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15
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF LOS ANGELES**
18

19 WILLIAM WEINSTEIN, an individual,

20 Plaintiff,

21 v.

22 VERVE TALENT AND LITERARY
23 AGENCY, LLC, a Limited Liability Company;
24 ADAM LEVINE, an individual; BRYAN
25 BESSER; an individual; and DOES 1 through
26 10, inclusive,

27 Defendants.

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Superior Court of California,
County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By R. Perez, Deputy Clerk

Case No.: 24STCV05098

**PLAINTIFF WILLIAM WEINSTEIN'S EX
PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

*[Appendix of Evidence and [Proposed] Order
filed concurrently herewith]*

Date: March 6, 2024
Time: 8:30 a.m.
Dept.: 82



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1 **I. INTRODUCTION AND SUMMARY OF ACTION**

2 This action arises out of a corporate conspiracy to oust, Mr. William Weinstein, the
3 founding member and CEO of Verve Talent and Literary Agency, LLC (“Verve”), when he
4 invoked the contractually required dispute resolution procedures to resolve a director deadlock
5 that had plagued the effective management of the company. Rather than constructively engage in
6 the required dispute resolution procedure, Verve’s two other co-founding members, Defendants
7 Adam Levine and Bryan Besser, circumvented the terms of Verve’s operating agreement and
8 simply purported to “terminate” Mr. Weinstein from employment at the agency that he founded
9 and then leaked the news to the media less than 20 minutes later violating the operating
10 agreement’s confidentiality provision and their fiduciary duties to the company.

11 This misguided “coup” by Mssrs. Levine and Besser will undoubtedly backfire
12 spectacularly, as will be proven in Mr. Weinstein’s concurrently filed confidential arbitration
13 proceeding which, in part, challenges the propriety of this “termination.” For now, however, Mr.
14 Weinstein simply requests that this Court enter a temporary restraining order and preliminary
15 injunction, returning Mr. Weinstein provisionally to his employment with Verve, preserving the
16 status quo pending the arbitration proceeding, and requiring Verve, Levine and Besser to engage
17 in the contractually required dispute resolution procedure to which all parties agreed during the
18 formation of the company. This is not the Wild West; the parties’ must abide by their contractual
19 duties.

20 **Ex Parte Notice Provided:** Notice of this *ex parte* application was provided to counsel
21 for Defendants by electronic mail on February 29, 2024, at 12:14 pm. (McRae Decl. ¶ 6, Ex. 4.)
22 Counsel for Defendants have indicated that they intend to oppose the relief requested herein. (*Id.*)

23 **II. RELEVANT BACKGROUND FACTS**

24 **A. The Verve Operating Agreement and Confidential Dispute Resolution**
25 **Procedures**

26 Verve was founded in 2009 by Mr. Weinstein, Levine and Besser, each of whom is
27 designated as a “Founding Member” under the company’s Operating Agreement. (Weinstein
Decl. ¶ 2, Ex. 1). The Verve Operating Agreement sets forth the corporate governance and other

1 operating procedures and requirements of the organization. The Operating Agreement sets forth a
2 detailed confidential dispute resolution procedure (the “Confidential Dispute Resolution
3 Procedure”) that is designed to efficiently resolve disputes amongst the members, while
4 maintaining the confidentiality of such internal disputes in order to protect Verve’s clients and to
5 preserve the enterprise value of the organization by limiting public and media exposure. This is
6 the *exclusive* procedure by which disputes are to be resolved. Specifically, the Operating
7 Agreement provides as follows:

8 **11.3. Dispute Resolution.** Any dispute among the Company or
9 the Members and arising out of or relating to this Agreement will
10 be resolved in accordance with the procedures specified in this
11 section 11.3, which will be the *sole and exclusive procedure for*
12 *the resolution of any such dispute.* The Company and the
13 Members intend that these provisions will be valid, binding,
14 enforceable and irrevocable and will survive any termination of
15 this Agreement.

