limited partners in EFO LSI. In that capacity, they each acted as shills for W. Horne and in doing so participated in the control of the EFO Debtors through their headquarters in Dallas, Texas, and the wrongdoings of those entities, and benefited from those wrongdoings. W. Horne was the CEO of LSI for many years and occupied a position on the Board of Managers as well. W. Horne was involved with the EFO Debtors from the outset and, in fact, actually had minimally invasive spine surgery at Laserscopic in October 2004 (at the behest of R. Grammen), and then was involved with the EFO Debtors in the start-up of LSI. As such, each of these individuals and entities participated in the control of the EFO Debtors at the Esping HQ in Dallas, Texas, and the wrongdoings of those entities, and benefited from those wrongdoings.

i. WPE Kids is a limited partner of Holdings and is the owner of the largest percentage of all of the members of EFO LSI. JEK, Stanhope, EFO Equity Fund II, Eminence, Masterdom, KRE, Spinal Tap, and Appreciation are each a limited partner in Holdings, and all of these entities are located at the Esping HQ, and are part of the Esping Empire, and controlled by W. ESPING, along with WPE Holdings, the general partner of WPE Kids. As such, each of these entities participated in the control of the EFO Debtors and the wrongdoings of those entities through their headquarters at the Esping HQ in Dallas, Texas, and benefited from those wrongdoings.

j. Bollinger was the general counsel of, and in a managerial position with LSI after its improper formation, and a limited partner in EFO LSI. Indeed, when W. Horne took a leave of absence for health reasons, Bollinger became the COO. As such,

she participated in the control of the EFO Debtors through their headquarters at the Esping HQ in Dallas, Texas, and participated in the wrongdoings of those entities and benefited from those wrongdoings.

k. Amato was an attorney representing the EFO Debtors and LSI, as well as a limited partner in EFO LSI. Amato represented them before and during the underlying litigation with Plaintiffs. As such, he participated in the control of the EFO Debtors through the Esping HQ in Dallas, Texas, and participated in the wrongdoings of those entities and benefited from those wrongdoings. Amato was not licensed to practice law in Texas.

l. St. Louis was the doctor involved in the narrative above, was in a managerial position with LSI after its improper formation, and a limited partner in EFO LSI. Jill St. Louis is a relative of St. Louis. He was also an officer and director of Laserscopic Spinal and an employee of Laserscopic Medical. As such, they participated in the control of the EFO Debtors through the Esping HQ in Dallas, Texas, and the wrongdoings of those entities and benefited from those wrongdoings.

100. EFO LSI was formed initially as the parent entity for LSI, which in turn was the parent entity for a number of subsidiaries carrying LSI in their names and operating on behalf of LSI and its principals. This situation existed through the time of the first judgment from the Florida trial court in 2012.

101. After the trial court issued the Trial Order in October of 2012, the underlying litigation was essentially stayed from 2013 through 2019 as the parties participated in two separate appeals, one after the other, with only a brief period on remand after the first appellate ruling in February of 2016. On remand, other than awarding punitive damages, the trial court issued the same compensatory damages award. Thus, a second appeal ensued.

102. Because jurisdiction in the trial court did not exist during the various appeals, Plaintiffs were prohibited from conducting post-judgment discovery, including as it pertains to the assets of the EFO Debtors, keeping them in the dark until 2019, when the cloak was finally removed after jurisdiction returned to the trial court. By all accounts and based upon publicly available information during the various appeals, LSI was a profitable and growing multi-million-

dollar operation, raking in hundreds of millions of dollars during the pendency of the underlying litigation

103. LSI experienced phenomenal financial success as a result of the wrongful actions found by the Florida trial court. As a result, EFO LSI received large distributions from LSI (at least $134 million), and in turn made large distributions to its partners (including each of the Defendants) and paid exorbitant salaries and bonuses to the individuals listed above. This was done through EFO LSI's principal place of business in Dallas, Texas, by each of the Defendants exercising control over that entity and its assets, in a conspiracy by the Defendants to denude EFO LSI to enrich themselves individually while defrauding Judgment Creditors, a conspiracy that was to be accomplished in Dallas, Texas.

104. LSI Holdco continued to show exceptional profitability up to 2015. That was the year prior to the issuance of the first appellate opinion, and the year that oral argument on that appeal was held. Defendants, who had the benefit of knowing what was going on inside LSI, inside the EFO Debtors and in the litigation, had a strategic advantage. Seeing the writing on the wall after the Trial Order with its detailed and significant adverse factual findings, and thereafter the opinion issued in the first appeal, they realized that the minimal judgment that the trial court had rendered was not going to stand; that the appellate court was likely to require much more in damages to be awarded, something that was telecast by both the briefing and the tenor of the bench during the oral argument. In that year, as shown in Ex. B, despite an ever-increasing annual gross revenue of $285.428 million, and net profits of about 25% of LSI Holdco's gross revenue, as Plaintiffs now understand, LSI Holdco showed a loss of $5.379 million.

105. Perhaps contributing to (or the cause of) the loss is the fact that, in 2015, the EFO Debtors, W. Esping (and his relatives and the entities owned and controlled by him), R. Grammen

(and his relatives and the entities owned and controlled by him), St. Louis, W. Horne (and his relatives and the entities owned and controlled by him), Wilson, Krupala, Bollinger, Amato and the other Defendants caused LSI to obtain a $150 million loan, guaranteed by LSI Holdco. This amount was used to repay a $30 million revolving loan with the same lender that was issuing the larger credit facility; the balance was used to make huge distributions to LSI Holdco interest holders including over $40 million to EFO LSI alone.

106. W. Esping (and his relatives and the entities owned and controlled by him), R. Grammen (and his relatives and the entities owned and controlled by him), St. Louis, W. Horne (and his relatives and the entities owned and controlled by him), Wilson, Krupala, Bollinger, Amato and the other Defendants then distributed these amounts to its partners (including, but not limited to the Defendants/partners identified above) in the equivalent amount. This was done through EFO LSI's principal place of business in Dallas, Texas, by each of the Defendants exercising control over that entity and its assets, in a conspiracy by the Defendants to denude EFO LSI to enrich themselves individually while defrauding Judgment Creditors, a conspiracy that was to be accomplished in Dallas, Texas. This was in violation of Texas statutes because it resulted in EFO LSI being insolvent or without sufficient capital to operate. These distributions occurred when Wilson was the President of Genpar and Krupala was its Secretary. Recall, Genpar is the managing member of Cypress GP, and Cypress GP is the general partner of EFO LSI. Upon information and belief, this was accomplished by Cypress GP obtaining the approval of the distributions by each of the limited partners of EFO LSI, including each of the Defendants. This was easy to do because each of the Defendants was either an entity owned and controlled by W. Esping, R. Grammen and/or W. Horne, or a relative of one of those individuals who acted as a shill for them, agreeing to and approving whatever W. Esping, R. Grammen and W. Horne wanted

them to do. Alternatively, W. Esping, R. Grammen and/or W. Horne may have expressed the approval of their relatives without having conferred with them.

107. R. Grammen was and is the Vice-President of Genpar, Krupala was and is the Secretary of Genpar, and they, along with Wilson, were all acting under the direction and orders of W. Esping and R. Grammen, for their own benefit, the benefit of the other partners of EFO LSI, which includes their friends and family, including the Marital Trust and its owners, trustees and beneficiaries, W. Esping, K. Esping, Kirtland and Blanton.

108. At trial in 2010-2011, there was evidence of independent valuations performed of LSI that showed incredible financial success and substantial enterprise value:

a. The J.P. Morgan Chase valuation document was "created by the management team of Laser Spine Institute, LLC" in 2008. The estimated value of the company based on projections was $320 million. Ex. A at p. 68, ¶ 407.

b. Sometime after July 31, 2009, Goldman Sachs valued LSI at between $248 million and $428 million. Ex. E at DO7410-13 (attached hereto) (seq. pp. 353-357).

c. On December 10, 2009, Summit Partners valued LSI at $172 million enterprise value, $476 million equity value, and value to shareholders of $550 million. Ex. D at DO7432-33 (seq. pp. 312-13).

d. LSI stock has been purchased at various times by insiders (which transactions typically trade at a discount). Even those transactions establish an enterprise value of LSI of at least $100 million. One of those purchases was by W. Horne, who repurchased certain interests from a family member for $10 million. Within that same time period, W. Horne and R. Grammen internally agreed that the valuation of LSI was $100 million. Ex. A at 68, ¶ 408.

e. In 2014, the Sheridan Group purchased a 10% interest in LSI for $60 million. This translates to a total value for LSI of $600 million.

f. In November 2017, LSI Holdco was independently valued, by Stout, at $165-185 million. Ex. B, EFOLSI003354 (seq. p. 267).

109. Plaintiffs now understand that while the case was on appeal, the gross revenues for LSI, and therefore LSI Holdco, continued to increase year over year to over $268 million per annum in 2014, with a net income that year of over $71 million. Even though a Financial Statement

of LSI Holdco (*Id.* at EFOLSI003356) shows losses in net income from 2015-2017, it shows continued huge gross revenues (2015 gross revenue was even $17 million more than 2014, and if the gross revenue rate through the first 2/3 of 2017 continued throughout the rest of that year, the gross revenue for 2017 would have been approximately $322.5 million). Given the huge revenues and the typical rate of return in these years, it becomes clear that the illegal recapitalization, which saddled LSI Holdco with $120 million in debt paid out in distributions to benefit Defendants at the behest of R. Grammen, W. Esping, W. Horne and the other Defendants and interest holders, is evidence of the looting and denuding of these companies to defeat judgment collection efforts. See the table below (data taken from that Financial Statement):

Year	Gross Revenues (Millions)	Net Income (Millions)
2012	$ 150.850	$ 27.525
2013	206.330	46.135
2014	268.679	71.319
2015	285.428	(5.379)
2016	246.341	(66.974)
2017 (through 8/31)	215,550	(61.865)

110. EFO LSI's interest in LSI and later in LSI Holdco, translated into nearly $150 million of distributions to its partners. The table below provide a year-by-year break down of EFO LSI's yearly distributions directly from LSI and/or LSI Holdco:

2006	2007	2008	2009	2010
$6,812,614	$12,952,568	$22,447,811	$4,119,643	$6,819,394

2011	2012	2013	2014	2015
$3,271,659	$5,582,768	$11,708,195	$16,068,316	$45,040,473

111. Over the course of LSI's existence, EFO LSI pocketed $134,823,440, purely in distributions from LSI. This amount does not include any salaries or bonuses paid to any of its

partners including those paid to R. Grammen, W. Esping, St. Louis, W. Horne, or anyone else. By example, in 2009, W. Horne earned more than $1 million dollars in compensation and bonuses and, upon information and belief, earned significantly more thereafter in compensation. The same is true, by example, of St. Louis. At all times material, Defendants exercised dominion and control over the assets, property, and operations of the EFO Debtors, in Texas, for their own benefit.

112. The table below provides a year-by-year breakdown of LSI (and later LSI Holdco's) yearly distributions to its members:

2006	2007	2008	2009	2010
$9,266,229	$28,697,503	$47,894,179	$8,236,445	$14,871,803

2011	2012	2013	2014	2015
$7,328,396	$13,247,289	$28,153,481	$38,902,232	$118,973,944

113. Between 2006-14, even before the self-dealers "recapitalized" in order to distribute $120 million to themselves, LSI had distributed almost $200 million to LSI and later LSI Holdco's members—many of whom are the same individuals controlling EFO LSI, including Defendants. In total, $315,571,501 was distributed to LSI members and subsequent transferees (i.e., EFO LSI and its members) between 2006 and 2015, these distributions and bonuses, salaries, and insider payments for "no show" jobs are described herein, collectively, as the "Transfers", and include transfers made on account of the Judgment Debtors, though sometimes not directly from it:

a. In addition to pure profit distributions taken by the owners (W. Esping, W. Horne, R. Grammen and St. Louis and their shills), insiders took exorbitant salaries and bonuses for themselves and family members; these actions were taken without regard to the company's debt (or to taking on new debt), solely for Defendants' self-interest.

b. The distributions to EFO LSI, W. Esping, W. Horne and R. Grammen (directly and/or through entities that they created to receive such amounts) and their family members translated to millions of dollars, often tens of millions of dollars. Some of the interest holders in EFO LSI also separately received distributions.

c. For example, in addition to his interest in EFO LSI, St. Louis individually received over $44 million in distributions directly from LSI and later LSI Holdco (in addition to his salary and bonuses received). His family members also received payments.

d. To illustrate, St. Louis' now ex-wife, J. St. Louis received over $3 million in distributions directly from LSI and LSI Holdco and then another $4.7 million through her interest in EFO LSI, so nearly $8 million dollars individually was paid to her. This also does not include the amounts St. Louis and J. St. Louis received from sales of shares of the interests in LSI over time or loans they received from LSI.

e. Similarly, W. Horne, through a series of companies owned or controlled by him, including Horne Management and WH, collected more than $23 million, above and beyond his distributions from EFO LSI. W. Horne was also the long-time CEO of LSI and was compensated handsomely for his role.

114. As noted above, EFO LSI also improperly transferred millions of dollars of capital to its members in 2015 through a recapitalization event thereby ensuring insolvency; it did so at a time when the company was already feeling financial pressures that required working capital and other restructuring to remain successful. Before and after the recapitalization event, the Judgment Defendants (who because of their roles and involvement were intimately familiar with the specifics of the underlying litigation) were aware that there was a substantial likelihood that the appellate court would issue an opinion that reversed the trial court's damages. This is particularly true where, as here, they did not dispute Plaintiffs' damages at trial, but, rather, relied on a liability ruling in their favor. That did not happen, and they knew that as early as October of 2012.

115. Thus, while the underlying litigation was ongoing, the individuals who were partners of EFO LSI, including Defendants, participated in the scheme to loot the EFO Debtors using EFO LSI as a conduit through its principal place of business in Dallas, Texas (Esping HQ). Defendants have and continue to take for themselves the gains that in actuality belonged to Plaintiffs—who received their initial entitlement to disgorgement damages in October of 2012. Notably, the Judgment Debtors did not dispute this damages methodology at trial, arguing only that they were not liable and had done nothing wrong. Multiple courts have confirmed the

opposite, ultimately awarding Plaintiffs nearly $400 million dollars. This action to funnel distributions was taken solely for their collective benefit as partners in the venture, though they may have also acted as partners of EFO LSI to fund the distributions.

116. By the time the Plaintiffs obtained the Second Amended Final Judgment on July 3, 2019, EFO LSI (through Defendants conspiring to use it as a conduit) had been quietly secreting away nearly $140 million, leaving both EFO LSI and LSI insolvent and unable to pay the Plaintiffs. This too was a calculated decision by Defendants, one EFO LSI and the Defendants had been planning as R. Grammen warned from the start, an effort designed to enrich the Defendants at the expense of EFO LSI and the EFO Debtors, and to ensure that Plaintiffs could not ultimately collect any judgment when that day came.

117. As described above, part of the plan was to create a series of legal fictions to act as shields for their wrongful conduct, though the Defendants (especially R. Grammen, W. Horne, St. Louis, W. Esping, Wilson and Krupala and their proxies) were conspiring directly in active concert to loot the EFO Debtors. The Defendants began erecting thinly capitalized shell companies to further perpetrate the fraudulent and illegal action. They began by creating the legal fiction of LSI Holdco, transferring EFO LSI's interests (and those of the other owners of LSI) to LSI Holdco, though LSI Holdco had no money to buy those interests and all the same Defendants were on both sides of the transfer. This occurred within two months of the issuance of the Trial Order issued in October of 2012; the ruling was a 130-page tome outlining the illegal and fraudulent acts of St. Louis, the EFO Debtors and the LSI Debtors. Knowing that they could only stave off a significant damages award for so long, they created LSI Holdco, and Holdings filed bankruptcy within the same short period. Another step in the plan was to extract every dollar from LSI (and LSI Holdco) and EFO LSI in the intervening period, while the appeals were pending, converting the companies

into insolvent shells with no assets (prior to a ruling on the second appeal). Knowing that day would come sooner rather than later and aware that the LSI Debtors were in dire need of working capital, they set about to drain the last bit of value out of LSI before any judgment was awarded. Thus, Defendants took the next step: Defendants, EFO LSI and LSI Holdco worked together (same group of individuals) to extract the remaining value of LSI Holdco through a "recapitalization", to distribute the last equity to Defendants though the company was insolvent.

118. At the time—unbeknownst to Plaintiffs—LSI was experiencing serious deficiencies in, and failures of, internal financial controls and accounting procedures after 2015, precipitated by the significant distributions being made to LSI and LSI Holdco members. Before that, however, it was clear that the company was experiencing reimbursement and other issues that meant that they should have been holding onto cash and otherwise looking to adapt LSI to changes in the market. Defendants, as parties in control of LSI either knew or should have known about the distress. Yet, they took over $100 million out anyway.

119. On June 23, 2014, the LSI Holdco Board of Managers held an "Emergency Meeting." Present at the meeting in person or telephonically were: W. Horne (Chairman and representing Horne Management), W. Esping, Robert Basham, R. Grammen, Chris Sullivan, Edward DeBartolo, Ray Monteleone (Secretary), James Palermo, Bollinger (COO), Mark Andrzejewski, Jamie Adams, Mark Marriage Briley Cienkosz and Josh Helms.

120. Among other topics, on the agenda for this 2014 meeting was the discussion "New Senior Debt Facility (For Debt Dividend Recap & Growth Capital)." R. Grammen led the discussion on this topic. Edward De Bartolo made a motion, seconded by Chris Sullivan, to approve management pursuing a new senior debt facility with a limit of $270 million, and a recap up to $220 million. The motion authorized "management to execute all necessary documents to

facilitate the closure on the new debt facility." The Board passed the motion unanimously. The facility to pay the dividends to (ultimately) the Defendants was in the form of a syndicated loan under Texas law, originated by a Texas Bank in Dallas—Texas Capital Bank, N.A. This happened at a time when LSI could ill-afford to secret out more than $100 million in distributions, but, rather, needed such amounts for working capital and to otherwise address the changes in the marketplace including reductions in reimbursement rates from insurers.

121. The fiduciary duty to the company would have been met by not pulling out those resources for personal gain, but instead retaining such amounts for working capital, and, to the extent working capital was needed, keeping cash on hand to pay debt service, not taking the money out and then saddling the LSI Debtors with the debt service on the Credit Agreement that lined the pockets of the interest holders.

122. For example, LSI wrote down approximately $34 million of accounts receivable for fiscal year 2015 and was forced to establish a reserve for bad debt of approximately $22.5 million for that year. These write downs and reserves required LSI to restate its financial results for fiscal year 2015. Specifically, LSI's revenue for 2015 was reduced from $322 million to $263.5 million, and its earnings before interest, taxes, depreciation, and amortization ("EBITDA") was reduced from $74.6 million to $16.1 million for the twelve-month period ending December 31, 2015. These were extraordinary adjustments to the financial results of the company, in a year that these interested parties saw fit to take on a $150 million dollars of debt so that they could distribute the majority of this amount to themselves. Not surprisingly, after obtaining the funding for the recapitalization, LSI was unable to meet its debt service almost from the beginning, requiring that bank to amend its loan agreements multiple times to defer the defaults.

123. LSI, through the Judgment Defendants and others, later admitted that it had a "dire need of immediate liquidity" after 2015, and that it was facing serious financial issues. Of course, LSI did not reveal that the individuals behind it had been raiding the company for years including their 2015 surgical excision of the remaining enterprise value of the company.

124. According to an internal e-mail from one of the members of the LSI Holdco Board of Managers to several of the other members of the Board of Managers in December 2015, the "*Board decided that our company was too special to sell. Because several members of the Board wanted to 'take some money off the table' we decided to put some debt on the company through a dividend recap instead of selling a piece of the business.*"

125. Through this dividend recapitalization loan among certain LSI controlled entities and Texas Capital Bank (as agent), the Board of Managers leveraged the assets of LSI Holdco and its subsidiaries for their own personal advantage and essentially gutting LSI Holdco and its subsidiaries (and immediately thereafter EFO LSI, which then distributed to its own interest holders who orchestrated the self-interested loan to LSI).

126. On or about July 2, 2015, W. Esping, R. Grammen, and other members of the Board of Managers caused certain of the LSI entities—namely, LSI, LSI Management, Laser Spine Institute Consulting, LLC and Medical Care Management Services, LLC—to enter into a $150 million credit agreement with a syndicate led by Texas Capital Bank as agent. The obligations under the credit agreement were guaranteed by LSI Holdco and the remainder of the LSI entities.

127. In connection with the Credit Agreement, LSI Holdco (and other LSI entities) agreed, among other things, to maintain: (a) certain financial covenants; (b) certain cash balances; and (c) its primary depository, purchasing and treasury services with Texas Capital Bank.

128. The Board of Managers caused substantially all of the Companies' assets to be pledged to Texas Capital Bank to secure and serve as collateral for the credit agreement.[16] The bulk of the proceeds from the Credit Agreement was deposited by Texas Capital Bank into the bank account of LSI Management. The proceeds were then distributed to LSI Holdco, and LSI Holdco distributed its pro rata share to EFO LSI.

129. Specifically, despite existing and impending financial issues created by their actions, the Board of Managers immediately caused, authorized and ratified the transfer from LSI Management to LSI Holdco of an amount equal to $110,473,942 of the loan proceeds, and simultaneously therewith caused, authorized and ratified the almost immediate transfer by LSI Holdco of such proceeds for the direct or indirect benefit of EFO LSI and its members, the other members of the Board of Managers, and the other ultimate equity holders/members of LSI Holdco in respect of their membership interests. They did this despite being aware that the LSI Debtors needed working capital. Knowing, moreover, that the underlying litigation was on appeal and (after hearing the appellate oral argument) that the appeal would likely result in a significant award being issued in Plaintiffs' favor, they likewise understood that time was of the essence.

130. As a direct result of these distributions, each of LSI Holdco, LSI, LSI Management, and the other the LSI entities and EFO LSI all became insolvent by tens of millions of dollars.

131. From and after 2015, W. Esping, R. Grammen, W. Horne, St. Louis and other Defendants continued to intentionally mismanage LSI's operations and finances and the EFO Debtors, causing further financial deterioration and driving LSI and its entities deeper into

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[16] The Texas Capital Bank loan, collateral agreement, guarantees, and similar agreements were governed by Texas law and called for venue in Dallas. At this time, neither Amato nor Bollinger were licensed to practice law in Texas. Bollinger claimed to be an officer and the "General Counsel" of LSI. Amato claimed to be counsel to LSI though he was receiving distributions from a non-LSI entity.

insolvency. As the EFO Debtors were managed by many of the same individuals as those controlling the LSI Debtors, the EFO Debtors and their members knew or should have known of the deteriorating financial condition, and, in fact, caused the same to line their own pockets before a judgment in the Litigation was ultimately finalized. Upon information and belief, the EFO Debtors and the LSI Debtors worked in concert to ensure this result.

132. For example, knowing that LSI was slated to have greatly increased fixed expenses by adding 3 operational facilities and a multi-million dollar buildout of its corporate headquarters in Tampa in 2015-2016, the wrongdoers nonetheless pushed forward with their "recapitalization" thereby creating self-inflicted financial incapacity. EFO LSI, in fact, referred to this cash out as an "acceleration" of all future distributions, and advised its members that it was unlikely that they would be receiving distributions in the future (and so they would be de minimis). EFO LSI, as LSI's largest partner, was undeniably aware of the infrastructure and growth plans of LSI as its principals (including W. Esping, Horne and R. Grammen held positions on the Board of Managers) as well as the Bailey appeal as oral argument in the first appeal occurred in May of 2015. R. Grammen personally attended the oral argument and, thus, appreciated the tenor of the appellate panels questioning and certainly counsel for the EFO Debtors and the LSI Debtors reported back to their principals their analysis of the Second District argument.

133. Further, as the general partner of EFO LSI, Cypress GP is owned/managed by the same individuals on the Board of Managers of LSI (i.e., W. Esping, Horne and R. Grammen), EFO LSI was well aware of and directly involved in LSI's deteriorating financial condition and decision-making process. In short, knowing the entire landscape allowed Defendants to extract the last value from LSI in the event—as was likely the case—there would be an adverse ruling from the appellate court. Indeed, their own internal documents make clear that they were

"accelerating" their future income stream, and in this case, taking the entire enterprise value from the LSI Debtors.

134. Looking to avoid detection, LSI (and other LSI entities) and EFO LSI sought to protect and insulate themselves from any claims related thereto in at least two ways. First, EFO LSI (including its principals) and others sought releases from Texas Capital Bank in connection with claims that the bank might have against EFO LSI and other distributees in respect of the Texas Capital Bank loan to effectuate the 2015 distributions. Second, EFO LSI and others sought to hide and cover-up the patently unfair and unreasonable manner in which they controlled the affairs of LSI by manipulating the corporate structure of LSI. Additionally, none of the defendants to the underlying suit supplemented their discovery responses or disclosed their looting in court filings.

135. In November of 2016, EFO LSI and the members of the Board of Managers continued their pattern and practice for their own benefit by using their control over LSI to protect and insulate themselves. Specifically, knowing of LSI's repeated defaults under the "recap" loan and faced with mounting evidence of potentially fraudulent transfers and liability of EFO LSI, and members of the Board of Managers' liability for their actions or omissions, EFO LSI and members of the Board of Managers attempted to inoculate themselves from liability and prevent any financial recovery to the *Bailey* Plaintiffs.

136. On November 18, 2016, the members of LSI, LSI Hold Co., including EFO LSI entered into an agreement to release Texas Capital Bank from any claims arising out of the credit agreement, while simultaneously negotiating and obtaining a covenant-not-to-sue for themselves. They did this to exculpate themselves and avoid exposure when their fraudulent conduct was uncovered. Although Texas Capital Bank would not agree to a full general release, leveraging their relationship with the bank, they were able to secure a covenant not to sue by the bank to all

interest holders (including EFO LSI) for any claim Texas Capital Bank may have against them relating to the dividend loan.

137. The signatories to this agreement included the LSI investors, namely: SLG LSI Investment, LLC, LSI Holdco, EFO LSI, Horne Management Inc., MMPerry Holdings, LLP, DBF-LSI, CTS Equities, LP, RJRPT, Ltd, RDB Equities, LP, WH, Horne Management, St. Louis, and R. Grammen.

138. Upon information and belief, the EFO Debtors knew of the potential for a fraudulent transfer suit and so engaged a bankruptcy lawyer who advised on the fraudulent transfer risks. Additionally, upon information and belief, they informed Texas Capital Bank of the potential risk.

139. On the same day as EFO LSI agreed to release Texas Capital Bank, EFO LSI and LSI Hold Co. together made the decision to limit liability despite their illegal conduct. Upon information and belief, the Board, including many of the same individuals holding majority interests and making controlling decisions for EFO LSI, e.g., W. Horne, W. Esping, and R. Grammen, together made the decision to amend LSI Holdco's operating agreement in an attempt to remove LSI Holdco's fiduciary obligations.

140. Before November of 2016, LSI Holdco's operating agreements contained iterations of the following provisions concerning "Liability of Members of the Board of Managers":

> 3.12 Liability of Members of the Board of Managers.
>
> **(a) Notwithstanding anything to the contrary herein, this Section 3.12 shall not affect the liability** or duties of any officer or member of the Board of Managers (or Persons controlling any member of the Board of Managers) of the Company.

See, e.g., *Limited Liability Company Agreement of LSI Holdco LLC*, dated effective as of January 1, 2013 (emphasis added); *Amended and Restated Limited Liability Company Agreement of LSI Holdco LLC*, dated effective as of January 1, 2015 (emphasis added).

141. By its express terms, the Operating Agreement did not "affect the liability or duties of" the Defendants and other members of the Board of Managers of LSI Holdco (among others) "[n]otwithstanding anything to the contrary."

142. On November 18, 2016, the Defendants through the participation of EFO LSI, among others, caused certain amendments to be made to the governing corporate documents of LSI Holdco attempting, among things, to specifically exonerate and release themselves from any liability related to the distributions that had been wrongfully made.

143. On November 18, 2016, the Defendant and other members of LSI Holdco executed LSI Holdco's *Second Amended and Restated Limited Liability Company Agreement.* EFO LSI and the members of the Board of Managers of Holdco manipulated their control of LSI Holdco to absolve themselves from liability in this amendment by replacing the above- referenced "Liability of Members of the Board of Managers" provision with the following:

> **3.6 Liability of Members of the Board of Managers.**
> a. To the maximum extent permitted by applicable law, all fiduciary duties of any Manager to the Company or any Member are hereby eliminated. Without limiting the foregoing, each Member hereby waives any claim or cause of action against the present and former Managers, or any of their respective Affiliates, employees, agents, and representatives, for any breach of any fiduciary duty to the Company or its Members by any such Person, including as may result from a conflict of interest between the Company or any of its Subsidiaries and such Person. Subject to compliance with the express terms of this Agreement, a Manager shall not be obligated to recommend or take any action as a Manager that prefers the interests of the Company or any of its Subsidiaries or the other Members over the interests of such Manager or its Affiliates, heirs, successors, assigns, agents or representatives and the Company, and the Members hereby waive all fiduciary duties, if any, of the Board of Managers to the Company and the Members, including in the event of any such conflict of interest. Notwithstanding the

> foregoing, nothing herein shall eliminate the implied duties of any Manager or Member of good faith and fair dealing under Delaware law.

(Emphasis added).

144. This Revised Liability and Release Provision purports to grant, without any consideration whatsoever, members of EFO LSI and the other members of the Board of Managers waivers (through the elimination of fiduciary duties) for all claims or causes of action for any breach of any fiduciary duty to LSI Holdco, including prior breaches of fiduciary duty in connection with the distributions and conflicts of interest between LSI Holdco and EFO LSI.

145. These fiduciaries of LSI Holdco (R. Grammen, W. Esping, W. Horne) sought this provision to leave LSI Holdco (and subsequently EFO LSI) with nothing but staggering debt. Indeed, through the foregoing language—which was added after the credit agreement was executed, the distributions made, and defaults thereunder—the Defendants and the other members of the Board attempted to: (A) Eliminate all fiduciary duties they owed to LSI Holdco; (B) Obtain from all other members of LSI Holdco waivers of any claims or causes of action against "the present and former Managers" for any breach of any fiduciary duty to LSI Holdco or its members, including as may result from a conflict of interest; (C) Receive *carte blanche* protection to prefer their own interests over the interests of LSI Holdco and other members; (D) Obtain *ex post facto* ratification, approval, and consent to "all actions taken on or prior to the date [of the Second Restated LSI Holdco LLC Agreement] for their conduct in conjunction with the distributions in 2015, and the loan to obtain it, and other related transactions; and (E) Obtain *ex post facto* releases from LSI Holdco members of claims or causes of action for any breach of express or implied duty (including any breach of any fiduciary duty) in connection with those transactions.

146. The intent and design of the Release Agreement and these foregoing changes to LSI Holdco's operating agreements was clear: the Defendants and the other members of the Board

of Managers (A) looted LSI, LSI Holdco, EFO LSI and the other companies of their value through the loan to effectuate the distributions, the distributions discussed above, and related transactions (including millions in fees paid to insiders); (B) realized that they were exposed to tremendous liability for this corporate looting; and (C) abused their control and dominion over LSI, LSI Holdco, the LSI companies, EFO LSI and the other EFO Debtors (and their collective assets) by modifying the corporate governance documents to try to absolve themselves of existing liabilities.

147. Defendants simultaneously took steps to protect the value and assets of EFO Debtors from execution by transferring them for minimal or no consideration to other entities that they owned or controlled, or otherwise paying them out in distributions to Defendants. This left the EFO Debtors likewise insolvent and with virtually no assets to execute on.

148. For example, for many years, Genpar had various accounts receivable on its books for several years from related entities, which receivables were on the books at the time the second appellate opinion was issued on December 28, 2018. In an effort to avoid or eliminate Plaintiffs ability to attempt to collect the receivable from these related third parties, on December 31, 2018, W. Esping deposited $1,369,151.23 into the TCB account of Genpar, purportedly in satisfaction of various receivables owed to Genpar from various other Esping entities. Within days of making the deposit W. Esping caused Genpar to transfer the exact amount of the deposit to JBJ Lending (yet another related entity) thereby laundering the funds from whatever entity deposited the funds through Genpar and on to JBJ Lending and, in the process, purported to eliminate $1,369,151.23 worth of receivables that would have been subject to execution for partial satisfaction of the Judgment. Compounding this misappropriation of assets, the books and records of Genpar in just this instance alone were changed three times over a period of 11 months, as late as the end of the

year in 2019. At the end of the day, the value transferred out of Genpar was sent to a related entity without any consideration. These records were altered and manipulated by Krupala.

149. As another example, Kirtland is the Vice-President of the Esping Family Foundation, also located at Esping HQ. The Genpar records do not indicate that she is an officer, director, or employee of Genpar.

150. Despite this, a review of the Genpar records reveals that, between January 1, 2016 and December 31, 2019, Genpar paid a total of $92,000.00 in net "payroll" to Kirtland as follows:

2016	24,000.00
2017	24,000.00
2018	24,000.00
2019	20,000.00
Total	**$92,000.00**

151. Paying "no show" employees like Kirtland is a classic money laundering technique used by criminals, amounting to embezzlement or fraud. During the same period, the company paid $88,754.84 for insurance for the non-employee Kirtland, totaling nearly $200,000 in assets that were illegally transferred to Kirtland as recently as 2019.

152. This is but one example of a non-functioning officer, director, or manager being compensated by an entity that she had no apparent connection to, except for being in the Esping family and having access to the Esping HQ and Esping Empire. These transactions also indicate how W. Esping treated the assets of the various Esping entities—they were his to use as he wanted.

153. This process was one more step in Defendants' illegal purpose and sham, which was intended to (and did) perpetrate a fraud.

154. Additionally, the Fifteen additional Financier Defendants have, transferred millions of dollars into the Defendants and EFO Debtors and participated in the schemes by acting as the

"piggy bank" for the entities in the Esping HQ, including some of the Judgment Debtors as noted above.

VI. UNDERLYING JUDGMENT

155. Plaintiffs recovered the initial judgment resulting from the Trial Order against Judgment Debtors on November 2, 2012, in Case No. 06-08498, the 13th Judicial Circuit Court of Hillsborough County, Florida.

156. Ultimately, the initial judgment was affirmed as to liability but reversed due to inadequacy of damages. *Bailey*, 196 So. at 383. The trial court issued an Amended Final Judgment on January 30, 2017, which was later reversed due to inadequacy of damages in the second appellate opinion. *Bailey*, 268 So. at 202-03. The Florida Supreme Court denied the EFO Debtors' Petition for Certiorari. The trial court entered its Judgment on July 3, 2019, for a total of $369,073,388.00, for disgorgement, punitive damages and pre-judgment interest, together with post-judgment interest in accordance with Fla. Stat. § 55.03.

157. The Judgment was domesticated in Texas on July 29, 2019, by order of this Court in Case No. DC-19-10056. The Judgment is now final, fully enforceable, and due to Plaintiffs in full. That case is before the 191st District Court of Dallas, County, Texas. Plaintiffs have made efforts to collect on the Judgment from the Judgment Debtors as set forth in the following: Plaintiffs have served post-judgment requests for production on Judgment Defendants in the Florida case, and both post-judgment interrogatories and requests for production in the Texas case. In both cases, Judgment Defendants asserted numerous objections as to relevance (especially as to any information prior to July 3, 2015) and privacy (see EFO Defendants' Consolidated Response to Plaintiff' Interrogatories General Objections No. 1, and Interrogatory Responses Nos. 1-3, 12, 14, 16-27, 40-41, 46, 50, 52-53, 55, 57-65, 71, 76-80, 86, 88-89, 91-93, 96, 98-99, and 106-07

regarding relevance and Nos. 4-6, 15-16, 18, 22, 35, 81, 89, 106 and 109 regarding assertions of privacy), without providing the requested information.

