**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| **Stephen D. Rubin, John Seramur, Ellis Rosenzweig, Mike Rubin, Wendy Rubin, Michelle Sobel o/b/o Willa Sobel, Michelle Sobel o/b/o Lucy Sobel, Michelle Sobel, Paul Brenner, Jason Gorchow, Gerald Levy, Edward LeVine, LeVine Limited Partnership, Dec-Art Designer Inc. 401K P.S. Plan f/b/o Gerald R. Levy, The Edwin C. Glickman Trust, Richard Konst, James Cohn, Irvin Caplan, James Rubin, Joyce Rubin, Ronald L. Boorstein, Margaret DeShon, Ronald Norinsky, David Gorenstein, Trustee of the David Gorenstein Trust, Adele J. Gorenstein, Trustee of the Adele J. Gorenstein, Trust, and JBF Enterprises, an Illinois general partnership,** | ) | |
| **Plaintiffs,** | ) | **Case No. 09-cv-6152** |
| **v.** | ) | **Honorable Judge Guzman**<br>**Magistrate Judge Denlow** |
| **Howard E. Bedford, Clifford K. Bolen, David S. Lipson, Edward P. Dolanski, Robert C. Douglas II, and David T. Allen,** | ) | |
| **Defendants.** | ) | |

**AMENDED COMPLAINT**

NOW COME Plaintiffs Stephen D. Rubin ("Rubin"), John Seramur ("Seramur"), Ellis Rosenzweig, Michael Rubin, Wendy Rubin, Michelle Sobel on behalf of Willa Sobel, Michelle Sobel on behalf of Lucy Sobel, Michelle Sobel, Paul Brenner, Jason Gorchow, Gerald Levy, Edward LeVine, LeVine Limited Partnership, Dec-Art Designer Inc. 401K P.S. Plan for the benefit of Gerald Levy, The Edwin C. Glickman Trust, Richard Konst, James Cohn, Irvin

Caplan, James Rubin, Joyce Rubin, Ronald L. Boorstein, Margaret DeShor, Ronald Norinksky, David Gorenstein, Trustee of the David Gorenstein Trust, Adele J. Gorenstein, Trustee of the Adele J. Gorensetin Trust, and JBF Enterprises, an Illinois general partnership, (collectively referred to hereinafter as "Plaintiffs"), by and through their attorneys, GOLD & COULSON, a partnership of professional and limited liability corporations and Ronald L. Boorstein, and complaining of Defendants Howard E. Bedford ("Bedford"), Clifford K. Bolen ("Bolen"), David S. Lipson ("Lipson"), Robert C. Douglas II ("Douglas"), David T. Allen ("Allen") and Edward P. Dolanski ("Dolanski") (collectively referred to hereinafter as "Defendants"), state as follows:

## NATURE OF THE CASE

1. This case arises as a result of Defendant BEDFORD's fraudulent scheme to steal the business and assets of a profitable company, VITA FOOD PRODUCTS, INC. ("VITA"), by paying substantially less for that business and those assets than their true value. In order to effectuate this scheme, he formed an enterprise ("THE MERGER ENTERPRISE") aided and abetted by the other Defendants Bolen, Lipson, Douglas, Allen and Dolanski.

2. In 2006 Bedford became a shareholder in VITA, a Nevada corporation with its principal office in Chicago, Illinois.

3. Through fraud, deceit, breaches of fiduciary duties, self-dealing, and other acts, the MERGER ENTERPRISE succeeded in its purpose by permitting a corporation, wholly owned by a limited liability company, which was itself wholly owned by Bedford, to steal the business and assets of VITA through engaging in a pattern of racketeering.

4. Plaintiffs, who together owned more than 30% of the issued and outstanding shares of VITA when it was stolen, are victims of the fraud, deceit, breaches of fiduciary duties and self-dealing engaged in by Defendants to carry out the MERGER ENTERPRISE.

5. Plaintiffs seek damages against Defendants for: (1) conducting the affairs of a racketeer influenced and corrupt enterprise in violation of section 1962 (c) of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c); (2) using a racketeer influenced corrupt enterprise to acquire or maintain control over a business and assets in violation of 1962(b) of RICO, 18 U.S.C. § 1962(b); (3) conspiring to violate §1962(b) and (c) of RICO in violation of § 1962(d) 18 U.S.C. § 1962(d); (4) breaches of fiduciary duties and the duty of good faith and loyalty; and (5) negligence.

**PARTIES**

6. VITA was engaged in the business of processing and distributing food products throughout the United States when the acts complained of herein resulted in the loss of VITA's business and assets. Its principal office was in Chicago, Illinois.

7. The Defendants were all Directors of VITA at the time of its theft and participants in carrying out the MERGER ENTERPRISE.

8. As stated, Plaintiffs owned more than 30% of the equity of VITA at the time of its theft.

9. VFP Merger Co., ("VFP"), a Nevada corporation, was organized for and pursuant to the directions of Bedford, and now holds all the business and assets of VITA as a result Defendants' conduct.

10. At all times relevant hereto, all of the issued and outstanding stock of VFP has been owned by MDB Alternative Investments II, L.L.C., ("MDB"), a Delaware limited liability company organized and wholly owned by Bedford.

11. VFP and MDB were the key components constituting the vehicle for the corrupt MERGER ENTERPRISE.

## JURISDICTION AND VENUE

12. Counts I through III of this Complaint state claims based on: (1) conducting the affairs of a racketeer influenced and corrupt enterprise in violation of section 1962(c) of the Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S. C. § 1962(c); (2) using a racketeer influenced enterprise to acquire or maintain control over an enterprise in violation of § 1962 (b) of RICO, 18 U.S.C. § 1962(b); (3) conspiring to violate sections 1962(b) and (c) of RICO in violation of § 1962(d), 18 U.S.C. § 1962(d).

