

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>ALLA PASTERNAK, Executrix of the</b>	:	
<b>Estate of Leon Frenkel,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>BRUCE K. KLEIN, et al.,</b>	:	<b>No. 14-2275</b>
<b>Defendants.</b>	:	

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

**Schiller, J.**

**July 24, 2017**

In 2010, Leon Frenkel<sup>1</sup> loaned \$153,000 to Victory Partners, LLC (“VPLLC”), memorialized in a contract signed by Bruce K. Klein as manager of VPLLC. To secure the loan, VPLLC (as a company) and Klein (as an individual guarantor) pledged “400,000 shares of unrestricted and freely tradable common stock of New Media Plus, Inc.”

What began as a simple secured loan has ballooned into a seven year quagmire. VPLLC never repaid the loan, and Frenkel sued Klein and VPLLC for breach of contract in 2014. After numerous procedural hurdles, the Court granted partial summary judgment to Frenkel and against VPLLC in December 2016, finding that VPLLC had breached the loan agreement. The Court conducted a bench trial on January 9, 2017 on the only two remaining issues:<sup>2</sup> (1) whether Klein and VPLLC breached the pledge agreement by failing to provide 400,000 shares of

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<sup>1</sup> Leon Frenkel died on March 4, 2017. His daughter and executrix, Alla Pasternack, subsequently substituted herself as plaintiff. Because Frenkel signed the agreements, brought the lawsuit, and testified at trial, the Court will refer to Frenkel as the plaintiff throughout the opinion.

<sup>2</sup> Frenkel also sued Defendants for breach of two other contracts: a \$25,000 loan taken by Klein individually, and an associated pledge agreement for an additional 100,000 shares of New Media Plus, Inc. stock. Frenkel and Klein settled these claims on the record the morning before trial.

unrestricted and freely tradable stock in New Media Plus, Inc. (“NMP”), and (2) whether Frenkel can pierce the corporate veil and hold Klein personally liable for the breached contracts. The parties have filed their proposed findings of fact and conclusions of law, and the questions are now ripe for decision.

The Court finds that the 450,000 shares of NMP currently in Frenkel’s possession are not “unrestricted and freely tradable,” and therefore holds that VPLLC and Klein breached the pledge agreement. The Court also finds that VPLLC is the alter ego of Klein, who misused the corporate form for his personal interest. The Court will pierce the corporate veil and hold Klein personally liable for VPLLC’s obligations arising from the two breached contracts.

## **I. FINDINGS OF FACT**

### **A. Klein and VPLLC**

#### **i. Documented Evidence about Klein and VPLLC**

VPLLC is a New Jersey limited liability company with Klein as its sole member. (Joint Pretrial Stip. Agreed Facts ¶ 2.) VPLLC operates out of 123 Elbert Street in Ramsey, New Jersey—the same address used by Klein and his ex-wife as their marital residence until their March 9, 2015 divorce. (*Id.*; Pl.’s Suppl. Submission Ex. B [hereinafter “Klein Divorce Settlement”] ¶¶ 9–12, ECF No. 85 (describing the 123 Elbert Street house as the “marital residence” of Klein and his ex-wife).) According to the New Jersey State Treasurer, VPLLC was registered in New Jersey on April 5, 2000. (Pl.’s Proposed Findings of Fact & Conclusions of Law [hereinafter “Frenkel Proposed Facts”] Ex. 76.) Its status was revoked on November 16, 2008, for failure to pay annual reports. (*Id.*) VPLLC was reinstated on January 10, 2012, but was revoked for a second time on November 16, 2014, again for failure to pay annual reports. (*Id.*) As of January 6, 2017, VPLLC has not been reinstated. (*Id.*)