16 **11.3.1 Notification and Negotiation.** If the Company or any
17 Member wishes to assert such a dispute with any other such Person
18 arising out of or relating to this Agreement, such Person will
19 promptly notify such other Person in writing of such dispute and
20 will attempt for a period of fifteen (15) days to resolve any such
21 dispute promptly by negotiation between executives who have
22 authority to settle such dispute. *All such negotiations are*
23 *confidential and will be treated as compromise and settlement*
24 *negotiations for purposes of applicable rules of evidence. . . .*

25 (OA ¶¶ 11.3, 11.3.1) (emphasis added.)¹

26 ¹ Notwithstanding this Confidential Dispute Resolution Procedure, the Operating Agreement
27 allows Mr. Weinstein to seek temporary or preliminary injunctive relief to protect a party’s rights
28 under the Operating Agreement. To wit, the Operating Agreement provides: “Notwithstanding
the parties’ agreement to submit all disputes to final and binding arbitration, the parties will have
the right to seek and obtain temporary or preliminary injunctive relief in any court of competent
jurisdiction. Such courts will have authority to, among other things, grant temporary or
provisional injunctive relief (with such relief effective until the arbitrator has rendered a final
award) in order to protect any party’s rights under this Agreement or its intellectual property
rights.” (OA ¶ 11.3.4).

1 **Mr. Weinstein Invokes the Confidential Dispute Resolution Procedures**
2 **Following Months of Corporate Deadlock**

3 At the end of calendar year 2023, Verve had several important corporate decisions to make
4 which were necessary to the continuing operation and internal administration of the company.
5 Among these decisions was the constitution of the company’s Board of Directors, which had been
6 undetermined since at least 2022, and the 2023 compensation packages for the company’s
7 members. The members of the company were deadlocked on these and other issues that
8 negatively impacted the members’ and Mr. Weinstein’s, as CEO, ability to effectively manage the
9 company. (Weinstein Decl. ¶ 3).

10 Specifically, as to the members’ compensation packages, for numerous consecutive years,
11 in addition to serving as the company’s CEO, Mr. Weinstein was also the top revenue generator at
12 the company by a substantial amount. However, Mr. Weinstein consistently had a far lower ratio
13 of compensation to revenue generated than the other members. Mr. Weinstein sought to align the
14 members’ compensation packages more fairly and true to the value each brought to the
15 organization. The other members, who, for years, were compensated at a far higher rate vis a vis
16 their revenue generated than Mr. Weinstein, balked at Mr. Weinstein’s proposals. The company
17 was deadlocked and, even as of the date of filing this application, has not reached a determination
18 as to members’ 2023 compensation. (Weinstein Decl. ¶ 4).

19 In light of these corporate deadlocks and other management issues, on February 8, 2024,
20 Mr. Weinstein, through his counsel, sent written correspondence to the other members invoking
21 the Confidential Dispute Resolution Procedure. Specifically, Mr. Weinstein requested that the
22 members engage in the required 15-day negotiation period and, barring a negotiated resolution,
23 consider dissolution of the company. (Weinstein Decl. ¶ 5, Ex. 2) (McRae Decl. ¶ 2, Ex. 2).

24 **The Remaining Members Retaliate and Subvert the Confidential Dispute**
25 **Resolution Procedures by Terminating Mr. Weinstein and Leaking the**
26 **Confidential Corporate Affairs to the Media**

27 Defendants did not engage in any negotiation with Mr. Weinstein following his February
28 8, 2024 correspondence. On February 19, 2024, (i.e. President’s Day), and only 11 days into the

1 15-day negotiation period, Mr. Weinstein received a response from the claimed “Board of
2 Directors” at Verve that purported to notify Mr. Weinstein that, without any advance notice or call
3 for a special meeting, he had been summarily removed as a manager of the company and his
4 employment immediately terminated for “Cause.”² The underlying “cause” has never been
5 specified by Verve. (Weinstein Decl. ¶ 6, Ex. 3) (McRae Decl. ¶ 3, Ex. 3). Pursuant to the
6 Operating Agreement, a Founding Member, such as Mr. Weinstein, could only be terminated by a
7 majority vote of the company’s members, as well as a unanimous vote by the other two Founding
8 Members Levine and Besser. (OA 5.5.1(a)). Under the Operating Agreement, a member’s
9 departure from the Company for “Cause” has serious economic effects, including the right of the
10 Company to redeem the departing member’s membership interests at a substantially reduced cost.
11 (OA ¶ 8.6.6.)