158. Additionally, Judgment Defendants refused to provide any of the requested information pertaining to Holdings, asserting a preclusion stemming from a bankruptcy case dating back to December 12, 2012. However, as a business entity, Holdings could not have been discharged in bankruptcy, and in fact the bankruptcy court expressly held that its proceedings would not affect the judgment in the Florida case, except that payments made pursuant to the bankruptcy court ruling would offset the Florida judgment (Ex. C at 2-3) (seq. pp. 299-300):

1) "It is further ORDERED, ADJUDGED and DECREED that the allowance, disallowance or modification of any proof of claim as provided herein shall be without any preclusive effect or consequence in any legal or administrative proceeding, including (but not limited to), the Florida Lawsuit and in any related trial or appellate proceedings involving the Judgment or any further proceedings relating to the Judgment, including any assertion that the allowance, disallowance or modification of any proof of claim as provided herein creates any claim or defense arising under the doctrines of res judicata, collateral estoppel, judicial estoppel or other legal or equitable doctrine, but excepting that the distributions paid to the Litigation Claimants shall be a setoff against the Litigations Claimants' claims against all parties in the Florida lawsuit, as may be established in the Florida Lawsuit or other legal proceeding relating to the claims asserted in the Florida Lawsuit. It is further

2) ORDERED, ADJUDGED and DECREED that this Order shall not be used in any manner in any proceeding, including the Florida Lawsuit, to suggest that the Litigation Claimants compromised, settled, released or in any way agreed to fix the amount of their claims in the Florida Lawsuit or in any lawsuit pending or that may be filed. It is further

3) ORDERED, ADJUDGED and DECREED that all rights of the Litigation Claimants to seek any and all damages that have been or may be awarded in any court or other forum against the Debtor and any other person or entity are hereby preserved."

159. Plaintiffs have filed numerous applications for writs of garnishment in both the Florida underlying suit and the Texas suit. Those writs were issued and served on various

garnishees. As a result, Plaintiffs have received the following amounts that have been credited on the judgment:

4) On October 28, 2019, $153.65 from Texas Capital Bank in response to a writ of garnishment pertaining to accounts held for Michael M. Perry.

5) On January 22, 2020, $19,000 from Texas Capital Bank in response to a writ of garnishment pertaining to accounts held for Genpar.

160. On November 15, 2019, Plaintiffs settled all claims against Michael M. Perry, which has been credited to the judgment.

161. On January 22, 2020, the Constable of Dallas County, Texas, levied on the writ of execution issued by the clerk of this Court and seized some property belonging to one or more of the EFO Debtors. On February 3, 2020, pursuant to notice, the constable held an auction sale of the assets levied upon. From that sale, Plaintiffs received the following amounts:

6) Plaintiffs purchased the shares of stock to two corporations, EFO Building 3900-GP, Inc. and EFO Building B-GP, Inc., previously owned by Genpar, for a total credit on the judgment of $1,000,000.

7) Plaintiffs also purchased certain causes of action previously owned by EFO Debtors for a total credit on the judgment of $4,000,000.

8) Plaintiffs received a check from the constable in the amount of $210.60 as the proceeds from the auction sale, minus costs, which amount has been credited on the judgment.

162. After crediting the amounts recovered, EFO Debtors still owe Plaintiffs over $375,000,000, with interest currently accruing at the annual rate of 6.83% pursuant to Fla. Stat. 55.03 as set forth in the Florida judgment, which amounts to a per diem of at least $70,170 in accruing interest.

163. Defendants, Financier Defendants, and the individuals behind them, have literally formed hundreds of business organizations of various types that are in a confusing maze of relationships, insiders and affiliations, in an attempt to defeat judgment collection efforts. This

was not a clever legal maneuver; it was an abuse of the law made by high net worth individuals and families that have the means to satisfy the judgment.

COUNTS FOR RELIEF

VII. COUNT 1 – GENERAL PARTNERSHIP AND JOINT LIABILITY

164. Plaintiffs incorporate paragraphs 1-163 and those below as if set forth herein.

165. Defendants are jointly and severally liable for the wrongful conduct of EFO Debtors and for payment of the Judgment identified in Section VI above because they are each, individually and collectively, working with the EFO Debtors to commit a wrong and have, at various times, held themselves out as partners with the partnership goal of profiting from Esping's theft of the LSI business and enriching the Esping Family. In support of this claim, Plaintiffs will show that:

a. Though "EFO Holdings L.P." allegedly ceased to exist (having been liquidated in chapter 11), Defendants have used that name in public as the alias name of their general partnership.

b. The Financier Defendants were part of this general partnership and alter-egos of the Judgment Debtors because:

   i. they transferred millions of dollars into and out of Defendants operated by the same control persons at Esping HQ.

   ii. The Financier Defendants were controlled by J. Krupala and W. Esping.

   iii. The transactions between Defendants and the Financier Defendants were self-interested transactions that were not objectively fair to the EFO Debtors.

   iv. The transactions were often called "loans", but did not have checks for creditworthiness, the interest rate and maturity date were either notional or non-existent, there was no expectation of receipt of the time-value of the money,

   v. the cash transferred from the Financier Defendants was transferred to benefit the general partnership—the entities controlled by W. Esping—and not the benefit of the specific entity

vi. the Financier Defendants were expected to be repaid from the profits of the general partnership, and actually were repaid on that basis

vii. the Financier Defendants were included in the scheme to hinder, delay and defraud the Judgment Creditors because of these fictional sham loans and other interrelated, under-documented transfers of millions of dollars.

viii. The Financier Defendants entered into sham transfers to "loan" to Defendants to place fictional debt on those Defendants and further frustrate collection by the Judgment Creditors.

ix. The Financier Defendants make transfers directly for the benefit of W. Esping—even paying for his private country club membership.

x. These collective transaction volumes are used to attract new investors and prospects.

c. To hold themselves out to the public, the "EFO Holdings" partnership represents on the internet that it has millions of dollars to invest, and that it is (as of 2020) investing and copyrighting its webpage.

i. The website is efoholdings.com and efoholdings.net.

ii. The website is controlled by J. Krupala for W. Esping, who admit they pay for the Holdings bill from other entities.

iii. The partnership's phone number is answered simply "EFO".

d. The partnership members use the domain email address of "efoholdings.net" for substantially all partnership communications, without regard to which partner of the general partnership is speaking.

e. Each member of the general partnership divides proceeds of the partnership in accordance with the partnership goals—profiting from Esping's business theft, collecting money from various Esping-directed actions in one place and sending it another to benefit W. Esping and his family.

f. The partners have, at least once since the bankruptcy, issued a press release as "EFO Holdings".

g. Managers of a racetrack and casino working for the partnership filed sworn documents claiming to be officers of "EFO Holdings", which J. Krupala disputes that they were (but the racetrack and casino are managed by the EFO partnership).

h. These partners use the same offices jointly at 500 N. Akard, Suite 1500, Dallas, Texas 75201, and 9115 Galleria Court, Suite 105, Naples, Florida 34109. Hence,

the public sees only one "EFO Holdings" entity. There is one door, one main phone number, and one team of people working.

i. Defendants use various business checking accounts and assets from within the partnership to pay personal debts, and do not regularly reimburse the business entities for these expenditures. For example, Mr. Esping's country club bill is sent to him "c/o EFO Holdings" as recently as September 2020.

j. Many of the Defendants in the partnership use confusingly similar names to hold themselves out as one another, i.e. EFO which stands for Esping Family Offices and are all part of the Esping Empire.

k. All of the business entity members of the general partnership share common employees and centralized accounting, to account for receipts and distributions between the partners jointly.

l. At different times, different entities have paid the wages of the EFO Debtors' employees, including a "no show" job for an Esping family member.

m. Each entity's (including both Defendants' and EFO Debtors') employees render services on behalf of the other entities.

n. The allocation of profits and losses between the entities is not based on a strict formula, because the members of the general partnership are working for a common partnership goal, not the goal of a particular member.

o. There has been commingling of funds, including but not limited to the payment of corporate debts with personal checks.

p. Representations have been made that the individuals would financially back the EFO Debtors.

q. Defendants have caused the EFO Debtors to now be inadequately capitalized.

r. As set forth above, these actions have been caused to occur by Defendants' ownership and control of EFO Debtors.

s. Bills and invoices sent to "EFO Holdings" are paid by various members of the partnership, and those bills have been received and paid continuously for 8 years after the bankruptcy using other members of the partnership, even bills to counsel for Holdings.

166. Under Texas law, the Defendants (together) and Financier Defendants (working with the Defendants), all operating out of the Esping HQ, have formed a general partnership. The debts of the EFO Debtors are the debts of the partnership because they were

incurred by the partners for the overall partnership goals. Each member of the general partnership is liable to the Plaintiffs for this partnership debt.

167. The same individuals controlled each business entity and held mutual agency between them and the entities. Nearly all of the entities of the EFO general partnership are integrated into, and part of, the same QuickBooks software, which shares only one license and the same administrator, Krupala, who moves funds into and out of the various EFO-related entities without independent legal or factual reason to facilitate the EFO partnership or conspiracy. Transfers of assets show a common ownership of property. As general partners, the Defendants should all be liable for the actions of that conspiracy/partnership looting the EFO Debtors.

168. Alternatively, the Plaintiffs would show that, in general, creditors of the Defendants accepted the representations of the individuals in control that appeared to show a single entity. Their reliance was reasonable. The Plaintiffs' claims apply to a partnership by estoppel.

169. Additionally, in equity the Defendants and Financier Defendants should have their corporate forms disregarded and veils pierced. They are all alter-egos of each other, in reality and in law, because their actions caused harm, concealed assets, and they would otherwise claim a sperate legal existence as a shield for fraudulent activity and illegal distributions. Equity demands these entities be considered one and the same as the Judgment Debtors. Allowing money taken by theft, hidden by conspiracy, and run through sham transactions (discussed below) would permit fraudulent or illegal conduct and therefore, in equity, the court should consider Defendants and Financier Defendants jointly liable on the Underlying Judgment as if they were Judgment Debtors.

170. An undisclosed agent is jointly liable with its principal. If someone is acting as a shill, go-between, proxy or stand-in for someone, any actions and monies they received would be on account of their principal. The relatives of R. Grammen, St. Louis, W. Horne and W. Esping

are shills for the patriarch/husband/father/uncle/brother/spouse who directed their actions. By simply telling their relatives to participate in the scheme, and the relatives then blithely acting as instructed, or allowing the principals to act for them, these relatives are not entitled to claim any separation from their principal.

171. The substance of the illegal and fraudulent actions by "EFO" permit the court to find them acting as partners, alter-egos, or otherwise impose joint liability because no legal fiction (partnership, LLC, or corporation) can be used as a shield for fraudulent conduct.

VIII. COUNT 2 – CONSPIRACY / USE OF BUSINESS ENTITIES FOR ILLEGAL PURPOSES / JOINT LIABILITY AND DISREGARD OF CORPORATE FORM

172. Plaintiffs incorporate the above paragraphs 1-171 and those below as if set forth herein.

173. As found by both the Florida trial court and the Florida Court of Appeals, by clear and convincing evidence, EFO Debtors committed and conspired to commit slander per se, tortious interference, violations of the Florida Deceptive and Unfair Trade Practices Act and attempted to use the EFO Debtors to acquire a monopoly, each of which were illegal. The Florida courts also found that W. Esping, R. Grammen, and St. Louis used Genpar and Holdings to form EFO LSI for the purpose of committing those illegal acts.

174. The Florida courts further found that W. Horne later became involved in using EFO LSI to further those illegal acts. The other Defendants were owners, officers, directors, managers, or in other positions of control to direct, and did direct, those illegal acts.

175. W. Esping, W. Horne, R. Grammen and/or St. Louis were present for most of the trial in person, and each of them testified in the trial. They testified, heard testimony, and hired the largest firm in Florida to oppose the Plaintiffs. Yet, the trial court found actual fraud after

hearing all of the evidence, so the requirement of fraud to impose liability is satisfied by *res judicata* or estoppel.

176. "Actual fraud usually involves dishonesty of purpose or intent to deceive, whereas constructive fraud is the breach of some legal or equitable duty which, irrespective of moral guilt, the law declares fraudulent because of its tendency to deceive others, to violate confidence, or to injure public interests. … [T]his Court has, along with several of our sister courts, recognized that the actual fraud requirement in the Code involves 'dishonesty of purpose or intent to deceive.'" *TransPecos Banks v. Strobach*, 487 S.W.3d 722, 730 (Tex. App.—El Paso 2016, no pet.). Here, as discussed above, the trial court found dishonesty, theft, and fraud by the principal Defendants in control of LSI.

177. The Financier Defendants assisted in the continuing concealment and as part of the conspiracy to defraud creditors by making transfers of assets for the benefit of the EFO Debtors, acting under the same control persons.

178. As discussed in detail above, the Defendants and Financier Defendants had an agreement—though because they were all controlled by the same human beings that agreement was not likely written down—to act to a) hinder, delay, and defraud the creditors of the EFO Debtors; b) cover up breaches of duty; and c) commit illegal acts. The goal of this conspiracy was to conceal assets from creditors, work together to breach fiduciary duties through self-interested transactions, pay "expenses" of insiders that should have been taxable income, and then launder what actually happened by creating accounting entries to make the transfers appear legitimate—sometimes even backdating changes.

179. For example, the EFO Debtors incurred debt for insider vacations and trips, personal medical expenses, private aircraft, even strip clubs—debts that have no legitimate

business purpose and should have been treated as income to insiders. Then, the Financier Defendants and Defendants pay the debts of the EFO Debtors. Payments on behalf of the Debtor are recoverable. Moreover, this appears (on information and belief) to evade a lawful tax by compensating insiders as "expenses".

180. In any case, the control persons of Defendants and Financier Defendants worked together in a conspiracy. That conspiracy was within the "Esping Enterprise" or "EFO" – a group of persons and entities working together using the umbrella of companies at the Esping HQ under the control of Krupala, R. Grammen, W. Esping's and others (see count 6). This conspiracy was formed, upon information and belief, before 2005 and has been involved in stripping capital from EFO-controlled companies in distress to conceal assets from creditors and breach the duties to creditors of the struggling entity. Nearly all of the entities of the Esping Enterprise are integrated into and part of the same QuickBooks software, which shares only one license and the same administrator, Krupala, who moves funds into and out of the various EFO-related entities without independent legal or factual reason to facilitate the EFO General Partnership or conspiracy.

181. Therefore, each Defendant and Financier Defendant should be held jointly and severally liable for the illegal acts of breach of duty of the EFO Debtors as found by the Florida courts, and for the Judgment set forth in Section VI above and based on the actions discussed above to further the conspiracy with "no show" jobs, altered records, paper transfers, shills and go-betweens—all *after* the trial court entered the first judgment against the EFO Debtors.

182. The corporate forms of each Defendant and Financier Defendant do not shield them from actually dishonest and fraudulent conduct. All of the Defendants and Financier Defendants were controlled by the same core of control persons and all should be liable for their wrongful acts

in conjunction with the above-described fraudulent transfers, concealing profits of actual fraud, breaches of duty, and illegal conduct of the Esping Enterprise.

IX. COUNT 3 – DETERMINATION OF SHAM "DISTRIBUTION" TRANSACTION USING PROXIES TO FRAUDULENTLY TRANSFER ASSETS - DISREGARD OF FORM OVER SUBSTANCE IN TRANSFERS TO HOLD THE DISTRIBUTEES LIABLE

183. Plaintiffs incorporate paragraphs 1-181 and those below as if set forth herein.

184. The EFO Debtors and Mr. Esping used family members, controlled shell companies, and shills to fraudulently transfer and/or launder money from the Laser Spine Institute and hide it. Part of the sham was (as discussed above):

a. running over $80 million as a "distribution" through un-capitalized shells actually controlled by W. Esping, but occasionally using J. Krupala and others as shills,

b. quickly moving the cash into shells (again under his control),

c. then into Esping/Grammen/Horne-family controlled entities and Esping/Grammen/Horne family members,

d. quickly changing names of EFO GP/Genpar to conceal the actors, then quickly changing names of other affiliates,

e. creating fictitious changes in investments between the entities, though the entities only "invested" in the Esping Family's entities.

185. Because the court considers the substance of a transaction over form, the Court is asked to disregard any of the intermediary shells and shills and pierce the corporate veil to impose liability on the real parties to the transaction, those who worked with Esping (described above). This veil-piercing is accomplished by disregarding shell entities that played no real economic role in the sham transaction.

186. The EFO Debtors illegal conduct was not peculiar to this sham litigation—there were others. Several of the EFO Debtors and the individuals controlling those companies engaged

in similar practices to evade their creditors and were previously found to have engaged in intentional misconduct towards their business partners.

187. For example, Holdings and W. Esping were found personally liable by clear and convincing evidence for fraud, conspiracy to commit fraud, breach of partnership duties and conspiracy to breach partnership duties. The trier of fact found that—as in this litigation— the torts were committed with malice by W. Esping and Holdings. *Bluff Power Partners, LP, et al. v. McComman LFG Processing Management, LLC, et al.*, Case No. DC-09-15690, in the 44th Judicial District Court of Dallas County, Texas. After the jury announced their $13.5 million dollar damages verdict, W. Esping, who had testified to a personal net worth of $120 million, said "Good luck collecting" to the Plaintiff's lawyer as he left the courtroom.[17] Sadly familiar, but the EFO Debtors' brazen conduct demonstrates a knowing practice of defrauding their business partners and ensuring that when justice is ultimately served, they will have dissipated the assets necessary to satisfy the judgment.

188. Plaintiffs further allege that Defendants and Financier Defendants are jointly and severally liable for their own wrongful conduct looting the EFO Debtors because Defendants intended to and did use EFO Debtors as shams to perpetrate an actual fraud on Plaintiffs, both by their actions as found by the Florida courts and by their looting and denuding of the EFO Debtors, then by funneling the money through two shell entities.

189. Those actions were committed with dishonesty of purpose and/or intent to deceive. This fraud was perpetrated for the personal benefit of insiders/Defendants, who have been able to take the benefits stolen from Plaintiffs, stash it in the EFO Debtors until the Judgment, then after the Judgment funnel the money as illegal dividends and distributions through two entities—

[17] https://www.investorpoint.com/news/WASTEMGT/41862758/.

ultimately to Defendants' own accounts. This fraud was an effort to avoid having Plaintiffs recover the funds required to be disgorged by the Florida court that found fraud.

190. Adherence to the corporate fiction in this matter would promote injustice and lead to an inequitable result. "[I]t would effectively permit the corporate form to be used as a 'cloak for fraud.' . . . We will not permit the law to be used for unlawful ends." *Matthews Constr. Co., Inc. v. Rosen*, 796 S.W.2d 692, 694 (Tex. 1990). The Court should prevent the use of the EFO Debtor entities as a cloak for fraud or illegality or to work an injustice, by awarding the judgment requested by Plaintiffs. The veil should be disregarded because of the wrongful act of concealing money from creditors by the transactions described herein.

191. Alternatively, Defendants acted on their own to create direct liability to the Plaintiffs from the actions discussed above and the Plaintiffs are entitled to a declaration that the Transfers and distributions to these insiders were shams, parts of shams, and declare the substance of the sham transactions holds over form. As such, the persons receiving the Distributions were key to the actual transaction—looting to conceal assets running the distributions through an uncapitalized limited partnership as a shell intermediary. The recipients of the Distributions should be considered the real party to the transactions with the Judgment Debtors.

X. COUNT 4 – THE TRANSFERS WERE MADE IN FRAUD OF CREDITORS AND CAN BE RECOVERED FROM THE TRANSFEREES

192. Plaintiffs incorporate paragraphs 1-190 and those below as if set forth herein.

193. EFO LSI distributed millions of dollars to the Defendants as Transfers described above including (without limitation) distributions of $315,571,501.00, payments for the benefit of insiders, millions of dollars in bonuses to Defendants as, "no show" job salary and benefits, and payment of expenses that should have been income, and the EFO Debtors did not receive any value in return for the Transfers. A table of some the Transfers was set forth in paragraph 46 and these

were part of the sham transaction described above. The sham transaction was also an unlawful distribution to Defendants because the distributions rendered the transferor insolvent, and the debtor was unable to pay debts as a result of the denuding.

194. The Plaintiffs sue the Defendants to avoid and recover the Transfers pursuant to Tex. Bus. Org. Code § 24.005.

195. The Transfers constitute transfers of EFO LSI's property to and for the benefit of the Defendants.

196. Pursuant to § 24.008, the Plaintiffs may avoid any transfer of an interest of EFO LSI in property to the extent necessary to satisfy their claims. Pursuant to § 24.009(b)(2), Plaintiffs may also recover from subsequent transferees. § 24.005(a)(1) provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or within a reasonable time after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud any creditor of the debtor.

197. EFO LSI distributed over $100 million to the Defendants, washed through several intermediaries in the sham transaction, and did not receive any value in return. Therefore, these constitute transfers of interests of EFO LSI in its property to and for the benefit of the Defendants.

198. The Transfers were made with the actual intent to hinder, defraud, or delay the creditors of the EFO Debtors. Specifically, the following badges of fraud are present indicating an actual intent to hinder creditors:

a. the transferors consulted with counsel on fraudulent transfer liability and were aware of the voidability of the transaction but did not disclose it to the Judgment Creditors;

b. the transfers were concealed, and no discovery responses described the transfers though several defendants;

c. a suit had been pending,

   i. a multi-million dollar judgment had been issued,

   ii. the evidence supporting a $300 million judgment was admitted and unrebutted;

   iii. oral argument at the appellate level told the Defendants that they were likely facing $300 million or more;

d. the transfer was to insiders,

   i. the same insiders were on both sides of the transaction—sending and receiving;

   ii. the insiders violated corporate governance principles to make the transfers;

   iii. the debtor defaulted on the $120 million loan in less than a year;

e. after the transfers, several persons involved subsequently attempted to shield, conceal or remove assets by a sham transaction using shells, acquiring homesteads, having insider liens placed on homesteads, and otherwise shielding the assets in trusts, gifts to family members, and spending it;

f. the transfers were timed suspiciously and appear to be based on the impending judgment and collection, not business reasons;

g. these assets transferred constituted the essential business capital of the EFO LSI Defendants;

h. essentially all the value of the EFO LSI entity was transferred out to insiders, leaving it with no working capital to operate and unable to pay debts within a year; and

i. the transfer rendered the transferor insolvent (or was made while the transferor was insolvent) because the transferor pledged substantially all of its assets to make a payment to insiders when it already owed the Plaintiffs.

199. The Transfers were for the benefit of the Defendants, either made directly to a Defendant or made to the Defendant via a partnership/intermediary, which intermediary immediately transferred then the assets to the Defendants for no additional consideration and the intermediary had no business justification for the immediate transfer.

200. The Transfers used sham transactions, described in detail herein.

201. Before the Transfers, there was significant risk that a judgment would be entered in the *Bailey* Litigation disgorging EFO LSI's wrongful gains. The transfers reduced—and prevented the recovery of additional—available funds to satisfy that judgment, which hindered and delayed EFO LSI's creditors. In addition, the Transfers (including the return of supposed capital contributions) reduced EFO LSI's assets and ability to satisfy the judgment

202. At the time of the Transfers, EFO LSI had unsecured claims and was insolvent, had its insolvency deepened, or became insolvent as a result of the Transfers.

203. As a result of the Transfers, Plaintiffs have been damaged, and Plaintiffs may avoid the Transfers with respect to the Defendants.

204. The Defendants are either first or subsequent transferees of the Transfers, and were otherwise beneficiaries of the Transfers, for whose benefit the Transfers were made and, as a result, the Plaintiffs are entitled to avoid the Transfers as voidable with respect to the Defendants.

205. Each of W. Esping, R. Grammen, Wilson, Krupala, and W. Horne were actively acting in concert with each other and EFO LSI to hide the LSI Holdco assets, conceal evidence of the improper transfer, and then act to paper over the duties they had breached.

206. Tex. Bus. Org. Code § 24.005(a)(2) provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation: without receiving reasonably equivalent value in exchange for the transfer or obligation, and the debtor: (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

207. EFO LSI was balance sheet insolvent because it owed the Plaintiffs upon the first tortious act. The assets of EFO LSI were at all times less than the amount owing Plaintiffs.

208. Alternatively, the transfer rendered EFO LSI insolvent because the transfer was financed and the incurrence of the indebtedness, coupled with the existing liability to Plaintiffs and others easily outstripped the assets of EFO LSI.

209. Alternatively, the transfer left EFO LSI with an unreasonably small amount of capital to operate because EFO LSI was, left without sufficient capital to operate and subsequently forced into liquidation. Had it been properly capitalized, EFO LSI may have been able to operate.

210. EFO LSI received less than reasonably equivalent value in exchange for the Transfers because EFO LSI received nothing in exchange for the Transfers. The Transfers were called dividends. If they were payments, they were made to insiders who were not actual creditors and LSI received no value in exchange.

211. At the time of the Transfers, EFO LSI (A) was engaged in a business or transaction or was about to engage in a business or a transaction, for which any assets or property remaining with EFO LSI after the Transfers were made was unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed that it was incurring, debts beyond its ability to pay them as they became due. Evidence of that is the lack of cash and critical default without an equity infusion less than a year later.

212. As a result of the Transfers, Plaintiffs, as unsecured creditors of EFO LSI, have been damaged and, pursuant to § 24.008, Plaintiffs may avoid the Transfers in respect of the Defendants.

213. Tex. Bus. Org. Code § 24.006 provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the

obligation was incurred, if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation.

214. As a result of the transfers, Plaintiffs, as judgment creditors of EFO LSI, have been damaged and, pursuant to § 24.008, Plaintiffs may avoid the Transfers in respect of the Defendants.

215. The Defendants were either the first or subsequent transferee of the Transfers and were otherwise beneficiaries of the Transfers as described herein, or for whose benefit the Transfers were made and, as a result, the Plaintiffs are entitled to avoid the Transfers as voidable in respect of the Defendants.

XI. COUNT 5 – BREACH OF FIDUCIARY DUTIES AND DUTIES OF LOYALTY AGAINST W. ESPING, R. GRAMMEN, W. HORNE, KRUPALA, WILSON, BOLLINGER, AND AMATO

216. The Plaintiffs re-allege paragraphs 1 through 214 and those below as if fully set forth herein.

217. On February 5, 2020, at the constable's execution sale, Plaintiffs purchased causes of action that belonged to the EFO Debtors. These causes of action included any causes of action on behalf of the EFO Debtors against their officers, directors, partners, managers, and other employees for breaches of fiduciary duties and breaches of their duties of loyalty. This cause of action is brought by Plaintiffs both in their capacity as creditors and on behalf of the EFO Debtors as so acquired.

218. When a person serves in a dual capacity as a limited partner and as a person controlling or managing the affairs of a limited partnership, it is not the party's status as a limited partner that gives rise to fiduciary duties; rather those duties exist by virtue of the additional relationship, such as agent or employee, in which capacity that person controls or manages the business of the partnership or by contract.

219. At all applicable times, W. Esping, R. Grammen, W. Horne, Krupala, Wilson, Bollinger, and Amato were officers, directors, partners, managers, other control persons and/or other employees of one or more of the EFO Debtors who held a fiduciary role to the EFO Debtors. As actual control persons and agents, each held a role (sometimes informal) in the control of the affairs of the EFO Debtors.

220. As officers, directors, managers, members, other control persons and/or other employees of one or more of the EFO Debtors, these Defendants owed fiduciary duties to the EFO Debtors and the creditors of the EFO Debtors. Those duties include a duty of loyalty, honesty, and duty of care. Those duties expanded to include creditors of the entity when the entity became insolvent. As set forth, the Plaintiffs became creditors when the first tortious act was committed.

221. Accordingly, each of these Defendants owed fiduciary duties to the Plaintiffs on or before November 2004. Yet, they then authorized the tortious actions described above that resulted in Plaintiffs obtaining a judgment for over $370 million against the EFO Debtors.

222. Additionally, W. Esping, R. Grammen, W. Horne, Krupala, Wilson, Bollinger, and Amato breached fiduciary duties of loyalty by their self-dealing in using their positions of control to cause the Transfers to be made, ultimately to themselves for their own family members' benefit, effectively making the EFO Debtors without working capital, insolvent, and in default to creditors in less than a year—causing harm to the entity. Additionally, the following breaches of duty can be observed by the facts pleaded above:

a. They implemented the sham transactions discussed above, which harmed the Plaintiffs directly.

b. They operated the Financier Defendants and to assist in the conspiracy and conceal assets, breach duties by entering self-interested transactions and, upon information and belief, authorized transactions that appear designed primarily to evade paying a lawful tax.

c. They allowed each entity to work as part of the Esping Enterprise, which harmed the Plaintiffs and the entities themselves.

d. They allowed the EFO Debtors to incur corporate debt for personal expenses such as private aircraft, strip clubs, medical expenses, and private vacations.

e. They engaged in self-interested transactions with other entities they controlled that harmed the EFO Debtors and the creditors.

f. These transactions were not objectively fair to the EFO Debtors and damaged the EFO Debtors and the creditors of those entities for the following reasons:

i. Their actions of theft and breaches of duty resulted in a judgment for over $370 million against the EFI Debtors;

ii. The transactions resulted in less working capital being available for the entities and thus the entities were unable to operate properly and pay claims effectively;

iii. The transactions resulted in reduced assets available to satisfy the claims of creditors and/or unreasonably reduced the working capital of the EFO Debtors;

iv. The accounting for the transactions, especially for transactions incorrectly booked as intercompany receivables, decreased the creditworthiness, investment options and bankability of the entities and resulted in injury to the entities by interfering with future operations;

v. The transfers were ultimately made to the individuals, for their own benefit, who controlled the EFO Debtors;

vi. Eventually these breaches of duty caused the EFO Debtors to cease operations and fail to pay their creditors.

223. These agents breached their duty of disclosure to their principals and creditors because they failed to properly disclose the transactions to creditors and principals they served. As a result, creditors were effectively prevented from discovering the transactions, because the EFO Debtors did not supplement any discovery requests, despite obligations to do so under the law. The Plaintiffs could not have reasonably discovered the breaches of W. Esping, R. Grammen, W. Horne, Krupala, Wilson, Bollinger, and Amato earlier than May of 2019. The actions of W.

Esping, R. Grammen, W. Horne, Krupala, Wilson, Bollinger, and Amato were effectively concealed. That concealment injured the EFO Debtors and the Plaintiffs.

224. The Distributions were a breach of fiduciary duty. The Distributions violated TEX. BUS. ORGS. CODE ANN. § 153.112, and thus the parties involved in the wrongful action are liable to the parties injured thereby. Additionally, the violations of Texas law, and self-interested related party nature of the Distributions remove the protection of the business judgment rule.

225. The injuries to the EFO Debtors and Plaintiffs as creditors are no less than the amount of Plaintiffs' judgment against those entities, and likely more, as the improper self-interested transactions reduced the ability of the entities to operate. W. Esping, R. Grammen, W. Horne, Krupala, Wilson, Bollinger, and Amato each worked in concert to hide the EFO Debtors' assets, conceal the transfers that moved the assets, and attempt to conceal the breaches of duty.

XII. COUNT 6 – CONSPIRACY TO COMMIT BREACH OF FIDUCIARY DUTY AND BREACH OF DUTY OF LOYALTY

226. The Plaintiffs re-allege paragraphs 1 through 224 and those below as if fully set forth herein.

227. As part of their efforts to collect the underlying judgment, Plaintiffs acquired at auction all causes of action held by each of the EFO Debtors against any of their owners, officers, directors, managers, partners for any breach of fiduciary duty. This cause of action is brought by Plaintiffs both in their individual capacity and on behalf of the EFO Debtors as so acquired.

228. W. Esping, R. Grammen, W. Horne, Krupala, Wilson, Bollinger, and Amato controlled the Defendants and Financier Defendants. For the reasons stated above in Count 2, the actions in breach of duty were not made alone—each human being had to control numerous Defendants and Financier Defendants in concert to achieve the goal of the Esping Enterprise conspiracy. Thus, the Defendants and Financier Defendants that were part of the scheme, part of

the self-interested transactions, and involved in the breaches of duty listed above are also liable for the harm caused by those breaches of duty.

229. W. Esping, R. Grammen, W. Horne, Krupala, Wilson, Bollinger, and Amato conspired between themselves to breach their duties to EFO Debtors by the above-referenced self-interested transactions and Transfers, including the breaches of duty and the following actions:

a. Transferring money between each of their entities and the EFO Debtors without obtaining a reasonable benefit to the EFO Debtors;

b. Failing to properly maintain records accurately describing the financial condition and actions of the EFO Debtors and describing of their actions with each other;

c. Failing to disclose their actions though obligated to under the discovery rules; and

d. Making self-interested decisions on corporate governance, such as taking loans to pay themselves, modifying Credit Agreements to limit their personal risk, and inter-Defendant transfers as part of the effort to conceal assets.

230. W. Esping, R. Grammen, W. Horne, Krupala, Wilson, Bollinger, and Amato were officers, directors, managers, partners, employees and otherwise agents of the EFO Debtors, and as such had fiduciary duties and duties of loyalty and care to the EFO Debtors. These duties included duties to avoid intentional misconduct or knowing violations of the law that could result in liability for the business entities with which they were involved. The duties required that they not engage in unfair self-interested transactions and hold funds entrusted to them with utmost care.

231. In breach of these duties, W. Esping, R. Grammen, W. Horne, Krupala, Wilson, Bollinger, and Amato caused the EFO Debtors to violate the FDUPTA, tortiously interfere with Plaintiffs' business relationships, defamation, and misappropriation of confidential trade secrets, resulting in damages being assessed against the EFO Debtors. Additionally, they directed the EFO Debtors to take actions that benefit themselves and the other Defendants at the Plaintiffs' and EFO Debtors' expense. They also transferred money in self-interested transactions that were unfair to the EFO Debtors, especially including "no show" jobs, personal expense payments, the 2015

distributions, and millions of dollars in distributions and bonuses to insiders, especially payments to themselves. They obtained no third-party fairness opinion on these payments to themselves. They also concealed the transfers.

232. Because of W. Esping's, R. Grammen's, W. Horne's, Krupala's, Wilson's, Bollinger's, and Amato's involvement, the EFO Debtors lost more than the mere multi-million dollars in Transfers to Defendants, they lost the value of the EFO Debtors themselves. Looting the company left the EFO Debtors without working capital and thus damaged the EFO Debtors much more than just the money taken. The EFO Debtors had debt placed on them as a result of the breaches of duty that lost the entire total enterprise value of the businesses.

XIII. COUNT 7 – LIABILITY ON HORNE / MASTERDOM FOR FORFEITED CORPORATE EXISTENCE

233. Plaintiffs incorporate paragraphs 1-231 and those below as if set forth herein.

234. The following Defendants forfeited their corporate status by either failing to pay their franchise taxes, failing to maintain a legal corporate presence in states where the business was located, and failure to file required reports and thus they may not appear, defend, or provide a shield to their insiders who directed them:

a. Masterdom was voluntarily terminated on December 13, 2019; and

b. Horne J has not filed its Annual Report as required by Georgia law.

235. Accordingly, a judgment should issue against them and the officers or agents who acted for them in facilitating the sham transaction and their responses to this petition should be struck.

XIV. COUNT 8 – *IN REM*: TURNOVER, QUANTUM MERUIT, CONVERSION AND CONSTRUCTIVE TRUST / INJUNCTION

236. Plaintiffs incorporate paragraphs 1-234 and those below as if set forth herein.

237. In the Underlying Judgment, the funds earned from LSI Debtors were ordered disgorged as being the product of theft. A thief never owns what he steals.[18] The Florida Court's judgment, which is now domesticated as a judgment of the Texas Court, is entitled to estoppel effect.