VPLLC maintained a JPMorgan Chase checking account from at least January 1, 2014, to September 9, 2014. (*Id.* Exs. 50–58 (JPMorgan Chase bank account statements); Tr. 172:22–173:11.) VPLLC’s bank records reveal that between January and July 2014, Klein: made 56 ATM withdrawals totaling \$9,586 (Frenkel Proposed Facts Exs. 50–56; *see* Tr. 83:14–19); made seven bank teller cash withdrawals totaling \$9,800 (Frenkel Proposed Facts Exs. 50–51, 54–55; Tr. 83:20–24); and wrote one check payable to himself for \$1,000 (Frenkel Proposed Facts Ex. 52; Tr. 83:25–84:2).<sup>3</sup> Klein also routinely used the VPLLC bank account to pay for goods and services at shoe stores, supermarkets, the Sarasota Family YMCA, car repair shops, liquor stores, restaurants, and moving and storage companies. (Frenkel Proposed Facts Exs. 50–56; Tr. 23:22–43:21.) In July 2014, Klein paid \$2,800 from the VPLLC bank account to the Sands Point Condominium Association in partial satisfaction of outstanding overdue fees for his Florida condo. (Frenkel Proposed Facts Exs. 56, 59; Tr. 42:9–14, 43:24–46:14; Klein Divorce Settlement ¶¶ 17–21 (stating that Klein and his ex-wife owned the Florida condo).) The VPLLC bank account carried a negative balance from June 2014 to September 9, 2014, at which time JPMorgan Chase wrote off the outstanding \$2,016.69. (Frenkel Proposed Facts Ex. 58.)

Klein maintained a Bank of America checking account from at least December 25, 2013 to December 24, 2014. (*Id.* Exs. 60–71 (Bank of America bank account statements); Tr. 173:12–15.) These statements reveal significantly less activity than the VPLLC bank account, and include mostly ATM withdrawals and purchases at restaurants and grocery stores. (Frenkel Proposed Facts Exs. 60–71.) The account was overdrawn by the end of July 2014, and Bank of America “force closed” it on November 21, 2014. (*Id.* Exs. 66–71.)

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<sup>3</sup> Klein testified at trial that he was the only person with access to the VPLLC bank account in 2014. (Tr. 34:22–35:2.)

**ii. Klein’s Testimony about VPLLC**

According to Klein’s testimony at trial, VPLLC was created in 2000 as an investment vehicle by lawyer Steven Rosenberg. (Tr. 158:23–160:2, 163:5–164:1.) Whenever individuals wanted to invest in a particular opportunity, they would become members in the LLC and contribute money to VPLLC’s capital account. (Tr. 158:23–160:2, 161:4–23.) When an investment was liquidated, members would receive the resulting funds on a pro-rata basis, minus a four percent management fee kept in the capital account for the managing member. (Tr. 26:22–24, 158:23–160:2, 160:7–12, 161:4–162:1.) To avoid having “to do documentation,” VPLLC members would never withdraw from the company, but instead would remain as “non-participating” members. (Tr. 161:6–9, 187:1–7.) VPLLC began with six members, including Klein, and eventually grew to include 32 (or 60) members, many of whom were high net worth individuals and all of whom were Klein’s friends. (Tr. 29:9–30:1, 160:13–161:3, 174:6–177:19, 180:12–23. *Compare* Tr. 161:3 (“There were 32 [members].”), *with* Tr. 49:1–2 (“[W]e had as many as 60 that put moneys in.”).) VPLLC’s mailing address was initially a P.O. Box in Manhattan, then an address in Fairlawn, New Jersey, and finally Klein’s home in Ramsey, New Jersey. (Tr. 178:8–179:3.)

Klein testified that he served as VPLLC’s managing member, which required him to keep up VPLLC’s paperwork, pay its expenses, issue Schedule K-1s<sup>4</sup> to the members, file its separate tax returns, and coordinate investment opportunities with members. (Tr. 162:2–163:1, 171:20–172:7, 179:20–22, 181:25–182:8.) Nevertheless, Klein stated that he had been unaware that VPLLC’s status was revoked for four years. (Tr. 16:12–19:7.) He claimed that VPLLC worked

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<sup>4</sup> A partnership “uses Schedule K-1 to report [each member’s] share of the partnership’s income, deductions, credits, etc.” IRS, *Partner’s Instructions for Schedule K-1 (Form 1065)* (Dec. 29, 2016), <https://www.irs.gov/pub/irs-pdf/i1065sk1.pdf>.

with outside lawyers and accountants. (Tr. 51:17–21, 56:21–24, 172:8–14.) Klein also claimed that sometime between 2010 and 2013, he loaned VPLLC approximately \$20,000. (Tr. 179:23–180:8.)