13. This Court has both subject matter and personal jurisdiction for Counts I through III under § 1965(b) of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1965(b) and § 1331 of Federal Code of Civil Procedure (28 U.S.C. § 1331). This Court also has jurisdiction over Counts IV and V pursuant to 28 U.S.C. § 1367 because those claims are so related to Counts I-III that they form part of the same case or controversy.

14. Venue is proper in this Court since almost all of the acts on which this Complaint is based were committed in the Eastern Division of the Northern District of Illinois and almost all of the occurrences described in this Complaint took place in the Eastern Division of the Northern District of Illinois.

## FACT BACKGROUND COMMON TO ALL COUNTS

15. During the year 2001 VITA acquired a corporation known as Virginia Honey, Inc., ("Virginia Honey") for a price substantially in excess of its book value.

16. Upon the acquisition of Virginia Honey, VITA recorded on its Balance Sheet, as Goodwill, the amount by which the purchase price exceeded the book value of Virginia Honey.

17. After Virginia Honey had been acquired by VITA in September, 2002, VITA acquired a corporation known as Halifax Foods, Inc., and combined it with Virginia Honey, to form the Vita Specialty Foods Division of VITA.

18. From 2002 through 2006 VITA's Specialty Foods Division sustained considerable losses, principally as the result of errors made in the conduct of business VITA acquired from Virginia Honey requiring a product recall it was forced to make in connection with a serious error in bottling food sauces distributed under the name "Budweiser".

19. Due to the continuing losses of its Specialty Foods Division, VITA needed infusion of substantial amounts of funds to continue to operate its business.

20. In March, 2006, VITA obtained $2,500,000.00 of capital by selling 400,000 shares of stock to Bedford, 200,000 shares of stock to Rubin, 200,000 shares of stock to Seramur, 100,000 shares of stock to Bolen and 100,000 shares to Glenn Morris ("Morris").

21. In May, 2006 Bedford joined Rubin and Seramur as a member of VITA's Board of Directors of which Rubin was Chairman.

22. During this time frame VITA also borrowed substantial amounts of money from commercial banks, primarily LaSalle Bank, N.A.

23. The VITA 2006 losses were so considerable that VITA was required to take a non-cash write down (impairment) of Goodwill on the financial reports it made public for that year.

24. As a result, the public financial reports VITA issued for the year 2006 were negatively impacted both by the Specialty Foods Division cash losses and the resulting write down (impairment) of Goodwill.

25. Except for its unusual loss during the year 2006, the Specialty Foods Division was steadily moving toward profitability and the other Division of VITA, its principal Division, was increasingly profitable.

26. LaSalle Bank, N.A., according to Bedford wanted Rubin removed as President and CEO of VITA, and Bedford advised the Directors of VITA to so remove him if it were to consider refinancing VITA's debt.

27. Bedford presented no written or other confirmation of the position supposedly taken by LaSalle Bank, N.A. and the Board of Directors received none; nevertheless, Bedford was able to convince all of the Directors of VITA, other than Rubin, that they must replace Rubin as the President and Chief Executive Officer of VITA with Bolen, which the Directors did on or about August 18, 2006.

28. Nevertheless, due to VITA's substantial bank debt, in 2007 Board chairman Rubin, VITA's largest single shareholder, began seeking a purchaser for VITA.

29. Early in 2007 at the annual national Seafood Show, Rubin discussed with two different seafood competitors of VITA the possibility of having one or the other of them acquire VITA.

30. Trident Seafood Corporation ("Trident"), one of those competitors approached by Rubin for the possible purchase of VITA, subsequently sent representatives to VITA's office in Chicago to explore the possibility of purchasing VITA through a due diligence review.

31. In a subsequent telephone call to Rubin, Trident indicated that it was prepared to acquire VITA for as much as $25,000,000.00 plus the assumption of VITA's outstanding debt.

32. When Rubin informed Bedford of the substantial interest Trident had in acquiring VITA, Bedford acted quickly to end the possibility of having Trident acquire VITA.

33. Like Trident, Bedford recognized that the former financial difficulties of VITA were being eliminated and the future prospects for Vita had become very positive.

34. Bedford also realized that, with the cash and non-cash loss Vita sustained in 2006, as VITA moved into 2007 it appeared that VITA would need either to be acquired by a larger company or to have a further substantial infusion of cash.

35. By then Bedford had begun formulating his scheme to steal the business and assets of VITA.

36. The integral ingredients of Bedford's scheme were:

a. taking effective control of VITA through an additional contribution to its capital;

b. replacing members of the Board of Directors of VITA with individuals who would participate in carrying out the corrupt enterprise;

c. issuing public financial reports, which contrary to internal reports, would show VITA to be experiencing continuing, long-term difficulties;

d. arranging to merge VITA into a corporation, all of the stock of which would be wholly owned, directly or indirectly, by Bedford;

e. carrying out an elaborate process which would fraudulently make it appear that the terms of the merger were fair to VITA;

f. completing the merger of VITA into the Bedford corporation.

37. In 2007, Bedford informed Rubin that he would not agree to or support any sale of VITA unless the offer were in excess of $40,000,000.00 plus the assumption of VITA's outstanding debt and stated that he could eventually obtain more than $40,000,000 for VITA.

38. During this period and because of Bedford's objection to any sale less than $40,000,000, Rubin continued to seek refinancing of the VITA debt, but was unsuccessful.