238. W. Esping, W. Horne and R. Grammen were present for most of the trial in person, and each of them testified at trial. They testified, heard testimony, and hired one of the largest firms in Florida to oppose the Plaintiffs. Yet, the court found conspiratorial and tortious conduct, ordered disgorgement of the stolen business, and awarded punitive damages. The appellate court agreed—twice.

239. W. Esping, W. Horne and R. Grammen have such significant connections with the EFO Debtors that they should be estopped from claiming the business taken from Plaintiffs was their property. Similarly, W. Esping's shills and family members who only acted when instructed to also should be estopped.

240. The Florida Court entered a judgment both *in personam* in an amount ($370 million) and *in rem* to disgorge the taken property because a thief cannot convey title. Plaintiffs can proceed against the persons of the Debtors to collect, and they can pursue the money held in trust because of the theft.

241. One who wrongfully takes and uses the property of another cannot use the property for free. The owner is entitled to be compensated in equity for the loss of his property, depreciation, waste, and interest.

[18] "It appears to be a settled rule that a purchaser of property from one who has acquired possession thereof by theft, acquires no title thereto." *McKinney v. Croan*, 144 Tex. 9, 12, 188 S.W.2d 144, 146 (1945).

242. The Florida Court's disgorgement judgment imposed a constructive trust on funds withdrawn as distributions from the Judgment Debtor, by whomever held and wherever located.

243. The Transfers can be recovered from any Defendant. All of the Defendants have communicated continuously during the course of the litigation. The Defendants knew that distributions leveraged from stolen property could have been receiving property of another—at least that that fact was alleged. The Defendants, especially including the Esping Family, knew that Plaintiffs claimed the business was stolen. Yet, Defendants took the distributions anyway. Any they did so knowing that they were leaving the EFO Debtors already insolvent, without sufficient capital to operate, or rendered insolvent by the distributions and debt.

244. If any Defendant is in possession of the funds subject to the Underlying Judgment, the Court should impose a constructive trust on the holder and require the funds to be returned to Plaintiffs. These funds were discreet and specifically identifiable and, upon information and belief, can be traced from the EFO Debtors to each of the Defendants.

245. There is a likelihood the Defendants will try to further dissipate these funds while this proceeding is pending. The Plaintiffs are entitled to an injunction against further dissipation because the parties holding the funds today have held significant cash and participated in the sham transactions prior to this. Also, the funds were not needed by the persons currently holding them, as they are believed to be invested in investments that do not require further immediate funding.

246. In some cases, the funds may have been dissipated, in which case the court should order that the Defendants who have dissipated the funds are jointly and severally liable for conversion of the funds.

XV. COUNT 9 – MONEY HAD AND RECEIVED & UNJUST ENRICHMENT

247. Plaintiffs incorporate paragraphs 1-245 and those below as if set forth herein.

248. As described above, each Defendant listed above obtained the corresponding Distribution/Transfer (money) that they were not entitled to have, because the money was looted and part of a fraudulent transfer scheme that involved breaches of duty and actual wrongdoing. The Plaintiffs in the underlying action obtained a judgment that holds that the Distribution/Transfers belong to them as they obtained a disgorgement award, requiring Defendants disgorge such amounts to Plaintiffs. Plaintiffs, in good conscience and equity, remain the rightful owners of the money, and Defendants should not be allowed to keep it.

249. Plaintiffs are entitled to the amount of the Transfers withheld by Defendants. They also, because the Transfers were part of a fraudulent scheme with malice, are entitled to exemplary damages, injunctive relief against further transfer or dissipation and costs.

250. Indeed, the Defendants concealed their Distributions from Plaintiffs and the public at large, failing to inform the trial court, appellate courts, Florida Supreme Court, or to supplement any discovery. The concealment by the Debtors was backstopped by the actions of the Defendants in resisting discovery in the collection actions. Debtors and Defendants are controlled by the same persons (W. Esping, W. Horne, R. Grammen and Krupala) who, using their various shells further concealed the whereabouts and nature of the money received. The statute of limitations was thus tolled during the period of concealment. Additionally, the Defendants paid no value for the distributions—they were returns on equity that itself was not paid for, not payments on indebtedness—and thus the Defendants have no good faith purchaser defense.

251. Also, Plaintiffs are entitled to the loss of value of the Transfers, which includes the current fair market value of the transferred funds, plus interest at the highest legal rate.

252. Additionally, the money taken by Defendants resulted in unjust enrichment. The Transfers violated Texas Law because they were made in breach of duty, by related entities acting

in breach of a duty of loyalty, they looted the company and left it insolvent and without working capital, and the Transfers harmed all creditors and the EFO Debtors themselves. In equity, the funds taken as Transfers, and then forwarded on via sham transactions should be paid to Plaintiffs.

XVI. COUNT 10 – ATTORNEYS' FEES AND COSTS

253. Pursuant to Tex. Civ. Prac. & Rem. Code § 31.002 and other applicable Texas law, Plaintiffs are entitled to recover their reasonable attorneys' fees and costs expended in this matter.

XVII. REQUESTS FOR DISCLOSURE

254. Defendants should be deemed to have admitted facts because they refused to provide sufficient requests for Disclosure under Tex. R. Civ. P. 194 months after their deadline to do so.

XVIII. JURY DEMAND

255. Plaintiffs hereby demand a jury trial.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants and Financer Defendants be cited to appear and answer, and that upon final trial Plaintiffs have judgment in the following manner:

a. against Defendants and Financier Defendants for the amount of the Florida judgment as it exists on the date of judgment, plus pre-judgment and post-judgment interest as set forth in the underlying judgment,

b. against Defendants to disregard the sham transactions and recognize of the substance of the actual distribution transactions that create liability for the Defendants as the actual parties,

c. for recovery of money fraudulently transferred to the Defendants, disregarding shell entities, piercing the corporate veils,

d. against W. Esping, R. Grammen, W. Horne, Krupala, Wilson, Bollinger, and Amato for breach of fiduciary duty

e. against Defendants and Financier Defendants for conspiracy to breach fiduciary duties.

f. against Defendants and Financier Defendants who hold money that does not belong to them in good conscience and equity

g. against Defendants and Financier Defendants a permanent injunction against further transfer or dissipation of the funds ordered disgorged

h. against Defendants and Financier Defendants a declaration of a constructive trust that they return the funds belonging to Plaintiffs

i. against Defendants for loss of the fair market value of the Transfers and prejudgment interest at the highest lawful rate

j. Against Masterdom and Horne, J for the full amount of the underlying judgment, as it exists on the date of judgment, plus pre-judgment and post-judgment interest as set forth in the underlying judgment,

k. Plaintiffs' reasonable costs of court and attorneys' fees expended herein,

l. in an amount sufficient to compensate Plaintiffs for Defendants' wrongful acts, and

for such other and further relief, at law and in equity, to which Plaintiffs may show themselves justly entitled.

/s/ *Hugh M. Ray, III*
PILLSBURY WINTHROP SHAW PITTMAN LLP
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Attorneys for JOE SAMUEL BAILEY, LASERSCOPIC SPINAL CENTERS OF AMERICA, INC., LASERSCOPIC SPINE CENTERS OF AMERICA, INC. and LASERSCOPIC MEDICAL CLINIC, LLC, Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served in accordance with Rule 21a of the Texas Rules of Civil Procedure on the following on January 12, 2021:

Mark Stromberg, Stromberg Stock, PLLC, 8350 N. Central Expressway, Suite 1225, Dallas, Texas 75206, by electronic filing manager/e-mail at mark@strombergstock.com.

Christopher J. Schwegmann, Lynn Pinker Hurst & Schwegmann, LLP, 2100 Ross Ave., Suite 2700, Dallas, Texas 75201, by electronic filing manager/e-mail at cschwegmann@lynnllp.com.

Gerrit M. Pronske, Pronske & Kathman, P.C., 2701 Dallas Parkway, Suite 590, Plano, Texas 75093, by electronic filing manager/e-mail at gpronske@pronskepc.com.

/s/ Hugh M. Ray, III
Hugh M. Ray, III

EXHIBIT D

CAUSE NO. DC-19-10056

JOE SAMUEL BAILEY; LASERSCOPIC SPINAL CENTERS OF AMERICA, INC.; and LASERSCOPIC MEDICAL CLINIC, LLC, Plaintiffs/Judgment Creditors	§	IN THE DISTRICT COURT OF
vs.	§	DALLAS COUNTY, TEXAS
JAMES S. ST LOUIS, D.O.; MICHAEL W. PERRY, M.D.; EFO HOLDINGS L.P.; EFO GENPAR, INC.; EFO LASER SPINE INSTITUTE, LTD.; LASER SPINE INSTITUTE, LLC; LASER SPINE MEDICAL CLINIC, LLC; LASER SPINE PHYSICAL THERAPY, LLC; and LASER SPINE SURGICAL CENTER, LLC, Defendants/Judgment Debtors	§	I-162nd JUDICIAL DISTRICT

FILED
2019 JUL 18 AM 11:17
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Javier Hernandez
DEPUTY

NOTICE OF FILING FOREIGN JUDGMENT

You are hereby notified that the Judgment Creditor named below has filed an authenticated copy of a Judgment with the above-described Court. The Judgment named you as the Judgment Debtor and was rendered by the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division, as Case No. 06-08498 and styled *Joe Samuel Bailey, et al., Plaintiffs vs. James S. St. Louis, et al., Defendants.*

The filing was made under the provisions of the Uniform Enforcement of Foreign Judgments Act.

The name and address of each Judgment Debtor is as follows:

James S. St. Louis, D.O.
4728 N. Habana Avenue, Suite 202
Tampa, FL 33614

Michael W. Perry, M.D.
5332 Avion Park Drive
Tampa, FL 33607

EFO Holdings L.P.
2828 Routh Street, Suite 500
Dallas, TX 75201

EFO Genpar, Inc.
500 N. Akard Street, Suite 1500
Dallas, TX 75201

EFO Laser Spine Institute, Ltd.
2828 Routh Street, Suite 500
Dallas, TX 75201

Laser Spine Institute, LLC
5332 Avion Park Drive
Tampa, FL 33607

Laser Spine Medical Clinic, LLC
3001 N. Rocky Point Drive E, Suite 380
Tampa, FL 33607

Laser Spine Physical Therapy, LLC
3001 N. Rocky Point Drive E, Suite 380
Tampa, FL 33607

Laser Spine Surgical Center, LLC
5332 Avion Park Drive
Tampa, FL 33607

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

By: _____

Hugh M. Ray, III
Texas Bar No. 24004246
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Attorneys for Plaintiffs/Judgment Creditors

EXHIBIT E

Filing # 107098468 E-Filed 05/05/2020 05:40:24 PM

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

JOE SAMUEL BAILEY, LASERSCOPIC SPINAL CENTERS OF AMERICA, INC., LASERSCOPIC MEDICAL CLINIC, LLC, AND LASERSCOPIC SPINE CENTERS OF AMERICA, INC.

Plaintiffs,

Vs.

WILLIAM ESPING, ROBERT GRAMMEN, CYPRESS GP, LLC, WPE KIDS PARTNERS, LP, EFO PRIVATE EQUITY FUND II LP, EMINENCE INTERESTS LP, STANHOPE CAPITAL FUND I, LP, JEK SEP/PROPERTY LP, LEE WEEKS, HPH INVESTMENTS, II, ESPING MARITAL DEDUCTION TRUST #2, HELEN A. GRAMMEN, MICHAEL GRAMMEN & YVONNE GRAMMEN, MASTERDOM VALUE FUND, LTD., ROBERT P. GRAMMEN, KRE SEP/PROPERTY, LP, KARA A. GRAMMEN, LOUIS X. AMATO, SPINAL TAP PARTNERS, APPRECIATION SIBLINGS, GEOFFREY LAURENCE WALLACE ESTATE, WILLIAM HORNE, HORNE J, LLC, HORNE TIPPS PROPERTIES LLC, JAMES W. HORNE, HORNE MANAGEMENT INC., WH, LLC, JUSTIN HORNE, JAMES S. ST. LOUIS, III, JILL ST. LOUIS, JOHN E. AYRES, KENNETH "KIP" GORDMAN, MARTIN HOLMES, EDITH SMITH, WESTFIELDS INVESTMENTS, LLC, KIRK COLEMEN, ANTHONY KOEIJMANS, PAYNE LANCASTER, DAVID OWEN, ALVIN HOLDINGS LLC, BRAV VENTURES LP, N. ROSS BUCKENHAM, ANGIE H. CARLSON, CHARLES LYNCH LANCASTER TRUST, WILLIAM RAY CLARK, STACY R. DANAHY, GEORGE B. ERENSEN, PATRICK FOOTE, GULFSHORE CAPITAL PARTNERS LLC, HUGH P. HENNESY, HOAK PRIVATE

CASE NO. 06-CA-008498
Division L

EQUITIES I, L.P., PETER JACOBSEN, JOHN A. DROSSOS 2000 IRREVOCABLE EXEMPT TRUST, ROD C. JONES, EDWARD F. KIERNAN, MARY SULLINS LANCASTER TRUST, LESTER MORALES, JR., NELDA CAINS PICKENS GRANDCHILDREN'S TRUST, PAYNE LANCASTER IRA, RIFAM, LLC, SAN YSIDRO HOLDINGS LP, JAMES F. STAFFORD, VIREO, LLC, ASHLEY S. WILL FINNEGAN, BE-MAC ASSET MANAGEMENT, INC., PHIL GARCIA, BRIDGET GORDMAN, DOTTY BOLLINGER, RAYMOND MONTELEONE, CHAAC CAPITAL GROUP, LLC, CHRISTOPHER YINGER, CRAIG BURNS, D TROMBLEY 2600-B, LLC, ARBORWOOD NAPLES, LLC, GAFLP II, LTD., JASON JONES, JOHN POLIKANDRIOTIS, JOHN F. SPALLINO, LYNNE M FLAHERTY, TINA M. CHRISTIAENS, VALERIE A MAXAM-MOORE, CARL KARNES, MARY C. TANNER-BROOKS, SYLVIA J GAGLIARDI, WILLIAM K BROOKS, MARBL SOS, LTD., ANAND A GANDHI, JOSHUA C. HELMS, LISA A. MELAMED, ORZO, LLC, JENNIFER KIERNAN, CHARLES L. LANCASTER, AND MARY S. LANCASTER

Defendants.
_____/

FIRST AMENDED THIRD-PARTY COMPLAINT

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INTRODUCTION

The *Bailey* Defendants[1] were not content to simply steal Plaintiffs' proprietary information, solicit their employees and gut their business; from the outset they decided that if Plaintiffs ever obtained vindication for their wrongful conduct, they would ensure it would be exceedingly difficult, if not impossible, to collect on any judgment. In short, the *Bailey* Defendants conspired to ensure that any judgment would be a Pyrrhic victory, at best.

Dating back to 2004, when their illegal activities began, EFO made clear that "EFO would make ten times whatever damages the Plaintiffs might suffer." Order on Non-Jury Trial entered on October 9, 2012 by Judge Nielsen ("Trial Order" or "Order") at 39, ¶ 216. These were the words of Robert Grammen ("Grammen"), an EFO representative/managing partner in 2004, made at the time the *Bailey* Defendants[2] conspired to wrest a unique laser spine surgery business from the Plaintiffs; their illegal conduct was spearheaded by Grammen, William Esping ("Esping"), James St. Louis. D.O. ("St. Louis") and William Horne ("Horne"). After a six-week bench trial, a 131-page Trial Order, two separate appeals resulting in two opinions by the Second District Court of

[1] The Defendants in the *Bailey* Litigation are: James St. Louis, D.O ("St. Louis"), Michael. Perry, M.D. ("Perry"), EFO Holdings, LP ("EFO Holdings"), EFO GP Interests, Inc. f/k/a EFO Genpar, Inc. ("EFO GP Interests"), EFO Laser Spine Institute Ltd. (EFO LSI) and Laser Spine Institute, LLC ("LSI") collectively referred throughout as the "*Bailey* Defendants." The *Bailey* Defendants are distinguished from the Defendants identified in this lawsuit who will be referred to collectively as "Defendants" or the "Fraudulent Transfer Defendants." EFO Holdings, EFO GP Interests and EFO LSI will from time to time be referred to as the "EFO Defendants."

[2] The underlying litigation refers to the *Bailey* Litigation *Joe Samuel Bailey v. James S. Louis, D.O., et. al*., Case No. 06-08498, tried in the Circuit Court for Hillsborough County, Florida.

Appeals that affirmed the extensive factual findings of the trial court, but twice overruled the damages analysis, the denial of the *Bailey* Defendants' efforts at multiple rehearing requests and their Petition for Certiorari to the Florida Supreme Court, Plaintiffs finally obtained justice on July 3, 2019 when the trial court awarded damages including disgorgement, punitive damages and interest totaling over $369 million against the *Bailey* Defendants, jointly and severally.[3] In the more than 15 years that this case was winding through the judicial system, the *Bailey* Defendants paid themselves (and their various interest holders in the case of a corporate defendant) several hundred million dollars in distributions, salaries and bonuses.

Despite the significant judgment entered against them—in an amount known to them as early as 2009 prior to the beginning of the trial—the *Bailey* Defendants have refused to pay Plaintiffs. Worse still, as Plaintiffs have discovered through costly and time-consuming post-judgment collection efforts, the *Bailey* Defendants have used the time during decade long litigation to transfer vast sums of money to themselves, their business associates, their family members and their friends. Their reasoning was obvious: knowing the trial court's factual findings detailing their egregious conduct in the Trial Order would likely result in a substantial damages award at some point, the *Bailey* Defendants were determined to make sure that when that day came, they

[3] Note that Michael Perry, M.D. ("Perry") was found jointly and severally liable for only the defamation damages in the amount of $1,333,245.00, plus post-judgment interest. The matter has been resolved as to Dr. Perry.

will have secreted out all of the proceeds garnered from the theft of Plaintiffs' business, moved those funds through a series of shell games, and then claim no funds remain to pay the Judgment.

This is a lawsuit to recover the tens of millions of dollars that *Bailey* Defendant EFO LSI wrongfully and fraudulently transferred to its partners, including the master minds behind the illegal theft of Plaintiffs' business. In 2015, knowing that an appeal on the damages was pending and an opinion would be forthcoming, EFO LSI and its principals encouraged LSI to use the only remaining value in the company to "recapitalize" so that they (and other interest holders) would illegally obtain what they anticipated would be their last significant pay-out; EFO LSI received $45 million dollars in that "recapitalization" funded by Texas Capital Bank and a consortium of other banks, and then immediately fraudulently distributed that amount to its partners. The purpose and intent was clear: as it had with all earlier distributions totaling tens of millions of dollars, EFO LSI and the other defendants were acting to ensure that the entire value of the company was squeezed out while they could still do so (shrouded in secrecy), and the *Bailey* Plaintiffs would ultimately collect nothing at the end of their long legal journey.

The 2015 distributions occurred while the parties to the *Bailey* Litigation were waiting on the first appellate ruling, ultimately issued in February of 2016. In that opinion, the Second DCA made clear that, if the trial court intended to award disgorgement damages, the award given was "grossly insufficient." *Bailey v. St. Louis*, 196 So. 3d 375, 378 (Fla. App. 2016). On remand, although the trial court issued punitive damages, it entered the same compensatory damages award; a second appeal ensued in early 2017. The Second DCA issued its second opinion on December

28, 2018, and this time, rather than leave it to the trial court, it instructed the trial court to enter the judgment in favor of Plaintiffs for their full ask of nearly $300 million plus pre-judgment interest. In a further effort to kick the can down the road, the *Bailey* Defendants filed multiple rehearing motions and sought review by the Florida Supreme Court. When those efforts failed, a final judgment was finally entered on July 3, 2019.

By this time, however, as Esping and Grammen promised, the *Bailey* Defendants had made good on their promise that Plaintiffs would never recover, and if they did, it would be a small fraction of what they made. In keeping with their earlier vows, the *Bailey* Defendants fraudulently transferred most, if not all, of the substantial distributions including to the individual wrongdoers themselves, *to wit:* Grammen, Esping, St. Louis and Horne and their family members and friends as well as entities they each own, manage and/or control. This, of course, was always part of their illegal scheme. There can be no doubt that they knew that the day of reckoning would be significant, as Plaintiffs sought on appeal the very same amount that they introduced during discovery and at trial: $264 million dollars plus prejudgment interest. Because the *Bailey* Defendants always knew the damages sought by Plaintiffs, they likewise knew as early as 2010 that they needed to drain as much liquidity out of LSI while at the same time keeping the judicial balls in the air as long as possible. The *Bailey* Defendants knew that once those balls fell, it was best if no funds remained accessible to Plaintiffs and they acted accordingly.

BACKGROUND

I. *BAILEY* LITIGATION

A. THE *BAILEY* DEFENDANTS CONSPIRED TO TORTIOUSLY INTERFERE WITH PLAINTIFFS' BUSINESSES RESULTING IN AN AWARD OF DISGORGEMENT AND PUNITIVE DAMAGES AGAINST THEM.

1. Because past is prologue, EFO LSI has continued its fraudulent behavior, this time by illegally dissipating and transfering the LSI generated assets in order to circumvent its obligation to pay its creditors, namely, Plaintiffs. Thus, it is not surprising that the *Bailey* Defendants conduct is once again subject to intense scrutiny.

2. The trial court in the *Bailey* Litigation made exacting factual findings detailing the *Bailey* Defendants' misconduct from the inception of LSI and EFO LSI. Those factual findings remained undisputed despite two separate appeals to the Second DCA and a Petition for Certiorari to the Florida Supreme Court. The Second DCA succinctly summarized the salient findings in its first opinion:

> The trial court found that Joe Samuel Bailey, Ted Suhl, Dr. James St. Louis, and Dr. Michael Perry formed several businesses: Laserscopic Spinal Centers of America, Inc., and Laserscopic Spine Centers of America, Inc. (the parent holding companies), as well as Laserscopic Spinal Centers of Florida, LLC, Laserscopic Surgery Center of Florida, LLC, Laserscopic Medical Clinic, LLC, and Laserscopic Diagnostic Imaging and Physical Therapy, LLC (collectively referred to as Laserscopic Spinal). All four directors had an ownership interest in Laserscopic Spinal, which was organized to provide minimally invasive spinal surgery. Laserscopic Spinal's business model was unique, and Dr. St. Louis was one of between four and ten surgeons in the country who specialized in endoscopic minimally invasive spine surgery.

Laserscopic Spinal began providing services to patients in August 2004. Revenues for the company showed significant growth results between August and October 2004, and the number of surgical procedures performed increased in each of the three months. Between $75,000 and $100,000 in revenue was generated in August 2004, $250,000 in September 2004, and $650,000 in October 2004.

Laserscopic Spinal met with William Esping, the managing director of EFO Holdings L.P., and Robert Grammen, a partner with EFO, about the possibility of EFO providing a loan to Laserscopic Spinal. To obtain the loan, Laserscopic Spinal provided a copy of its business plan to Mr. Esping and Mr. Grammen upon the express and agreed condition that the materials would be kept confidential. Laserscopic Spinal also provided its financial information to EFO and allowed EFO to conduct a due diligence investigation on site. After conducting its due diligence, EFO did not offer a loan to Laserscopic Spinal but instead offered to invest $3,000,000 in Laserscopic Spinal in exchange for fifty-five percent interest in the company, permanent control of the board, and a preferential seven percent return on its invested capital with the agreement that no distributions could be made to other investors until EFO's invested capital was repaid. When Mr. Bailey called Mr. Grammen to discuss EFO's unexpected terms, Mr. Grammen told Bailey that "**you're going to accept this offer or we're going to take your doctors and we're going to take your company. And we're going to go up the street, and we're going to do it ourselves**." EFO made good on its threat.

In order to make Dr. St. Louis and Dr. Perry angry at and suspicious of Mr. Bailey, Mr. Grammen and another individual raised concerns regarding Laserscopic Spinal's expenses, operations, and capitalization without conducting any investigation into such. The records that were provided to EFO during the due diligence period were used by EFO to mislead Dr. St. Louis and Dr. Perry to incorrectly believe that Mr. Bailey was improperly using and misappropriating corporate assets. The trial court found that EFO "intentionally engaged in activities designed to develop a relationship with St. Louis and Perry and cause them to question Bailey's integrity. [It] did this in an effort to leverage [its] position in the negotiations to force a sale of Laserscopic with the support of St. Louis and Perry."

When another individual who had an option to purchase an investor's interest in Laserscopic Spinal refused to sell his option to EFO, Mr.

Grammen threatened that they would lose the company. When the investor stated that he would sue if Mr. Grammen and EFO interfered with the business, Mr. Grammen was not concerned and indicated that **EFO would make ten times whatever damages they might have to pay in a lawsuit**.

Two days after EFO's offer to invest in Laserscopic Spinal, Dr. St. Louis and Dr. Perry told Mr. Bailey that they were leaving Laserscopic Spinal to establish a competing venture with EFO. While Dr. St. Louis and Dr. Perry were owners, officers, directors, and employees of Laserscopic Spinal, they had numerous phone calls with and met privately with Mr. Esping and Mr. Grammen. The trial court found that Dr. St. Louis and Dr. Perry conspired with EFO to establish a competing business. The incorporation documents for the competing business, Laser Spine Institute, LLC, were signed twenty-two days after EFO's offer to invest in Laserscopic Spinal.

Notably, taking Laserscopic Spinal's two physician-officers and setting up a competing business was not all that the Appellees did here. The trial court found that they "made use of Laserscopic's business plan, confidential documents, key personnel including the entire surgical team and other employees, internal forms and documents, and patient leads. Defendants obtained the critical head start and benefit of time and know-how, which gave them a significant advantage in the market." Laser Spine Institute created a business plan, which EFO admitted was a "cut and paste job" of Laserscopic Spinal's confidential business plan that EFO had received during due diligence. Laser Spine Institute then used Laserscopic Spinal's confidential business plan to seek funding from lenders. Laser Spine Institute never created its own comprehensive business plan.

Dr. St. Louis and Dr. Perry falsely told Laserscopic Spinal employees that Mr. Bailey was stealing corporate assets. Dr. St. Louis also told employees that Mr. Bailey had many aliases, was a wanted felon, and had "possible" sexual offenses. The trial court specifically found that all of these allegations were false and, furthermore, "[there was] no evidence that St. Louis and Perry had a good faith belief the statements about Bailey were accurate at the time that they were made."

But it was not enough to gut Laserscopic Spinal, the Appellees deboned it with surgical skill. Dr. St. Louis, Dr. Perry, and EFO paid numerous employees to quit working at Laserscopic Spinal and continued to pay them until Laser Spine Institute was ready to open. Dr. Perry also incited

> employees to quit by falsely telling them that Mr. Bailey was going to fire them. Dr. St. Louis told one employee to stop scheduling surgeries, which directly affected at least ten patients. Laserscopic Spinal's list of patient lists and leads, accounts payable information, and operating room supplies were also misappropriated. As many as thirty to forty patients of Laserscopic Spinal were scheduled for surgery by Laser Spine Institute. Patients of Laserscopic Spinal were sent a notice by Laser Spine Institute stating that their clinic had simply moved locations. Laser Spine Institute created a patient success story advertisement, which actually featured a patient of Laserscopic Spinal.
>
> After Dr. St. Louis and Dr. Perry left Laserscopic Spinal, Mr. Bailey sought to hire another surgeon who specialized in minimally invasive spine surgery. Dr. St. Louis and Dr. Perry contacted that surgeon and discouraged him from joining Laserscopic Spinal. Mr. Grammen also contacted the surgeon and stated that he believed Laserscopic Spinal would fail and offered to pay the surgeon *not* to work for Laserscopic Spinal.

Bailey, 196 So.3d at 380-81 (emphasis added). The Second District crystalized the essence of the trial court's findings and laid bare the truth: the *Bailey* Defendants' illegal scheme to co-opt Plaintiffs' thriving startup made them millionaires many times over just as Grammen had promised. *Id.* at 378 and n.2. The individuals controlling the scheme were Esping, Grammen, St. Louis and Horne, each working individually and through a web of entities manufactured to insulate them from liability and siphon off tens of millions of dollars in LSI distributions while the *Bailey* Litigation was winding its way through the courts.

B. THE FINAL JUDGMENTS AND DAMAGES AWARD.

3. On October 9, 2012, the Court issued the 131-page Trial Order in favor of the Plaintiffs, and on November 2, 2012, the Court entered the initial Final Judgment, albeit for damages that were far below what Plaintiffs had sought and proven at trial. Plaintiffs appealed the

damages award and the failure of the trial court to award punitive damages, and the *Bailey* Defendants filed a cross-appeal although they did not appeal the trial court's factual findings against them.

4. EFO LSI (and LSI), had actual notice that Plaintiffs sought disgorgement damages of $264 million and that the trial court damages award would likely be reversed on appeal because the *Bailey* Defendants failed to challenge the methodology of damages at trial. Because they understood that they were unlikely to change the course of the litigation long term, the Bailey Defendants set about to ensure that when that day came, EFO LSI would have ensconced away well over $100 million in distributions paid out by LSI. In all, EFO LSI alone received at least $134 million in distributions from LSI, which EFO LSI in turn immediately distributed to its partners including Grammen, Horne, St. Louis and Esping, individually or through various corporate forms that each of them owned, managed and/or controlled. This is apart from the many other interest holders paid out by LSI including separate entities owned and/or controlled by Grammen, Esping, Horne and St. Louis.

5. On February 3, 2016, the Second District Court of Appeals issued its opinion in the first appeal, which reversed the Final Judgment and determined that: (1) the trial court's award to Laserscopic Spinal Centers of America, Inc. ("Spinal") and Laserscopic Medical Clinic LLC ("Medical")—if intended to be a disgorgement award—was "grossly insufficient" and that Plaintiffs could obtain a disgorgement of LSI's profits irrespective of the amount actual damages suffered, (2) the trial court's award of out-of-pocket damages to Laserscopic Spine Centers of America, Inc. ("Spine") was inconsistent with the evidence introduced at trial, (3) the factual

findings supported an award of punitive damages, and (4) damages should be awarded for the FDUPTA violations because monetary relief could be awarded to business enterprises in addition to consumers. The Second DCA remanded the case and noted, among other things, that the evidence supported an award of out-of-pocket damages of $6,831,172 and disgorgement damages in the neighborhood of $271 million.

6. On remand, the *Bailey* Defendants did not request a new trial on damages and the trial court issued his new rulings based upon the submissions and argument of counsel. The First Amended Final Judgment was entered on January 30, 2017, adding an award of punitive damages in the amount of $5,750,000, a FDUPTA damage award of $1,050,000, and awarding the very same "disgorgement" damages award of $1.6 million initially awarded in 2012.[4]

7. In early 2017, a second appeal ensued and, on December 28, 2018, the Second DCA reversed and remanded again, this time directing the trial court to award out-of-pocket damages of $6,831,172 to Plaintiff Spine and holding that the disgorgement damages "at a minimum" are between $264 million to $265 million to Plaintiffs Spinal and Medical. The parties did not appeal the punitive damages and defamation damages.

8. Not surprisingly, the *Bailey* Defendants then exhausted every opportunity to delay the entry of a final judgment embodying the Second DCA's opinion including, without limitation: failing to respond to repeated service of drafts of a proposed Second Amended Final Judgment,

[4] The trial Court initially awarded *Bailey* Plaintiff Spine (defined below) $300,000.

filing various post-appeal motions and then an appeal to the Florida Supreme Court, and demanding a hearing before entry of the Second Amended Final Judgment despite the clarity of the Second DCA's opinion. And, after a hearing was obtained (albeit 6 months after the Second DCA opinion) and having never provided any comments to the proposed draft judgment, counsel for the Bailey Defendants appeared at the hearing and argued against the entry of the judgment, continuing their efforts to prevent Plaintiffs from beginning formal and legally authorized efforts at collection of a final judgment. The trial court, after hearing argument, issued the Second Amended Final Judgment on July 3, 2019, and post-judgment discovery began thereafter. Plaintiffs have been forced to expend significant sums in an effort to locate any assets upon which they can collect; as the *Bailey* Defendants intended, they appear to have left their cupboard's bare.

9. Given the allegations in the pleadings, the expert testimony regarding damages and the trial court's extensive factual findings, EFO LSI, its partners and the other *Bailey* Defendants knew or should have known that their participation in the scheme to take the entire value of Plaintiffs' company, lock, stock and barrel would ultimately result in a disgorgement award given that their gains were predicated on their illegal conduct.

10. Indeed, the trial court's factual findings demonstrate that it was probable that the *Bailey* Defendants' illegal conduct would result in any gain being disgorged:

- "The EFO Defendants and the LSI Defendants were engaged in a pattern of unfair and deceptive practices as well as broad-sweeping, anti-competitive conduct. Their intentional and wrongful conduct included the EFO Defendants' solicitation

of St. Louis and Perry, each of whom they knew to be officers, directors and employees of Laserscopic; the EFO and LSI Defendants' inducement of the Laserscopic employees to leave their employment and join the LSI Defendants; the EFO Defendants and LSI Defendants' misappropriation of the assets of Laserscopic including the confidential information, which the LSI Defendant then used in their business; and, the LSI Defendants' false statements about Bailey and Laserscopic to the Department of Health and solicitation of that agency to terminate the surgical licenses at Lasercopic's facility. *Id.* at 96, ¶ 17.

- "In this case, each of the Defendants participated in various ways in the conspiracy, first to try and take over Laserscopic's business, and failing that, to take key employees and corporate assets so that any remaining business could not compete." *Id.* at 100, ¶ 1.
- "Each of the Defendants and the Former Laserscopic Employees were engaged in conspiratorial conduct ranging from misappropriating confidential information including patient lists, secretly looking for an alternative facility while still employed by Laserscopic, soliciting Laserscopic employees to sever their employment with Laserscopic, making false and defamatory statements about Bailey and Laserscopic and other similar conduct for the purpose of establishing the LSI Defendants. Each of these acts supports a claim for the independent tort of

conspiracy in addition to the other claims against each of the Defendants and Defendants are jointly and severally liable." *Id.* at 100, ¶ 3.

- "The EFO Defendants tortiously interfered with Laserscopic's business relationships in several ways. Summarized below are some of the ways detailed in the factual findings. The EFO Defendants interference with the relationship between St. Louis and Perry. The EFO Defendants used the confidential information obtained from Laserscopic and misrepresented the contents of such documents. They engaged in face to face meetings and numerous cellular telephone calls with both St. Louis and Perry, while they knew each of them to be officers, directors, employees and owners of Laserscopic. They engaged in such conduct even after they received notices from…another director with Laserscopic and Laserscopic that the conduct should cease. This conduct was knowing, willful and intentional." *Id.* at 102-103, ¶ 1.

- "St. Louis and Perry interfered with Laserscopic's relationships with its employees…St. Louis and Perry engaged in numerous intentional and willful acts directed at causing the EFO Defendants to choose to establish a competing facility…and participating in meetings with the EFO Defendants' representatives including William Esping, Mr. Grammen and Mr. Surgen for the purpose of inducing them to open a competing facility with them. St. Louis and Perry also directed Laserscopic employees to cancel existing patients for surgery at

Laserscopic so that those surgeries could be performed at the LSI Defendants. Further, they directed employees to take prospective patient lists which were later used by the LSI Defendants to solicit these individuals to have surgery at LSI." *Id.* at 103, ¶ 3.

- "The LSI Defendants, after their formation, actively participated in tortious conduct against Laserscopic and ratified past tortious acts performed on their behalf and for their benefit. The LSI Defendant hired Defendants St. Louis and Perry [and Laserscopic employees] each whom they knew had business relationships with Laserscopic. St. Louis, on behalf of the LSI Defendants, wrote to the State of Florida, suggesting that the license for Laserscopic's facility be cancelled and making statements about Mr. Bailey, the CEO, that would cause the applicable licensing authorities to question the abilities and operational integrity of Laserscopic. The LSI Defendants also contacted patients and prospective patients that they knew to have business relationships with Laserscopic for the purpose of soliciting them for surgery. These are examples of the intentional, willful and wrongful conduct of the LSI Defendants that constitute tortious interference." *Id.* at 103, ¶ 4.