12 Less than 20 minutes after sending this correspondence, the members leaked Mr.
13 Weinstein’s termination to various media outlets with the clear intent to publicly tarnish Mr.
14 Weinstein’s reputation. Specifically, a media report was released containing a statement from
15 “Verve leadership” announcing Mr. Weinstein’s departure. The article provided more details
16 only known to Levine and the other Verve members including that the decision was made after
17 deliberation by Verve’s leadership and approved by Verve’s board and owners.
18 (<https://deadline.com/2024/02/verve-bill-weinstein-2-1235831395/>). (Weinstein Decl. ¶ 7, Ex. 5).

20 ² The Operating Agreement states that the term “Cause” “shall have the meaning ascribed to such
21 term in the applicable Member’s (or such Member’s Service Affiliate’s) written service or
22 employment agreement with the Company or any of its Affiliates, and in the event there is no
23 such written agreement shall mean: (i) indictment for, conviction of, or pleading guilty or nolo
24 contendere to, a felony or other crime of moral turpitude, (ii) the commission of fraud, dishonesty
25 or acts of misconduct in rendering services on behalf of the Company or any Affiliate, (iii) the
26 use of illegal drugs (whether or not at the workplace) or other conduct, even if not in conjunction
27 with the individual’s duties hereunder, which could reasonably be expected to, or which does,
28 cause the Company public disgrace or disrepute or economic harm, (iv) repeated failure to
perform duties for the Company or its Affiliates, which failure, if reasonably capable of being
cured, is not cured to the Board’s satisfaction within ten (10) days after written notice thereof,
(v) gross negligence or willful misconduct with respect to the Company or its Affiliates or in the
performance of duties, or (vi) a material violation of any of the terms of any of the Company’s
established rules or polices which, if reasonably capable of being cured, is not cured to the
Board’s satisfaction within ten (10) days after written notice thereof.” (OA, p.3.) Mr. Weinstein
has no employment agreement with Verve, so the definition of “cause” in the Operating
Agreement controls.

1 This was a direct violation of the Operating Agreement’s confidentiality provision.³ The article
2 was replete with anonymous quotes from alleged employees, stating that Mr. Weinstein was a
3 great agent, but had rubbed employees the wrong way by requesting that they return to the office
4 following Covid, among other things. These employee complaints do not come anywhere close to
5 “Cause,” as it is defined in the Operating Agreement.

6 Verve, and through Levine and Besser, immediately cut-off Mr. Weinstein’s work email
7 access and cellular phone and demanded the return of Mr. Weinstein’s work computer and all
8 other Verve related materials and client files. The leak of Mr. Weinstein’s purported
9 “termination” and the restriction of his access to his work materials has been incredibly damaging
10 to Mr. Weinstein’s reputation and his ability to continue providing the highest level of service to
11 his clients. (Weinstein Decl. ¶ 8).

12 The Confidential Dispute Resolution Procedure invoked by Mr. Weinstein had thus been
13 entirely subverted by simply terminating Mr. Weinstein’s employment – leaving up to Levine and
14 Besser sole determination the key corporate decisions, including Mr. Weinstein’s 2023
15 compensation. These actions against Mr. Weinstein were made in direct retaliation for his
16 commencement of the Confidential Dispute Resolution Proceeding. (Weinstein Decl. ¶ 11).
17 Defendants have refused to continue with or complete the Confidential Dispute Resolution
18 Proceeding with respect to the issues raised by Mr. Weinstein, and have, instead, only engaged in
19 discussions regarding Mr. Weinstein’s post-termination compensation.⁴ Mr. Weinstein has since
20 learned that Besser and Levine are attempting to arrange a sale of the company to a third party
21 buyer, and the removal of Weinstein as an active and voting member in the organization was a
22 _____

23 ³ The Operating Agreement’s Confidentiality Provision prohibits the public disclosure of
24 internal corporate governance and management affairs, such as the purported “termination” of
25 Mr. Weinstein. (OA ¶ 11.15.) There is an exception to the confidentiality provision, however,
26 for matters such as the instant complaint and application for injunctive relief, wherein the parties
27 are permitted to disclose otherwise confidential information “in order to enforce [the member’s]
rights pursuant to [the Operating] Agreement.” (OA ¶ 11.15.)