Klein testified that VPLLC made fewer than ten deals over the course of its existence, including investments in Mr. Softee, LendingTree.com, Medicis Pharmaceuticals, Drinks America, Juno, and a company producing digestive products. (Tr. 164:2–170:1.) Investments ranged from several hundred thousand dollars to one million dollars, and the operating agreement stipulated that investments could last no longer than 24 months. (*Id.*) VPLLC made investments primarily between 2000 and 2006, with some final deals made in 2008 or 2009. (Tr. 170:2–13, 179:4–10.) The company was largely dormant by 2010. (Tr. 170:18–25, 171:1–2.) Between 2010 and 2014, VPLLC operated mostly to collect a few outstanding returns, though Klein claims he reactivated the company in 2012 when three people wanted to make a final investment. (Tr. 170:18–25, 179:11–19.) The company informally disbanded in 2014, but Klein never filed for dissolution. (Tr. 171:9–19, 187:17–20.)

### **iii. Discovery Requests for Records about VPLLC**

Frenkel submitted two document requests for records related to VPLLC. (Frenkel Proposed Facts Exs. 77, 78.) The second request sought corporate books and records related to VPLLC, and all records, including emails, which referred to the formation of VPLLC and its compliance with state and federal law. (*Id.* Ex. 78 ¶¶ 6, 12–19, 21.) Frenkel also requested documents about the sale, transfer, and insurance of VPLLC’s membership interests; financial statements and documents for VPLLC; documents related to VPLLC’s capitalization; and bank account statements for VPLLC and Klein. (*Id.*)

Despite these detailed requests, Klein failed to produce *any* documents. (Tr. 47:7–15, 51:17–57:15, 188:15–189:18.) Frenkel only obtained VPLLC’s JPMorgan Chase bank account

information and Klein's Bank of America account information through subpoena. (Tr. 52:19–53:4.)

Instead, Klein claimed that he kept all papers for VPLLC in a “four-drawer fireproof file” or “safe” in his home, but that his ex-wife drilled the safe, removed its contents, and shredded everything she did not keep for herself. (Tr. 47:7–50:22.) He claimed that the several accountants he worked with no longer spoke with him because he owed them money, but also that they told him they do not have any of VPLLC's financial or tax records. (Tr. 51:17–52:4, 84:20–21.) He claimed that he only had phone numbers for two of the 32 (or 60) former VPLLC members, and those two did not have any records. (Tr. 54:11–55:9, 189:12–18.) He claimed that the several lawyers he worked with, including Rosenberg, did not have any records. (Tr. 56:21–57:15, 84:16–19.) He admitted that he did not go to the state treasury department or the federal Internal Revenue Service to ask for old tax returns. (Tr. 84:22–85:12, 188:15–189:9.) Klein also blamed the lack of documents on: (1) his ignorance over how to retrieve his own emails from “Amazon” or Yahoo; (2) his being a “paper guy” who did not use electronic banking; and (3) VPLLC not doing much business when he did start using electronic banking. (Tr. 52:5–54:10.)

## **B. The VPLLC Loan Agreement and Pledge Agreement**

In contrast to the murky waters of VPLLC, the two contracts executed by VPLLC could not be clearer.

On May 7, 2010, VPLLC executed a promissory note in favor of Frenkel for a principal amount of \$153,000. (Frenkel Proposed Facts Ex. 3 [hereinafter “Note”].) Klein signed the note on behalf of VPLLC, identifying himself as “Manager.” (*Id.*) VPLLC agreed to repay the note upon demand at an eight percent annual interest rate, and also agreed to pay all costs of collection, including reasonable attorneys' fees. (*Id.* ¶¶ 1, 7.) In the event of default, VPLLC would be immediately responsible for the entire unpaid sum plus fifteen percent annual interest.

(*Id.* ¶¶ 1–2.) In December 2016, the Court found that VPLLC had breached this contract by failing to pay Frenkel upon demand. (Mem. Op. & Order, ECF Nos. 64, 65.)