11. These findings, and many more, are codified in the Trial Order, and confirmed by two appellate court opinions. *Bailey*, 196 So. 3d at 383; *Bailey v. St. Louis*, 268 So. 3d 197, 198 (Fla. App. 2018). The *Bailey* Defendants did not appeal the trial court's factual findings, clearly

aware that such an effort would be futile. Thus, while Plaintiffs submit that the *Bailey* Defendants knew far earlier—dating back to when Plaintiffs filed their initial complaint in Florida in September 2006 or, at a minimum, during the trial in 2010, they knew at the latest when the trial court issued the Trial Order establishing the extent of their illegal conduct.

12. Despite the exacting findings of the *Bailey* Defendants' intentional acts and the sweeping damages testimony (predicated on undisputed financial data created by LSI), EFO LSI did nothing to ensure that it could satisfy any judgment, instead choosing to extract tens of millions of dollars from LSI while the *Bailey* Plaintiffs were embroiled in years of litigation. As profits were earned (or access to capital was available) LSI's interest holders immediately siphoned those funds, and those entities and individuals did the same, and so on and so on, in an elaborate effort to avoid accountability.

13. The judicial delays emboldened the *Bailey* Defendants—including EFO LSI—to secret every dollar from their host to prevent the *Bailey* Plaintiffs from ever recovering any of the damages they suffered. Thus, while the prolonged litigation allowed LSI to generate hundreds of millions of dollars in profits, the delay also allowed them time to ensure those amounts would be outside the reach of the *Bailey* Plaintiffs when judgment day arrived.

14. This result was foreshadowed by EFO and Grammen from the beginning: "When Bailey called Mr. Grammen to discuss EFO's unexpected [deal] terms, Mr. Grammen told Bailey that "Billy likes what you're doing, and you're going to accept this offer or we're going to take

your doctors and we're going to take your company. And we're going to go up the street, and we're going to do it ourselves." Trial Order at 35-36, ¶ 196.

15. Grammen later threatened Mr. Miller[5] claiming that even if Plaintiffs won the lawsuit, "we have ways to take care of it" and the consensus was that Grammen did not mean an appeal. *Id.* at 39, ¶ 214.

16. Grammen also stated that "Sam's not going to get anything. I don't think he deserves anything….We're not going to pay him." *Id.* ¶ 215

17. "Mr. Grammen told Mr. Miller that he and his friends were going to lose the company," all in an effort to get Mr. Miller to sell his option to purchase the Spinal interests of another investor. *Id.* at 39, ¶ 216.

18. "When Mr. Miller told [Mr. Grammen] he would sue if Mr. Grammen and EFO interfered with the business Mr. Grammen was not concerned, indicating EFO would make ten times whatever damages the Plaintiff might suffer." *Id.* at 39, ¶ 216.

19. These are just some of the extensive factual findings in the Trial Order establishing their tortious conduct. EFO LSI and each of its partners knew or should have known of the egregious misconduct firmly established by the trial court—findings even they did not appeal. Indeed, these findings were publicly available and were likely discussed by the Board given the

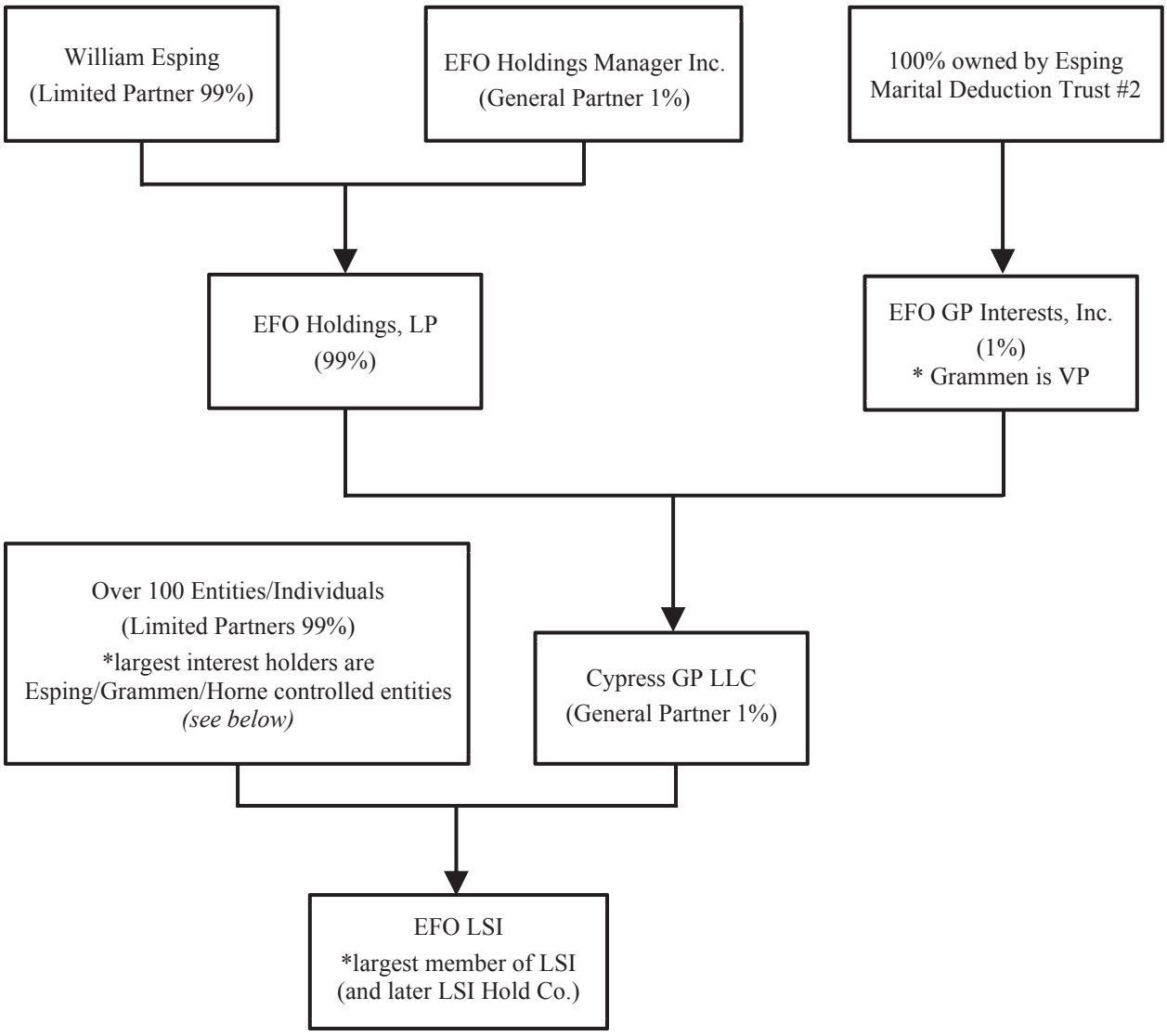
[5] Mr. Miller was an investor with Plaintiffs with a right to purchase the interest of another investor. *Id.* at 33, ¶ 175.

impact they would have on the various companies likely to be affected by a substantial damages award resulting from an appeal.

II. FROM THE INCEPTION, THE EFO DEFENDANTS THREATENED THAT PLAINTIFFS WOULD NEVER RECOVER ANY MONEY.

20. The group of "EFO Defendants" in the *Bailey* Litigation are EFO Holdings, LP ("EFO Holdings"), EFO GP Interests Inc. f/k/a EFO Genpar Inc. ("EFO Genpar") and EFO Laser Spine Institute Ltd. ("EFO LSI"), and they, among others, were found to be jointly and severally liable for the illegal conduct and the resulting damages. These entities are controlled primarily by Esping and Grammen, who were two of the architects of the underlying illegal conduct that rested a once promising start-up from the hands of Plaintiffs.

21. EFO LSI is organized as follows:



22. The initial goal of Grammen, Esping, Horne, St. Louis and others—acting through their various entities—was to force Plaintiffs (excluding Spine, which was the mitigation effort formed by Plaintiffs) to cede control of their up and running business for a fraction of its enterprise value using the leverage they created between Bailey and Ted Suhl (another investor) and their respective business partners and employees including *Bailey* Defendants St. Louis and Perry during the due diligence period. Among other artifices, the *Bailey* Defendants made various defamatory statements about Mr. Bailey, the status and availability of funding for the business and the character of the principals; these tactics were used to create a wedge between Spinal's key employees and Mr. Bailey hoping to pressure him to simply sell out for a pittance of what the company was worth and yield control to the wrongdoers. When those efforts were unsuccessful, Grammen, Esping and Spinal's key employees formed EFO LSI and LSI to make good on their promise to steal the business out from under the Plaintiffs.

23. In short, the *Bailey* Defendants did precisely what they promised: they stole the business and, anticipating a large judgment at some distant time in the future, made sure to drain all of the profits from LSI and its subsidiaries along the way by making huge distributions to themselves and the other investors as well as paying handsome salaries and bonuses to the wrongdoers like Defendant St. Louis and Horne, who were directly involved in the illegal conduct.

24. Their corporate raiding ultimately resulted in LSI filing an Assignment for the Benefit of Creditors ("ABC Proceeding") in March of 2019, just months after the Second DCA's December 28, 2018 opinion.

25. Because the *Bailey* Defendants knew that it was only a matter of time before their illegal acts caught up to them, they were prepared when it did; along the way, among other things, the *Bailey* Defendants formed new entities, creating a labyrinth style corporate structure, moved money around and hired various lawyers and other professionals to defend their actions.

26. The EFO Defendants illegal conduct was not isolated to Plaintiffs or the *Bailey* Litigation. Rather, several of the EFO Defendants and the individuals controlling those companies engaged in similar practices to evade their creditors in other business situations, and were previously found to have engaged in intentional and fraudulent misconduct towards their business partners akin to that alleged in the *Bailey* Litigation.

27. For example, in a similar case, EFO Holdings and Esping were found personally liable (by clear and convincing evidence) for fraud, conspiracy to commit fraud, breach of partnership duties and conspiracy to breach partnership duties. The trier of fact found that the actions were committed with malice by Esping and EFO Holdings. *Bluff Power Partners, LP, et al. v. McComman LFG Processing Management, LLC, et al.*, Case No. DC-09-15690, In the 44th Judicial District Court of Dallas County, Texas.

28. After the jury announced their $13.5 million dollar damages verdict in *Bluff Power*, Esping, who testified to a personal net worth of $120 million, said "Good luck collecting" to the Plaintiff's lawyer as he left the courtroom. https://www.investorpoint.com/news/WASTEMGT/41862758/. Esping was also found to be liable for millions of dollars in punitive damages for his malicious and intentional conduct. This

incident sounds eerily familiar to the conduct in the *Bailey* Litigation, and the *Bailey* Defendants' brazen and wanton conduct demonstrates a knowing and continued practice of defrauding their business partners (and potential business partners); worse still, their conduct confirms that when justice is ultimately served, they will have exhausted all means to ensure that the assets were dissipated. As established by the trial court, the *Bailey* Defendants conduct was conscious and knowing, and the same is true of their efforts to shield the distributions and proceeds they fraudulently obtained from collection.

III. THE PARTIES

A. The Debtors

29. **EFO Laser Spine Institute, Ltd.** ("**EFO LSI**") is a Florida limited partnership formed on December 8, 2004. Its general partner is Cypress GP LLC, a subsidiary or division of EFO Holdings, LP. According to the EFO LSI partnership agreement, it was formed in part for the purpose of "acquir[ing] a membership interest in **Laser Spine Institute, LLC**, a Florida limited liability company" ("**LSI**") (emphasis supplied). At its inception, EFO LSI had a majority interest in LSI. Over time as EFO LSI expanded the number of partners, it decreased its interest in LSI and later LSI Hold Co. LSI was the vehicle that the *Bailey* Defendants created as their copycat business venture based on their theft of Plaintiffs' proprietary business model, trade secrets including their business plan, employees and other valuable confidential information.

30. **EFO Holdings, LP** ("**EFO Holdings**"). In 2012 EFO Holdings, L.P. supposedly had assets over $300 million under management. EFO Holdings was formed to deploy capital on

behalf of the Esping family. Esping is its managing partner. Esping was the 99% limited partner and EFO Holdings Manager Inc. was the 1% general partner. In December 2012, shortly after Plaintiffs obtained their first judgment against the *Bailey* Defendants, EFO Holdings filed for chapter 7 bankruptcy.

31. **EFO GP Interests Inc. f/k/a EFO Genpar Interests Inc.** (**"EFO GP" or "EFO Genpar"**) is the operating entity for EFO Holdings that is the entity through which fees are earned and EFO pays salaries and likely bonuses to its employees. Grammen is the Vice President. EFO GP is the in the general partners of Cypress GP LLC. EFO GP is 100% owned by the Esping Marital Deduction Trust #2, also a partner in EFO LSI that received millions in distributions.

B. The *Bailey* Plaintiffs

32. **Plaintiff Joe Samuel Bailey** ("**Bailey**") was one of the founders of Spinal and was its CEO. Bailey was awarded $1,000,000, pre-judgment interest in the amount of $333,245 plus post-judgment interest against Defendant James S. St. Louis, D.O., Michael Perry, M.D., EFO Holdings LP, EFO Genpar, Inc., EFO LSI, jointly and severally, for defamation. Bailey first became a creditor of the LSI Defendants (defined below) on or before November 8, 2004 when he was first defrauded by fraudulent representation made at the Vinoy hotel (described in detail below).[6]

33. **Laserscopic Spinal Centers of America, Inc.**, (**"Spinal**") is a Nevada Corporation organized by Bailey, Ted Suhl, and *Bailey* Defendants James S. St. Louis and Michael Perry, to

[6] The Trial Court found the LSI Defendants liable for their pre-formation Torts. Order at ¶113.

operate a minimally invasive spinal surgery business. Spinal was and is the parent entity of various subsidiaries but the only one relevant here is Laserscopic Medical Clinic, LLC. Like Bailey, Spinal first became a creditor if the LSI Defendants on or before November 8, 2004.

34. **Laserscopic Medical Clinic, LLC** ("**Medical**") is a Florida limited liability company and a wholly owned subsidiary of Spinal. This entity employed the Laserscopic physicians, including St. Louis and Perry during their tenure with the business. Laserscopic Spinal and Medical Clinic were awarded $269 million, pre-judgment interest in the amount of $89,642,905, plus post-judgment interest against *Bailey* Defendants James S. St. Louis, D.O., EFO Holdings LP, EFO Genpar, Inc., EFO Laser Spine Institute Ltd., LSI, LLC, Laser Spine Medical Clinic LLC, Laser Spine Physical Therapy, LLC, Laser Spine Surgical Center, LLC (LSI and its subsidiaries will be collectively referred to as the "**LSI Defendants**"), jointly and severally. Like Bailey, Medical first became a creditor of the LSI Defendants on or before November 8, 2004.

35. **Plaintiff Laserscopic Spine Centers of America, Inc.** ("**Spine**") is a Nevada corporation. Spine was formed in an attempt to mitigate the conduct of the *Bailey* Defendants and was awarded $6,831,172 in out-of-pocket costs because the *Bailey* Defendants—not satisfied that they had "killed the king," engaged in tortious conduct in an effort to ensure that Plaintiffs' business could not survive even in its weakened state; Spine was also awarded prejudgment interest in the amount of $2,266,066, plus post-judgment interest against *Bailey* Defendants EFO Holdings, LP, EFO Genpar, Inc.; James S. St. Louis, D.O.; EFO LSI, and the LSI Defendants,

jointly and severally. Spine became a creditor of the *Bailey* Defendants when the tortious conduct first occurred described below, in no event later than January of 2006.

C. The Defendants

1. The *Bailey* Defendants

36. The EFO Defendants were insolvent at all times between November 4, 2004 and the present because their obligations to the Plaintiffs exceeded their assets at fair value. Upon information and belief, at various times after the Judgment the EFO Defendants were unable to pay debts as they came due in the ordinary course, rendering them also insolvent under common law insolvency.

37. The EFO Defendants, upon becoming insolvent, owed fiduciary duties to the creditors of their respective entities. Among those duties was a duty of care and duty of loyalty. The EFO Defendants then (as described in detail below) engaged in a series of self-interested transactions with persons or individuals simultaneously in control of the EFO Defendants and the LSI Defendants.

38. The LSI Defendants, upon information and belief, had the following officers, managers, members, directors, control persons or similar fiduciaries:

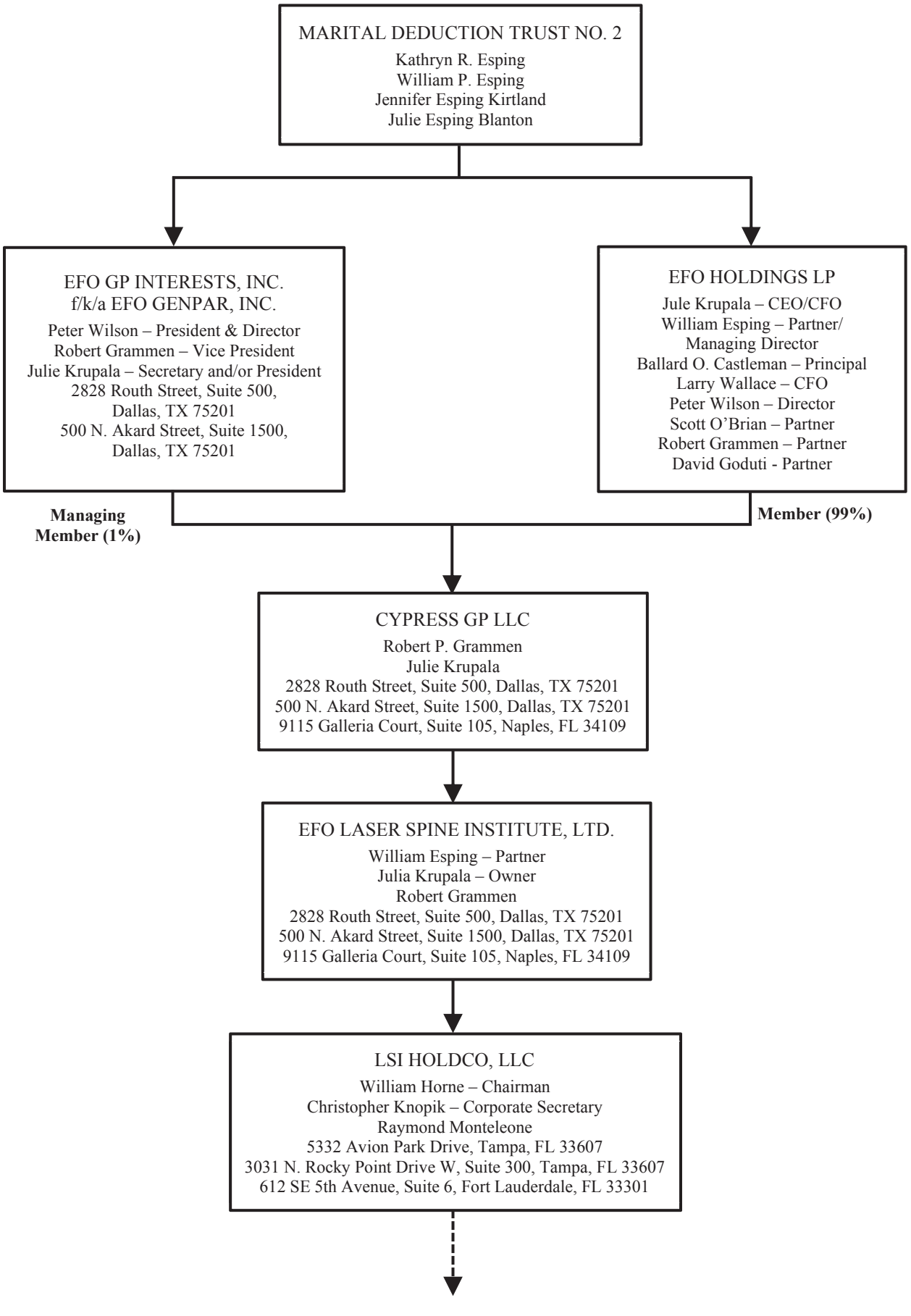
- Laser Spine Surgical Center LLC: Managing Member was Medical Care Management Services, LLC. That entity's Managing Member was Horne Management, Inc. Horne Management's President and Director was William E. Horne. Its Chief Financial Officer was Raymond Monteleone. Laser Spine Medical

Clinic, LLC: Managing Member was Laser Spine Institute, LLC. That entity's Managing Member was LSI Holdco, LLC. LSI Holdco's Chairman was William E. Horne. Other principles were Christopher Knopik (Corporate Secretary) and Raymond Monteleone. LSI Holdco's Managing Member was EFO LSI. EFO LSI's principles included Esping, Grammen and Julie Krupala. EFO LSI's General Partner was Cypress GP LLC, which has Grammen and Julie Krupala as its principles. The Managing Member of Cypress GP is EFO GP Interests, Inc., f/k/a EFO Genpar, Inc. Its principles included Grammen as vice-president, Peter Wilson as director and president (for a portion of time), and Julie Krupala as secretary and president (for a portion of time). The largest member of Cypress GP (99%) was EFO Holdings, LP, which had Julie Krupala as the Chief Executive Order and Chief Financial Officer, Esping as a partner/managing director, and Grammen as a partner.

- Laser Physical Therapy, LLC: Managing Member was Laser Spine Institute, LLC. That entity's Managing Member was LSI Holdco, LLC. LSI Holdco's Chairman was William E. Horne. Other principles were Christopher Knopik (Corporate Secretary) and Raymond Monteleone. LSI Holdco's Managing Member was EFO LSI. EFO LSI's principles included Esping, Grammen and Julie Krupala. EFO LSI's General Partner was Cypress GP LLC, which has Grammen and Julie Krupala as its principles. The Managing Member of Cypress GP is EFO

GP Interests, Inc., f/k/a EFO Genpar, Inc. Its principles included Grammen as vice-president, Peter Wilson as director and president (for a portion of time), and Julie Krupala as secretary and president (for a portion of time). The largest member of Cypress GP (99%) was EFO Holdings, LP, which had Julie Krupala as the Chief Executive Order and Chief Financial Officer, Esping as a partner/managing director, and Grammen as a partner.

39. Through his senior position of ownership, Esping had effective control over all of these entities:


MARITAL DEDUCTION TRUST NO. 2
Kathryn R. Esping
William P. Esping
Jennifer Esping Kirtland
Julie Esping Blanton
EFO GP INTERESTS, INC.
f/k/a EFO GENPAR, INC.
Peter Wilson – President & Director
Robert Grammen – Vice President
Julie Krupala – Secretary and/or President
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Dallas, TX 75201
500 N. Akard Street, Suite 1500,
Dallas, TX 75201
EFO HOLDINGS LP
Jule Krupala – CEO/CFO
William Esping – Partner/
Managing Director
Ballard O. Castleman – Principal
Larry Wallace – CFO
Peter Wilson – Director
Scott O'Brian – Partner
Robert Grammen – Partner
David Goduti - Partner
Managing Member (1%)
Member (99%)
CYPRESS GP LLC
Robert P. Grammen
Julie Krupala
2828 Routh Street, Suite 500, Dallas, TX 75201
500 N. Akard Street, Suite 1500, Dallas, TX 75201
9115 Galleria Court, Suite 105, Naples, FL 34109
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Julia Krupala – Owner
Robert Grammen
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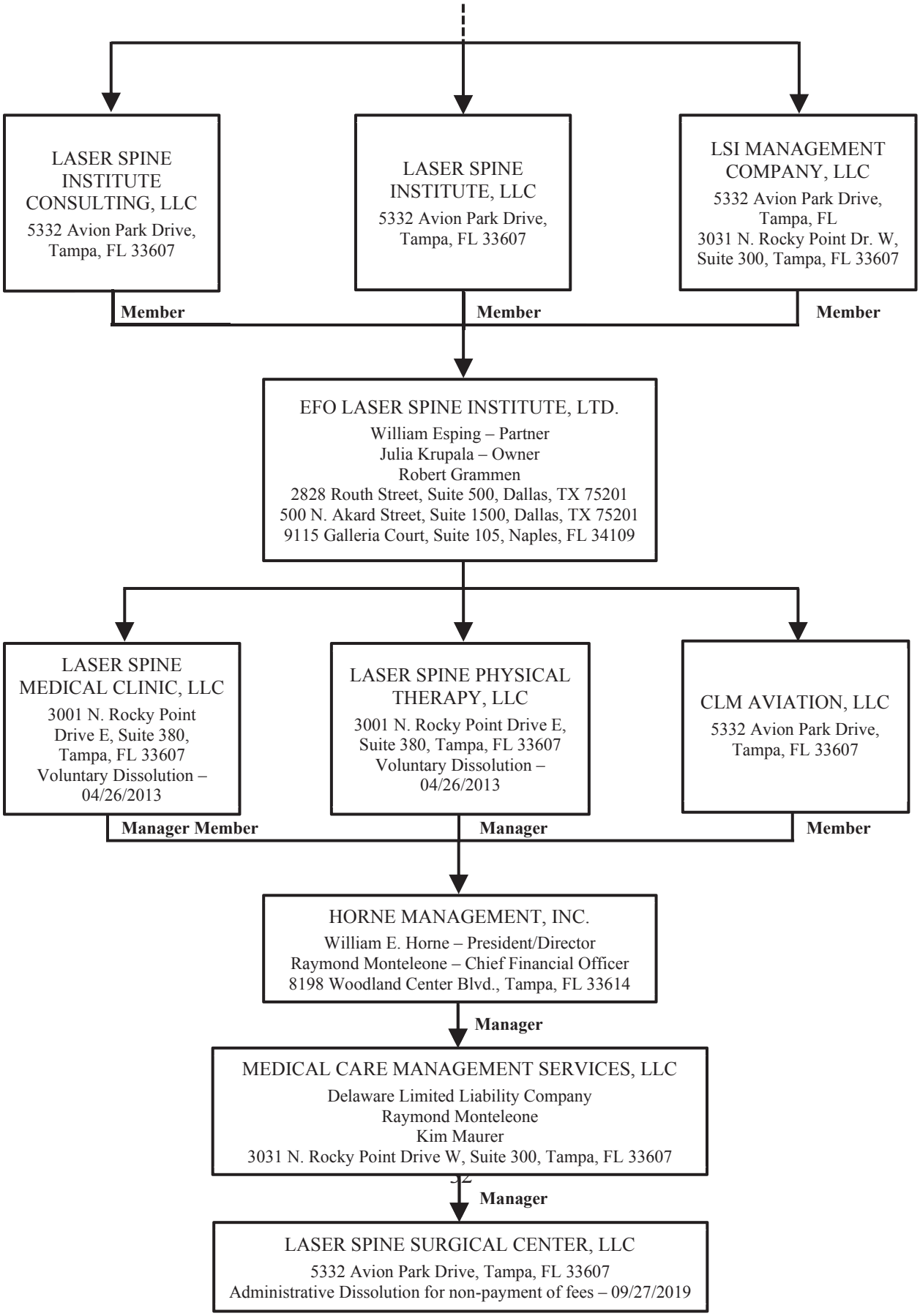
500 N. Akard Street, Suite 1500, Dallas, TX 75201
9115 Galleria Court, Suite 105, Naples, FL 34109
LSI HOLDCO, LLC
William Horne – Chairman
Christopher Knopik – Corporate Secretary
Raymond Monteleone
5332 Avion Park Drive, Tampa, FL 33607
3031 N. Rocky Point Drive W, Suite 300, Tampa, FL 33607
612 SE 5th Avenue, Suite 6, Fort Lauderdale, FL 33301


LASER SPINE INSTITUTE CONSULTING, LLC
5332 Avion Park Drive, Tampa, FL 33607
LASER SPINE INSTITUTE, LLC
5332 Avion Park Drive, Tampa, FL 33607
LSI MANAGEMENT COMPANY, LLC
5332 Avion Park Drive, Tampa, FL
3031 N. Rocky Point Dr. W, Suite 300, Tampa, FL 33607
Member
Member
Member
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9115 Galleria Court, Suite 105, Naples, FL 34109
LASER SPINE MEDICAL CLINIC, LLC
3001 N. Rocky Point Drive E, Suite 380, Tampa, FL 33607
Voluntary Dissolution – 04/26/2013
LASER SPINE PHYSICAL THERAPY, LLC
3001 N. Rocky Point Drive E, Suite 380, Tampa, FL 33607
Voluntary Dissolution – 04/26/2013
CLM AVIATION, LLC
5332 Avion Park Drive, Tampa, FL 33607
Manager Member
Manager
Member
HORNE MANAGEMENT, INC.
William E. Horne – President/Director
Raymond Monteleone – Chief Financial Officer
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Manager
MEDICAL CARE MANAGEMENT SERVICES, LLC
Delaware Limited Liability Company
Raymond Monteleone
Kim Maurer
3031 N. Rocky Point Drive W, Suite 300, Tampa, FL 33607
Manager
LASER SPINE SURGICAL CENTER, LLC
5332 Avion Park Drive, Tampa, FL 33607
Administrative Dissolution for non-payment of fees – 09/27/2019

40. The EFO Defendants, upon information and belief, had the following officers, managers, members, directors, control persons or similar fiduciaries: including Esping, Grammen and Horne, among others.

41. Upon information and belief, none of the self-interested transactions described below were approved solely by disinterested fiduciaries nor were they the subject of a third-party fairness opinion or similar analysis by an independent fiduciary.

2. EFO Related Defendants Controlled by Esping and Grammen

42. **Defendant William Esping** ("**Esping**") is the managing director of EFO Holdings, LP and owns, manages or controls a large number of the Defendants, as identified below. He also owned, managed and/or controlled EFO LSI, LSI and LSI Hold Co.

43. **Defendant Robert Grammen** ("**Grammen**") was and is a limited partner of EFO LSI. As of 2015, he held 4.44261% of the partnership interest in EFO LSI. His address is 19115 Galleria Court, Suite 105, Naples, FL 34109. Grammen received distributions of at least $6,529,453 with $1,995,254 distributed in 2015. Grammen manages, controls and/or owns EFO Holdings, LP and EFO GP Interests, was a founding member of LSI and was on the board of directors of LSI Holdco.

44. **Defendant Cypress GP, LLC** ("**Cypress**") was and is a Texas Limited Partnership and was and is a general partner of EFO LSI. In 2015, it held 0.72116% of the partnership interest in EFO LSI. Its principal place of business is at 500 N. Akard Street, Suite 1500, Dallas, TX 75201-3302. Cypress received distributions of at least $1,230,336 from EFO LSI, with $323,884

distributed in 2015. Cypress is managed by EFO GP Interests Inc. (f/k/a EFO Genpar Inc.), which at all relevant times has been controlled and managed by Grammen and Esping who are both also fiduciaries of EFO LSI and the Bailey Defendants as control persons. At one point, EFO Holdings, LP was a member of Cypress, owning 99% of it.

45. **Defendant WPE Kids Partners, LP** ("**WPE Kids**") was and is a limited partner of EFO LSI. As of 2015, it held 27.0163307% of the partnership interest in EFO LSI. Its principal place of business is at 500 N Akard Street, Suite 1500 Dallas, TX 75201-6651. WPE Kids Partners, LP received distributions of at least $57,626,814 with $12,133,451 distributed in 2015 alone. The general partner of WPE Kids is WPE Holdings, Inc.; Esping is the Vice President and signed the EFO LSI partnership agreement on behalf of WPE Kids. Upon information and belief, Esping owns, controls and/or manages this entity.

46. **Defendant EFO PRIVATE EQUITY FUND II LP** ("**EFO Fund II**") was and is a limited partner of EFO LSI. As of 2015, it held 6.30299% of the partnership interest in EFO LSI. Its principal place of business is at 500 N. Akard Street, Suite 1500 Dallas, TX 75201-6651. EFO Fund II received distributions of at least $9,187,139, with $2,830,782 distributed in 2015. EFO Fund II is located at the same address as EFO Holdings and EFO GP Interests Inc. (f/k/a EFO Genpar Inc.). Upon information and belief, EFO Fund II is controlled, owned and/or managed by Grammen, Esping and/or their surrogates.

47. **Defendant EMINENCE INTERESTS LP** ("**Eminence**") was and is a limited partner of EFO LSI. As of 2015, it held 5.56522% of the partnership interest in EFO LSI. Its

principal place of business is at 500 N. Akard Street, Suite 1500 Dallas, TX 75201-6651. Eminence received distributions of at least $8,553,326, with $2,499,440 distributed in 2015. Eminence is located at the same address as EFO Holdings and EFO GP Interests Inc. (f/k/a EFO Genpar Inc.). Upon information and belief, Eminence is controlled, owned and/or managed by Grammen Esping, Ballard Castleman and/or their surrogates. Eminence Interests, L.P., a Texas limited partnership may own approximately 80% of the interests of EFO Financial Group LLC according to SEC filings.

48. **Defendant Stanhope Capital Fund I, LP** ("**Stanhope**") was and is a limited partner of EFO LSI. As of 2015, it held 4.807710% of the partnership interest in EFO LSI. Its principal place of business is at 500 N. Akard Street, Suite 1500 Dallas, TX 75201-6651. Stanhope received distributions of at least $8,182,028, with $2,159,227 distributed in 2015. Stanhope is located at the same address as EFO Holdings and EFO GP Interests Inc. (f/k/a EFO Genpar Inc.).

49. **Defendant JEK SEP/PROPERTY LP** ("**JEK Property**") was and is a limited partner of EFO LSI. As of 2015, it held 2.40386% of the partnership interest in EFO LSI. Its principal place of business is at 500 N Akard Street, Suite 1500 Dallas, TX 75201-6651. JEK Property received distributions of at least $4,091,010, with $1,079,614 distributed in 2015. Upon information and belief, this entity is likely managed, owned and/or controlled by Jennifer Kirkland, Esping's sister.

50. **Defendant Lee Weeks** ("**Weeks**") was and is a limited partner of EFO LSI. As of 2015, she held 1.20193% of the partnership interest in EFO LSI, with an address at 9180 Galleria

Court, Suite 600, Naples, FL 34109. Weeks received distributions of at least $2,045,512, with $539,807 distributed in 2015. This address is the same address that Grammen, a partner in EFO Holdings LP and EFO GP Interests, uses in Florida to conduct business. Upon information and belief, Grammen previously worked for Weeks at Coral Hospitality in Florida while Weeks was CEO.

51. **Defendant HPH Investments, II** ("**HPH**") was and is a limited partner of EFO LSI. As of 2015, it held 0.13070% of the partnership interest in EFO LSI. Its principal place of business is at 500 N. Akard Street, Suite 1500 Dallas, TX 75201-6651. HPH received distributions of at least $220,842, with $58,699 distributed in 2015. Upon information and belief, this entity is managed, owned and/or controlled by EFO GP Interests, Esping and/or Grammen.

52. **Defendant Esping Marital Deduction Trust #2** ("**Esping Martial Trust**") was and is a limited partner of EFO LSI. As of 2015, it held 0.42020% of the partnership interest in EFO LSI. Its principal place of business is at 500 N Akard Street, Suite 1500, Dallas, TX 75201-6651. Esping Marital Trust received distributions of at least $651,598, with $188,719 distributed in 2015. The Esping Marital Trust is the 100% owner of EFO GP Interests, Inc., a Judgment Debtor. The Vice President of EFO GP Interests is Grammen. The Esping Marital Trust is located at the same address as EFO Holdings and EFO GP Interests Inc. (f/k/a EFO Genpar Inc.). Upon information and belief, Esping owns, controls, benefits from and/or manages this entity.