⁴ The parties have agreed to participate in a mediation session. However, from Defendants’
perspective, the scope of this mediation is limited to the financial terms of Mr. Weinstein’s exit
from the company. Defendants have refused to engage in negotiation or discussion on any of the
issues raised by Mr. Weinstein in initiating the Confidential Dispute Resolution Procedure on
February 8, 2024. (McRae Decl. ¶ 4, 5, Ex. 4).

1 calculated conspiracy to increase the sales proceeds flowing to Besser and Levine, at Weinstein's
2 expense. (Weinstein Decl. ¶ 10).

3 Further, while employed with Verve, Mr. Weinstein, along with the other Founding
4 Members, personally guaranteed a revolving line of credit in Verve's name. Following his
5 termination, Verve has refused to absolve Mr. Weinstein of this personal guaranty, has forbidden
6 Mr. Weinstein from communicating with the lender, and has refused to even provide Mr.
7 Weinstein with a copy of the underlying loan documents and personal guaranty. Mr. Weinstein is
8 concerned that Verve will continue to draw on this line of credit for which he may be personally
9 liable and as to which he will have no ability to consent or reject. (Weinstein Decl. ¶ 9).

10 Mr. Weinstein desires and intends to go forward with the Confidential Dispute Resolution
11 Proceeding, including filing an arbitration proceeding, if necessary. However, he has received no
12 engagement from Defendants, other than their purported termination of his employment.
13 (Weinstein Decl. ¶ 11).

14 **III. LEGAL ARGUMENT**

15 **A. Ex Parte Relief is Necessary**

16 Pursuant to Code of Civil Procedure sections 526 and 527(c), a party may obtain
17 injunctive relief on an ex parte basis where irreparable harm will occur if the application is heard
18 on regular notice and the applicant, in good faith, attempts to contact the opposing party. Here,
19 substantial irreparable harm will result if this application is heard on regular notice because there
20 are imminent and irreversible corporate decisions directly impacting the ongoing enterprise value
21 of the company, including the potential sale of the company to a third party, the draw down on
22 additional lines of credit that Mr. Weinstein personally guaranteed and Mr. Weinstein's ongoing
23 ability to service his existing clients. (Weinstein Decl. ¶ 8, 9, 10, 11).

24 Further, the mandated Confidential Dispute Resolution Procedure has been completely
25 derailed and cannot be completed per the timelines set forth in the Operating Agreement absent ex
26 parte injunctive relief from the Court. (Weinstein Decl. ¶ 5, 6, 11, Ex. 2-3) (McRae Decl. ¶ 2, 3,
27 Ex. 2-3). Hearing this matter on a regularly noticed motion schedule will take several months,
during which time Besser and Levine will have the opportunity to take corporation actions

1 detrimental to Mr. Weinstein and without compliance with the Confidential Dispute Resolution
2 Procedures, including further disclosures of confidential information to tarnish his public
3 reputation and restriction of his access to his work and client files in order to continue providing
4 the utmost level of service to his clients. (Weinstein Decl. ¶ 7, 8). These issues are of critical and
5 time sensitive importance and require and warrant *ex parte* relief.

6 **B. Injunctive Relief Is Necessary And Appropriate**

7 A party seeking an injunction must show that: (1) he has a reasonable probability of
8 succeeding on the merits; and (2) the harm from refusal to grant the injunction outweighs the
9 harm the opposing party will sustain from imposition of the injunction. *See IT Corp. v. County of*
10 *Imperial*, 35 Cal. 3d 63, 69-70 (1983). Once a court finds that a party has a reasonable chance of
11 success on the merits, its ruling on an injunction should be in favor of the party likely to suffer the
12 greatest injury. *Continental Banking Co. v. Katz*, 68 Cal. 2d 512, 528 (1968). Where the injury to
13 the moving party is clear and unmistakable and no corresponding damages will result to the
14 opposing party if the Court grants injunctive relief, it is an abuse of the Court’s discretion to deny
15 such relief. *See Ellis v. American Federation of Labor*, 48 Cal. App. 2d 440, 446 (1941).