Also on May 7, 2010, VPLLC and Klein pledged “400,000 shares of unrestricted and freely tradable common stock of New Media Plus, Inc.” as collateral security for the note. (Frenkel Proposed Facts Ex. 4 [hereinafter “Pledge Agreement”].) The clause “unrestricted and freely tradable” referred to securities that could “be sold freely in public or private sale under registration with the Securities Act or pursuant to an exemption in the Securities Act, and [that were] not subject to any external condition” or limitation. (Order 1 n.1, ECF No. 59.) In the event of default on payment of the note, VPLLC and Klein agreed that Frenkel could declare the principal and interest on the note immediately due and payable. (Pledge Agreement ¶ 4.) VPLLC and Klein also agreed to pay all reasonable expenses, including reasonable attorneys’ fees, incurred from Frenkel’s exercise or enforcement of his rights under the pledge agreement. (*Id.* ¶ 5) Klein signed the pledge agreement twice, once on behalf of VPLLC as the pledgor, again identifying himself as “Manager,” and once on behalf of himself as individual guarantor. (Pledge Agreement.)

The note and the pledge agreement each contain an integration clause, which states that the contract forms the entire agreement between the parties. (*Id.* ¶ 9; Note ¶ 8.) The note is governed by Pennsylvania law, (Note ¶ 4), while the pledge agreement is governed by New York law (Pledge Agreement ¶ 11).

### **C. The New Media Plus Shares**

One month after the note and pledge agreement were signed, Frenkel acquired 450,000 shares of NMP common stock. (Frenkel Proposed Facts Exs. 7, 8.) Frenkel signed two subscription agreements dated June 19, 2010. In the first, Periscope Partners L.P., a company Frenkel controlled, agreed to purchase 150,000 shares of “\$0.001 par value Common Stock” of

NMP at a purchase price of \$1.00 per share, totaling \$150,000. (Joint Pretrial Stip. Agreed Facts ¶ 6; Frenkel Proposed Facts Ex. 7 ¶ 1.) Frenkel signed the agreement on behalf of Periscope. (Frenkel Proposed Facts Ex. 7.) In the second, Frenkel agreed to purchase 300,000 shares of “\$0.001 par value Common Stock” of NMP at a purchase price of \$0.01, totaling \$3,000. (*Id.* Ex. 8 ¶ 1.) Frenkel signed this agreement on his own behalf. (*Id.* Ex. 8.) Neither Klein nor VPLLC were parties to either agreement. (*Id.* Exs. 7, 8.)

The subscription agreements, which are identical except for the differing investors, made clear that the 450,000 shares are restricted. The agreements stated that Frenkel “will not sell or assign” the shares “except in accordance with the provisions of the Securities Act of 1933, as amended, or pursuant to the registration Requirements under the Act, or pursuant to an available exemption under the Act such as Rule 144 or Regulation S, which requires a prior holding period of not less than one year from date of purchase.” (*Id.* Ex. 7 ¶ 5(ii); *id.* Ex. 8 ¶ 5(ii).) The agreements further confirmed that the share certificates “shall bear an appropriate restrictive legend that restricts the further sale or assignment” of the shares “except in accordance with the foregoing provisions set forth above.” (*Id.* Ex. 7 ¶ 5(iv); *id.* Ex. 8 ¶ 5(iv).)

Frenkel did not receive the certificates until March 30, 2012. (Defs.’ Trial Ex. 23.) Both certificates bear a restrictive legend barring future sale unless the shares are registered or subject to an exemption in the Securities Act of 1933, and unless a lawyer provides a legal opinion acceptable to NMP:

These securities have not been registered with the Securities and Exchange Commission or the securities commission of any state in reliance upon an exemption from registration under the Securities Act of 1933, as amended (the “Securities Act”), and, accordingly, may not be offered or sold except pursuant to an effective registration statement under the Securities Act or pursuant to an available exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and in accordance with applicable state

securities laws as evidenced by a legal opinion of counsel to the transferor to such effect, the substance of which shall be reasonably acceptable to the company.

(Frenkel Proposed Facts Exs. 9, 10.)

The parties provided scant information about NMP. The only piece of evidence the Court has about NMP is a two page document from the Nevada Secretary of State's business registry. (*Id.* Ex. 79.) It states that NMP was a domestic corporation registered in Nevada in January 2010, but its status was revoked in January 2013. (*Id.*) The corporation had three officers at the time of its revocation: Branislav Gjorcevski, Brett H. Pojunis, and Ronald P. Russo, Jr. (*Id.*) NMP issued 200,000,000 shares at a par value of \$0.001. (*Id.*) Klein testified that he purchased founder's shares in the company. (Tr. 70:8–11, 195:11–16.)