39. Rubin therefore continued his efforts to find a purchaser for VITA.

40. Knowing VITA's vulnerability and need for immediate cash infusion, Bedford also proceeded with his plan to seize the business and assets of VITA for wholly inadequate consideration by offering to make an additional investment in VITA.

41. Bedford volunteered to invest $3,000,000 in VITA, if, but only if, Rubin would give him an irrevocable proxy to vote all of Rubin's VITA stock plus receive an option to purchase 2,650,000 additional shares of VITA at a price starting at $1.25 per share and increasing to $1.75 per share.

42. Having no other viable alternative to preserve VITA's bright future and realize the positive prospects that Trident, Bedford and Rubin all recognized VITA was on the verge of achieving, Rubin acceded to the terms proposed by Bedford.

43. Based on acceptance of his demands, Bedford transferred $3,000,000 to VITA during 2007 allowing him effectively to control VITA. The Rubin proxy received by Bedford is attached as Exhibit 1.

44. Possessing Rubin's proxy and control of VITA, Bedford rapidly set about to steal VITA's business and assets.

45. Bedford's objective was helped by having the terms of VITA existing directors, Seramur, Glen Morris ("Morris"), and Steven Rothstein ("Rothstein") either expire or not be renewed .

46. When their terms as Directors expired, Bedford promptly replaced Seramur, Rothstein and Morris on the VITA Board with Bedford's co-conspirators *Lipson, Allen, Dolanski, and Bolen*. Bolen was also confirmed as the President and Chief Executive Officer of VITA at this time.

47. Bedford then moved to the next stage of his scheme by utilizing a myriad of deceptive and misleading acts to substantially lower the market price of VITA shares of stock. These acts included but were not limited to:

a. artificially reducing the publicly reported VITA operating profits by approximately $1,000,000.00 in one year;

b. suppressing information of valuable co-packing rights which VITA was very near obtaining; and

c. preventing information about favorable VITA developments from being distributed to VITA shareholders or the investing public.

48. As a result of Bedford's manipulation of VITA's stock price, his co-conspirators were able to purchase shares for considerably less than $1.00 per share, even though Bedford, Seramur and Morris had previously purchased shares of Vita stock for $2.50 per share.

49. Eventually, on May 31, 2008, Bedford had Rubin removed as Chairman of VITA's Board and replaced him in that position with Bedford's principal ally Lipson. Rubin continued as a Board member as the proxy which he executed for Bedford would terminate unless Bedford always voted those shares to retain Rubin on the VITA Board.

50. Still on the VITA Board, but the only director of VITA not a participant in the MERGER ENTERPRISE, Rubin contacted Bedford several times about prospective purchasers for VITA, each of which would pay significantly more per share than Bedford had paid for his shares of VITA stock.

51. One Company, Ocean Beauty, Inc., actually offered simply to purchase use of VITA's name for the equivalent of $8,000,000.00, but Bedford refused to consider that proposal as well as all the others called to his attention by Rubin.

52. In order to make certain of the continued active support and complicity of all the Board members except Rubin, Bedford assured them that:

a. if, because of allegations of fraud, the VITA directors and officers liability insurance coverage were inapplicable, he would personally indemnify them against any liability they may have as a result of cooperating with Bedford's scheme to acquire the business and assets of VITA for grossly inadequate consideration (that indemnification is reduced to writing on Exhibit 2, at page 13 attached);

b. they would receive more for the shares of stock of VITA they purchased than they had paid for them; and

c. they would eventually be given an opportunity to invest in and serve in compensated positions in the entity which was going to acquire the business and assets of VITA.

53. Having prevented the possibility of selling VITA for as much as $25,000,000.00 plus the assumption of its debt (See ¶ 29 *supra*), on November 24, 2008 Bedford overtly acted to further the MERGER ENTERPRISE by having an attorney use the U.S. mails to make an offer of $.30 cents per share for all of the issued and outstanding VITA stock he did not own (Exhibit 3 attached) which indicated that the value of the entire VITA company was *only $2,200,000.00*.

54. This "generous" offer was received by Lipson, VITA's Chairman and Bedford's principal collaborator.

55. On that same day, November 24, 2008, Lipson immediately warned all the Directors, by email: "NOT TO DISCUSS THIS OFFER WITH ANYONE" (Exhibit 4 attached).

56. On November 30, 2008, Lipson sent another email to the other Defendants warning them "NOT" to contact "current shareholders" as "there is some potential of litigation in processes similar to this [corrupt enterprise] and I do not want to increase the odds when I am the one who will be sued (along with you)." (Exhibit 5 attached).

57. The next day, December 1, 2008, Bedford and Lipson caused a "Special Committee" of the VITA Board to be formed to entertain Bedford's "offer".

58. The Special Committee was composed entirely of Bedford's co-Defendants.

59. Initially, the members of the Special Committee were Lipson, Dolanski, Douglas and Allen, with Bedford's chief accomplice Lipson designated as the Chairman.

60. By email, Rubin was excluded from the "Special Committee" and prevented from being in any way involved with its proceedings. (Exhibit 5 attached).

61. The Special Committee undertook the daunting challenge of demonstrating that a "fair price" for VITA was considerably less than VITA was truly worth.

62. Based on the unsettling task of justifying an inadequate price for the business and assets of VITA which had been assigned to the Special Committee, its members protested that the compensation provided for them was inadequate.

63. In order to insure that the purpose and goal of the MERGER ENTERPRISE would be fulfilled and that his co-Defendants would continue their corrupt activities, Bedford arranged to have the compensation of the Special Committee members increased. (See Exhibit 6 email.)