53. **Defendant Helen A. Grammen** ("**H. Grammen**") was and is a limited partner of EFO LSI. As of 2015, she held 0.15757% of the partnership interest in EFO LSI, with an address

at 11717 Gulf Boulevard, Apt. 546, North Redington Beach, FL 33708. H. Grammen received distributions of at least $244,356, with $70,769 distributed in 2015. Upon information and belief, H. Grammen is the mother of Grammen and is a member of EFO Holdings LP.

54. **Defendants Michael Grammen & Yvonne Grammen** ("**M&Y Grammen**") were and are limited partners of EFO LSI. As of 2015, they held 0.31731% of the partnership interest in EFO LSI, with an address at 10407 Cypress Lakes Preserve Drive, Lake Worth, FL 33467. M&Y Grammen received distributions of at least $432,843, with $142,510 distributed in 2015. Michael Grammen is the brother of Grammen and Yvonne Grammen is his wife.

55. **Defendant Masterdom Value Fund, Ltd.** ("**Masterdom**") was and is a limited partner of EFO LSI. As of 2015, it held 0.183840% of the partnership interest in EFO LSI. Its principal place of business is at 4017 Amherst Avenue, Dallas, TX 75225-7004. Masterdom received distributions of at least $285,857, with $82,565 distributed in 2015 according to the Schedule K1 filing. This entity previously held the same address at 2828 Routh Street, Suite 500, Dallas, TX 75201, as EFO Holdings LP and EFO GP Interests. It now has the same address as Lancaster.

56. **Defendant KRE SEP/Property, LP** ("**KRE Property**") was and is a limited partner of EFO LSI. As of 2015, it held 2.00771% of the partnership interest in EFO LSI. Its principal place of business is at 500 N. Akard Street, Suite 1500, Dallas, TX 75201-6651. KRE Property received distributions of at least $3,177,284, with $901,698 distributed in 2015. KRE Property is located at the same address as EFO Holdings and EFO GP Interests Inc. (f/k/a EFO

Genpar Inc.) and, upon information and belief, is controlled, owned and/or managed by Esping and/or his relatives, Kathryn R. Esping, William Esping's mother

57. **Defendant Kara A. Grammen** ("**K. Grammen**") was and is a limited partner of EFO LSI. As of 2015, she held 0.2% of the partnership interest in EFO LSI. Her address is 15517 Gulf Boulevard, Redington Beach, FL 33708. K. Grammen received distributions of at least $235,993, with $89,822 distributed in 2015. K. Grammen is the sister of Robert Grammen, who manages, controls and owns EFO Holdings, LP, EFO GP Interests and was on the board of directors of LSI Holdco.

58. **Defendant Louis X. Amato** ("**Amato**") was and is a limited partner of EFO LSI. As of 2015, he held 0.42596% of the partnership interest in EFO LSI. His address is 28209 Jewel Fish Ln, Bonita Springs, FL 34135-8639. Amato received distributions of at least $502,625, with $191,308 distributed in 2015. Amato represented EFO Holdings LP, EFO GP Interests and EFO LSI at various times during the *Bailey* Litigation.

59. **Defendant Spinal Tap Partners** ("**STP**") was and is a limited partner of EFO LSI. As of 2015, it held 5.8866193% of the partnership interest in EFO LSI. Its principal place of business is at 500 N Akard Street, Suite 1500, Dallas, TX 75201-6651. STP received distributions of at least $5,903,064, with $2,643,769 distributed in 2015. STP is located at the same address as EFO Holdings and EFO GP Interests Inc. (f/k/a EFO Genpar Inc.) and, upon information and belief, is likely controlled, owned and/or managed by Esping, EFO GP Interests or EFO Holdings, LP.

60. **Defendant Appreciation Siblings** ("**Appreciation**") was and is a limited partner of EFO LSI. As of 2015, it held 0.593% of the partnership interest in EFO LSI. Its principal place of business is at 500 N Akard Street, Suite 1500, Dallas, TX 75201-6651. Appreciation received distributions of at least $604,198, with $266,326 distributed in 2015. Appreciation is located at the same address as EFO Holdings and EFO GP Interests Inc. (f/k/a EFO Genpar Inc.) and, upon information and belief, is likely controlled, owned and/or managed by Esping, EFO GP Interests or EFO Holdings, LP.

61. **Defendant Geoffrey Laurence Wallace Estate** ("**Wallace Estate**"), Edith Smith Executrix, was and is a limited partner of EFO LSI. As of 2015, it held 0.54087% of the partnership interest in EFO LSI, with an address 3400 Chapel Wood Drive, Sunnyvale, TX 75182. The Wallace Estate received distributions of at least $448,814, with $242,914 distributed in 2015. Upon information and belief, the Wallace Estate is an entity likely formed in the name of and/or for the benefit of G. Larry Wallace, who was an officer in EFO Holdings and EFO GP Interests Inc. (f/k/a EFO Genpar Inc.) entities controlled, owned and/or managed by William Esping.

62. **Defendant Payne Lancaster** ("**Lancaster**") was and is a limited partner of EFO LSI. As of 2015, he held 0.77277% of the partnership interest in EFO LSI, with an address at 4017 Amherst Avenue, Dallas, TX 75225. Lancaster received distributions of at least $1,283,838, with $347,063 distributed in 2015. Lancaster was on the management team of EFO Holdings LP. Lancaster was also a manager of Metro 67, one of Esping's companies.

63. **Defendant Charles Lynch Lancaster Trust** ("**Lancaster Trust**") was and is a limited partner of EFO LSI. As of 2015, it held 0.07353% of the partnership interest in EFO LSI. Its principal place of business is at 4017 Amherst Avenue, Dallas, TX 75225. It received distributions of at least $80,997, with $19,030 distributed in 2015. Upon information and belief, this trust is affiliated with Payne Lancaster, who was on the EFO Management team.

64. **Defendant Mary Sullins Lancaster Trust** ("**Lancaster Trust**") was and is a limited partner of EFO LSI. As of 2015, the Lancaser Trust held 0.07353% of the partnership interest in EFO LSI. Its principal place of business is at 4017 Amherst Avenue, Dallas, TX 75225. The Lancaster Trust received distributions of at least $33,025, with $19,036 distributed in 2015. Upon information and belief, this trust is affiliated with Payne Lancaster, former management at EFO Holdings LP.

65. **Defendant Payne Lancaster IRA** ("**Lancaster IRA**") was and is a limited partner of EFO LSI. As of 2015, it held 0.06749% of the partnership interest in EFO LSI. Its principal place of business is at 4017 Amherst Avenue, Dallas, TX 75225. The Lancaster IRA received distributions of at least $ 100,896, with $30,312 distributed in 2015. Upon information and belief, this IRA is affiliated with Payne Lancaster, former management at EFO Holdings LP.

66. **Defendant Charles L. Lancaster** ("**C. Lancaster**") was and is a limited partner of EFO LSI. As of 2015, he held 0.07353% of the partnership interest in EFO LSI, with an address 4017 Amherst Avenue, Dallas, TX 75225. C. Lancaster received distributions of at least $32,677,

with $33,025 distributed in 2015. Upon information and belief, he is likely associated with Payne Lancaster, former management at EFO Holdings LP.

67. **Defendant Mary S. Lancaster** ("**M. Lancaster**") was and is a limited partner of EFO LSI. As of 2015, she held 0.07353% of the partnership interest in EFO LSI, with an address 4017 Amherst Avenue, Dallas, TX 75225. M. Lancaster received distributions of at least $32,677, with $33,025 distributed in 2015. Upon information and belief, she is likely associated with Payne Lancaster, former management at EFO Holdings LP.

3. Horne Controlled Defendants

68. **Defendant William Horne** ("**Horne**") holds a number of ownership, management or controlling interests in the Defendants. He owned, managed and/or controlled EFO LSI, LSI and LSI Hold Co. He was the CEO of LSI and later LSI Hold Co. between 2005 and 2015.

69. **Defendant Horne J, LLC** ("**Horne J**") was and is a limited partner of EFO LSI. As of 2015, it held 1.85542% of the partnership interest in EFO LSI. Its principal place of business is at 1288 Finch Road, Winder, GA 30680. Horne J received distributions of at least $3,149,719, with $833,300 distributed in 2015 according to the Schedule K1 filing. Upon information and belief, this entity is likely owned or controlled by William Horne ("Horne"), former President and CEO of LSI, or by an immediate family member or surrogates of Horne.

70. **Defendant Horne Tipps Properties LLC** ("**Horne Tipps**") was and is a limited partner of EFO LSI. As of 2015, it held 1.146093% of the partnership interest in EFO LSI. Its principal place of business is at 8198 Woodland Center Boulevard, Tampa, FL 33614. Horne

Tipps received distributions of at least $2,708,821, with $514,729 distributed in 2015 according to the Schedule K1 filing. Upon information and belief, this entity is managed, owned and/or controlled by Horne, former President and CEO of LSI, or by immediate family members or surrogates of Horne.

71. **Defendant James W. Horne** ("**James Horne**") was and is a limited partner of EFO LSI. As of 2015, he held 0.2101% of the partnership interest in EFO LSI, with an address at PO Box 8339, Fleming Island, FL 32006. James Horne received distributions of at least $325,798, with $94,359 distributed in 2015. Upon information and belief, James Horne is likely a family member of Horne, former President and CEO of LSI and LSI Holdco.

72. **Defendant Horne Management Inc.** ("**Horne Management**") was and is a limited partner of EFO LSI. As of 2015, it held 1.893444% of the partnership interest in EFO LSI. Its principal place of business is at 8198 Woodland Center Boulevard, Tampa, FL 33614. Horne Management received distributions of at least $2,372,396, with $850,378 distributed in 2015 according. Horne Management is owned, managed and/or controlled by Horne, the former President and CEO of LSI and LSI Holdco.

73. **Defendant WH, LLC** was and is a limited partner of EFO LSI. As of 2015, it held 0.157570% of the partnership interest in EFO LSI. Its principal place of business is 19520 Gulf Boulevard, Unit 402, Indian Shores, FL 33785. WH, LLC received distributions of at least $244,356, with $70,769 distributed in 2015. WH, LLC is owned, managed and/or controlled by Horne, the former President and CEO of LSI and LSI Holdco.

74. **Defendant Justin Horne** ("**Justin Horne**") was and is a limited partner of EFO LSI. As of 2015, he held 0.04105% of the partnership interest in EFO LSI. His address is 1002 Bajada De Avila, Tampa, FL 33613. J. Horne received distributions for at least $42,020 with $18,435 distributed in 2015. Justin. Horne is the son of Horne, the former President and CEO of LSI and LSI Holdco.

75. **Defendant Raymond Monteleone** ("**Monteleone**") was and is a limited partner of EFO LSI. As of 2015, he held 0.40966% of the partnership interest in EFO LSI. His address is 3965 North 32 Terrace, Hollywood, FL 33021. Monteleone received distributions of at least $488,839, with $183,987 distributed in 2015. Monteleone is a former executive and officer at LSI and still has several ongoing business relationships with Horne. Upon information and belief, Monteleone was also Horne's accountant.

4. St. Louis Related Defendants

76. **Defendant James S. St. Louis, III** ("**J**. **St. Louis**") was and is a limited partner of EFO LSI. As of 2015, he held 1.17618% of the partnership interest in EFO LSI, with an address at 7149 Forest Mere Drive, Riverview, FL 33578. J. St. Louis received distributions of at least $4,019,280, with $528,242 distributed in 2015. J. St. Louis is the son of *Bailey* Defendant St. Louis, one of the key employees that defrauded Plaintiffs and one of the architects of the coup from inside Laserscopic Spinal. J. St. Louis was hired by and worked for LSI for many years, additionally reaping significant sums in salary and bonuses, not to mention any LSI interests that he received separately (meaning other than through EFO LSI).

77. **Defendant Jill St. Louis** ("**Jill St. Louis**") was and is a limited partner of EFO LSI. As of 2015, she held 6.00964% of the partnership interest in EFO LSI, with an address at 611 S. FT. Harrison Avenue, #311, Clearwater, FL 33756. Jill St. Louis received distributions of at least $4,708,029, with $2,699,032 distributed in 2015. She is the ex-wife of *Bailey* Defendant St. Louis, although they were married during the conduct alleged in the underlying *Bailey* Litigation.

5. Other Defendants

78. **Defendant John E. Ayres** ("**Ayres**") was and is a limited partner of EFO LSI. As of 2015, he held 1.92978% of the partnership interest in EFO LSI. His address is at 123 East Avenue, Naples, FL 34108. Ayres received distributions of at least $3,641,802, with $866,694 distributed in 2015. Ayres worked with Robert Grammen at Coral Hospitality in Florida.

79. **Defendant Kenneth "Kip" Gordman** ("**Gordman**") was and is a limited partner of EFO LSI. As of 2015, he held 0.60096% of the partnership interest in EFO LSI. His address is at 16756 J Circle, Omaha, NE 68135. Gordman received distributions of at least $1,022,752, with $269,903 distributed in 2015. Gordman was a partner in other EFO controlled entities such as Underground Tank Partners.

80. **Defendant Bridget Gordman** ("**Gordman**") was and is a limited partner of EFO LSI. As of 2015, she held 0.600960% of the partnership interest in EFO LSI. Her address is 16756 J Circle, Omaha, NE 68135. Gordman received distributions of at least $1,022,752, with $269,903 distributed in 2015.

81. **Defendant Martin Holmes** ("**Holmes**") was and is a limited partner of EFO LSI. As of 2015, he held 3.60579% of the partnership interest in EFO LSI, with an address at 50 Beachside Drive, #101, Vero Beach, FL 32963. Holmes received distributions of at least $6,136,516, with $1,619,420 distributed in 2015.

82. **Defendant Edith Smith** ("**Smith**") was and is a limited partner of EFO LSI. As of 2015, she held 0.16676% of the partnership interest in EFO LSI, with an address at 3400 Chapelwood Drive, Sunnyvale, TX 75182. Smith received distributions of at least $282,222, with $74,892 distributed in 2015.

83. **Defendant Westfields Investments, LLC** ("**Westfields**") was and is a limited partner of EFO LSI. As of 2015, it held 1.923% of the partnership interest in EFO LSI. Its principal place of business is 809 Autumn Breeze Court, Herndon, VA 20170, and can be served at the same address. Westfield Investments, LLC received distributions of at least $3,272,809, with $863,691 distributed in 2015.

84. **Defendant Kirk Colemen** ("**Coleman**") was and is a limited partner of EFO LSI. As of 2015, he held 0.58582% of the partnership interest in EFO LSI, with an address at 245 Casa Blanca Avenue, Fort Worth, TX 76107. Coleman received distributions of at least $920,316, with $263,103 distributed in 2015. Starting in May 2015, Coleman was employed at Texas Capital Bank as its Executive Vice President.

85. **Defendant Anthony Koeijmans** ("**Koeijmans**") was and is a limited partner of EFO LSI. As of 2015, he held 0.29291% of the partnership interest in EFO LSI, with an address

at 500 N. Akard Street, Suite 1500 Dallas, TX 75201-6651. Koeijmans received distributions of at least $490,545, with $131,551 distributed in 2015. His address is the same address as EFO LSI, EFO Holdings, LP and EFO GP Interests.

86. **Defendant David Owen** ("**Owen**") was and is a limited partner of EFO LSI. As of 2015, he held 0.24039% of the partnership interest in EFO LSI, with an address at 18208 Preston Road, Suite D9-218, Dallas, TX 75252. Owen received distributions of at least $409,102, with $107,961 distributed in 2015.

87. **Defendant Alvin Holdings LLC** ("**Alvin**") was and is a limited partner of EFO LSI. As of 2015, it held 1.92309% of the partnership interest in EFO LSI. Its principal place of business is at 6029 Mendota Drive, Dallas, TX 75201. Alvin received distributions for at least $3,253,273, with $863,691 distributed in 2015.

88. **Defendant Brav Ventures LP** ("**Brav**") was and is a limited partner of EFO LSI. As of 2015, it held 1.67465% of the partnership interest in EFO LSI. Its principal place of business is at 3912 Wentwood Drive, Dallas, TX 75225-5318. Brav received distributions of at least $2,484,950, with $752,115 distributed in 2015.

89. **Defendant N. Ross Buckenham** ("**Buckenham**") was and is a limited partner of EFO LSI. As of 2015, he held 0.21010% of the partnership interest in EFO LSI, with an address at 3544 Southwestern Boulevard, Dallas, TX 75225. Buckenham received distributions of at least $325,798, with $94,359 distributed in 2015.

90. **Defendant Angie H Carlson** ("**Carlson**") was and is a limited partner of EFO LSI. As of 2015, she held 0.06303% of the partnership interest in EFO LSI, with an address at 3632 Asbury Street, Dallas, TX 75205. Carlson received distributions of at least $97,746, with $28,309 distributed in 2015.

91. **Defendant William Ray Clark** ("**Clerk**") was and is a limited partner of EFO LSI. As of 2015, he held 0.17753% of the partnership interest in EFO LSI, with an address at 6323 Woodland, Dallas, TX 75225. He received distributions of at least $275,293, with $79,734 distributed in 2015.

92. **Defendant Stacy R. Danahy** ("**Danahy**") was and is a limited partner of EFO LSI. As of 2015, she held 0.05252% of the partnership interest in EFO LSI, with an address at 34913 N 25TH Lane, Phoenix, AZ 85086. Danahy received distributions of at least $81,440, with $23,590 distributed in 2015. Danahy was employed by Spinal and was one of the employees solicited by the *Bailey* Defendants to abandon her role to join their illegally manufactured competing venture.

93. **Defendant George B Erensen** ("**Erensen**") was and is a limited partner of EFO LSI. As of 2015, he held 0.262620% of the partnership interest in EFO LSI, with an address at 319 Orchard Street, Greenwich, CT 06830. Erensen received distributions of at least $385,804 with $117,949 distributed in 2015.

94. **Defendant Patrick Foote** ("**Foote**") was and is a limited partner of EFO LSI. As of 2015, he held 0.05252% of the partnership interest in EFO LSI, with an address at 200 4TH

Avenue S #417, St. Petersburg, FL 33701. Foote received distributions of at least $80,331, with $23,590 distributed in 2015. Foote was an employee of LSI.

95. **Defendant Gulfshore Capital Partners LLC** ("**Gulfshore**") was and is a limited partner of EFO LSI. As of 2015, it held 0.04202% of the partnership interest in EFO LSI. Its principal place of business is at C/O Max Mazzone, 2338 Immokalee Road #149, Naples, FL 34110. Gulfshore received distributions of at least $64,275 with $18,872 distributed in 2015.

96. **Defendant Hugh P Hennesy** ("**Hennesy**") was and is a limited partner of EFO LSI. As of 2015, he held 0.04202% of the partnership interest in EFO LSI, with an address at 3953 Maple Avenue, Suite 290, Dallas TX 75201. Hennesy received distributions of at least $65,165, with $18,872 distributed in 2015.

97. **Defendant Hoak Private Equities I, L.P.** ("**Hoak**") was and is a limited partner of EFO LSI. As of 2015, it held 0.6303% of the partnership interest in EFO LSI. Its principal place of business is at Reagan Place at Old Parkland, 3963 Maple Avenue, Suite 450, Dallas TX 75201. Hoak received distributions of at least $977,391, with $283,078 distributed in 2015.

98. **Defendant Peter Jacobsen** ("**Jacobsen**") was and is a limited partner of EFO LSI. As of 2015, he held 1.8909% of the partnership interest in EFO LSI, with an address at 9400 SW Barnes Road #550, Portland, OR 97225. Jacobsen received distributions of at least $2,892,142, with $849,234 distributed in 2015.

99. **Defendant John A. Drossos 2000 Irrevocable Exempt Trust** ("**Drossos Trust**") was and is a limited partner of EFO LSI. As of 2015, it held 0.04202% of the partnership interest

in EFO LSI. Its principal place of business is at 6719 Park Lane, Dallas, TX 75225. The Drossos Trust received distributions of at least $64,275, with $18,872 distributed in 2015.

100. **Defendant Rod C. Jones** ("**Jones**") was and is a limited partner of EFO LSI. As of 2015, he held 0.13656% of the partnership interest in EFO LSI, with an address at 3953 Maple Avenue, Ste. 290, Dallas, TX 75201. Jones received distributions of at least $211,771, with $61,334 distributed in 2015. Jones manages high net worth family offices.

101. **Defendant Edward F. Kiernan** ("**Kiernan**") was and is a limited partner of EFO LSI. As of 2015, he held 0.10505% of the partnership interest in EFO LSI, with an address at 300 E 39th Street, #15C, New York, NY 10016. Kiernan received distributions of at least $274,174, with $75,096 distributed in 2015.

102. **Defendant Lester Morales, Jr.** ("**Morales**") was and is a limited partner of EFO LSI. As of 2015, he held 0.07382% of the partnership interest in EFO LSI, with an address at 7149 Forest Mere Drive, Riverview, FL 33578. Morales received distributions of at least $106,575, with $33,155 distributed in 2015. Morales is a former executive director of LSI.

103. **Defendant Nelda Cains Pickens Grandchildren's Trust** ("**Pickens Trust**") was and is a limited partner of EFO LSI. As of 2015, the Pickens Trust held 0.07353% of the partnership interest in EFO LSI. Its principal place of business is at 3953 Maple Avenue, Suite 290, Dallas, TX 75219. The Pickens Trust received distributions of at least $114,022, with $33,025 distributed in 2015. Nelda Cains Pickens is the widow of T. Boone Pickens.

104. **Defendant RIFAM, LLC** ("**RIFAM**") was and is a limited partner of EFO LSI. As of 2015, it held 0.4202% of the partnership interest in EFO LSI. Its principal place of business is at C/O Brian Riley, 4660 La Jolla Village Drive, San Diego, CA 92122. RIFAM received distributions of at least $651,598, with $188,719 distributed in 2015 according to the Schedule K1 filing. This entity is an Arizona company with its principal place of business in California.

105. **Defendant San Ysidro Holdings LP** ("**Ysidro Holdings**") was and is a limited partner of EFO LSI. As of 2015, it held 0.15757% of the partnership interest in EFO LSI. Its principal place of business is at 4516 Lovers Lane c/o PMB 413, Dallas, TX 75225-6925. Ysidro Holdings received distributions of at least $244,356, with $70,769 distributed in 2015.

106. **Defendant James F. Stafford** ("**Stafford**") was and is a limited partner of EFO LSI. As of 2015, he held 0.05252% of the partnership interest in EFO LSI, with an address at 5407 Bowline Bend, New Port Richey, FL 34652. Stafford received distributions of at least $81,441, with $23,590 distributed in 2015. Stafford is a former employee of LSI, who was solicited away from Spinal along with others by the *Bailey* Defendants.

107. **Defendant Vireo, LLC** ("**Vireo**") was and is a limited partner of EFO LSI. As of 2015, it held 0.1505% of the partnership interest in EFO LSI. Its principal place of business is at C/O David Crowell, 3610 W Jetton Avenue, Tampa, FL 33629. Vireo received distributions of at least $160,664, with $47,180 distributed in 2015.

108. **Defendant Ashley S. Will Finnegan** ("**Finnegan**") was and is a limited partner of EFO LSI. As of 2015, she held 0.07382% of the partnership interest in EFO LSI. Her address is

2725 SW 92nd Terrace, Gainesville, FL 32608. Finnegan received distributions of at least $106,575, with $33,155 distributed in 2015.

109. **Defendant BE-MAC Asset Management, Inc. ("BE-MAC**") was and is a limited partner of EFO LSI. As of 2015, it held 0.07879% of the partnership interest in EFO LSI. Its principal place of business is at 8501 Gunn Highway, Odessa, FL 33556. BE-MAC received distributions of at least $146,352, with $35,388 distributed in 2015 according to the Schedule K1 filing.

110. **Defendant Phil Garcia** ("**Garcia**") was and is a limited partner of EFO LSI. As of 2015, he held 0.38868% of the partnership interest in EFO LSI. His address is 16529 Ivy Lake Drive, Odessa, FL 33556. Garcia received distributions of at least $500,901, with $174,564 distributed in 2015.

111. **Defendant Dotty Bollinger** ("**Bollinger**") was and is a limited partner of EFO LSI. As of 2015, she held 1.02454% of the partnership interest in EFO LSI. Her address is 536 Pinnacle Vista Road, Gatlinberg, TN 37738. Bollinger received distributions of at least $1,219,677 with $460,137 distributed in 2015 according to the Schedule K1 filing. Bollinger is the former General Counsel of LSI, who occupied that role during the *Bailey* trial.

112. **Defendant CHAAC Capital Group, LLC ("CHAAC")** was and is a limited partner of EFO LSI. As of 2015, it held 0.08519% of the partnership interest in EFO LSI. Its principal place of business is 73 Southport Cove, Bonita Springs, FL 34134. CHAAC received distributions of at least $100,527, with $38,262 distributed in 2015.

113. **Defendant Christopher Yinger ("Yinger")** was and is a limited partner of EFO LSI. As of 2015, he held 0.0213% of the partnership interest in EFO LSI. His address is 2310 Hannah Way N., Dunedin, FL 34698. Yinger received distributions of at least $9,565 distributed in 2015.

114. **Defendant Craig Burns ("Burns")** was and is a limited partner of EFO LSI. As of 2015, he held 0.0213% of the partnership interest in EFO LSI. His address is 916 Cypress Cove Way, Tarpon Springs, FL 34688. Burns received distributions of at least $9,565 distributed in 2015.

115. **Defendant D Trombley 2600-B, LLC ("Trombley")** was and is a limited partner of EFO LSI. As of 2015, it held 0.0213% of the partnership interest in EFO LSI. Its principle place of business is 9019 Oak St. NE, St. Petersburg, FL 33702. Trombley received distributions of at least $9,565 distributed in 2015.

116. **Defendant Arborwood Naples, LLC ("Arborwood")** was and is a limited partner of EFO LSI. As of 2015, it held 0.63895% of the partnership interest in EFO LSI. Its principal place of business is 13490 Old Livingston Road, Naples, FL 34109. Arborwood received distributions of at least $753,934, with $286,962 distributed in 2015.

117. **Defendant GAFLP II, LTD. ("GAFLP")** was and is a limited partner of EFO LSI. As of 2015, it held 0.63895% of the partnership interest in EFO LSI, with a registered agent address of ORI, Inc., 2705 Bee Caves Road, Suite 230, Austin, TX 78746. GAFLP received distributions of at least $753,934, with $286,962 distributed in 2015.

118. **Defendant Jason Jones ("J. Jones")** was and is a limited partner of EFO LSI. As of 2015, he held 0.0213% of the partnership interest in EFO LSI. His address is 12724 Stanwyck Circle, Tampa, FL 33626. J. Jones received distributions of at least $9,565 distributed in 2015.

119. **Defendant John Polikandriotis ("Polikandriotis")** was and is a limited partner of EFO LSI. As of 2015, he held 0.01065% of the partnership interest in EFO LSI. His address is PO Box 5218, Edwards, CO 81632. Polikandriotis received distributions of at least $4,782 distributed in 2015.

120. **Defendant John F. Spallino ("Spallino")** was and is a limited partner of EFO LSI. As of 2015, he held 0.0213% of the partnership interest in EFO LSI. His address is 11329 East Raintree Drive, Scottsdale, AZ 85255. Spallino received distributions of at least $9,565 distributed in 2015.

121. **Defendant Lynne M Flaherty ("Flaherty")** was and is a limited partner of EFO LSI. As of 2015, she held 0.01065% of the partnership interest in EFO LSI. Her address is 10320 Abbotsford Dr., Tampa, FL 33626. Flaherty received distributions of at least $4,782 distributed in 2015.

122. **Defendant Tina M. Christiaens ("Christiaens")** was and is a limited partner of EFO LSI. As of 2015, she held 0.01065% of the partnership interest in EFO LSI. Her address is 2203 SE 20th Avenue, Cape Coral, FL 33990. Christiaens received distributions of at least $4,782 distributed in 2015.

123. **Defendant Valerie A Maxam-Moore ("Maxam-Moore")** was and is a limited partner of EFO LSI. As of 2015, she held 0.0213% of the partnership interest in EFO LSI. Her address is 4565 15th Ave N, St. Petersburg, FL 33626. Maxam-Moore received distributions of at least $9,565 distributed in 2015.

124. **Defendant Carl Karnes** ("**Karnes**") was and is a limited partner of EFO LSI. As of 2015, he held 0.96155% of the partnership interest in EFO LSI, with an address is 2201 Winding Hollow Lane, Plano, TX 75093. Karnes received distributions of at least $1,162,659, with $431,850 distributed in 2015.

125. **Defendant Mary C. Tanner-Brooks** ("**Tanner-Brooks**") was and is a limited partner of EFO LSI. As of 2015, she held 0.050282% of the partnership interest in EFO LSI, with an address at PO Box 2012, Riverview, FL 33568. Tanner-Brooks received distributions of at least $51,680, with $22,583 distributed in 2015.

126. **Defendant Sylvia J Gagliardi** ("**Gagliardi**") was and is a limited partner of EFO LSI. As of 2015, she held 0.043099% of the partnership interest in EFO LSI, with an address at 11304 Lake Katherine Circle, Clermont, FL 34711. Gagliardi received distributions of at least $44,297, with $19,356 distributed in 2015.

127. **Defendant William K Brooks** ("**Brooks**") was and is a limited partner of EFO LSI. As of 2015, he held 0.050282% of the partnership interest in EFO LSI, with an address at PO Box 2012, Riverview, FL 33568. Brooks received distributions of at least $51,680, with $22,583 distributed in 2015.

128. **Defendant MARBL SOS, Ltd.** ("**Marbl**") was and is a limited partner of EFO LSI. As of 2015, it held 0.11852% of the partnership interest in EFO LSI. Its principle place of business is 4201 W Parmer Lane, Suite A275, Austin, TX 78727-4115 and may be served on Mark A Flood, 8500 Bluffstone Cove, Suite A101 Austin, TX 78759. MARBL received distributions of at least $113,352, with $53,228 distributed in 2015.

129. **Defendant Anand A Gandhi ("Gandhi")** was and is a limited partner of EFO LSI. As of 2015, he held 0.0142% of the partnership interest in EFO LSI. His address is 5933 Browder Rd., Tampa, FL 33625. Gandhi received distributions of $6,377 distributed in 2015.

130. **Defendant Joshua C. Helms ("Helms")** was and is a limited partner of EFO LSI. As of 2015, he held 0.0142% of the partnership interest in EFO LSI. His address is 4505 Henderson Blvd., Tampa, FL 33629. Helms received distributions of at least $6,377 distributed in 2015.

131. **Defendant Lisa A. Melamed** ("**Melamed**") was and is a limited partner of EFO LSI. As of 2015, she held 0.046970% of the partnership interest in EFO LSI. Her address is 4320 NW 103 Drive, Coral Springs, FL 33065. Melamed received distributions of at least $41,417, with $21,095 distributed in 2015. Melamed represented LSI Holdco as its general counsel.

132. **Defendant Orzo, LLC** ("**Orzo**") was and is a limited partner of EFO LSI. As of 2015, it held 0.16112% of the partnership interest in EFO LSI, with an address at 16327 Palmettoglen Ct., Lithia, FL 33547. Orzo received distributions of at least $151,317, with $72,360 distributed in 2015.

133. **Defendant Jennifer Kiernan** ("**J. Kiernan**") was and is a limited partner of EFO LSI. As of 2015, she held 0.10505% of the partnership interest in EFO LSI, with an address 1462 Pepperwood Drive, Niles, OH 44446. Kiernan received distributions of at least $47,180, with $47,180 distributed in 2015.

134. Unless specifically identified, these Defendants will collectively be referred to as "Defendants" or "Fraudulent Transferees."

IV. JURISDICTION AND VENUE

135. This is an action in which the matter in controversy exceeds the sum of $30,000, exclusive of interest, costs and attorney's fees.

136. Venue and jurisdiction are proper in Hillsborough County, Florida, because Hillsborough County, Florida, is the principal place of business for EFO LSI, which received distributions from LSI—likewise maintaining its principal place of business in Hillsborough County, Florida, at all times material—and then distributed tens of millions of dollars to the Fraudulent Transferees; the causes of action accrued in Hillsborough County, Florida; the Defendants conducted significant business in Hillsborough County, Florida; the transfers were made in Hillsborough County; the Defendants were operating, conducting, engaging in, or carrying on business or business ventures in this state and the Plaintiffs' injuries arose from those operations; and the torts were committed in Hillsborough County and/or caused harm in Hillsborough County, Florida. Therefore, this Court has jurisdiction and venue is proper pursuant to Fla. Stat. §26.012; §47.011; §48.193.

FACTUAL BACKGROUND

I. LSI AND EFO LSI WERE CONTROLLED BY THE SAME GROUP OF PEOPLE BOTH BEFORE AND AFTER THE CORPORATE NAME CHANGE.

137. As established by the trial court in the *Bailey* Litigation and affirmed by the Second DCA, the *Bailey* Defendants—including EFO LSI and LSI—conspired to "gut" Plaintiffs cutting edge business, reaping hundreds of millions of dollars in profits and destroying Spinal and then Spine in the process.

138. For instance, the same group of individuals that formed EFO LSI were also the ones controlling LSI and its subsidiaries (and thereafter LSI Hold Co.) It started when EFO Holdings and EFO Genpar, acting through Esping and Grammen, learned about the *Bailey* Plaintiffs' business when considering providing a loan to Spinal; liking what they saw, the *Bailey* Defendants decided they wanted to steal the business rather than fund it when Mr. Bailey and the existing funder were unwilling to turn the majority interest in the business over to EFO Holdings and EFO Genpar for peanuts.

139. To that end, the EFO Defendants and their principals began by filling the heads of Spinal officers and employees with lies about the principals of Spinal and Medical including outrageous statements regarding their character, including false allegations regarding misappropriation of funds by Mr. Bailey, and misrepresenting the financial wherewithal of the business and the ability to obtain capital. Some of the trial court findings are included, but given the 131-page Trial Order, the findings are merely a sampling.

140. By example, the trial court found:

a. "On November 8, 2004, a meeting was held at the Vinoy Hotel between St. Louis and Perry and EFO representatives, including Mr. Esping and Mr. Grammen…Those in attendance at the Vinoy meeting including St. Louis, his wife [Jill St. Louis], Mr. Esping, Mr. Grammen, and Ballard Castleman . . . ." Order at 46-47, ¶¶ 258 and 260.

b. "The meeting at the Vinoy Hotel was part of a pattern of contact between St. Louis and Perry, on one hand, and the EFO Defendants, on the other, in which the Defendants were conspiring to open a competing surgery center." *Id.* at 47, ¶ 265. And as the *Bailey* Defendants admitted, the people involved in discussions regarding the formation of EFO LSI included Robert Grammen, William Esping, Mike Surgen, and James St. Louis, D.O.

c. EFO LSI was created to hold an interest in LSI. As the EFO LSI Partnership Agreement states: "Section 1.3: Purpose of the Partnership is to acquire a membership interest in Laser Spine Institute, LLC, a Florida limited liability company (the "Company") and to acquire and manage various investment property and to engage in any other activities permissible by a limited partnership under the Act." (PX 928). EFO LSI was initially created in December 2004, shortly after Dr. Perry and Dr. St. Louis resigned from Laserscopic Spinal to create LSI. "Bill Esping approved the formation of EFO LSI." Trial Order at 66, ¶ 393.

d. "As of November 2004, it was decided that EFO, through EFO [LSI], would own 65 percent of LSI, St. Louis would own 25 percent, Perry would own 10 percent and Mr. Surgen would own 5 percent." *Id.* at 49, ¶ 278. Ultimately, "[i]n 2004, EFO LSI owned 55-56% of LSI and St. Louis owned 44-45%" *Id.* at 65, ¶ 386.

e. "The [initial] owners of EFO LSI include Mr. Esping, Mr. Grammen, St. Louis, Mr. Surgen, and various limited partners. The limited partners include Mr. Horne, Perry and Dr. Hamburg. Mr. Esping and his family own approximately 30% of EFO LSI; St. Louis owns approximately 22%; Mr. Grammen owns less than 5%; and Mr. Horne owns about 9%; St. Louis also owns about 4% of LSI." *Id.* at 65-66, ¶ 389.