## **II. CONCLUSIONS OF LAW**

### **A. Breach of the Pledge Agreement**

Under the “[g]overning law” header, the pledge agreement states that it “will be deemed to be made in the State of New York.” (Pledge Agreement ¶ 11.) Because this Court sits in a diversity action in Pennsylvania, the Court must look to Pennsylvania's choice-of-law rules. *Kruzits v. Okuma Mach. Tool, Inc.*, 40 F.3d 52, 55 (3d Cir. 1994). “Pennsylvania courts generally honor the intent of the contracting parties and enforce choice of law provisions in contracts executed by them.” *Id.* Therefore, the Court construes the alleged breach of the pledge agreement under New York law.

#### **i. Standard of Review for Breach of Contract in New York**

In New York, a party seeking to recover for a breach of contract must demonstrate “the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's

breach of its contractual obligations, and damages resulting from the breach.” *143 Bergen St., LLC v. Ruderman*, 144 A.D.3d 1002, 1003 (N.Y. App. Div. 2016).

The parties do not dispute that the first two elements are met: the pledge agreement is a contract agreed to by Frenkel, Klein, and VPLLC; and Frenkel met his obligations under the pledge agreement by loaning VPLLC \$153,000 under the note. *See Erie Cty. Sav. Bank v. Coit*, 11 N.E. 54, 56 (N.Y. 1887) (“Where a contract of guaranty is entered into concurrently with the principal obligation, a consideration which supports the principal contract supports the subsidiary one also.”); *CMI II, LLC v. Interactive Brand Dev., Inc.*, 824 N.Y.S.2d 753 (N.Y. Sup. Ct. 2006) (same). Even though VPLLC agreed to the note and pledge agreement during its first period of revocation, the company’s subsequent reinstatement made the note and pledge agreement retroactively valid. *See Asbestos Workers Local Union No. 32 v. Shaughnessy*, 703 A.2d 276, 278 (N.J. Super. Ct. App. Div. 1997) (holding that contracts signed by individual officers on behalf of a company while its corporate charter was suspended for failure to file an annual report were retroactively valid because the company’s charter was later reinstated after the annual report was filed).

Although Frenkel has not submitted evidence demonstrating the fourth element, damages, New York courts recognize nominal damages of \$1.00 when a plaintiff has otherwise made out a breach of contract claim.<sup>5</sup> *E.g., Montblanc-Simplo v. Aurora Due S.r.L.*, 363 F. Supp. 2d 467, 485 (E.D.N.Y. 2005) (“In the absence of any proof of lost sales or any other evidence of lost

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<sup>5</sup> A claim for attorneys’ fees for enforcing a contract does not satisfy the damages element, even if the contract states that attorneys’ fees will be awarded. *See Ross v. Sherman*, 944 N.Y.S.2d 620, 621 (N.Y. App. Div. 2012) (holding that although the Supreme Court correctly awarded nominal damages of \$1.00, it incorrectly denied the plaintiffs’ motion for attorneys’ fees when the contract stated that the prevailing party would recover attorneys’ fees in the event of litigation).

benefit due to the breach of the Settlement Agreement, the only remedy available to Montblanc is nominal damages.”); *Kronos, Inc. v. AVX Corp.*, 612 N.E.2d 289, 292 (N.Y. 1993) (“Nominal damages are always available in breach of contract actions . . . .” (citing 5 Corbin, Contracts § 1001, at 29)); *Ross v. Sherman*, 944 N.Y.S.2d 620, 621 (N.Y. App. Div. 2012) (holding that the “Supreme Court properly awarded the plaintiffs only nominal damages on their cause of action alleging breach of contract” because the “plaintiffs failed to submit sufficient evidence to demonstrate actual damages as a result of the defendants’ breach of contract”).

The only element in dispute is whether Klein and VPLLC breached the pledge agreement by failing to provide Frenkel with “400,000 shares of unrestricted and freely tradable common stock of New Media Plus, Inc.” (Pledge Agreement ¶ 1.) The parties agree that Frenkel is currently in possession of 450,000 common shares of NMP. Thus, the only remaining question is whether these 450,000 shares are “unrestricted and freely tradable”; i.e., whether they can be sold freely, “without limitations or conditions,” in a “public or private sale under registration with the Securities Act or pursuant to an exemption in the Securities Act.” (Order 1 n.2, ECF No. 59.)