64. The Special Committee also retained Graham R. Laub ("Laub) of the Philadelphia law firm Dilworth Paxson LLP to devise and implement a process to establish that VITA's stock was worth much less than its real value and that its Special Committee was engaged in a genuine effort to establish a "fair price" while at the same time hiring the San Francisco firm, Sutter Securities, to render a "fairness" opinion for Bedford's upcoming planned sale and merger.

65. From December 1, 2008 into February, 2009 the Special Committee and Bedford pretended to be negotiating a "fair price."

66. On December 9, 2008, Bedford's stacked Special Committee went through the motions of rejecting his sham $0.30 per share offer, and then Bedford "agreed" to submit a revised offer.

67. With the ploy of the $0.30 per share offer ended, on December 15, 2008 Bedford made a second offer that increased the purchase price to $1.00 per share: a more than 300% increase over his prior ridiculous $0.30 offer.

68. Gil Matthews, a principal in the Sutter Securities firm, warned the Special Committee that the price it was attempting to establish could not be properly supported and they were risking legal problems by not establishing a more reasonable price through a better assessment of the VITA's value. (See Exhibit 7 email).

69. Since the Sutter Securities firm could not opine as to the fairness of the Special Committee's predetermined price of approximately $1.00 per share, which valued the entire company at only $7,400,000 if it used values of companies which were actually comparable to VITA, Sutter used the subterfuge of comparing firms that were significantly different from VITA. (see Exhibit 8 attached hereto).

70. During this period when the Special Committee was supposed to be determining a "fair price" for VITA, its Directors were repeatedly instructed to keep the process secret and especially to avoid advising any of VITA's competitors that the company was available for purchase. Copies of communications in that regard are attached hereto as Exhibit 9.

71. As late as December 11, 2008, Rubin unaware of the corrupt MERGER ENTERPRISE, but still a VITA Director with a fiduciary duty to seek the highest price possible for a sale of VITA, once again began to contact potential buyers and apprise Bedford of his efforts.

72. Seeking to stop this potential interference with his scheme, Bedford sent an email to Rubin stating "I'm NOT shopping VITA FOODS to the public and I have NO intention of currently doing so." (Exhibit 10 attached).

73. The arrogant act described in the preceding paragraph demonstrates not only Bedford's breach of fiduciary duty, but also manifests his complete disregard for the consequences of his continuing the corrupt MERGER ENTERPRISE.

74. On or about January 27, 2009, Bedford's puppet Special Committee agreed to a purchase price of $1.05 per share and the U.S. mails were used to effectuate the goal of the MERGER ENTERPRISE. (Ex. 11 attached).

75. On February 11, 2009 Douglas confirmed what occurred on January 27, 2009 when he sent an email in which he said "we were to go back to a price of $1.20, but the Special Committee eventually accepted a price of $1.05." (Exhibit 12, attached).

76. The February 11, 2009 email sent by Douglas represents further corroboration that the Special Committee's being charged with reaching a "fair price" was a charade.

77. Jeffrey Rubenstein, an attorney for the Vita Board of Directors, recognized the danger of using email to discuss the corrupt MERGER ENTERPRISE and accordingly, on February 11, 2009 emailed this caution to members of the Board of Directors: "Gentlemen, it is not the best idea to discuss this by email." (Exhibit 13, attached).

78. On February 27, 2009, Bedford, for himself, and his co-collaborator Lipson, wrongfully acting on behalf of VITA, executed the Merger Agreement for the contrived price of $1.05 per share (Exhibit 14 attached) representing a total purchase price of approximately $7,735,000.00 for the business and assets of VITA, as opposed to a total price of somewhere between $18,000,000 - $25,000,000 as calculated years earlier and available from competitors of VITA.

79. Bedford's stacked VITA board of directors, first having excused Bedford and Rubin from the meeting, approved unanimously the $1.05 price and recommended it to shareholders.

80. On March 22, 2009 Rubin, who was still unaware of the MERGER ENTERPRISE, inquired of Lipson about other competitive offers for the stock of VITA, and in response, received an email from Lipson:

> **"Candidly, if you requested the time of day, I would have to tell you to go fuck yourself". (Ex. 15 attached)**

81. On that same day, March 22, 2009, Lipson sent an email to the other Directors of VITA warning them to keep information away from Rubin because he was trying to use the information he received to stimulate interest in others to attempt to acquire VITA.

82. After the Merger Agreement between VITA, VFP, MDB II and Bedford had been "negotiated" and executed, the Special Committee established a very limited period to solicit competing offers, which time period was designated as the "Shop Period." The Shop Period to contact competitors was limited to only *two weeks*, deliberately limited to quash any true interest from entities who were both desirous and able to pay a reasonable price for VITA.

83. Lipson's audaciousness and arrogance in perpetrating the MERGER ENTERPRISE fraud became so out of control, that, contrary to Rubenstein's advice (paragraph 77 *supra*,), he sent an email on March 24, 2009 to his co-Defendants that the "new ownership" will celebrate its successful conclusion of the fraud with a dinner at a fancy, expensive downtown Chicago Restaurant and that he was going to have herring and wine immediately after transmitting the email. (See Ex. 16 attached). March 24, 2009 was *before* the "Shop Period" had expired and a full month before the Special Meeting of Shareholders scheduled for the vote on the proposal merger was to be held!

84. Among the potential purchasers that the Special Committee failed to contact was TRIDENT, undoubtedly the most likely company to make a substantial offer for VITA.

85. The Special Committee also failed to contact Ocean Beauty, Inc. which had previously expressed interest in acquiring VITA or the right to use the name of VITA for certain products.