16 **1. There is More Than a Reasonable Probability that Mr. Weinstein Will**
17 **Prevail on the Merits of his Claims**

18 Mr. Weinstein seeks an injunction against Verve, Levine and Besser, preventing them
19 from terminating Mr. Weinstein’s employment during the pendency of the Confidential Dispute
20 Resolution Procedure and provisionally returning him to his original corporate status in order to
21 complete the required dispute resolution procedures. The Confidential Dispute Resolution
22 Procedures are mandatory and are the *exclusive* process by which disputes amongst the members
23 are to be resolved. Defendants circumvented and derailed the Confidential Dispute Resolution
24 Procedure initiated by Mr. Weinstein by terminating his employment in retaliation for his
25 commencement of the process. (Weinstein Decl. ¶ 2, 5, 6, Ex. 1). This conduct is a direct
26 violation of the Operating Agreement and entitles Mr. Weinstein to the injunctive relief sought.
27 These are matters that must be resolved in the context of the Confidential Dispute Resolution
Proceeding – not through the extra-contractual “termination” of Mr. Weinstein. Accordingly, Mr.

1 Weinstein has a reasonable probability of prevailing on the merits of his claims.

2 **2. The Balancing of Harm Weights in Mr. Weinstein's Favor**

3 The balancing of harm to the parties strongly favors Mr. Weinstein. Mr. Weinstein will be
4 greatly harmed absent the requested relief. Defendants have circumvented the Confidential
5 Dispute Resolution Procedure by terminating Mr. Weinstein's employment, locking him out of
6 his email and cellular telephone, and restricting his access to his files and information that he
7 requires to continue providing services to his clients. (Weinstein Decl. ¶ 6, 8). Further, there is a
8 grave danger that Defendants will take corporate actions and make corporate decisions in Mr.
9 Weinstein's absence that are unfair and to Mr. Weinstein's detriment – including without
10 limitation setting Mr. Weinstein's compensation package for calendar year 2023 and/or
11 organizing a sale of Verve to a third party buyer on terms that limit any compensation to Mr.
12 Weinstein. (Weinstein Decl. ¶ 4, 10). Additionally, Mr. Weinstein remains as a personal guarantor
13 on several loans taken out by Verve. Following the purported "termination," Verve has refused to
14 absolve Mr. Weinstein of this personal guaranty or to even provide him copies of the underlying
15 loan documentation. (Weinstein Decl. ¶ 9). Additionally, Defendants' release of confidential
16 information (and, in large part, false information) in violation of the Operating Agreement has
17 injured Mr. Weinstein's reputation in the industry. (Weinstein Decl. ¶ 7).

18 Numerous courts in both California and Delaware have found irreparable injury
19 warranting injunctive relief in similar situations. *See e.g. Chartis Warrantyguard, Inc. v. Nat'l*
20 *Elecs. Warranty, LLC*, 2011WL336385, at *10 (Del. Ch. Jan 28, 2011) (granting motion for
21 preliminary injunction on plaintiff's claims for breach of confidentiality provisions pending full
22 resolution of plaintiff's claims in arbitration where evidence shows defendant will likely continue
23 using the protected information and it will likely be difficult to determine damages or adequate
24 damages may not be available at all); *Chalk v. Us Dist. Court Cent. Dist. of California*, 840 F2d
25 701 (9th Cir. 1988) (reversing lower court and finding a preliminary injunction ordering
26 reinstatement of employee to prior position pending determination of alleged wrongful
27 termination is proper); *Volpicelli v. Jared Sydney Torrance memorial Hosp.*, 109 Cal.App.3d 242
(1980) (affirming preliminary injunction reinstating physician as member of medical staff at

1 hospital pending proper notice and hearing on termination of physician's membership pursuant to
2 by laws of the defendant hospital and concluding sufficient showing of irreparable harm was
3 made in lower court).

4 On the other hand, Verve, Besser and Levine will suffer no harm if the requested relief is
5 granted. The parties will simply be returned to their status quo ante pending completion of the
6 required Confidential Dispute Resolution Proceeding. In other words, Defendants are not losing
7 anything by the Court granting the requested interim relief. The balance of harm weighs entirely
8 in favor of Mr. Weinstein.

9 **IV. CONCLUSION**

10 For the foregoing reasons, Mr. Weinstein respectfully requests that his status with the
11 Company be provisionally reinstated pending completion of the required Confidential Dispute
12 Resolution Process.

13 Dated: February 29, 2024

EARLY SULLIVAN WRIGHT
GIZER & MCRAE LLP

14
15 By: 

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17 Attorneys for Plaintiff
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