141. When the EFO LSI partnership agreement was signed, the limited partners were Esping and/or WPE Kids Partners, LP, St. Louis, Mathew B. Milstead, Michael Surgen, Horne, John Ayres, Lee Weeks, CV Karnes Investments, Ltd., SW Pollock Investments, Ltd., Westfield Investments, Ltd., Ballard Castleman, Brian Kueker, Edith Smith, HPH Investments II, Julie Krupala, Nancy McCullough and Grammen.

142. EFO LSI was and at all times material has been controlled by its general partner, Cypress GP, LLC. Cypress GP, LLC is owned (or was at one point) by two other *Bailey* Defendants—EFO Holdings and EFO Genpar.

143. EFO Holdings, which was owned by the general partner, EFO Holdings Manager, Inc. (1%) and the sole limited partner Esping (99%). At least in 2007, EFO Holdings owned a 4.5% limited partner interest in EFO LSI.

144. EFO Genpar is 100% owned by the Esping Marital Deduction Trust #2. The director is Peter Wilson, the President and Secretary is Julie Krupala and the Vice President is Grammen. The Esping Marital Deduction Trust #2 is located at the same address as EFO Holdings and EFO Genpar is, upon information and belief, controlled, owned and/or managed by Esping.

145. Each of the individuals present at the initial formation meetings for LSI and EFO LSI maintained significant ownership interests in LSI and EFO LSI and as a result received millions of dollars in distributions as did their family and friends.

146. In December 2012, within a month after the original final judgment was entered in the *Bailey* Litigation and only two months after the Trial Order was issued, LSI conveniently and purposefully reorganized under a new entity, LSI Holdco (hereinafter "LSI Hold Co" or "Hold Co").

147. Upon information and belief, the purpose of the reorganization was to create roadblocks, delays and procedural hurdles for the *Bailey* Plaintiffs when they sought to recover and to otherwise shield LSI's assets. Once the Trial Order was issued, the *Bailey* Defendants were confronted with hundreds of factual findings outlining their conduct that paralleled a criminal enterprise. The *Bailey* Defendants scrambled to manufacture layers in their corporate structure to fraudulently defeat the *Bailey* Plaintiffs' collection efforts knowing that the case record below was

closed and Plaintiffs could not conduct any further discovery about their dealings until after any final judgment was actually final—many years down the road.

148. Specifically, within weeks of the trial court's issuance of the damning factual findings regarding their egregious conduct, the Board of Managers of LSI formed a new company under Delaware law. Upon information and belief, this restructuring occurred to shield assets. This Board of Managers was controlled by some of the same individuals involved in the original fraudulent conduct—namely, St. Louis, Grammen, Esping and Horne.

149. On January 1, 2013, the members of LSI entered into a new operating agreement with LSI Holdco that, among other things, transferred their membership interests in LSI to Holdco. Essentially, the owners of LSI assigned their respective interests in LSI to LSI Holdco in exchange for the same equivalent membership interests in LSI Holdco. As a result of this assignment, LSI Holdco became the sole member, manager and owner of LSI. LSI Holdco was not a defendant in the *Bailey* Litigation as it was formed after the initial final judgment was entered. There would be no reason to make this structural change other than to make it more difficult for Plaintiffs to ultimately collect when any judgment became final.

150. Under the 2013 LSI Operating Agreement, and as sole member of LSI, LSI Holdco managed, conducted, and controlled the affairs of LSI, and controlled the assets of LSI and the assets of LSI's subsidiaries. The Board of Managers of LSI Hold Co. controlled all aspects of Holdco and LSI and its subsidiary companies.

151. At or about the same time, EFO LSI followed suit and did the same thing. Specifically, EFO LSI joined in the creation of LSI Hold Co., and transferred its interests in LSI to LSI Holdco. Upon information and belief, the same wrongdoers maintained their positions on the Board of Managers of EFO LSI including St. Louis, Grammen, Esping and Horne and continued to maintain their interests in LSI Holdco.

152. Upon information and belief, EFO LSI's decision to transfer its interests to LSI Holdco was made by individuals from the same group that made the decision to transfer LSI's interests to LSI Holdco, namely, St. Louis, Grammen, Esping and Horne among others including those friends and family that they controlled.

153. This corporate restructuring added a layer of corporate fiction between LSI and the interest holders receiving distributions. LSI profits was then rolled up to LSI Holdco and then distributed these amounts to LSI Holdco's members, but, as noted above, because of the timing of its formation, LSI Holdco was not a party to the *Bailey* Litigation.

154. The *Bailey* Defendants hoped this restructuring would allow them to extract the profits undetected given it did not exist until after the initial judgment. The Board of Managers, which included Horne, St. Louis, Grammen and Esping, continued to exercise dominion and control over LSI and other LSI subsidiaries, the day-to-day affairs and operations, and their respective property. Notwithstanding the additional corporate layer, upon information and belief, nothing changed in the operations of LSI's business or its ownership other than that the wrongdoers

saw the writing on the wall given the trial court's extensive factual findings that established their illegal conduct that would ultimately give rise to a tremendous damages award.

155. At the time that EFO LSI restructured its interests and in keeping with their desire to stymie the *Bailey* Plaintiffs' collection efforts, *Bailey* Defendant EFO Holdings filed for bankruptcy in December 2012, barely two months after the Trial Order was issued. Upon information and belief, this restructuring was yet another effort to impede the Bailey Plaintiffs ability to collect on any judgment. Notably, that Texas bankruptcy court preserved all claims for Plaintiffs in the original *Bailey* Litigation and this case.

II. LSI DEVELOPED A MULTI-MILLION DOLLAR SPINAL SURGERY OPERATION AND EFO LSI AND ITS MEMBERS REAPED THE BENEFIT FOR YEARS.

156. After the trial court issued the Trial Order in October of 2012, the *Bailey* Litigation was essentially stayed during the pendency of two separate appeals, with only a brief period where jurisdiction at the trial court level after the first appellate ruling in February of 2016, while the case was remanded and an amended judgment was entered.

157. On remand after the first appeal, other than awarding punitive damages, the trial court issued the same compensatory damages award. Because jurisdiction in the trial court did not exist during the various appeals, Plaintiffs could not conduct discovery as it pertains to the assets of the *Bailey* Defendants, keeping Plaintiffs in the dark until July of 2019, after the entry of the July 3, 2019 final judgment when the cloak was finally removed and jurisdiction returned to the trial court.

158. By all accounts and based upon publicly available information during the various appeals, LSI was a profitable and growing multi-million-dollar operation, raking in hundreds of millions of dollars during the pendency of the *Bailey* Litigation.

159. LSI opened its first surgical facility in Tampa, Florida in 2005, after soliciting away Spinal's key employees, stealing its business plan and otherwise conspiring to put Spinal out of business. The trial court, based upon the information available at the time the case was tried in 2010 and 2011, confirmed LSI's financial success: Trial Order at 68, ¶¶ 403-08.

- In 2005, LSI's revenue was between approximately $3-12 million; in 2006 revenue was $26-$29 million in 2007, LSI's revenue was $64-$65 million in 2008, revenue was $91 million and LSI's revenues for 2009 were projected to be $103 million. Projected revenue for 2010 was $110 million.

- In 2006, LSI's net income was $12-$12.3 million; in 2007, LSI's net income was $30-$31 million; in 2008, LSI's net income was $24-$28.5 million; for 2009, LSI's net income was estimated at $15-27 million.

- LSI'S gross revenues: 2005: $3 million; 2006: $26 million; 2007: $64 million; 2008: $90 million; 2009: $100 million. Projected revenue for 2010 was $110 million. Net profit in 2006 was $12 million; 2007 was $30 million; 2008 was $24 million and 2009 was $15 million.

- LSI's patient totals were as follows: 2005 - 368 patients; 2006 - 1,429; 2007 - 3,072; 2008 – 4,156 with a projection for 2009 of 5,000 patients.

- The approximate number of surgeries performed by LSI, by year, are as follows: 2005 - 60 surgeries; 2006 - 1,400 surgeries; 2007 - 2,200 surgeries; 2008 - 3,400 surgeries; 2009 - 4,100 surgeries; and 2010 - 4,600 surgeries projected.

- And the independent valuations performed of LSI showed incredible financial success:

- The J.P. Morgan Chase valuation document was "created by the management team of Laser Spine Institute, LLC" in 2008. The estimated value of the company based on projections was $320 million.

- Sometime after July 31, 2009, Goldman Sach's valued LSI at between $248 million and $428 million.

- On December 10, 2009, Summit Partners valued LSI at $172 million enterprise value, $476 million equity value, and value to shareholders of $550 million.

- LSI stock has been purchased at various times, giving LSI an enterprise value of $100 million. A recent stock purchase by Mr. Horne was based upon a valuation of LSI of $100 million. Within that same time period, Mr. Horne and Mr. Grammen agreed that the valuation of LSI was $100 million.

160. The trial court's factual findings regarding revenues and profits were based on LSI's own financial data produced in the litigation, admitted into evidence and not disputed by the *Bailey* Defendants at trial. After the Second DCA issued its opinion on December 28, 2019, on the second remand, the trial court awarded Spinal and Medical the disgorgement award of $264 million plus prejudgment interest, as well as $6.8 million to Spine.

161. Plaintiffs now understand that while the case was on appeal the gross revenues for LSI, and therefore LSI Holdco, continued to increase year over year to over $268 million per annum in 2014, with a net income that year of over $71 million. Even though a Financial Statement of LSI Holdco shows losses in net income from 2015-2017, it shows continued huge gross revenues (2015 gross revenue was even $17 million more than 2014, and if the gross revenue rate through the first 2/3 of 2017 continued throughout the rest of that year, the gross revenue for 2017

would have been approximately $322.5 million) and is the evidence of the looting and denuding of these companies drain every last bit of value out of the company so that there would be nothing left for Plaintiffs when they ultimately received a final judgment consistent with the evidence, the applicable law and the findings in the Trial Order. *See* Table below (data taken from that Financial Statement).

162. In 2015-2016, LSI spent $56 million on a 176,000-square-foot headquarters in Tampa, to accommodate 25% more patients. Plaintiffs had no idea prior to 2019 the financial situation at the company was other than what was publicly available.

163. Despite the millions of dollars in revenues and profits, LSI abruptly closed its doors and fired hundreds of employees without warning at the end of February 2019, just two months after the Second DCA issued its appellate opinion in the *Bailey* Litigation. While that was a surprise to Plaintiffs, it was likely not to the *Bailey* Defendants, who were well aware that they were systematically fleecing LSI of its enterprise value and using those amounts (amounts needed for operating capital) to pay themselves and the other investors.

164. Indeed, as Plaintiffs learned afterwards, while the *Bailey* Litigation was winding its way through the judicial system, the members/owners of LSI received tens of millions of dollars in distributions from LSI, including the largest interest holder, EFO LSI.

165. From its inception, EFO LSI—whose partners were originally comprised of only the individuals that committed the wrongful acts in the first instance—had been reaping the profits

of its wrongdoing through its interest in LSI. EFO LSI's initial operating agreement indicates that it was to receive a 65% interest in LSI, although at later points it may have sold some its interests.

166. Nevertheless, EFO LSI's interest in LSI and later in LSI Holdco, translated into nearly a $150 million of distributions to its partners. Upon information and belief, the charts below provide a year-by-year break down of EFO's LSI's yearly distributions directly from LSI and/or LSI Hold Co.:

2006	**2007**	**2008**	**2009**	**2010**
$6,812,614	$12,952,568	$22,447,811	$4,119,643	$6,819,394
2011	**2012**	**2013**	**2014**	**2015**
$3,271,659	$5,582,768	$11,708,195	$16,068,316	$45,040,473

167. Over the course of LSI's existence, EFO LSI pocketed over $130,000,000, purely in distributions from LSI. This amount does not include any salaries or bonuses paid to any of its partners including those paid to St. Louis, Horne or anyone else. By example, in 2009, Horne earned more than $1 million dollars a year in compensation and bonuses.

168. At the time of these distributions, taking into account the true assets and liabilities of LSI at fair value, the *Bailey* Defendants were excising all of the working capital such that LSI was effectively insolvent.

169. The chart below provides a year by year breakdown of LSI (and later LSI Holdco's) yearly distributions to its members, nearly enough to satisfy the final judgment:

2006	2007	2008	2009	2010
$9,266,229	$28,697,503	$47,894,179	$8,236,445	$14,871,803
2011	**2012**	**2013**	**2014**	**2015**
$7,328,396	$13,247,289	$28,153,481	$38,902,232	$118,973,944

170. Between 2006-2014, LSI distributed almost $200 million to LSI and later LSI Holdco's members—many of whom are the same individuals controlling EFO LSI. Upon information and belief, in total $315,571,501 was distributed to LSI members and subsequent transferees (i.e., EFO LSI and its members) between 2006 and 2015.

171. This is simply the profits distributed, not the "exorbitant salaries and bonuses to [officers and] employees while taking no action [to] address the company's debt."[7] Horne, St. Louis and others were included in those not simply receiving distributions but also receiving significant compensation as employees.

172. The distributions to some of the individual *Bailey* Defendants and family members translated to many millions of dollars. For example, in addition to his interest in EFO LSI, Defendant St. Louis individually received over $44 million in distributions directly from LSI and later LSI Holdco, but separately also received additional amounts in distributions paid directly or through family members. These amounts did not include his substantial salary and any bonuses he received while employed by the company as an officer and as a surgeon at LSI, and the salary

[7] https://www.tampabay.com/health/debt-lawsuits-big-spending-led-to-the-death-of-laser-spine-institute-20190722/

and bonuses paid to his family members that obtained employment at LSI. This corporate graft was not limited to St. Louis as the family members of other *Bailey* Defendants were also on the corporate gravy train.

173. To illustrate, Defendant St. Louis' now ex-wife, Defendant Jill Diane St. Louis received over $3 million in distributions directly from LSI and/or LSI Holdco and then another $4.7 million through her interest in EFO LSI, so nearly $8 million dollars individually was paid to her. This also does not include the amounts Defendant St. Louis and his wife received from sales of shares of the interests in LSI over time or loans they received from LSI. And his namesake son, Jimmy, upon information and belief, was also receiving salary, benefits, bonuses and other compensation from the company.

174. Similarly, Defendant Horne, through a series of companies owned or controlled by him, including Horne Management and WH, LLC, collected more than $23 million, above and beyond his distributions from EFO LSI. His son too was receiving salary and other benefits from the company.

175. EFO LSI also improperly transferred millions of dollars of capital contributions back to its members in 2015 through a recapitalization event thereby guaranteeing insolvency. Before and after the recapitalization event, the *Bailey* Defendants were aware that there was a substantial likelihood that the appellate court would issue an opinion that reversed the trial court's damages award given that Plaintiffs' damages went undisputed at trial.

176. Thus, while the *Bailey* Litigation was ongoing, EFO LSI continued to take for themselves the gains that belonged to Plaintiffs—who received their initial entitlement to disgorgement damages in October of 2012.

177. By the time the Plaintiffs obtained the Second Amended Final Judgment on July 3, 2019, EFO LSI had been quietly disbursing more than $130 million to its interest holders, leaving EFO LSI insolvent and unable to pay the Plaintiffs. Or so it claims.

178. This too was a calculated decision, one EFO LSI had been planning for from the start when the litigation was commenced.

III. LSI AND EFO LSI LOOT THE COMPANIES OF EVERY DOLLAR TO PREVENT CREDITORS FROM RECOVERING

A. LSI Reorganized to be Held in LSI Holdco. and EFO LSI Transferred its interests in LSI to LSI Holdco.

179. Despite the millions flowing out of LSI and EFO LSI for years, the *Bailey* Defendants' greed could not be quelled.

180. The directors and officers of LSI and EFO LSI systematically drained every last dollar from the companies, lining their pockets to the greatest extent possible, and making sure that there was nothing available from which the *Bailey* Plaintiffs could collect.

181. As described above, part of *Bailey* Defendants' plan was to create the legal fiction of LSI Holdco and to transfer EFO LSI's interests to LSI Holdco. Another part of the plan was to extract every dollar from LSI (and LSI Holdco) and EFO LSI, leaving each entity insolvent. When EFO LSI had no cash on hand to extract, EFO LSI and LSI Holdco worked together (through the

same group of individuals) to extract any remaining value in LSI Holdco to be distributed to its direct and indirect members through a recapitalization issued and afforded by a $150 million loan from Texas Capital Bank and a consortium of other banks.

B. LSI Holdco and EFO LSI Decide to Enter into a Credit Agreement with Texas Capital Bank for $150 Million.

182. Upon information and belief, LSI internally acknowledged that it was experiencing serious deficiencies in, and failures of, internal financial controls and accounting procedures during and after 2015. This of course would not be surprising in and of itself after LSI had distributed more than $200 million by 2014. Essentially, LSI was distributing any profits as they were made.

183. This practice of shelling out the profits put LSI in a precarious financial position. As Plaintiffs learned during post-judgment discovery, LSI Holdco wrote-down approximately $34 million of accounts receivable for fiscal year 2015 and was forced to establish a reserve for bad debt of approximately $22.5 million for fiscal year 2015. These write downs and reserves required LSI Hold co to restate its financial results for fiscal year 2015.

184. Specifically, the revenue for 2015 was reduced from $322 million to $263.5 million and its EBITDA was reduced from $74.6 million to $16.1 million for the twelve-month period ending December 31, 2015. Indeed, after obtaining the funding for the recapitalization, LSI Holdco thereafter failed to meet its debt service going forward requiring that bank to amend its loan agreements more than once.

185. LSI Holdco, through the *Bailey* Defendants and others, later admitted that it had a "dire need of immediate liquidity" since 2015, and that it was facing serious financial issues.

186. According to an internal e-mail from one of the members of the Board of Managers to several of the other members of the Board of Managers in December 2015, the "*Board decided that our company was too special to sell. Because several members of the Board wanted to 'take some money off the table' we decided to put some debt on the company through a dividend recap instead of selling a piece of the business*."

187. Despite the existing and impending financial issues facing LSI Holdco, about which the Defendants knew or should have known, LSI Holdco approached Texas Capital Bank, their then existing senior secured lender, to borrow a substantial amount of additional money not to bolster the company's operating capital, but, rather, to make distribution payments to the owners/members of LSI Holdco.

188. On June 23, 2014 the Board of Managers of LSI Holdco held an "Emergency Meeting." Present at the meeting in person or telephonically were: Horne (Chairman and representing Horne Management), Esping, Robert Basham, Grammen, Chris Sullivan, Edward De Bartolo, Ray Monteleone (Secretary), James Palermo, Dotty Bollinger (COO), Mark Andrzejewski, Jamie Adams, Mark Marriage, Briley Cienkosz and Josh Helms.

189. Among other topics, on the agenda for this meeting was the discussion "New Senior Debt Facility (For Debt Dividend Recap & Growth Capital)." Grammen led the discussion on this topic. Edward De Bartolo made a motion, seconded by Chris Sullivan, to approve management

pursuing a new senior debt facility with a limit of $270 million, and a recap up to $220 million. The motion authorized "management to execute all necessary documents to facilitate the closure on the new debt facility." The Board passed the motion unanimously.

190. Through this dividend recapitalization loan among certain LSI Holdco controlled entities and Texas Capital Bank, as the leader of a consortium of banks, the Board of Managers leveraged the assets of LSI Holdco and its subsidiaries for their own personal advantage and essentially gutting LSI Holdco and its subsidiaries (and as a result EFO LSI).

191. Thereafter, on or about July 2, 2015, the Defendants and other members of the Board of Managers caused certain of the LSI Holdco entities—namely, LSI, LSI Management, Laser Spine Institute Consulting, LLC and Medical Care Management Services, LLC—to enter into a $150 million credit agreement with Texas Capital Bank. The obligations under the credit agreement were guaranteed by LSI Holdco and the remainder of the LSI entities.

192. In connection with the Credit Agreement, LSI (and other LSI entities) agreed, among other things, to maintain: (a) certain financial covenants; (b) certain cash balances; and (c) its primary depository, purchasing and treasury services with Texas Capital Bank.

193. Through their desire to "take money off the table" and without regard to the impact on the business, the Board of Managers caused substantially all of the Companies' assets to be pledged to Texas Capital Bank to secure and serve as collateral for the credit agreement. The bulk of the proceeds from the credit agreement were deposited by Texas Capital Bank into the bank account of LSI Management. EFO LSI was then distributed its pro rata share.

194. Specifically, despite facing existing and impending financial issues, the Board of Managers immediately authorized and ratified an amount equal to $110,473,942 of the loan proceeds to be distributed; at the same time, it authorized and ratified the transfer of such proceeds for the direct or indirect benefit of EFO LSI and its members, the other members of the Board of Managers.

195. The Board of Managers, which included Horne, Grammen, St. Louis and Esping, did this despite being keenly aware that the company needed working capital and that the *Bailey* Litigation (then on appeal) would likely result in a significant damages award being issued in Plaintiffs' favor.

196. The Board of Managers took this action in July of 2016 knowing that LSI and LSI Holdco faced growing competition and declining medical reimbursements. This information was likewise known to EFO LSI, Grammen, Esping, Horne and St. Louis.

197. As a direct result of these distributions, each of the LSI entities and EFO LSI became insolvent. All of this information was unavailable to Plaintiffs, however, only learning of the corporate fleecing after they obtained a final judgment in July of 2019.

C. LSI and its Subsidiaries Default on the Loan

198. Predictably, the financial viability of LSI and the other LSI Entities and EFO LSI deteriorated rapidly thereafter, as shortly thereafter, none of the entities were able to meet their financial obligations—including LSI's obligations under the credit agreement with the Texas Capital Bank consortium.

199. Barely one year later, by at least as early as the middle of 2016—a year after over $110 million was distributed to its members—LSI defaulted under the credit agreement, requiring the credit agreement to be amended and the lender to waive LSI's defaults. On May 26, 2016 and June 9, 2016, Texas Capital Bank issued notices of default to LSI. These defaults continued thereafter with regularity and LSI simply continued to kick the can down the road as long as it could.

200. In addition, in June 2016, the Companies' deteriorating financial condition caused LSI to lay off 70 employees, which was then about 6% of its workforce.

201. On November 18, 2016, LSI entered into a Limited Waiver and First Amendment to Dividend Loan with Texas Capital Bank ("First Amendment").

202. Pursuant to the terms of the First Amendment, Texas Capital Bank listed a total of twenty (20) different defaults that had occurred and were continuing under the credit agreement, which defaults Texas Capital Bank agreed to waive pursuant to certain terms and conditions contained therein.

203. Despite the First Amendment, the financial condition continued to worsen and deteriorate. In fact, in 2016, LSI failed to make approximately $7.7 million in payments due to the landlord of the Tampa facility.

204. Less than one year after the First Amendment, LSI was again in default of the credit agreement. Consequently, on September 29, 2017, the LSI entities and Texas Capital Bank entered into a Limited Waiver and Second Amendment, which listed seven (7) additional defaults under

the credit agreement ("Second Amendment"). Pursuant to its the terms, Texas Capital Bank agreed to waive the additional defaults on the conditions contained therein.

205. From and after 2015, the Defendants continued to mismanage LSI's operations and finances, causing further financial deterioration and driving LSI and its entities deeper into insolvency. As EFO LSI was managed by many of the same individuals as those controlling LSI Holdco and its subsidiaries, EFO LSI and its members knew or should have known of the deteriorating financial condition. Upon information and belief, EFO LSI and LSI Holdco worked in concert to ensure this result.

206. For example, despite these known financial challenges, in 2015-2016, LSI greatly increased their fixed expenses by adding 3 operational facilities and a multimillion-dollar buildout of its corporate headquarters in Tampa. EFO LSI as LSI's largest interest holder was well aware of the financial challenges as well as the pending *Bailey* appeal.

207. Further as the general partner of EFO LSI, Cypress GP, LLC is owned/managed by the same individuals on the Board of Managers of LSI (i.e., Esping and Grammen), EFO LSI was well aware of and directly involved in LSI's deteriorating financial condition and decision making process.

208. Defendants' plan to loot LSI is evidenced in the management of the company and the continued desire to insulate themselves from liability in the *Bailey* Litigation. By example, in 2014, to extract more liquidity for its interest holders, LSI implemented a self-insurance programs for employees' health insurance and malpractice insurance rather than utilizing traditional

outsourcing that had historically been employed. Looking for ways to stop hemorrhaging cash—having chosen to instead take for themselves the infusion of capital—they chose instead to expose LSI employees to the possibility that necessary coverage for medical care would not be available. Indeed, after LSI became insolvent, it was unable to cover their self-insured retention amounts or pay medical bills, leaving those individuals without any health or malpractice insurance without coverage.

209. LSI's CEO in 2019 claimed that it shuttered because "LSI was unable to secure the financing to meet the banks' requirements. Thus, we had no choice other than to close our doors that afternoon. We deeply regret that, as a result, we were forced to release our employees that afternoon…"[8]

210. This, of course, completely ignores the fact that the closure was the result of greed and the desire to stay ahead of the *Bailey* Plaintiffs, so that there would be no assets from which they would collect. This avarice culminated in the $150 million dividend recap, issued even though Grammen, Esping, Horne and St. Louis each knew that the company would not have the financial ability to repay the loan in light of the judgment. The *Bailey* Defendants—and others including Grammen, Esping, Horne and St. Louis—knew that LSI would likely fail and, importantly, that it would not have the liquidity to pay the amounts owed to Plaintiffs (*Joe Samuel Bailey v. James S. Louis, D.O., et. al*., Case No. 06-08498).

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8 https://www.bizjournals.com/tampabay/news/2019/03/07/laser-spine-institute-ceo-shares-details-on-why.html

D. EFO LSI and the Defendants knew these transfers of the dividend recap were particularly problematic

1. LSI and EFO LSI Obtained Covenants Not to Sue from Texas Capital Bank in Exchange for Releases from Liability

211. Looking to avoid detection, LSI (and other LSI entities) and EFO LSI sought to protect and insulate themselves from any claims related thereto in at least two ways. First, EFO LSI and others sought releases from Texas Capital Bank in connection with claims that the bank might have against EFO LSI and other distributees in respect of the dividend loan. Second, EFO LSI and others sought to hide and cover-up the patently unfair and unreasonable manner in which they controlled the affairs of LSI by manipulating the corporate structure of LSI.

212. In November of 2016, EFO LSI and the members of the Board of Managers continued their pattern and practice for their own benefit by using their control over LSI to protect and insulate themselves. Specifically, knowing of LSI's repeated defaults under the "recap" loan and faced with mounting evidence of potentially fraudulent transfers and liability of EFO LSI, and members of the Board of Managers' liability for their actions or omissions, EFO LSI and members of the Board of Managers attempted to inoculate themselves from liability and prevent any financial recovery to the *Bailey* Plaintiffs.

213. On November 18, 2016, the members of LSI, LSI Hold Co., including EFO LSI entered into an agreement to release Texas Capital Bank from any claims arising out of the credit agreement. Upon information and belief, at the time these documents were executed, the interest holders of LSI pressed hard to obtain releases for themselves in an effort to avoid exposure when

their fraudulent conduct was uncovered. Although Texas Capital Bank would not agree to a full general release, leveraging their relationship with the bank, they were able to secure a covenant not to sue by the bank to all interest holders (including EFO LSI) for any claim Texas Capital Bank may have against them relating to the dividend loan.

214. The signatories to this agreement included the LSI investors, namely: SLG LSI Investment, LLC, LSI Holdco, EFO LSI, Ltd., Horne Management Inc., MMPerry Holdings, LLP, DBF-LSI, CTS Equities, LP, RJRPT, Ltd, RDB Equities, LP, WH, LLC, Horne Management, Inc.St. Louis, and Grammen.

215. Upon information and belief, the EFO Defendants knew of the potential for a fraudulent transfer suit and so engaged a bankruptcy lawyer who advised on the fraudulent transfer risks. Additionally, upon information and belief, they informed Texas Capital Bank of the potential risk.

2. LSI Holdco Amended its Operating Agreements in an Effort to Limit Liability.

216. On the same day as EFO LSI agreed to release Texas Capital Bank, EFO LSI and LSI Hold Co. together made the decision to limit liability despite their illegal conduct. Upon information and belief, the Board, including many of the same individuals holding majority interests and making controlling decisions for EFO LSI, e.g., Horne, Esping, and Grammen, together made the decision to amend LSI Holdco's operating agreement in an attempt to remove LSI Holdco's fiduciary obligations.

217. Before November of 2016, LSI Holdco's operating agreements contained iterations of the following provisions concerning "Liability of Members of the Board of Managers":

> 3.12 Liability of Members of the Board of Managers.
>
> **(a) Notwithstanding anything to the contrary herein, this Section 3.12 shall not affect the liability** or duties of any officer or member of the Board of Managers (or Persons controlling any member of the Board of Managers) of the Company.

See, e.g., *Limited Liability Company Agreement of LSI Holdco LLC*, dated effective as of January 1, 2013 (emphasis added); *Amended and Restated Limited Liability Company Agreement of LSI Holdco LLC*, dated effective as of January 1, 2015 (emphasis added).

218. By its express terms, the Operating Agreement did not "affect the liability or duties of" the Defendants and other members of the Board of Managers of LSI Holdco (among others) "[n]otwithstanding anything to the contrary."

219. On November 18, 2016, the Defendants through the participation of EFO LSI, among others, caused certain amendments to be made to the governing corporate documents of LSI Holdco attempting, among things, to specifically exonerate and release themselves from any liability related to the distributions that had been wrongfully made.

220. On November 18, 2016, the Defendant and other members of LSI Holdco executed LSI Holdco's *Second Amended and Restated Limited Liability Company Agreement.* EFO LSI and the members of the Board of Managers of Holdco manipulated their control of LSI Holdco to absolve themselves from liability in this amendment by replacing the above- referenced "Liability of Members of the Board of Managers" provision with the following:

> **3.6 Liability of Members of the Board of Managers.**
> a. To the maximum extent permitted by applicable law, all fiduciary duties of any Manager to the Company or any Member are hereby eliminated. Without limiting the foregoing, each Member hereby waives any claim or cause of action against the present and former Managers, or any of their respective Affiliates, employees, agents, and representatives, for any breach of any fiduciary duty to the Company or its Members by any such Person, including as may result from a conflict of interest between the Company or any of its Subsidiaries and such Person. Subject to compliance with the express terms of this Agreement, a Manager shall not be obligated to recommend or take any action as a Manager that prefers the interests of the Company or any of its Subsidiaries or the other Members over the interests of such Manager or its Affiliates, heirs, successors, assigns, agents or representatives and the Company, and the Members hereby waive all fiduciary duties, if any, of the Board of Managers to the Company and the Members, including in the event of any such conflict of interest. Notwithstanding the foregoing, nothing herein shall eliminate the implied duties of any Manager or Member of good faith and fair dealing under Delaware law.

(emphasis added).

221. This Revised Liability and Release Provision purports to grant, without any consideration whatsoever, members of EFO LSI and the other members of the Board of Managers waivers (through the elimination of fiduciary duties) for all claims or causes of action for any breach of any fiduciary duty to LSI Holdco, including prior breaches of fiduciary duty in connection with the distributions and conflicts of interest between LSI Holdco and EFO LSI.

222. These fiduciaries of LSI Holdco (Grammen, Esping, Horne) sought this provision to leave LSI Holdco (and subsequently EFO LSI) with nothing but staggering debt. Indeed, through the foregoing language—which was added after the credit agreement was executed, the distributions made, and defaults thereunder—the Defendants and the other members of the Board of Managers attempted to: (A) Eliminate all fiduciary duties they owed to LSI Holdco; (B) Obtain

from all other members of LSI Holdco waivers of any claims or causes of action against "the present and former Managers" for any breach of any fiduciary duty to LSI Holdco or its members, including as may result from a conflict of interest; (C) Receive *carte blanche* protection to prefer their own interests over the interests of LSI Holdco and other members; (D) Obtain *ex post facto* ratification, approval, and consent to "all actions taken on or prior to the date [of the Second Restated LSI Holdco LLC Agreement] for their conduct in conjunction with the Dividend Distribution, the Dividend Loan, and other related transactions; and (E) Obtain *ex post facto* releases LSI from Holdco members of claims or causes of action for any breach of express or implied duty (including any breach of any fiduciary duty) in connection with those transactions.

223. The intent and design of the Release Agreement and these foregoing changes to LSI Holdco's operating agreements was clear: the Defendants and the other members of the Board of Managers (A) looted LSI, Holdco, and the Companies of their value through the Dividend Loan, Dividend Distributions, and related transactions; (B) realized that they were exposed to tremendous liability for this corporate looting; and (C) abused their control and dominion over LSI, LSI Holdco, and the LSI companies (and their collective assets) by modifying the corporate governance documents in order to try to absolve themselves from existing liabilities.

E. LSI and EFO LSI did not Seek Any Legitimate Assistance in Trying to Restructure the Company

224. Despite being insolvent, and in serious default on the credit agreement from and after mid-2016, LSI and EFO LSI failed to engage restructuring professionals to assist them in

evaluating restructuring alternatives that should have been investigated and pursued as far back as 2016. They had, however, consulted with a bankruptcy lawyer about fraudulent transfers.

225. Rather, LSI did not engage with restructuring counsel until May 2018, long after the company could be salvaged and after the interest holders, including the wrong doers, had taken tens of millions of dollars "off the table" and taken steps to try to inoculate themselves from liability.

226. Even after engaging such counsel at the eleventh hour, LSI then failed to institute any formal bankruptcy or insolvency proceedings for nearly a year after, all the while LSI continued to incur debts, which in turn further deepened and increased their insolvency. The organization failed to take timely steps to address changing market conditions, the distributions and years of draining profits from the company without regarding the working capitalization necessary to ensure the long term viability and otherwise failing to timely consider restructuring options, all of which resulted in LSI's demise.

227. The demise did not impact EFO LSI or the other distributes, however, because they used the time to ensure that they quenched their insatiable thirst for cash, paying themselves several hundred million dollars and exacting for themselves various mechanisms to try to avoid liability when the house came crashing down.

228. All conditions precedent to the filing of this action have been performed, extinguished or were otherwise waived.

229. Plaintiffs have been forced to retain the undersigned counsel and are required to pay the reasonable attorneys' fees and costs.

COUNT I

(Against all Defendants)

AVOIDANCE AND RECOVERY OF THE TRANSFERS UNDER FLA. STAT. §§726.105(1)(b), 726.108 AND 726.109

230. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

231. The Plaintiffs sue the Defendants to avoid and recover the Transfers pursuant to Chapter 726, *et seq.,* Florida Statute.

232. EFO LSI distributed millions of dollars to the Defendants (the "**Transfers**") and did not receive any value in return. A chart of some the Transfers is attached as Exhibit A and incorporated herein by reference. Upon information and belief, the Defendants also received additional unlawful distributions.

233. The Transfers constitute transfers of EFO LSI's property to and for the benefit of the Defendants.

234. Pursuant to Chapter 726, the Plaintiffs may avoid any transfer of an interest of EFO LSI in property or any obligation incurred by EFO LSI that is voidable under applicable law by a creditor holding an unsecured claim.

235. Chapter 726 provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation: without

receiving reasonably equivalent value in exchange for the transfer or obligation, and the debtor: (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

236. EFO LSI was balance sheet insolvent because it owed the Plaintiffs upon the first tortious act. The assets of EFO LSI were at all times less than the amount owing Plaintiffs.