86. The VFP Merger agreement (Ex. 14) required that notice must be sent to all VITA shareholders of a pending shareholder vote on the Merger Agreement..

87. Defendants scheduled a Special Shareholders Meeting for April 23, 2009 to vote on the proposed merger.

88. The Merger Agreement (Ex. 14 attached) providing for the merger of VITA into VFP, which was wholly owned by MDB II, that was, in turn, wholly owned by Bedford, was described in the Notice of the Special Meeting of Shareholders scheduled for April 23, 2009. Again, and with obvious arrogance, the purpose of the MERGER ENTERPRISE was memorialized in writing.

89. After the expiration of the "Shop Period", TRIDENT became aware that VITA was theoretically available to be purchased, so the General Counsel of TRIDENT communicated that his company was interested in acquiring VITA and that the price it had postulated in its prior negotiations with Rubin ($18,000,000.00-$20,000,000 plus the assumption of VITA's debt) would be reasonable if VITA's business had not deteriorated since then.

90. Actually, the profitability of VITA had improved considerably since TRIDENT had previously expressed its interest in purchasing VITA.

91. Lipson was made aware of the interest of Trident and another prospective purchaser and he was placed in contact with the General Counsel of TRIDENT and the principal of the other interested entity.

92. At that time, all the TRIDENT personnel who needed to be involved with pursuing the acquisition of VITA could not consider it for several days because they were then in the midst of concluding another significant acquisition.

93. When Lipson was advised about the unavailability of TRIDENT personnel, because of their then current distraction, he placed a preposterous three (3) day time limit on receiving a proposal from TRIDENT, thereby eliminating any reasonable time for TRIDENT to conduct due diligence.

94. Subsequently, the General Counsel of TRIDENT confirmed that his company was very interested in acquiring VITA and that the offering price would be at least comparable to the price TRIDENT had suggested in the prior negotiations (18,000,000 to $25,000,000), but that the time limit imposed by Lipson prevented TRIDENT from proceeding, which was, of course, exactly what Lipson and Bedford intended.

95. Lipson received another offer for VITA which exceeded the price per share in the Merger Agreement.

96. However, under the Merger Agreement, Bedford had the right to reject the offer from the other prospective purchaser, even if it were superior to his.

97. Bedford exercised that right to reject the higher competing offer.

98. Having disposed of any possibility of having any other viable proposal to acquire VITA, the efforts of the participants in the corrupt enterprise were then directed to perpetuate the lie to VITA shareholders that they had no better option than to merge VITA into VFP.

99. In order to support that lie, the MERGER ENTERPRISE, on March 31, 2009, had Defendant Bolen (on behalf of VITA) release to the public, via the U.S. mail and wires, a year-

end *unaudited* report on the Company's financial condition which contained an "impairment of Goodwill" for 2008 in the amount of $1,934,000. (Exhibit 17 attached)

100. The financial statements submitted in 2008 to Vita's Board of Directors and also to VITA's bank to support a request to renew a loan were contrary to those released to the public as they contained no such impairment of goodwill.

101. The unaudited 2008 year end release of deceptive financial information was fabricated to substantiate a lower value for VITA so as to further justify the MERGER ENTERPRISE's $1.05 per share price. (See Exhibit 17 attached).

102. The Defendants caused two conflicting sets of financial statements for Vita to be issued: a true one for the collaborators; a false one for the minority shareholders and the public.

103. Since the VITA Specialty Foods Division of VITA was even more profitable in 2008 than it was in 2007, the financial statements of VITA made public for 2008 should not have had any write down (impairment) of Goodwill.

104. The contrived impairment of Goodwill for the year 2008 had the effect of showing that VITA had an operating loss of $1,488,640 during 2008 when, in fact, it had a substantial operating profit.

105. A further demonstration that the statement in paragraph 102 *supra* is accurate, was the issuance by VITA officers of an upbeat internal outlook for the year 2009 to the VITA Board (Exhibit 18), while concurrently manufacturing far more pessimistic information for issuance to shareholders and the public (Exhibit 17 attached).

106. Moreover, the information which VITA made public did not include any reference to favorable license agreements VITA had obtained, or were about to obtain, to produce and sell sauces under the names Budweiser, Jim Bean, Cadbury, A&W and Dr. Pepper and did not

include any reference to a potentially very profitable transaction with Ocean Beauty, Inc. which was close to being consummated.

107. Those potential transactions were included in the internal outlook made for the VITA Board of Directors and almost all of them were actually consummated before, or soon after, VFP had acquired all of VITA's business and assets.

108. When the Merger Agreement, with a $1.05 per share price for the MERGER ENTERPRISE was in place, Bedford and his co-Defendants needed a majority vote of the shareholders to finalize the scheme for which the MERGER ENTERPRISE had been created.

109. Notices of the April 23, 2009 Special Meeting of Shareholders were *not* sent to certain shareholders. (See Exhibit 19 attached hereto).

110. Also, Lipson denied one VITA shareholder access to the list of VITA shareholders for solicitation of votes against approving the Merger Agreement and in making that denial Lipson stated that the list of shareholders would first be made available only at the Special Shareholder Meeting itself on April 23, 2009.

111. Prior to the April 23, 2009 Special Shareholders Meeting, Rubin advised Bedford that he could not vote Rubin's shares of VITA in favor the Merger Agreement. (Copies of the emails Rubin and Bedford exchanged in that regard prior to the Special Shareholder Meeting are attached hereto as Exhibit 20).

112. Despite Rubin's insistence that his VITA shares of stock should not be voted for the merger, Bedford voted Rubin's shares in favor of approving the Merger Agreement.