**ii. The 450,000 NMP Shares Are Not “Unrestricted and Freely Tradable”**

Section 5(a) of the Securities Act of 1933 (the “Act”) prohibits the interstate sale of a security “[u]nless a registration statement is in effect” as to that security. 15 U.S.C. § 77e(a). Regardless of their method of acquisition, the 450,000 NMP securities are not registered pursuant to the Securities Act. The legend on the back of each certificate plainly states that the “securities have not been registered with the Securities and Exchange Commission or the securities commission of any state in reliance upon an exemption from registration under the Securities Act of 1933.” (Frenkel Proposed Facts Exs. 9, 10.) There is no evidence that the NMP

shares have been subsequently registered. Therefore, under Section 5(a) of the Securities Act, they cannot be sold across state lines—and cannot satisfy the pledge agreement—unless the Act provides an exemption.

Section 4(a)(1) of the Act provides several exemptions, including for “transactions by any person other than an issuer, underwriter, or dealer.” 15 U.S.C. § 77d(a)(1).<sup>6</sup> An underwriter includes “any person who has purchased from an issuer with a view to . . . the distribution of any security.” 15 U.S.C. § 77b(11). The Securities and Exchange Commission (“SEC”) adopted Rule 144 to “establish specific criteria for determining whether a person” is not an underwriter. 17 C.F.R. § 230.144 (Preliminary Note). Subject to provisions governing the manner of sale, Rule 144 allows a non-affiliate<sup>7</sup> of the issuing company to sell unregistered securities if the non-affiliate seller has held the securities for more than one year. §§ 230.144(b)(1), (d). Klein argues that Frenkel can freely claim the Section 4(a)(1) exemption because he held the NMP shares for more than a year, and therefore is not an underwriter under Rule 144. (Defs.’ Proposed Findings of Fact & Conclusions of Law ¶¶ 57–62.)

But even if Rule 144 were to apply, the Court holds that the 450,000 shares are not “unrestricted and freely tradable” because the share certificates still bear a restrictive legend requiring “a legal opinion of counsel to the transferor to such effect, the substance of which shall be reasonably acceptable to the company.” (Frenkel Proposed Facts Exs. 9, 10.) Before Frenkel

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<sup>6</sup> An issuer includes “every person who issues or proposes to issue any security,” with some exceptions. 15 U.S.C. § 77b(4). A dealer is “any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.” 15 U.S.C. § 77b(12). The parties agree that Frenkel is not an issuer or dealer.

<sup>7</sup> “An affiliate of an issuer is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such issuer.” § 230.144(a)(1). There is no evidence that Frenkel controlled, or was controlled by, NMP.

can sell the shares, he must obtain a legal opinion that Rule 144 applies, and NMP must decide that the legal opinion is “reasonably acceptable.” In other words, Frenkel cannot sell the shares unless NMP consents.

This corresponds to the SEC’s informal guidance<sup>8</sup> about restrictive legends, which cautions investors that “[e]ven if you’ve met all the conditions of Rule 144, you still cannot sell your restricted securities to the public until you’ve had the legend removed from the certificate.” *“Restricted” Securities: Removing the Restrictive Legend*, Sec. & Exch. Comm’n (Jan. 16, 2013).<sup>9</sup> The SEC notes that “removal of a legend is a matter solely in the discretion of the issuer.” *Id.* “Only a transfer agent can remove a restrictive legend. But the transfer agent won’t remove the legend unless the issuer consents—usually in the form of an opinion letter from the issuer’s counsel to the transfer agent.” *Id.*

Obligating Frenkel to obtain a legal opinion that is “reasonably acceptable” to NMP before selling the NMP shares places a condition and limitation on the shares such that they are not “unrestricted and freely tradable.” As a result, Klein and VPLLC have failed to provide Frenkel with “400,000 shares of unrestricted and freely tradable common stock of New Media Plus, Inc.,” and are in breach of their contractual obligations. *See 143 Bergen St., LLC*, 144 A.D.3d at 1003.