237. Alternatively, the transfer rendered EFO LSI insolvent because the transfer was financed and the incurrence of the indebtedness, coupled with the existing liability to Plaintiffs and others easily outstripped the assets of EFO LSI.

238. Alternatively, the transfer left EFO LSI with an unreasonably small amount of capital to operate because EFO LSI was, after the judgment, unable to operate and forced into liquidation. Had it been properly capitalized, EFO LSI may have been able to operate.

239. EFO LSI received less than reasonably equivalent value in exchange for the Transfers because EFO LSI received nothing in exchange for the Transfers. The Transfers were dividends or insider payments to insiders with no legitimate right to payment as creditors and thus provided no value to LSI or its creditors.

240. At the time of the Transfers, EFO LSI (A) was engaged in a business or transaction, or was about to engage in a business or a transaction, for which any assets or property remaining with EFO LSI after the Transfers were made was unreasonably small in relation to the business or

transaction, or (B) intended to incur, or believed or reasonably should have believed that it was incurring, debts beyond its ability to pay them as they became due.

241. As a result of the transfers, Plaintiffs, as unsecured creditors of EFO LSI, have been damaged and, pursuant to Chapter 726, Plaintiffs may avoid the Transfers in respect of the Defendants.

242. The Defendants were either the first or subsequent transferee of the Transfers and were otherwise beneficiaries of the Transfers as described herein, or for whose benefit the Transfers were made and, as a result, the Plaintiffs are entitled to avoid the Transfers as voidable in respect of the Defendants.

WHEREFORE, the Plaintiffs demand judgment against Defendant: (i) avoiding the Transfers in respect of the Defendants; and (ii) such other and further legal and equitable relief as the Court deems just and proper.

COUNT II

(Against all Defendants)

AVOIDANCE AND RECOVERY OF THE TRANSFERS UNDER FLA. STAT. §§726.106(1), 726.108 AND 726.109

243. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

244. The Plaintiffs sue the Defendants to avoid and recover the Transfers pursuant to Chapter 726, *et seq.,* Florida Statute.

245. EFO LSI distributed millions of dollars to the Defendants (the "**Transfers**") and did not receive any value in return.

246. The Transfers constitute transfers of EFO LSI's property to and for the benefit of the Defendants.

247. Pursuant to Chapter 726, the Plaintiffs may avoid any transfer of an interest of EFO LSI in property or any obligation incurred by EFO LSI that is voidable under applicable law by a creditor holding an unsecured claim.

248. Chapter 726 provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation without receiving reasonably equivalent in value exchange for transfer or obligation and the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation.

249. EFO LSI was balance sheet insolvent because it owed the Plaintiffs upon the first tortious act. The assets of EFO LSI were at all times less than the amount owing Plaintiffs.

250. Alternatively, the transfer rendered EFO LSI insolvent because the transfer was financed and the incurrence of the indebtedness, coupled with the existing liability to Plaintiffs and others easily outstripped the assets of EFO LSI.

251. Alternatively, the transfer left EFO LSI with an unreasonably small amount of capital to operate because EFO LSI was, after the judgment, unable to operate and forced into liquidation. Had it been properly capitalized, EFO LSI may have been able to operate.

252. EFO LSI received less than reasonably equivalent value in exchange for the Transfers because EFO LSI received nothing in exchange for the Transfers. The Transfers were

dividends or insider payments to insiders with no legitimate right to payment as creditors and thus provided no value to LSI or its creditors.

253. As a result of the transfers, Plaintiffs, as unsecured creditors of EFO LSI, have been damaged and, pursuant to Chapter 726, Plaintiffs may avoid the Transfers in respect of the Defendants.

254. The Defendants were either the first or subsequent transferee of the Transfers and were otherwise beneficiaries of the Transfers as described herein, or for whose benefit the Transfers were made and, as a result, the Plaintiffs are entitled to avoid the Transfers as voidable in respect of the Defendants.

WHEREFORE, the Plaintiffs demand judgment against Defendant: (i) avoiding the Transfers in respect of the Defendants; and (ii) such other and further legal and equitable relief as the Court deems just and proper.

COUNT III

(Against all Defendants)

AVOIDANCE AND RECOVERY OF THE TRANSFERS UNDER FLA. STAT. §§726.105(1)(b), 726.108 AND 726.109

255. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

256. The Plaintiffs sue the Defendants to avoid the Transfers pursuant to Chapter 726, *et seq.,* Fla. Stat.

257. EFO LSI distributed over $100 million to the Defendants and returned their capital contributions for their benefit and did not receive any value in return. Therefore, these constitute transfers of an interest of EFO LSI in its property to and for the benefit of the Defendants.

258. Pursuant to Chapter 726, the Plaintiffs may avoid any transfer of an interest of EFO LSI in property or any obligation incurred by EFO LSI that is voidable under applicable law by a creditor holding an unsecured claim.

259. Chapter 726 provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud any creditor of the debtor.

260. The Transfers were made with the actual intent to hinder or delay its creditors. Specifically, the following badges of fraud are present indicating an actual intent to hinder creditors:

a. the transferors consulted with counsel on fraudulent transfer liability and were aware of the voidability of the transaction but did not disclose it to the judgment creditors;

b. the transfers were concealed and no discovery responses described the transfers;

c. a suit was pending that could result in a large judgment;

d. the transfer was to insiders, authorized by insiders, and in violation of corporate governance principles;

e. after the transfers, several persons involved subsequently attempted to shield, conceal or remove assets by acquiring homesteads, having insider liens placed on homesteads, and otherwise shielding the assets;

f. the transfers were timed suspiciously and appear to be based on the impending judgment and collection, not business reasons;

g. these assets transferred were essential business capital of the EFO LSI Defendants;

h. essentially all the value of the EFO LSI entity was transferred out to insiders; and

i. the transfer rendered the transferor insolvent (or was made while the transferor was insolvent) because the transferor pledged substantially all of its assets to make a payment to insiders when it already owed the Plaintiffs.

261. The Transfers were for the benefit of the Defendants.

262. Before the Transfers, there was a significant risk that a judgment would be entered in the *Bailey* Litigation disgorging EFO LSI's wrongful gains. The transfers reduced—and prevented the recovery of additional—available funds to satisfy that judgment, which hindered and delayed EFO LSI's creditors. In addition, the Transfers (including the return of capital contributions) reduced EFO LSI's assets and its ability to satisfy the judgment and other creditor claims.

263. At the time of the Transfers, EFO LSI had unsecured claims and was insolvent, had its insolvency deepened, or became insolvent as a result of the Transfers.

264. As a result of the Transfers, Plaintiffs have been damaged, and pursuant to Chapter 726, may avoid the Transfers with respect to the Defendants.

265. The Defendants are either a first or subsequent transferees of the Transfers, and were otherwise beneficiaries of the Transfers, for whose benefit the Transfers were made and, as a result, the Plaintiffs are entitled to avoid the Transfers as voidable with respect to the Defendants. Each of Esping, Grammen, and Horne were actively acting in concert with each other and EFO LSI to hide the LSI Holdco assets, conceal evidence of the improper transfer, and then act to paper over the duties they had breached.

WHEREFORE, the Plaintiffs demand judgment against Defendants: (i) avoiding the Transfers with respect to the Defendants; and (ii) such other and further legal and equitable relief as the Court deems just and proper.

COUNT IV

(against Defendant William Esping)

BREACH OF FIDUCIARY DUTY

266. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

267. As an officer, director, manager, member and/or control person of EFO LSI Defendant Esping and the *Bailey* Defendants owed duties to the creditors of the EFO LSI Defendants and *Bailey* Defendants. Those duties include a duty of loyalty and duty of care. Those duties expanded to include creditors of the entity when the entity became insolvent. As set forth above, the Plaintiffs became creditors when the first tortious act was committed.

268. Accordingly, Esping owed fiduciary duties to the Plaintiffs on or before November 2004. Yet, Esping then authorized the following self-interested transactions described above, including but not limited to the Transfers.

269. These transactions were not objectively fair to EFO LSI and damaged EFO LSI and the creditors of that entity for the following reasons:

a. The transactions resulted in less working capital being available for the entity and thus the entity was unable to operate properly and pay claims effectively;

b. The transactions resulted in reduced assets available to satisfy the claims of creditors and/or unreasonably reduced the working capital of EFO LSI;

c. The accounting for the transaction, especially for transactions incorrectly booked as intercompany receivables, decreased the creditworthiness, investment options and bankability of the entity and resulted in injury to the entity by interfering with future operations;

d. Eventually these breaches of duty caused EFO LSI to cease operations and fail to pay its creditors.

270. There was no disclosure of the transactions, and creditors were effectively prevented from discovering the transactions, because the judgment debtors (ESO LSI and the Bailey *Defendants*) did not supplement any discovery requests, despite obligations to do so under the law. The Plaintiffs could not have reasonably discovered the breaches of Esping earlier than May of 2019. The actions of Esping were concealed.

271. The injuries to EFO LSI are no less than the amount transferred from the entity, and likely more, as the improper self-interested transaction reduced the ability of the entity to

operate. Esping, Grammen, and Horne each worked in concert to hide the LSI Holdco assets, conceal the transfer that moved the assets, and then attempt to paper over their breaches of duty.

WHEREFORE, Plaintiffs demand an entry of judgment against Esping for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT V

(against Defendant Robert Grammen)

BREACH OF FIDUCIARY DUTY

272. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

273. As an officer, director, manager, member and/or control person of EFO LSI Defendant Grammen and the *Bailey* Defendants owed duties to the creditors of the EFO LSI Defendants and *Bailey* Defendants. Those duties include a duty of loyalty and duty of care. Those duties expanded to include creditors of the entity when the entity became insolvent. As set forth above, the Plaintiffs became creditors when the first tortious act was committed.

274. Accordingly, Grammen owed fiduciary duties to the Plaintiffs on or before November 2004. Yet, Grammen then authorized the self-interested transactions described above, including but not limited to the Transfers, the modifications of the Operating Agreement, the refusal to supplement discovery and active concealment of the Transfers and loan, the modifications to the Credit Agreement (also concealed) and the deliberate delay in filing the ABC Proceeding.

275. These transactions were not objectively fair to EFO LSI and damaged EFO LSI and the creditors of that entity for the following reasons:

a. The transactions resulted in less working capital being available for the entity and thus the entity was unable to operate properly and pay claims effectively;

b. The transactions resulted in reduced assets available to satisfy the claims of creditors;

c. The accounting for the transaction, especially for transactions incorrectly booked as intercompany receivables, decreased the creditworthiness, investment options and bankability of the entity and resulted in injury to the entity by interfering with future operations;

d. Eventually these breaches of duty caused EFO LSI to cease operations and fail to pay its creditors.

276. There was no disclosure of the transactions, and creditors were effectively prevented from discovering the transactions, because the judgment debtor (ESO LSI and the *Bailey* Defendants) did not supplement any discovery requests, despite obligations to do so. The Plaintiffs could not have reasonably discovered the breaches of Grammen earlier than May of 2019. The actions of Grammen were concealed. Additionally, several of the Bailey Defendants have refused to disclose their assets as required by an order of this Court, evidencing that the active concealment is continuing.

277. The injuries to EFO LSI are no less than the amount transferred from the entity, and likely more, as the improper self-interested transaction reduced the ability of the entity to operate.

WHEREFORE, Plaintiffs demand an entry of judgment against Grammen for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT VI

(against Defendant William Horne)

BREACH OF FIDUCIARY DUTY

278. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

279. As an officer, director, manager, member and/or control person of EFO LSI Defendant Horne and the *Bailey* Defendants owed duties to the creditors of the EFO LSI Defendants and *Bailey* Defendants. Those duties include a duty of loyalty and duty of care. Those duties expanded to include creditors of the entity when the entity became insolvent. As set forth above, the Plaintiffs became creditors when the first tortious act was committed.

280. Accordingly, Horne owed fiduciary duties to the Plaintiffs on or before November 2004. Yet, Horne then authorized the self-interested transactions described above, including but not limited to the Transfers, the modifications of the Operating Agreement, the refusal to supplement discovery and active concealment of the Transfers and loan, the modifications to the Credit Agreement (also concealed) and the deliberate delay in filing the ABC Proceeding.

281. These transactions were not objectively fair to EFO LSI and damaged EFO LSI and the creditors of that entity for the following reasons:

a. The transactions resulted in less working capital being available for the entity and thus the entity was unable to operate properly and pay claims effectively;

b. The transactions resulted in reduced assets available to satisfy the claims of creditors

c. The accounting for the transaction, especially for transactions incorrectly booked as intercompany receivables, decreased the creditworthiness, investment options and bankability of the entity and resulted in injury to the entity by interfering with future operations;

d. Eventually these breaches of duty caused EFO LSI to cease operations and fail to pay its creditors.

282. There was no disclosure of the transactions, and creditors were effectively prevented from discovering the transactions, because the judgment debtors (ESO LSI and the Bailey *Defendants*) did not supplement any discovery requests, despite obligations to do so under the law. The Plaintiffs could not have reasonably discovered the breaches of Horne earlier than May of 2019. The actions of Horne were concealed. Additionally, several of the Bailey *Defendants* have refused to disclose their assets as required by an order of this Court, evidencing that the active concealment is continuing.

283. The injuries to EFO LSI are no less than the amount transferred from the entity, and likely more, as the improper self-interested transaction reduced the ability of the entity to operate.

WHEREFORE, Plaintiffs demand an entry of judgment against Horne for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT VII

(against Defendant William Esping)

BREACH OF DUTY OF LOYALTY

284. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

285. As an officer, director, manager, member and/or control person of EFO LSI Defendant Esping and the *Bailey* Defendant owed duties to the creditors of the EFO LSI and the *Bailey* Defendants, including the duty of loyalty. Those duties expanded to include creditors of the entity when the entity became insolvent. As set forth above, the Plaintiffs became creditors when the first tortious act was committed.

286. Accordingly, Esping owed a duty of loyalty to the Plaintiffs on or before November 2004. Yet, Esping then authorized the following self-interested transactions described above, including but not limited to the Transfers, the modifications of the Operating Agreement, the refusal to supplement discovery and active concealment of the Transfers and loan, the modifications to the Credit Agreement (also concealed) and the deliberate delay in filing the ABC Proceeding.

287. These transactions were not objectively fair to EFO LSI and damaged EFO LSI and the creditors of that entity for the following reasons:

a. The transactions resulted in less working capital being available for the entity and thus the entity was unable to operate properly and pay claims effectively;

b. The transactions resulted in reduced assets available to satisfy the claims of creditors

c. The accounting for the transaction, especially for transactions incorrectly booked as intercompany receivables, decreased the creditworthiness, investment options and bankability of the entity and resulted in injury to the entity by interfering with future operations;

d. Eventually these breaches of duty caused EFO LSI to cease operations and fail to pay its creditors.

288. There was no disclosure of the transactions, and creditors were effectively prevented from discovering the transactions, because the judgment debtor (ESO LSI and the Bailey *Defendants*) did not supplement any discovery requests, despite obligations to do so. The Plaintiffs could not have reasonably discovered the breaches of Esping earlier than May of 2019. The actions of Esping were concealed. Additionally, several of the Bailey *Defendants* have refused to disclose their assets as required by an order of this Court, evidencing that the active concealment is continuing.

289. The injuries to EFO LSI are no less than the amount transferred from the entity, and likely more, as the improper self-interested transaction reduced the ability of the entity to operate.

WHEREFORE, Plaintiffs demand an entry of judgment against Esping for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT VIII

(against Defendant Robert Grammen)

BREACH OF DUTY OF LOYALTY

290. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

291. As an officer, director, manager, member and/or control person of EFO LSI Defendant Grammen and the *Bailey* Defendant owed duties to the creditors of the EFO LSI and the *Bailey* Defendants, including the duty of loyalty. Those duties expanded to include creditors of the entity when the entity became insolvent. As set forth above, the Plaintiffs became creditors when the first tortious act was committed.

292. Accordingly, Grammen owed a duty of loyalty to the Plaintiffs on or before November 2004. Yet, Grammen then authorized the following self-interested transactions described above, including but not limited to the Transfers, the modifications of the Operating Agreement, the refusal to supplement discovery and active concealment of the Transfers and loan, the modifications to the Credit Agreement (also concealed) and the deliberate delay in filing the ABC Proceeding.

293. These transactions were not objectively fair to EFO LSI and damaged EFO LSI and the creditors of that entity for the following reasons:

a. The transactions resulted in less working capital being available for the entity and thus the entity was unable to operate properly and pay claims effectively;

b. The transactions resulted in reduced assets available to satisfy the claims of creditors

c. The accounting for the transaction, especially for transactions incorrectly booked as intercompany receivables, decreased the creditworthiness, investment options and bankability of the entity and resulted in injury to the entity by interfering with future operations;

d. Eventually these breaches of duty caused EFO LSI to cease operations and fail to pay its creditors.

294. There was no disclosure of the transactions, and creditors were effectively prevented from discovering the transactions, because the judgment debtors (ESO LSI and the Bailey *Defendants*) did not supplement any discovery requests, despite obligations to do so. The Plaintiffs could not have reasonably discovered the breaches of Grammen earlier than May of 2019. The actions of Grammen were concealed. Additionally, several of the Bailey *Defendants* have refused to disclose their assets as required by an order of this Court, evidencing that the active concealment is continuing.

295. The injuries to EFO LSI are no less than the amount transferred from the entity, and likely more, as the improper self-interested transaction reduced the ability of the entity to operate.

WHEREFORE, Plaintiffs demand an entry of judgment against Grammen for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT IX

(against Defendant William Horne)

BREACH OF DUTY OF LOYALTY

296. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

297. As an officer, director, manager, member and/or control person of EFO LSI Defendant Horne and the *Bailey* Defendant owed duties to the creditors of the EFO LSI and the *Bailey* Defendants, including the duty of loyalty. Those duties expanded to include creditors of the entity when the entity became insolvent. As set forth above, the Plaintiffs became creditors when the first tortious act was committed.

298. Accordingly, Horne owed a duty of loyalty to the Plaintiffs on or before November 2005. Yet, Horne then authorized the following self-interested transactions described above, including but not limited to the Transfers, the modifications of the Operating Agreement, the refusal to supplement discovery and active concealment of the Transfers and loan, the modifications to the Credit Agreement (also concealed) and the deliberate delay in filing the ABC Proceeding.

299. These transactions were not objectively fair to EFO LSI and damaged EFO LSI and the creditors of that entity for the following reasons:

a. The transactions resulted in less working capital being available for the entity and thus the entity was unable to operate properly and pay claims effectively;

a. The transactions resulted in reduced assets available to satisfy the claims of creditors

b. The accounting for the transaction, especially for transactions incorrectly booked as intercompany receivables, decreased the creditworthiness, investment options and bankability of the entity and resulted in injury to the entity by interfering with future operations;

c. Eventually these breaches of duty caused EFO LSI to cease operations and fail to pay its creditors.

300. There was no disclosure of the transactions, and creditors were effectively prevented from discovering the transactions, because the judgment debtors (ESO LSI and the Bailey *Defendants*) did not supplement any discovery requests, despite obligations to do so. The Plaintiffs could not have reasonably discovered the breaches of Horne earlier than May of 2019. The actions of Horne were concealed. **Additionally, several of the Bailey *Defendants* have refused to disclose their assets as required by an order of this Court, evidencing that the active concealment is continuing.**

301. The injuries to EFO LSI are no less than the amount transferred from the entity, and likely more, as the improper self-interested transaction reduced the ability of the entity to operate.

WHEREFORE, Plaintiffs demand an entry of judgment against Horne for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT X
(against All Defendants)

CONSPIRACY TO COMMIT BREACH OF FIDUCIARY DUTY AND BREACH OF DUTY OF LOYALTY

302. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

303. As part of their efforts to collect on the underlying judgment, Plaintiffs acquired at auction all causes of action held by each of the EFO Defendants against any of their owners, officers, directors, managers, partners for any breach of fiduciary duty. This cause of action is brought by Plaintiffs both in their individual capacity and on behalf of the EFO Defendants as so acquired.

304. Esping, Grammen, Wilson, Krupala and Horne were officers, directors, managers and otherwise agents of the *Bailey* Defendants, and as such had fiduciary duties and duties of loyalty and care to EFO LSI. These duties included duties to avoid intentional misconduct or knowing violations of the law that could result in liability for the business entities that they were involved with. In breach of these duties, Esping, Grammen, Wilson, Krupala and Horne caused the EFO Defendants to violate the FDUPTA, tortiously interfere with Plaintiffs' business relationships, defamation, and misappropriation of confidential trades secrets, resulting in damages being assessed against the EFO Defendants. Additionally, they directed EFO LSI to take actions that benefit themselves and the Defendants at the Plaintiffs' expense. EFO LSI knowingly participated in this breach, which harmed Plaintiffs.

305. Because of EFO LSI's involvement and Defendants' involvement, EFO LSI made multi-million dollars in distributions to Defendants and has become insolvent and unable to pay the debt it owes to its creditors, including Plaintiffs.

306. Also, Esping, Grammen, Wilson, Krupala and Horne breached their duties to EFO LSI by the above-referenced self-interested transactions, including but not limited to the following:

a. Transferring money between each of their entities and EFO LSI without obtaining a reasonable benefit to EFO LSI.

b. Failing to properly keep records of their actions with each other.

c. Failing to disclose their actions though obligated to under the discovery rules.

d. Making self-interested decisions on corporate governance, such as taking loans to pay themselves, modifying Credit Agreements to limit their personal risk, and changing corporate governance to avoid liability to EFO LSI and thus harming EFO LSI's ability to recover.

WHEREFORE, Plaintiffs demand an entry of judgment against Defendants for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT XI

(against all Defendants)

CONVERSION

307. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

308. The Court awarded Plaintiffs disgorgement damages resulting from EFO LSI's tortious conduct. The money received from EFO LSI as a result of its tortious conduct belonged to Plaintiffs.

309. Without authority or consent, Defendants knowingly, unlawfully, and intentionally misused and misappropriated the disgorged funds, with the intent to indefinitely or permanently deprive Plaintiffs of property.

310. Defendants, despite knowing that the disgorged amounts were properly owned by Plaintiffs as determined by the Court, Defendants intentionally diverted and redistributed those funds to themselves.

311. As a direct result of Defendants' misconduct, Plaintiffs have suffered damages.

WHEREFORE, Plaintiffs demand an entry of judgment against Defendants for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT XII

(against all Defendants)

UNJUST ENRICHMENT

312. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

313. The Court awarded Plaintiffs disgorgement damages resulting from EFO LSI tortious conduct. The money received from EFO LSI as a result of its tortious conduct belonged to Plaintiffs.

314. The Defendants were not entitled to the disgorgement amounts as the Court had determined that the they were the result of intentional misconduct against the Plaintiffs and constituted a wrongful gain.

315. As a result, the amount subject to disgorgement was a benefit conferred directly upon the Defendants. And the Defendants did not provide any value for the benefit to the Plaintiffs.

316. The Defendants, knowing money distributed from EFO LSI were subject to disgorgement or likely to be subject to disgorgement but nevertheless knowingly and voluntarily accepted.

317. Under the circumstances, it would be inequitable for Defendants to retain the benefit without paying the value.

WHEREFORE, Plaintiffs demand an entry of judgment against Defendants for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT XIII

(against all Defendants)

QUANTUM MERUIT

318. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

319. Under Florida law, when the law does not grant a remedy, a court may fashion an equitable one. This count is in the alternative to the extent other counts alleged do not grant a remedy at law for the wrongs alleged.

320. The Court awarded Plaintiffs disgorgement damages resulting from EFO LSI tortious conduct. The money received from EFO LSI as a result of its tortious conduct and the resulting Court Order, the Plaintiffs were the beneficial owners of the disgorged amounts and any amounts distributed to Defendants by EFO LSI. Plaintiffs are entitled to those disgorged amounts distributed to Defendants.

321. As stated above and throughout, the Plaintiffs are entitled to recover for the benefits conferred on Defendants and EFO LSI by virtue of the *Bailey* Defendants' wrongful gains that were distributed in part or in whole to the Defendants.

322. Defendants further used these distributed amounts as part of their joint venture, taking the benefit of those assets without paying for them.

323. The Defendants were not entitled to the disgorgement amounts as the Court had determined that the they were the result of intentional misconduct against the Plaintiffs and constituted a wrongful gain.

WHEREFORE, Plaintiffs demand an entry of judgment against Defendants for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

COUNT XIV

(against Defendants Esping, Grammen and Horne)

PARTNERSHIP OR JOINT VENTURE LIABILITY

324. The Plaintiffs re-allege paragraphs 1 through 229 as if fully set forth herein.

325. Defendants Esping, Grammen and Horne formed an ordinary partnership or joint venture because each of these defendants, working in conjunction with EFO LSI, LSI and their respective affiliated entities, did without limitation, one or more of the following:

a. As alleged above, they had the intent to act for a common benefit and hold themselves as out as a team for a common purpose;

b. Each member of the partnership sacrificed and contributed towards a partnership or joint venture goal;

c. Members of the partnership held themselves out as representatives of each other, or the venture;

d. Esping, Grammen and Horne with EFO LSI, LSI and their respective affiliated entities expressed an intent to be partners or enter into a joint venture; and

e. Esping, Grammen and Horne with EFO LSI, LSI and their respective affiliated entities regularly contributed money or property to their partnership or joint venture.

326. Plaintiffs should be able to collect from each member of the partnership or joint venture for their debts.

WHEREFORE, Plaintiffs demand an entry of judgment against Defendants for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment interest, costs and for any other relief the Court deems appropriate.

DEMAND FOR JURY TRIAL AS TO ALL COUNTS OF THE COMPLAINT

Plaintiffs hereby demand a trial by jury on all claims, issues, and Counts of the Complaint triable by such.

RESERVATION OF RIGHTS

The Plaintiffs reserve the right to further amend this Complaint upon completion their investigation and discovery in order to assert any additional claims for relief against the Defendants as may be warranted under the circumstances.

Respectfully submitted,

By: /s/ *Jennifer G. Altman*
Jennifer G. Altman, Esq.

CASE NO. 06-CA-008498
Division L

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 5, 2020, a true and correct copy of the foregoing was electronically filed via the Florida Courts Electronic Filing Portal, which well serve a Notice of Filing via the Court's e-service system on all Counsel of Record.

Respectfully submitted,

By: /s/ *Jennifer G. Altman*
Jennifer G. Altman, Esq.
Florida Bar No. 881384
Shani Rivaux, Esq.
Florida Bar No. 42095
Pillsbury Winthrop Shaw Pittman LLP
600 Brickell Avenue, Suite 3100
Miami, FL 33131
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jennifer.altman@pillsburylaw.com
shani.rivaux@pillsburylaw.com

EXHIBIT F

NO. DC-19-10056

JOE SAMUEL BAILEY, ET AL *Plaintiffs*	§	IN THE DISTRICT COURT OF
VS.	§	DALLAS COUNTY, TEXAS
JAMES S ST LOUIS, ET AL, *Defendants*	§	162ND JUDICIAL DISTRICT

NOTICE OF LEVY ON CAUSES OF ACTION

I, Deputy Constable Nicole McMahan, of Precinct One, Dallas County, Texas, have, and do hereby, levy execution in the above entitled and number case, on the following property owned and/or possessed by Defendants EFO HOLDINGS, L.P., EFO GP INTERESTS, INC. f/k/a EFO GENPAR, INC., and EFO LASER SPINE INSTITUTE, LTD., which property cannot reasonably be taken into my physical possession:

As to EFO HOLDINGS, L.P.: Any and all, each and every, claim and/or cause of action this entity has or may have against its partners, officers, directors, managers, employees, affiliates, insiders, and/or third parties, and/or any relative of any of the aforenamed, based on any grounds, including, but not limited to, breach of contract, violation of any civil or criminal statute and/or regulation, tort (including, but not limited to fraud, misrepresentation, negligence, breach of fiduciary duty, duress, and/or coercion), and any other grounds.

As to EFO GP INTERESTS, INC. f/k/a EFO GENPAR, INC.: Any and all, each and every, claim and/or cause of action this entity has or may have against its officers, directors, managers, employees, affiliates, insiders, and/or third parties, and/or any relative of any of the aforenamed, based on any grounds, including, but not limited to, breach of contract, violation of any civil or criminal statute and/or regulation, tort (including, but not limited to fraud, misrepresentation, negligence, breach of fiduciary duty, duress, and/or coercion), and any other grounds.

As to EFO LASER SPINE INSTITUTE, LTD.: Any and all, each and every, claim and/or cause of action this entity has or may have against its partners, officers, directors, managers, employees, affiliates, insiders, and/or third parties, and/or any relative of any of the aforenamed, based on any grounds, including, but not limited to, breach of contract, violation of any civil or criminal statute and/or regulation, tort (including, but not limited to fraud, misrepresentation, negligence, breach of fiduciary duty, duress, and/or coercion), and any other grounds.

The above listed property is now in my custody pursuant to the authority of the 162nd Judicial District Court of Dallas County, Texas, as set forth in writs of execution issued against each of the named entities. EFO HOLDINGS, L.P., EFO GP INTERESTS, INC. f/k/a EFO GENPAR, INC., and EFO LASER SPINE INSTITUTE, LTD., and all of their general partners, limited partners, officers, directors, shareholders, managers, employees, affiliates, and/or insiders, and/or any relative of any of the aforenamed, and all persons in active concert or participation with any of the aforenamed are prohibited from settling, transferring, removing, releasing, or otherwise disposing of any interest in the above listed property by any means

whatsoever, including, but not limited to by sale, gift, release, mortgage, pledge, lien, or any other manner, until the said property is released back to the three named entities or until they have replevied the same according to the law.

A copy of this notice is to be placed and maintained on the front door of each office of EFO HOLDINGS, L.P., EFO GP INTERESTS, INC. f/k/a EFO GENPAR, INC., and EFO LASER SPINE INSTITUTE, LTD., placed and maintained on each desk used at any time by any of those three entities, and given to each and every general partner, limited partner, officer, director, shareholder, manager, employee, affiliate, and/or insider of those three entities, any relative of any of the aforenamed, and all persons in active concert or participation with any of the aforenamed.

Signed on January 22, 2020.

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Nicole McMahon
Deputy Constable, Precinct One
Dallas County, Texas

CONSTABLE'S BILL OF SALE

The State of Texas, } ***KNOW ALL MEN BY THESE PRESENTS:***
COUNTY OF DALLAS

THAT WHEREAS, by virtue of a certain **Writ of Execution,**
Issued out of the 162nd District Court of the County of **Dallas** in the State of Texas, in favor of **Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., Laserscopic Medical Clinic, LLC, and Laserscopic Spine Centers of America, Inc.**
And against **EFO Genpar Interests Inc., f/k/a EFO Genpar, Inc., EFO Holdings L.P., and EFO Laser Spine Institute, Ltd.**
On a certain judgment rendered in said Court on the **29th** day of **July** A. D.**2019**
And directed and delivered to me as Constable of **Precinct #1, Dallas** County commanding me
To take into my possession and after due advertisement, sell the hereinafter described personal property,
I, **TRACEY L. GULLEY, Constable** as aforesaid, did on the **23rd** day of **January** A. D., **2020,** levy upon and take into my possession the property hereinafter described, and after advertising the same as required by law, I did on the **3rd** day of **February** A. D. **2020,** within the hour prescribed by law, at **Moving Services, Co., 102 N. Ewing Ave, Dallas, Texas 75203**; sell said property at public auction, when the same was struck off to **N/A** for the sum of **N/A** Dollars; **OR** the sale of said property at public auction being the highest secure bid made by **Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., Laserscopic Medical Clinic, LLC, and Laserscopic Spine Centers of America, Inc.** Now therefore in consideration of the premises, and the payment of said sum of **$1,000,000.00,** (One Million Dollars), as credit on the aforesaid judgment, the receipt of which is hereby acknowledged.
I, **TRACEY L. GULLEY,** Constable as aforesaid, have sold and delivered, and by these presents do sell and deliver unto the said **Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., Laserscopic Medical Clinic, LLC, and Laserscopic Spine Centers of America, Inc.,** all the rights, title and interest which the said **EFO Genpar, Inc.** had on the **23rd day of January A. D., 2020,** in and to the following described personal property, to-wit:
1,000 shares of stock in EFO Building 3900-GP Inc. and 1,000 shares of stock in EFO Building B-GP Inc.
ALL PROPERTY SOLD AS IS, NO WARRANTIES, OR GUARANTEES IMPLIED
Therefore, I, **TRACEY L. GULLEY,** as Constable, have sold and delivered, and by these presents do sell and deliver unto the said **Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., Laserscopic Medical Clinic, LLC, and Lasercopic Spine Centers, Inc.,** **TO HAVE AND TO HOLD** the same unto said **Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., Laserscopic Medical Clinic, LLC, and Laserscopic Spine Centers of America, Inc., their heirs and assigns forever, as fully as I, as Constable as aforesaid, can sell, transfer and dispose of the same by virtue of said** writ.
IN TESTIMONY WHEREOF, I have hereunto set my hand, this 5th of **February** A. D. **2020.**

Tracey L. Gulley

TRACEY L. GULLEY, CONSTABLE
DALLAS COUNTY, TEXAS PRECINCT 1

THE STATE OF TEXAS,
County of **DALLAS** }

Before me, ____

A Notary Public in and for the State of Texas, on this day personally appeared **TRACEY L. GULLEY,** Constable of said County, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledge to me that the executed the same for the purposes and consideration therein expressed, and in his capacity as Constable therein set forth.

WITNESS my hand and Seal of Office, at **DALLAS,** Texas, this 5th day of February A.D., **20**20.

Lenita Bailey
My Commission Expires
5/2/2023
ID No. 10369950

Lenita Bailey

5/2/2023

My Commission Expires

THE STATE OF TEXAS,
County of _____ }

I, _____**, County Clerk**

of said County, do hereby certify that the foregoing instrument, together with its certificate of authentication, was filed for record in my office on the _____day of _____ A.D. 20____ at _____o'clock ____M., and duly recorded the _____ day of _____ A. D. 20____ in the Records of said County, in book _____on page _____.

WITNESS my hand and official seal at my office in _____, Texas, this _____day of _____A. D. 20_____.

(Seal)

_____**, Clerk**

_____**, County.**

By _____**, Deputy.**

No. .....

Constable's Bill of Sale

FROM

By Constable
To

Filed for record the ____ **day**
Of ____ **A.D. 20**____
at ____ **o'clock** ____ **M.**

County Clerk.
County, Texas
By ____ **Deputy.**

FEES:
Acknowledgment ..... $ ____
Recording ..... $ ____
Total ..... $ ____

FEES:

Acknowledgment

.....

CONSTABLE'S BILL OF SALE

The State of Texas,
COUNTY OF DALLAS } ***KNOW ALL MEN BY THESE PRESENTS:***

THAT WHEREAS, by virtue of a certain **Writ of Execution,**

Issued out of the 162nd District Court of the County of **Dallas** in the State of Texas, in favor of **Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., Laserscopic Medical Clinic, LLC, and Laserscopic Spine Centers of America, Inc.**

And against **EFO GP Interests Inc. f/k/a EFO Genpar, Inc., EFO Holdings L.P., and EFO Laser Spine Institute, Ltd.**

On a certain judgment rendered in said Court on the **29th** day of **July** A. D.**2019**

And directed and delivered to me as Constable of **Precinct #1, Dallas** County commanding me

To take into my possession and after due advertisement, sell the hereinafter described personal property,

I, **TRACEY L. GULLEY, Constable** as aforesaid, did on the **23rd** day of **January** A. D., **2020,** levy upon and take into my possession the property hereinafter described, and after advertising the same as required by law, I did on the **3rd** day of **February** A. D. **2020,** within the hour prescribed by law, at **Moving Services, Co., 102 N. Ewing Ave, Dallas, Texas 75203**; sell said property at public auction, when the same was struck off to **N/A** for the sum of **N/A** Dollars; **OR** the sale of said property at public auction being the highest secure bid made by **Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., Laserscopic Medical Clinic, LLC and Laserscopic Spine Centers of America, Inc.** Now therefore in consideration of the premises, and the payment of said sum of **$4,000,000.00,** (Four Million Dollars), as credit on the aforesaid judgment, the receipt of which is hereby acknowledged.