113. Even though Seramur signed a proxy for his 272,000 shares of stock, which would have been voted against the Merger Agreement, the proxy for voting Seramur's 272,000 shares against the Merger Agreement was denied the right to vote those shares.

114. On April 23, 2009 the Merger Plan and Agreement was voted upon and approved despite a substantial number of votes against it and a substantial number of votes which should have been voted against it.

115. If, at the April 23, 2009 Special Meeting of Shareholders, the shares owned by Rubin had not voted for the Merger Agreement and the shares owned by Seramur had been voted against approving the Merger Agreement, there would have been insufficient votes cast to have approved the Merger Agreement.

116. After the Special Meeting of Shareholders vote, the MERGER ENTERPRISE moved very quickly to complete the merger, so that within a few days thereafter VFP became the owner of all of VITA's business and assets.

117. Several months after VFP had acquired and began operating VITA's business and using all of its assets, Plaintiffs engaged in discussions between themselves, and by comparing various different pieces of information, they first discovered that the business and assets of VITA had actually been stolen by the MERGER ENTERPRISE through its conduct of unlawful activities in which activities all the Defendants were active participants.

**COUNT I – RICO, SECTION 1962(b)**

118. For paragraph 118 of Count I, Plaintiffs adopt and incorporate paragraphs 1 through 117 by reference, as if the same were fully set forth herein.

119. At all times relevant hereto VITA and its business and assets have been, and are, engaged in activities that are in interstate commerce and which affect interstate commerce.

120. Through a pattern of racketeering activities which included numerous unlawful wires and mailings made by Defendants in violation of 18 U.S.C. § 1341 and 1343, the Defendants have

enabled the MERGER ENTERPRISE to acquire and maintain control of the business and assets of VITA.

121. These unlawful acts were conducted for and on behalf of the MERGER ENTERPRISE for more than two years in order to acquire and maintain control of the business and assets of VITA, which acts included, but were not limited to, the following:

a. interfering with and thwarting favorable offers for the purchase of the business and assets of VITA;

b. taking effective control of VITA through a capital contribution which was grossly unfair to the existing shareholders of VITA;

c. replacing non-corrupt members of VITA's Board of Directors with individuals who would participate in carrying out Defendant Bedford's corrupt scheme through participation in his corrupt enterprise;

d. issuing public financial reports, which, contrary to internal reports made available to Defendants, falsely showed VITA to be experiencing operating difficulties and financial problems; (Exhibit 17 attached)

e. approval and release, via the mails and wires, of material misrepresentations about an artificial write-down of goodwill in the amount of $1,934,000; (Exhibit 17 attached)

f. publishing an operating loss of $1,488,640 for 2008 when VITA actually had a substantial operating profit and a positive cash flow; (Exhibit 18)

g. thwarting Trident from making an offer for VITA at a substantial greater price than eventually paid by Bedford;

h. Bedford and his co-conspirators announcing that they would not sell their VITA stock for less than $6.00 per share;

i. thwarting an offer by Ocean Beauty, Inc., another competitor company, of approximately $3.00 per share to purchase simply the use of the name “VITA;

j. causing the “Special Committee” of the Board of Directors of VITA to pretend to consider an initial offer of $.30 cents per share for all of the issued and outstanding VITA stock not owned by Bedford (Ex. 3 attached);

k. emailing warnings to all Directors on November 24, 2008 “NOT TO DISCUSS THIS OFFER WITH ANYONE” (Exhibit 4 attached) and to Defendants “NOT” to contact “current shareholders” as “there is some potential of litigation in processes similar to this [corrupt enterprise] and I do not want to increase the odds when I am the one who will be sued (along with you)” (Exhibit 5 attached);

l. making Bedford’s chief ally, Lipson, Chairman of the “Special Committee”;

m. having the “Special Committee” of the Board of Directors engage in the ruse of rejecting Bedford’s $.30 cent per share offer;

n. sending an email on December 11, 2008 stopping Rubin from soliciting valid offers for the sale which contained the following: “I’m NOT shopping VITA FOODS to the public and I have NO intention of currently doing so.” (Exhibit 10 attached);

o. using the U.S. mail to accomplish a formal acceptance of Bedford’s totally inadequate purchase price of $1.05. (Ex. 11 attached);

p. issuing an email on February 11, 2009 memorializing the sham of the "Special Committee" stating "we were to go back to a price of $1.20, but the Special Committee eventually accepted a price of $1.05." (Exhibit 12 attached);

q. ignoring an email by the attorney for the Board of Directors of the danger of using emails to discuss the corrupt MERGER ENTERPRISE on February 11, 2009 which stated "Gentlemen, it is not the best idea to discuss this by email." (Exhibit l3 attached);

r. the execution on February 27, 2009 by Bedford and Lipson of the Merger Agreement for the contrived price of $1.05 per share. (Exhibit 14 attached);

s. failing to send notice to certain VITA shareholders of the pending special meeting of shareholders for voting on the sale of the business and assets of VITA pursuant to the merger agreement;

t. releasing to the public on March 31, 2009 via the U.S. mails and wires of a year-end unaudited report by VITA on the Company's financial condition containing an "impairment of goodwill" in the sum of $1,934,000 for 2008, which was a false statement since the financial statements that were submitted to a bank to attempt to refinance VITA's debt did not contain such an "impairment of goodwill";

u. issuing false year-end report to improperly lower the value of VITA in an attempt to justify the $1.05 per share price for the sale to the MERGER ENTERPRISE. (*See* Exhibit 17 attached);

v. denying the voting of a proxy of 272,000 VITA shares against the merger;

w. not soliciting further offers during the 30-day period "shop period" after February 27, 2009 (*See* Section 12.1 of the Merger Agreement, Exhibit 2);