## **B. Piercing the Corporate Veil of VPLLC**

Because this Court sits in a diversity action in Pennsylvania, the Court must look to Pennsylvania’s choice-of-law rules to determine what law governs whether Frenkel can pierce

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<sup>8</sup> The SEC website is careful to note it has “provided this information as a service to investors. It is neither a legal interpretation nor a statement of SEC policy.” *“Restricted” Securities: Removing the Restrictive Legend*, Sec. & Exch. Comm’n (Jan. 16 2013), <https://www.sec.gov/fast-answers/answersrestrichtm.html>.

<sup>9</sup> <https://www.sec.gov/fast-answers/answersrestrichtm.html>.

VPLLC's corporate veil. *Kruzits*, 40 F.3d at 55. "Under Pennsylvania law, the existence and extent" of member liability for the "corporate indebtedness" of an LLC "is determined by the law of the state of incorporation." *Commonwealth v. Golden Gate Nat'l Senior Care LLC*, 158 A.3d 203, 236 (Pa. Commw. Ct. 2017) (citing *Broderick v. Stephano*, 171 A. 582 (Pa. 1934)). VPLLC was incorporated in New Jersey, so the Court will apply New Jersey law.<sup>10</sup>

**i. Standard of Review to Pierce the Corporate Veil**

New Jersey recognizes as "fundamental" the proposition that a "corporation is a separate entity from its shareholders, and that a primary reason for incorporation is the insulation of shareholders from the liabilities of the corporate enterprise." *State, Dep't of Env'tl. Prot. v. Ventron Corp.*, 468 A.2d 150, 164 (N.J. 1983) (citation omitted). However, an "individual may be liable for corporate obligations if he was using the corporation as his alter ego and abusing the corporate form in order to advance his personal interests." *Sean Wood, L.L.C. v. Hegarty Grp., Inc.*, 29 A.3d 1066, 1076 (N.J. Super. Ct. App. Div. 2011) (internal quotation marks omitted).

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<sup>10</sup> The note states that it shall "be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania." (Note ¶ 4.) In its December 22, 2016, Memorandum, the Court outlined (but did not apply) the legal standard used by Pennsylvania when determining whether to pierce the corporate veil. The parties likewise briefed the Court with reference to Pennsylvania law. The Court has subsequently identified the rule requiring it to look to New Jersey law when deciding whether to pierce the veil of a New Jersey LLC, and will follow that rule here.

Because Pennsylvania and New Jersey apply similar standards when piercing the corporate veil, the Court does not believe this correction will prejudice the parties. *E.g.*, *Culbreth v. Amosa (Pty) Ltd.*, 898 F.2d 13, 15 (3d Cir. 1990) ("[B]oth Pennsylvania and New Jersey require a threshold showing that the controlled corporation acted robot-or puppet-like in mechanical response to the controller's tugs on its strings or pressure on its buttons."); *SunDance Rehab. Corp. v. Kingston SNF, LLC*, Civ. A. No. 12-01162, 2014 WL 12648453, at \*7 (M.D. Pa. Feb. 28, 2014) (holding that "the law as to piercing the corporate veil generally" is not materially different in Pennsylvania and New Jersey); *Travelers Prop. Cas. Co. of Am. v. Centimark Corp.*, Civ. A. No. 05-647, 2006 WL 2794555, at \*2 (W.D. Pa. Sept. 27, 2006) ("New Jersey's general standard on [piercing the corporate veil] is, as the court of appeals has expressly observed, quite similar to Pennsylvania's standard.").

When faced with such a “fraud or injustice,” a court may pierce the corporate veil and hold individuals liable. *Lyon v. Barrett*, 445 A.2d 1153, 1156 (N.J. 1982). This piercing of the veil prevents “an independent corporation from being used to defeat the ends of justice, to perpetrate fraud, to accomplish a crime, or otherwise to evade the law.” *Ventron Corp.*, 468 A.2d at 164 (citations omitted). Piercing the corporate veil is “an equitable remedy designed to remedy a fundamental unfairness perpetrated under the guise of the corporate form.” *State Capital Title & Abstract Co. v. Pappas Bus. Servs., LLC*, 646 F. Supp. 2d 668, 679 (D.N.J. 2009); accord *Verni ex rel. Burstein v. Harry M. Stevens, Inc.*, 903 A.2d 475, 498 (N.J. Super. Ct. App. Div. 2006).

A party seeking to pierce the corporate veil of an LLC and hold an individual member liable must establish two elements.