I, **TRACEY L. GULLEY,** Constable as aforesaid, have sold and delivered, and by these presents do sell and deliver unto the said **Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., and Laserscopic Medical Clinic, LLC,** all the rights, title and interest which the said **EFO Genpar, Inc., EFO Holdings L.P., and EFO Laser Spine Institute, Ltd.** had on the **23rd day of January A. D., 2020,** in and to the following described personal property, to-wit:

All claims and causes of action as set forth in the attached Notice of Levy on Causes of Action.

ALL PROPERTY SOLD AS IS, NO WARRANTIES, OR GUARANTEES IMPLIED

Therefore, I, **TRACEY L. GULLEY,** as Constable, have sold and delivered, and by these presents do sell and deliver unto the said **Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., Laserscopic Medical Clinic, LLC and Laserscopic Spine Centers of America, Inc.,** **TO HAVE AND TO HOLD** the same unto said **Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., Laserscopic Medical Clinic, LLC and Laserscopic Spine Centers of America, Inc., their heirs and assigns forever, as fully as I, as Constable as aforesaid, can sell, transfer and dispose of the same by virtue of said writ.**

IN TESTIMONY WHEREOF, I have hereunto set my hand, this 5th of February A. D. 2020.

Tracey L. Gulley,

TRACEY L. GULLEY, CONSTABLE
DALLAS COUNTY, TEXAS PRECINCT 1

THE STATE OF TEXAS,
County of **DALLAS** } Before me, _____

A Notary Public in and for the State of Texas, on this day personally appeared **TRACEY L. GULLEY,** Constable of said County, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledge to me that the executed the same for the purposes and consideration therein expressed, and in his capacity as Constable therein set forth.

WITNESS my hand and Seal of Office, at **DALLAS,** Texas, this 5th day of February A.D., **20** 20.

Lenita Bailey
My Commission Expires
05/02/2023
ID No 10369950

Lenita Bailey
5/2/2023
My Commission Expires

THE STATE OF TEXAS,
County of _____ } **I,** _____**, County Clerk**

of said County, do hereby certify that the foregoing instrument, together with its certificate of authentication, was filed for record in my office on the _____day of _____ A.D. 20____ at _____o'clock ____M., and duly recorded the _____ day of _____ A. D. 20____ in the Records of said County, in book _____on page _____.

WITNESS my hand and official seal at my office in _____, Texas, this _____day of _____A. D. 20_____.

(Seal)

_____**, Clerk**

_____**, County.**

By _____**, Deputy.**

No. .....

Constable's Bill of Sale

FROM

By Constable
To

Filed for record the _____ **day**
Of _____ **A. D. 20**____
at _____ **o'clock** _____ **M.**

County Clerk.
County, Texas
By _____
Deputy.

FEES:
Acknowledgment.....$ _____
Recording.....$ _____
Total.....$ _____

FEES:

Acknowledgment

.....

NOTICE OF CONSTABLE'S SALES

(PERSONAL PROPERTY)

BY VIRTUE OF a **Execution** Issued out of the **162nd District Court**

Dallas County, State of Texas ***In that certain Cause No. DC-19-10056***

Styled: Joe Samuel Bailey vs EFO GenPar Inc on a judgment rendered in said Court on the **29th** day of **July** **A.D.** **2019** and directed and delivered to me, as Constable of Dallas County, Texas, I have on the **23rd** day of **January** **2020**, levied upon and will offer for sale on the **3rd** day of **February** **A.D.** **2020,** Between the hours prescribed by law, at public auction to the highest bidder, for cash in hand, at **Moving Services, Co., 102 No. Ewing Ave., Dallas, Texas 75203 at 10:30 a.m.** County, Texas, the following personal property, to-wit: **"See Attached List"**

"Sold As Is" – No Warranties And / Or Guarantees Applied Or Offered

The above property is levied on as the property of **EFO GenPar INC, EFO Holding LP, EFO Laserscopic Institute LTD**

and will be sold to satisfy a **Judgment** In the **162nd District Court** Court of **Dallas** County rendered on the **29th** day of **July** **A. D.** **2020** in favor of **Joe Samuel Bailey, Laserscopic Spine Institute of America**

against the said **EFO GenPar INC, EFO Holding LP, EFO Laserscopic Institute LTD**

for the sum of **$384,893,531.02 threehundred eightyfour million eight thousand ninety three five hundred thirty one** DOLLARS,

principal, with interest at the rate of **6.77% &6.83 %** :percent. per annum from **29th of July 2019**

and the further sum of **0** DOLLARS,

costs, and all costs accruing by virtue of said suit.

GIVEN UNDER MY HAND this **7th** Day of **January** A. D. **2020**

Deputy: 120

Tracey L. Gulley

Constable, Precinct 1, Dallas County, Texas.

TRACEY L. GULLEY
CONSTABLE PRECINCT 1
7201 S. POLK STREET, STE. 100
DALLAS, TEXAS 75232-3831

Court Order No. DC-19-10052e

Plaintiff: Joe Samuel Bailey
LASerscopic SpineCenters of America
Vs.

Defendant: EPO Grapevine inc EPO LASerspine
EPO Hookup Up Institute LTD

Address: 500 N. Akard

City: Dallas

Time: _____ Date: 1-23-20

Property to be stored with Special Bailee:

Name: Moving Services

Phone: 214-686-1607

Address: 102 N. Ewing

City: Dallas TX

Deputy: _____ No: 120

Driver's Signature: _____

ITEM#	QUANTITY	DESCRIPTION
1	1	Credenza - Brown
2	1	2 drawer Wood file Cabinet
3	1	Wood Book case
4	1	Wood desk
5	1	Wood Desk
6	1	Wood Book case
7	1	Red chair
8	1	Black chair
9	1	Wood Desk
10	1	2 drawer Credenza - wood
11	2	Black - metal chairs
12	1	Wood Book case
13	1	Black & Chrome office Chair
14	1	Brown & Silver office Chair
15	2	2-drawer Wood File Cabinets
16	1	Round Wood Table
17	1	Wood desk
18	1	Credenza
19	2	Wood Book case
20	1	4-drawer Black Metal File Cabinet
21	2	Teal & Brown chairs

TRACEY L. GULLEY
CONSTABLE PRECINCT 1
7201 S. POLK STREET, STE. 100
DALLAS, TEXAS 75232-3831

Court Order No. DC19-10052e

Plaintiff: Joe Samuel Bailey
Laserscopic Spine Centers of America
Vs.
Defendant: EPD Holdings LP EPD GenPar Inc EPD Laserscopic Institute LTD

Address: 500 N Akard

City: Dallas

Time: _____ Date: 1-2320

Property to be stored with Special Bailee:

Name: Moving Services

Phone: 214-686-1607

Address: 102 N. Ewing

City: Dallas

Deputy: _____ No: 120

Driver's Signature: _____

ITEM#	QUANTITY	DESCRIPTION
22	1	Teal owood Office Chair
23	2	Wood Book Case
24	1	2-drawer Wood File Cabinet
25	1	Credenza
26	1	Blue & Chrome Office Chair
27	1	Wood Desk
28	1	Small - 2 drawer file Cabinet
29	3	TAN - Metal 4 drawer file Cabinets
30	2	Wood desk
31	3	Wood Book Cases
32	2	Maroon Chairs
33	1	Metal Printer Stand
34	1	TAN - Metal 4 drawer file Cabinet
35	1	desk
36	1	Credenza w/ hutch
37	1	Black & Chrome Office Chair
38	1	3 drawer Wood Printer Stand
39	2	Black metal Chairs
40	1	desk
41	1	2-drawer Wood file Cabinet
42	1	Credenza

TRACEY L. GULLEY
CONSTABLE PRECINCT 1
7201 S. POLK STREET, STE. 100
DALLAS, TEXAS 75232-3831

Court Order No. DC-19-10052e

Plaintiff: Joe Samuel Bailey
Laserscopic Spine Centers of America
Vs.

Defendant: EPD GenPar Inc EPD Laserscopic EPD Holdings LP Institute LTD

Address: 500 N. Akard

City: Dallas

Time: _____ Date: 1-23-20

Property to be stored with Special Bailee:

Name: Moving Services

Phone: 214-686-1607

Address: 102 N. Ewing

City: Dallas

Deputy: _____ No: 120

Driver's Signature: _____

ITEM#	QUANTITY	DESCRIPTION
43	2	Wood Book Case
44	2	Maroon & wood Chairs w/ Wheels
45	1	Maroon Office Chair
46	2	2-drawer Black-Metal File Cabinets
47	1	5-drawer Metal Black File Cabinet
48	2	Black Metal chairs
49	1	Desk
50	1	Wood Book Case
51	1	Credenza
52	1	Black & Chrome Office Chair
53	1	Small Wood Printer Stand
54	1	Desk
55	1	Small - 2 Shelf Wood Bookcase
56	1	Fabric Office Chair
57	1	2-drawer Wood Printer stand
58	1	4-drawer Black Metal file Cabinet
59	1	Credenza
60	1	Wood Book Case
61	1	Black Metal Chair
62	1	Desk
63	2	Credenza

TRACEY L. GULLEY
CONSTABLE PRECINCT 1
7201 S. POLK STREET, STE. 100
DALLAS, TEXAS 75232-3831

Court Order No. DC-19-10052e

Plaintiff: Joe Samuel Bailey
Laserscopic Spine Centers of America

Vs.

Defendant: EFO Holdings LP, EFO Brentar Inc, EFO Laserscopic Institute LTD

Address: 500 N. Akard

City: Dallas

Time: _____ Date: 1-23-20

Property to be stored with Special Bailee:

Name: Moving Services

Phone: 214 638 1607

Address: 102 N Ewing

City: Dallas

Deputy: _____ No: 120

Driver's Signature: _____

ITEM#	QUANTITY	DESCRIPTION
64	2	2-shelf Book case
65	1	Wood Book case
66	2	Teal & Wood Chairs
67	1	Blue & Chrome Office Chair
68	1	Black Office Chair
69	1	Desk
70	1	Credenza
71	2	Wood Printer Stands
72	1	2-drawer wood file Cabinet
73	1	3-shelf Book case
74	1	Wood Book case
75	2	Black Metal Chairs
76	1	Black Office Chair
77	1	Credenza
78	1	Desk
79	1	Green & Chrome Office Chair
80	1	2-drawer Wood file Cabinet
81	1	3-drawer Metal file cabinet
82	4	Wood Book cases
83	9	4-drawer fire file Cabinets
84	13	Wide file Cabinets

TRACEY L. GULLEY
CONSTABLE PRECINCT 1
7201 S. POLK STREET, STE. 100
DALLAS, TEXAS 75232-3831

Court Order No. DC-19-10052

Plaintiff: Joe Samuel Bailey
Laserscopic Spine Centers of America
Vs.
Defendant: EPO GenPar Inc.; EPO Laserscopic Holdings LP; Instarmed LTD

Address: 500 N. Akard

City: Dallas

Time: _____ Date: 1-23-20

Property to be stored with Special Bailee:

Name: Moving Services

Phone: 214-686-1607

Address: 102 N. Ewing

City: Dallas

Deputy: _____ No: 120

Driver's Signature: _____

ITEM#	QUANTITY	DESCRIPTION
85	1	2-drawer file Cabinet
86	1	desk
87	1	Green & Chrom office chai
88	1	Black & Wood Chair
89	1	Fabric office Chair
90	1	FAX-Se, U1d325b78N635381
91	1	U-shaped desk
92	1	2-drawer Black Metal File Cabin
93	2	maroon wood Chairs
94	1	L-Shaped desk
95	1	2-drawer Wood file Cabinet
96	2	Wood Book case
97	2	Black Metal Chairs
98	2	Black Office Chairs
99	1	Blue office Chair
100	4	2-drawer file Cabinet 2 TAN 2 Black
101	2	OVAL desk
102	3	Wood 2 drawer file CABINTS
103	1	1 Conference TABLE
104	~~8~~ 7	Metal file Cabinets
105	asst.	Metal Chrom Shelvin

TRACEY L. GULLEY
CONSTABLE PRECINCT 1
7201 S. POLK STREET, STE. 100
DALLAS, TEXAS 75232-3831

Court Order No. DC-19-10052C

Plaintiff: Joe Samuel Bailey

Vs. Laserscopic Spine Centers of America

Defendant: EPD Holdings LP; Institute LTD, EPD Laserscopic EPD Ventures LLC

Address: 500 N Akard

City: Dallas

Time: _____ Date: 1-23-20

Property to be stored with Special Bailee:

Name: Moving Services

Phone: 214-686-1607

Address: 102 N. Ewing

City: Dallas

Deputy: _____ No: 120

Driver's Signature: _____

ITEM#	QUANTITY	DESCRIPTION
106	1	Blue & Chrome Office Chair
107	9	Fabric Office Chairs

TRACEY L. GULLEY
CONSTABLE PRECINCT 1
7201 S. POLK STREET, STE. 100
DALLAS, TEXAS 75232-3831

Court Order No. DC-19-10052

Plaintiff: JOE Samuel Barky

Vs. LASER SCOPIC spine centers of America

Defendant: EFD GenPar inc EFD LASER spine EFD Holdings LP Mohawk LTD

Address: 500 N. AKARD

City: Dallas

Time: 1045 Am Date: 1-23-20

Property to be stored with Special Bailee:

Name: Kept in Possession

Phone: of Constable pct 1

Address: 7201 S. Polk st

City: Dallas TX 75232

Deputy: No: 120

Driver's Signature:

ITEM#	QUANTITY	DESCRIPTION
1	1	EFD GenPar inc stock Cert.
2	1	EFD GenPar Inc stock Cert.
		1000 shares Each.

KDO

EXECUTION Form No. 362 THE STATE OF TEXAS

TO ANY SHERIFF OR ANY CONSTABLE OF THE STATE OF TEXAS.....

GREETINGS:

WHEREAS, ON THE **JULY 29, 2019**

IN THAT CERTAIN CAUSE NUMBER **DC-19-10056** STYLED

JOE SAMUEL BAILEY; LASERSCOPIC SPINAL CENTERS OF AMERICA, INC.; LASERSCOPIC MEDICAL CLINIC, LLC; LASERSCOPIC SPINE CENTERS OF AMERICA, INC as Plaintiff and JAMES S. ST. LOUIS, D.O., MICHAEL W. PERRY, M.D., EFO HOLDINGS, L.P., EFO GENPAR, INC., EFO LASER SPINE INSTITUTE, LTD., LASER SPINE MEDICAL CLINIC, LLC, LASER SPINE PHYSICAL THERAPY, LLC, LASER SPINE SURGICAL CENTER, LLC, LASER SPINE INSTITUTE, LLC , as Defendant and wherein the LASERSCOPIC SPINAL CENTERS OF AMERICA, INC. AND LASERSCOPIC MEDICAL CLINIC, LLC.as Plaintiff

recovered a **FOREIGN** Judgment in the District Court of Dallas County, Texas,

162ND DISTRICT COURT, State of Texas, against

JAMES S. ST. LOUIS, D.O., EFO HOLDINGS, L.P., EFO GENPAR, INC., EFO LASER SPINE INSTITUTE, LTD., LASER SPINE INSTITUTE, LLC, LASER SPINE MEDICAL CLINIC, LLC, LASER SPINE PHYSICAL THERAPY, LLC AND LASER SPINE SURGICAL CENTER, LLC (JOINTLY AND SEVERALLY)

for the sum of **$358,642,905.00**

besides the costs in that behalf expended, as of record of said Court.

THEREFORE YOU ARE HEREBY COMMANDED that of the goods and chattels,

lands and tenements of said **JAMES S. ST. LOUIS, D.O., EFO HOLDINGS, L.P., EFO GENPAR, INC., EFO LASER SPINE INSTITUTE, LTD., LASER SPINE INSTITUTE, LLC, LASER SPINE MEDICAL CLINIC, LLC, LASER SPINE PHYSICAL THERAPY, LLC AND LASER SPINE SURGICAL CENTER, LLC (JOINTLY AND SEVERALLY)** you cause to be made the total/sum

of **$358,642,905.00**

With interest from THE **1ST DAY OF JANUARY, 2019 AND FOR EACH SUCCEEDING YEAR THEREAFTER UNTIL PAID, THE INTEREST RATE WILL ADJUST IN ACCORDANCE WITH FLORIDA STATUTE § 55.03**

HEREIN FAIL NOT, and have you the said moneys, together with this Writ, before said Court, at the Courthouse in the City of Dallas, within ninety days from the date of this writ.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas County, Texas. Given under my hand and seal of said Court at office in the City of Dallas, Texas, **ON THIS THE 6TH DAY OF JANUARY, 2020**

ATTEST: FELICIA PITRE DISTRICT CLERK

By Carmen Moorer, Deputy

CARMEN MOORER

DISTRICT COURT OF DALLAS COUNTY TEXAS

224/355

PCT 1

No. **DC-19-10056** 001501

DISTRICT COURTS

DALLAS COUNTY

LASERSCOPIC SPINAL CENTERS OF AMERICA, INC.

AND LASERSCOPIC MEDICAL CLINIC, LLC

308 WALLICK DR.

COTTER AR 72626

VS.

EFO GENPAR INC.

500 N AKARD ST STE 1500

DALLAS TX 75201

RECEIVED CONSTABLES OFFICE PCT. 1 2020 JAN -7 AM 10:41 DALLAS COUNTY, TEXAS

(5) EXECUTION

Judgment---------- $358,642,905.00
Costs----------

ISSUED

ON THIS THE 6TH DAY OF JANUARY, 2020

FELICIA PITRE

Clerk, District Court

By CARMEN MOORER Deputy

HUGH RAY III
909 FANNIN STE 2000
HOUSTON TX 77010
713-276-7600

DALLAS COUNTY CONSTABLE

FEES PAID

FEES NOT PAID

2/4/20

Return to Count with a Credit to

Cause # DC-19-10056

Credit Bid 5,000,000.00

Cash from property sale 234.00

Total Credit - 5,000,234.00

JMM 120

FILED

2020 FEB -5 PM 4:09

FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
DEPUTY

BILL OF COST

RECAPITULATION	
District Clerk's Fees	$
Sheriff's Fees	$
Constable's Fees	$
County Law Library Fund	$0.00
Stenographer's Fee	$0.00
All Other Fees	$
Execution	$0.00
NONE PER JUDGMENT	$
	$
TOTAL FEES	$

EXHIBIT G

NO. DC-19-10056

JOE SAMUEL BAILEY, ET AL *Plaintiffs*	§	IN THE DISTRICT COURT OF
VS.	§	DALLAS COUNTY, TEXAS
JAMES S ST LOUIS, ET AL, *Defendants*	§	191st JUDICIAL DISTRICT

Order for Turnover Relief and Charging Order

At the hearing on this motion, Plaintiffs/Judgment Creditors Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., Laserscopic Spine Centers of America, Inc., and Laserscopic Medical Clinic, LLC ("Judgment Creditors") appeared through their attorneys of record. EFO GP Interests, Inc. f/k/a EFO Genpar, Inc., EFO Holdings LP, and EFO Laser Spine Institute, Ltd., appeared through their attorneys of record. EFO Holdings, L.P. neither objected to the relief nor appeared. EFO Genpar, EFO Holdings, L.P. and EFO Laser Spine Institute, Ltd. are collectively the "Judgment Debtors".

At the hearing, the Court admitted the declaration of R. Jack Reynolds and all exhibits thereto except for exhibits 67, 68 and 69. The evidence closed, but the Court announced it would review the sur-reply by some of the judgment debtors.

After considering the pleadings, the evidence, and the argument of counsel, the Court finds that Judgment Creditors presented sufficient evidence that Judgment Debtors appear to own the property described below, and that turnover relief should be granted. Therefore, it is

ORDERED ADJUDGED AND DECREED, that the Judgment Debtors are ordered to turn over to the Dallas County Constable for Precinct One at 7201 S. Polk Street, #100, Dallas, Texas 75232, on or before ten (10) days of the date of entry of this order and all of the following in their actual or constructive possession, with all titles, deeds, share certificates, commercial notes or other documents/records related to the property:

1. All non-exempt assets of EFO Holdings, L.P. including (but not limited to) the following assets that EFO Holdings, L.P. did not oppose the turnover of:

(a) PatientPay, Inc.

(b) Jacob Ash Holdings, Inc.

(c) JMI Management, Inc.

(d) RSF Partners, Inc.

(e) Jacob Ash/Schuessler, Inc.

2. Any and all shares or interests in the following corporations:

(a) Edgewater Beach Development, Inc.

(b) EFO Overlook Management Co.

(c) EFO/Robroy, Inc.

(d) EFO U-Park, Inc.

(e) Esping Capital, Inc.

(f) Esping Consulting, Inc.

(g) Resort Properties of Naples, Inc.

(h) Spud Inc. and its interest as the general partner of SPA Drilling, LP.

(i) Alpina Genpar Inc. and its interest as the general partner of Alpina Lending, LP.

(j) Cross Matrix Corp

(k) EFO Overlook Management Co.

(l) EPB or EBP or EFO Realty, Inc. (Fl)

(m) EFO Realty, Inc. (Tx)

(n) Pulsar Telecommunications, Inc.

3. Claims and/or causes of action against insurance companies that carry Directors' and Officers' liability insurance for Defendants and/or that carry insurance policies that cover the actions that resulted in the underlying judgment.

4. Other claims and/or causes of action against other persons or entities.

5. Promissory notes payable to Judgment Debtors.

6. Accounts receivable as described on documents produced by Defendants at Bates Pages EFOGP001487 and EFOLSI003795.

7. Pieces of art described on documents produced by Defendants at Bates Page EFOGP001487.

8. Printers and copiers as described on documents produced by Defendants at Bates Page EFOGP001487.

9. Computers, software and monitors as described on documents produced by Defendants at Bates Page EFOGP001487.

10. Phone systems as described on documents produced by Defendants at Bates Page EFOGP001487.

11. Televisions as described on documents produced by Defendants at Bates Page EFOGP001487.

12. Microwaves and other kitchen appliances as described on documents produced by Defendants at Bates Page EFOGP001487.

For the charging order, the Court finds that EFO Holdings, L.P. did not oppose the relief sought so the requested charging order shall issue against EFO Holdings, L.P. as requested. Similarly, sufficient evidence was presented to justify a charging order against the Judgment Debtors as set forth below based on the following findings:

1. Defendant/Judgment Debtor EFO GP Interests, Inc. f/k/a EFO Genpar, Inc. appears to be a member of, and therefore owns an interest in, the following limited liability companies and/or partner in these limited partnerships subject to the charging order herein:

(a) Cypress GP, LLC, d

(b) EFO Oilers, LP and its interest in Mt. Gilead, LP and S&E Holdings, LP.

(c) EFO Properties, LP and its land in Waxahachie, Texas.

(d) EFO Residential Partners, LP and its interest in a residential apartment complex and parking garage in Memphis, Tennessee.

(e) Techas Partners, LP and its interests in Techxas Fund VI.0, LP and Techxas Ventures, LP.

(f) EFO Victory LP.

(g) EFO Davenport Partners, LP and its interests in various real estate partnerships in Austin, Texas.

(h) EFO New Frontiers, LP and its interest in eCorp Resource Partners, LP and eCorp Resource Partners I, LP.

(i) EFO Pulsar, LP.

(j) EFO Stanhope, LP and its interest in Stanhope Capital Fund I, LP.

(k) ENEL Champs Partners, LP and its interest in JMI Equity Fund IV, LP.

(l) Lubrication Partners, LP and its interest in Lubrication Partners, JV.

(m) San Clemente at Davenport, Ltd.

(n) San Clemente at Davenport B&C, Ltd.

(o) San Clemente at Davenport – North, Ltd.

(p) SCD B Investors – HP, Ltd.

2. Defendant/Judgment Debtor EFO Holdings, L.P. did not oppose the charging order and thus appears to be a member of, and therefore owns an interest in, the following limited liability companies and/or partner in these limited partnerships subject to the charging order herein:

(a) Melbourne Greyhound Park, LLC.

(b) BlastOff Ventures, LLC.

(c) EFO Financial Group, LLC.

(d) Intersect Beverage, LLC.

(e) Techxas Ventures LLC.

(f) Cypress GP, LLC and its interests in EFO Laser Spine Institute, Ltd. and any other businesses.

(g) E/S Alternatives LP.

(h) EFO Realty Sponsor Fund I, LP.

(i) EFO Realty Sponsor Fund II, LP.

Therefore, it is additionally, **ORDERED, ADJUDGED, AND DECREED** that—

1. The interests of Defendants/Judgment Debtor EFO GP Interests, Inc. f/k/a EFO Genpar, Inc. EFO Holdings L.P. and EFO Laser Spine, Ltd.in the limited liability companies and limited partnerships listed are subject to this charging order in favor of and for the benefit of Plaintiffs/Judgment Creditors Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., Laserscopic Spine Centers of America, Inc., and Laserscopic Medical Clinic, LLC ;

2. Distributions owed or payable to Defendants/Judgment Debtors EFO GP Interests, Inc. f/k/a EFO Genpar, Inc., EFO Holdings LP, EFO Holdings L.P. and/or EFO Laser Spine, Ltd. by any of the limited liability companies and limited partnerships listed above shall be paid directly to the Dallas County Constable for Precinct One at 7201 S. Polk Street, #100, Dallas, Texas 75232, for the benefit of Plaintiffs/Judgment Creditors Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., Laserscopic Spine Centers of America, Inc., and Laserscopic Medical Clinic, LLC; and

3. The limited liability companies and limited partnerships listed will only be discharged from their obligations to Defendant/Judgment Debtor EFO GP Interests, Inc. f/k/a EFO Genpar, Inc. EFO Holdings L.P. and EFO Laser Spine, Ltd. to the extent of any amounts so paid until the judgment against Defendant/Judgment Debtor EFO GP Interests, Inc. f/k/a EFO Genpar, Inc. entered in this cause is satisfied in full.

4. Except for EFO Holdings, L.P. who has been deemed to consent to the relief by not objecting, all other Judgment Debtors may reserve their right to argue at a subsequent hearing that they did not own an asset otherwise subject of this order. Judgment Debtors are strongly cautioned to provide the Judgment Creditors notice of any intent to dispose of or transfer any asset.

5. Plaintiffs shall have all writs of execution and other process.

6. All relief not expressly granted herein is denied.

SIGNED on Jan. 25, 2021

JUDGE PRESIDING

APPROVED AS TO FORM:

PILLSBURY WINTHROP SHAW PITTMAN LLP
Hugh M. Ray, III (SBN 24004246)
R. Jack Reynolds (SBN 16805300)
Attorneys for Plaintiffs
Two Houston Center
909 Fannin, Suite 2000
Houston, TX 77010-1028
Telephone: (713) 276-7600
Facsimile: (713) 276-7673
hugh.ray@pillsburylaw.com
jack.reynolds@pillsburylaw.com

Attorneys for JOE SAMUEL BAILEY, LASERSCOPIC SPINAL CENTERS OF AMERICA, INC., LASERSCOPIC SPINE CENTERS OF AMERICA, INC. and LASERSCOPIC MEDICAL CLINIC, LLC, Plaintiffs

EXHIBIT H

CAUSE NO. DC-20-06211

JOE SAMUEL BAILEY, *et al.*,	§	**IN THE DISTRICT COURT**
	§	
Plaintiffs,	§	
	§	
vs.	§	**162nd JUDICIAL DISTRICT**
	§	
JAMES S. ST. LOUIS, *et al.*,	§	
	§	
Defendants.	§	**DALLAS COUNTY, TEXAS**

ANSWERING DEFENDANTS' RESPONSES TO PLAINTIFFS' REQUESTS FOR DISCLOSURE

TO: Plaintiffs, Joe Samuel Bailey, *et al.*, by and through their attorneys of record, Hugh M Ray, III and R. Jack Reynolds of PILLSBURY WINTHROP SHAW PITTMAN, LLP, Two Houston Center, 909 Fannin, Suite 2000, Houston, Texas 77010.

Pursuant to TEXAS RULES OF CIVIL PROCEDURE Rule 194, Defendants **JEK SEP/PROPERTY, LP**; **JENNIFER ESPING KIRTLAND**; **JULIE ESPING BLANTON**; **KRE SEP/PROPERTY, LP**; **MASTERDOM VALUE FUND**; **SPINAL TAP PARTNERS**; **WILLIAM P. ESPING**; **WPE HOLDINGS, INC.**; **WPE KIDS PARTNERS, LP**; **CYPRESS GP, LLC**; **GEOFFREY LAURENCE WALLACE ESTATE**; **APPRECIATION SIBLINGS**; **STANHOPE CAPITAL FUND I, LP**; **ESPING MARITAL DEDUCTION TRUST NO. 2**; **EFO HOLDINGS MANAGER, INC.**; **EFO MANAGEMENT, LLC**; **EFO PRIVATE EQUITY FUND II, LP**; **JULIE KRUPALA; PETER WILSON; KATHERINE ESPING WOODS**; and **EMMINENCE INTERESTS, LP** (collectively, the "Answering Defendants"), serves these their

Responses to the Requests for Disclosure from **JOE SAMUEL BAILEY, *et al.*** (collectively, the "Plaintiffs").[1]

[1] Because the Specially Appearing Defendants have filed special appearances challenging the Court's personal jurisdiction over them, they presently do not join the Answering Defendants in making these responses to Plaintiffs' Request for Disclosure. The Specially Appearing Defendants have instead agreed to participate in limited jurisdictional discovery as ordered by the Court.

DEFENDANTS' RESPONSES TO PLAINTIFFS' REQUESTS FOR DISCLOSURES

(a) the correct names of the parties to the lawsuit;

RESPONSE:

The Answering Defendants aver that their names are correct in the Original Petition.

(b) the name, address, and telephone number of any potential parties;

RESPONSE:

None to Defendant's knowledge.

(c) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);

RESPONSE:

The Answering Defendants allege that Plaintiffs' lack standing to bring the claims set forth in their Original Petition, inasmuch as they are parties to, and creditors in, an assignment for the benefit of creditors in a case styled *Soneet R. Kapila, as Assignee, Plaintiff v. Laser Spine Institute, LLC, Defendant*, Consolidated Case No. 2019-CA-2762, filed on March 14, 2019 and pending in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division (the "ABC Litigation"). The ABC Litigation was the earlier-filed case, preceding the present case by more than one year. Pursuant to Florida Statutes §727.104, the assets that are subject of the assignment, which Defendant contends include the claims alleged against it by Plaintiffs in their Original Petition, were transferred to the assignee for possession, protection, preservation and administration by the assignee. As such, the claims asserted herein, the underlying bases of which include fraudulent transfer claims asserted by the Assignee in the ABC Litigation, belong, in whole or in part, to the Assignee.

The Answering Defendants further allege that, in accordance with Florida Statutes §727.105, other than consensual lienholders, general creditors such as Plaintiffs are prohibited and stayed from any "levy, execution, attachment, or the like in respect of any judgment against assets of the estate in the possession, custody or control of the assignee." Accordingly, Plaintiffs' claims in this case are subject to a stay imposed by law in the ABC Litigation, which is being violated by Plaintiffs by the existence and prosecution of this case.

In the alternative, the Answering Defendants aver that this Court should abstain from, and/or decline to exercise jurisdiction over the claims of the Plaintiffs herein, on prudential grounds,

inasmuch as the claims of Plaintiffs herein factually and substantially overlap with those being asserted by the Assignee in the ABC Litigation, and as a consequence there exists a substantially likelihood of multiple and inconsistent results if both the ABC Litigation and this case proceed to determination in different courts.

The Answering Defendants also allege that Plaintiffs' veil piercing claims against them, as limited partners of EFO Laser Spine Institute, L. P. ("EFO LSI"), are not recognized or legally viable claims under Texas or Florida law as applicable, as more fully set forth in the Answering Defendants' Special Exceptions. The Answering Defendants also contend that the Single Business Enterprise Theory is an expressly disapproved theory of liability and is not a basis for their liability to Plaintiffs, that the allegedly fraudulent transfers that form the basis of Plaintiffs' claims do not belong to Plaintiffs are already being litigated in the ABC Litigation, and are subject to multiple defenses, and that some or all of Plaintiffs' claims are barred by applicable statutes of limitations or repose.

On October 13, 2020, the Court granted Defendants' Special Exceptions and ordered Plaintiffs to re-plead. Accordingly, the Answering Defendants reserve the right to further amend this disclosure after Plaintiffs' re-plead.

(d) the amount and any method of calculating economic damages;

RESPONSE:

Not applicable to Defendant.

(e) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

RESPONSE:

Amato, Louis, Defendant
c/o Lynn Pinker

Bailey, Joe Samuel, Plaintiff
c/o Pillsbury

Blanton, Julie, Defendant
c/o Lynn Pinker

Bollinger, Dotty, Specially Appearing Defendant
c/o Lynn Pinker

Castleman, Ballard, former officer of Judgment Debtor EFO GP Interests, Inc.
c/o Lynn Pinker

Esping, William, Defendant
c/o Lynn Pinker

Goduti, David, employee of EFO Management, LLC
c/o Lynn Pinker

Grammen, Helen, Specially Appearing Defendant
c/o Lynn Pinker

Grammen, Kara, Specially Appearing Defendant
c/o Lynn Pinker

Grammen, Michael, Specially Appearing Defendant
c/o Lynn Pinker

Grammen, Robert, Specially Appearing Defendant
c/o Lynn Pinker

Grammen, Yvonne, Specially Appearing Defendant
c/o Lynn Pinker

Horne, James, Specially Appearing Defendant
c/o Lynn Pinker

Horne, Justin, Specially Appearing Defendant
c/o Lynn Pinker

Horne, William, Specially Appearing Defendant
c/o Lynn Pinker

Kirtland, Jennifer, Defendant
c/o Lynn Pinker

Krupala, Julie, Defendant
c/o Lynn Pinker

Smith, Edith, Executrix of Wallace Estate
c/o Lynn Pinker

St. Louis, Jill, Specially Appearing Defendant
c/o Lynn Pinker

Wilson, Peter, Defendant
c/o Lynn Pinker

Woods, Katheryn Esping
c/o Lynn Pinker

On October 13, 2020, the Court granted Defendants' Special Exceptions and ordered Plaintiffs to re-plead. Accordingly, the Answering Defendants reserve the right to further amend this disclosure after Plaintiffs' re-plead.

(f) for any testifying expert;

(1) the expert's name, address, and telephone number;

(2) the subject matter on which the expert will testify;

(3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party; documents reflecting such information;

(4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and

(B) the expert's current resume and bibliography;

RESPONSE:

None at the present time.

(g) any indemnity and insuring agreements described in Rule 192.3(f);

RESPONSE:

None to the Answering Defendants' knowledge.

(h) any settlement agreements described in Rule 192.3(g);

RESPONSE:

None to the Answering Defendant's knowledge.

(i) any witness statements described in Rule 192.3(h);

RESPONSE:

None to the Answering Defendant's knowledge.

(j) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;

RESPONSE:

Not applicable.

(k) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party;

RESPONSE:

Not applicable.

(l) name, address and telephone number of any person who may be designated as a responsible third party.

RESPONSE:

None known to the Answering Defendants.

DATE: October 14, 2020

Respectfully submitted,

/s/ Christopher J. Schwegmann

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ATTORNEYS FOR THE DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document was served upon the following counsel of record, *via e-file Texas*, on this the 14th day of October, 2020:

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Houston, Texas 77010-1028

/s/ Christopher J. Schwegmann
Christopher J. Schwegmann