x. limiting the time for soliciting offers from competitors to a portion of the total solicitation period so as to eliminate legitimate interest from potential purchasers;

y. using wires [Exhibits 9 and 10] to prevent potential purchasers from knowing that VITA was available for being sold;

z. rejecting a firm offer for VITA of a $1.16 per share (10% higher than Defendant Bedford's own offer); [Exhibit 21]

aa. granting TRIDENT, a potential suitor interested in acquiring VITA, only a three-day time period to conduct due diligence;

bb. issuing positive financial reports to the VITA Board of Directors while issuing concurrently more pessimistic information to shareholders (See Exhibits 17 and 18);

cc. concealing from VITA shareholders favorable license agreements VITA had obtained, or was about to obtain, to produce and sell sauces under the names Budweiser, Jim Beam, Cadbury, A&W, and Dr. Pepper;

dd. hiding a potentially very profitable transaction with Ocean Beauty, Inc., a transaction which was consummated shortly after Bedford acquired all of VITA's business and assets.

ee. ensuring the continued and active participation of the Defendants in the MERGER ENTERPRISE by making the following promises and representations:

i. Bedford would personally indemnify Defendants against any and all personal liability they might face as a result of their participation in the corrupt MERGER ENTERPRISE (See Exhibit 2, page 13 attached);

ii. Defendants would receive more for the shares of VITA stock they purchased than they had originally paid; and

iii. Defendants would eventually be given an opportunity to invest directly or indirectly in the company which would acquire the business and assets of VITA and they would be appointed to compensated positions within that company.

122. Defendants knew that the misrepresentations set forth in paragraphs 66, 99, 100, 101, 102, 103, 104, 105, 106, 107 and 108 were false when made and intended that those false representations be relied upon by shareholders who were solicited to tender their stock to VFA.

123. But for the lies and unlawful acts and actions of Defendants in violation of § 1962(b) of RICO, Plaintiffs would not have suffered the loss they have, all of which were the direct and proximate consequence of Defendants' conduct.

124. Defendants used wires and mails to implement the aforesaid lies and further the corrupt scheme of the MERGER ENTERPRISES in violation of 18 U.S.C. § 1341 and § 1343, as more specifically set forth in paragraphs 55, 56, 60, 63, 69, 70, 72, 74, and 75.

125. As a direct and proximate result of the conduct by Defendants, Plaintiffs have lost more than $8,000,000.00.

WHEREFORE, Plaintiffs respectfully pray that this Court: (1) award Plaintiffs three times the damages they sustained in accordance with 18 U.S.C. § 1964(c), which is at least $8,000,000, but the exact amount of which will be determined at trial; (2) award Plaintiffs their

costs, including reasonable attorneys' fees, in accordance with 18.U.S.C. 1964(c); (3) award Plaintiffs pretrial interest in an amount to be determined at trial; and (4) grant Plaintiffs such other and further relief as the Court deems necessary, appropriate and just.

**COUNT II – RICO, SECTION 1962(c)**

126. For paragraph 126 of Count II, Plaintiffs adopt and incorporate paragraphs 1 through 125 by reference, as if the same were fully set forth herein.

127. Defendants aided and abetted the MERGER ENTERPRISE to acquire and maintain ownership and control of the business and assets of VITA through their pattern of racketeering activity as aforesaid, in violation of 18 U.S.C. § 1962(c).

128. Defendants were associated with the MERGER ENTERPRISE in violation of 18 U.S.C. § 1962(d) and thereby enabled Bedford to acquire the business and assets of VITA for a price far lower than their actual worth.

129. Defendants were, and continue to be, associated with the MERGER ENTERPRISE in its conduct of racketeering activities in, and that affect, interstate commerce.

130. Plaintiffs have been injured as a direct, proximate, and foreseeable result of Defendants' pattern of racketeering activity by the MERGER ENTERPRISE to acquire and maintain an interest in and control over the business and assets of VITA. The approximate amount of injury to Plaintiffs is $8,000,000, the exact amount to be determined at trial.

WHEREFORE, Plaintiffs respectfully pray that this Court: (1) award Plaintiffs three times the damages they sustained, in accordance with 18 U.S.C. § 1964(c) which is at least $8,000,000, but the exact amount of which will be determined at trial; (2) award Plaintiffs their costs, including reasonable attorneys' fees, in accordance with 18.U.S.C. 1964(c); (3) award Plaintiffs pretrial interest in an amount to be determined at trial; and (4) grant Plaintiffs such other and further relief as the Court deems necessary, appropriate and just.

**COUNT III – RICO CONSPIRACY, SECTION 1962(d)**

131. For paragraph 131 of Count III, Plaintiffs adopt and incorporate paragraphs 1 through 130 by reference, as if the same were fully set forth herein.

132. As detailed in paragraphs 118 through 122 and 124 *supra*, Defendants all conspired to violate the provisions of subsections (b) and (c) of § 1962 of RICO in order to permit and facilitate the theft of the business and assets of VITA by the MERGER ENTERPRISE through racketeering activity.

133. When Defendants commenced their conspiracy and engaged in the acts and actions alleged in paragraphs 118 through 122 and 124 to carry out that conspiracy, they knew that the MERGER ENTERPRISE was a corrupt, unlawful enterprise and that it affected interstate commerce.

134. Defendants conspired to commit these acts in an attempt to aid and abet Bedford in acquiring the business and assets of VITA for substantially less than their actual worth.

135. Plaintiffs have been injured as a result of the overt acts committed by Defendants in furtherance of the conspiracy. As a direct and proximate result of fraudulent activity of the Defendants, Plaintiffs have lost at least $8,000,000. The precise amount of damages to Plaintiffs are to be determined at trial.

WHEREFORE, Plaintiffs respectfully pray that this Court: (1) award Plaintiffs three times the damages they sustained in accordance with 18 U.S.C. § 1964(c) which is at least $8,000,000, the exact amount of which will be determined at trial; (2) award Plaintiffs their costs, including reasonable attorneys' fees, in accordance with 18.U.S.C. 1964(c); (3) award Plaintiffs pretrial interest in an amount to be determined at trial; and (4) grant Plaintiffs such other and further relief as the Court deems necessary, appropriate and just.

**COUNT IV – BREACH OF FIDUCIARY DUTY: GOOD FAITH AND LOYALTY AS TO ALL DEFENDANTS**

136. For paragraph 136 Plaintiffs adopt and incorporate paragraphs 1 through 135 by reference, as if same were fully set forth herein.

137. The entire merger procedure was replete with unfair and unlawful activities as specifically described in prior paragraphs hereof as follows:

a. Defendants had clear conflicts of interests when they engaged in their efforts to further the purpose of the MERGER ENTERPRISE (¶s 30, 35, 38, 40, 41, 46, 47, 48, 49, 52, 53, 55, 56, 57, 58, 60, 63, 64, 65, 66, 67, 69, 70, 72, 74, 75, 78, 79, 81, 82, and 85 *supra*);

b. instead of soliciting competing offers, Defendants actually thwarted them (¶s 30, 35, 51, 55, 56, 70, 72, 81, 82, 84, 85, 89, 93, 95 and 96 *supra*);

c. Defendants expressed their intention to participate in the merger and urged all other stockholders also to participate (¶s 79 and 88 *supra*);

d. statements made to other shareholders in conjunction with the solicitation of their votes were both material and misleading which could have and should have been clarified with other information available to Defendants (¶s 99, 100, 101, 102, 103, 104, 105, and 106 *supra*);

e. no proper shareholder ratification of the merger approval was obtained by Defendants (¶s 109, 110, 111, 112, and 113 *supra*);

f. the merger price was fraudulently determined and was grossly inadequate (¶s 66, 67, 68, 69, 70, 72, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 89, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105 and 106 *supra*);

g. the merger was the product of unfair dealing (¶s 30, 35, 38, 40, 41, 46, 47, 48, 49, 51, 52, 53, 55, 56, 57, 58, 60, 63, 64, 65, 66, 67, 69, 70, 72, 74, 75, 78, 79, 81, 82, 84, 85, 89, 93, 95, 96, 99, 100, 101, 102, 103, 104, 105, 106, 109, 110, 111, 112 and 113 *supra*);

h. Defendants received illicit inducements to approve the merger (¶s 52 and 63 *supra*); and

i. Defendants took improper actions to artificially and wrongfully depress the price of VITA stock (¶s 30, 35, 51, 55, 56, 66, 67, 68, 69, 70, 72, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 89, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105 and 106 *supra*).

138. Directors have a fiduciary duty to shareholders to act with the utmost good faith and loyalty in managing the affairs of the corporation and they are subject to enhanced scrutiny with respect to that duty when having an interest in a particular transaction, such as here.

139. Defendants refused any attempt to obtain the best possible price for VITA, even though they were informed of potential purchasers who were able and willing to pay a higher price.

140. The process surrounding the merger deal was not only inadequate, it fraudulently benefitted the consummate insider, Bedford.

141. This merger process favored Bedford's interests over those of VITA and its shareholders.

142. Through this conduct, Defendants breached their duty of good faith and loyalty to VITA and its shareholders by putting Defendant Bedford's interests ahead of those of the Company and its other shareholders.

143. As a direct and proximate result of this breach of fiduciary duties by Defendants, Plaintiffs received substantially less than fair market value for their interests in VITA, which caused Plaintiffs monetary damage of at least $8,000,000.

WHEREFORE, Plaintiffs ask that judgment be entered in their favor and against Defendants in a sum equal to the difference between the value they received and the fair market value of their interests in VITA, which will be determined at trial.

**COUNT V – NEGLIGENCE AS TO ALL DEFENDANTS**

144. For paragraph 144, Plaintiffs adopt and incorporate paragraphs 1 through 143 by reference, as if same were fully set forth herein.

145. Directors have a duty to shareholders to act with the utmost care and obtain the highest possible price for shares of stock which are to be sold in a proposed merger.

146. Both before and after the merger agreement with Defendant Bedford was executed, Defendants were required by their duty of care to obtain a higher sales price, if possible, as Defendants were in effect “auctioneers” of VITA.

147. Defendants violated their duties; they did not attempt to obtain the highest possible price for shares of VITA stock: instead they recommended the sale to Defendant Bedford, an interested, inside director.

148. Defendants ignored other possible buyers willing to pay substantially more than Defendant Bedford paid for all the business and assets of VITA.

149. Defendants refused to properly offer the business and assets of VITA for sale in an effort to obtain the highest possible return to VITA shareholders for their interests in VITA.

150. Defendants did not have a competent, fair and comprehensive valuation of the value of VITA stock made.

151. Defendants have failed and refused to exercise due care required of them.

152. This breach of duty directly and proximately caused monetary harm to Plaintiffs because they received substantially less than the full market value of their shares of VITA stock.

WHEREFORE, Plaintiffs ask that judgment be entered in their favor and against the Defendants in a sum equal to the difference between the value they received for their interests in VITA and the fair market value of such interests, which will be determined at trial.

Respectfully submitted,

By: __s\Arthur Gold_____
one of their counsel

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