First, the plaintiff must show that the LLC is “organized and operated as to make it a mere instrumentality of” the individual. *RNC Sys., Inc. v. MTG Holdings, LLC*, Civ. A. No. 15-5239, 2017 WL 1135222, at \*5 (D.N.J. Mar. 27, 2017) (internal quotation marks omitted) (applying New Jersey law to determine whether to pierce the veil of an LLC); accord *Ventron Corp.*, 468 A.2d at 164. To determine whether the defendant “abused the corporate structure” in this way, “New Jersey courts consider factors such as ‘gross undercapitalization[,] failure to observe corporate formalities, non-payment of dividends, the insolvency of the debtor corporation at the time, siphoning of funds of the corporation by the dominant stockholder, non-functioning of other officers or directors, absence of corporate records, and the fact that the corporation is merely a façade for the operations of the dominant stockholder or stockholders.’” *RNC Sys., Inc.*, 2017 WL 1135222, at \*5 (ellipsis omitted) (quoting *Craig v. Lake Asbestos of Quebec, Ltd.*, 843 F.2d 145, 150 (3d Cir. 1988)).

Second, the plaintiff must show that “adherence to the fiction of separate corporate existence would sanction a fraud or promote injustice.” *Pappas Bus. Servs., LLC*, 646 F. Supp. 2d at 679 (internal quotation marks omitted). Generally, this requires a showing that the individual “has abused the privilege of incorporation by using the corporate form to perpetrate a fraud or injustice, or otherwise to circumvent the law.” *Id.* (internal quotation marks and brackets omitted); accord *Ventron Corp.*, 468 A.2d at 164. A plaintiff is not required to prove common law fraud; instead, he must “demonstrate that the defendants, via the corporate form, perpetrated a fraud, injustice, or the like, a less exacting standard.” *Pappas Bus. Servs., LLC*, 646 F. Supp. 2d at 679 (internal quotation marks omitted).

**ii. The Court Will Pierce VPLLC’s Corporate Veil**

Although VPLLC—and Klein’s relationship with VPLLC—is at the heart of this case, the Court received little credible evidence about either. Based on the evidence, VPLLC is a limited liability company with Klein as its sole member and with its principal place of business at 123 Elbert Street in Ramsey, New Jersey. VPLLC was registered in New Jersey on April 5, 2000, but had its status revoked on November 16, 2008, for failure to pay annual reports. On May 7, 2010—while its status was revoked—VPLLC agreed to repay Frenkel \$153,000 upon demand, and to provide Frenkel with 400,000 shares of NMP common stock as collateral. Klein signed the note and pledge agreement on behalf of VPLLC, listing himself as “Manager.” VPLLC was reinstated by New Jersey on January 10, 2012. VPLLC had a JPMorgan Chase bank account from at least January 1, 2014, to September 9, 2014. During this period, Klein used the VPLLC bank account to make ATM withdrawals, to pay part of the fees of his Florida condo, and to make numerous personal purchases. Klein allowed the VPLLC bank account to carry a negative \$2,016.69 balance before JPMorgan Chase wrote off the loss. On November 16, 2014,

VPLLC again had its status revoked for failure to pay annual reports. To date, VPLLC has not been reinstated in New Jersey, nor has it repaid Frenkel as required by the note.

In other words, the Court knows only that VPLLC exists with Klein as its sole member, entered into the two contracts at dispute in this case, had a bank account in 2014 that Klein routinely used for personal purchases, and cannot conduct business under the name VPLLC in New Jersey. *See Pending Revocation Notice*, N.J. Dep't of the Treasury (Aug. 31, 2016).<sup>11</sup>

The dearth of information about VPLLC comes not from Frenkel's failure to meet his burden but from Klein's brazen refusal to comply with Frenkel's reasonable document requests. Klein provided *no records* about VPLLC or his relationship with the company. Instead, Klein asks the Court to credit his testimony, which provides the sole evidence about VPLLC's history, formation, purpose, capitalization, activities, members, records, and observation of corporate formalities.

This the Court cannot do. For several reasons, the Court does not find Klein credible.

First, Klein's testimony at trial contradicted his deposition testimony and other evidence. In the parties' Joint Pretrial Stipulation, Klein agreed that VPLLC "is a New Jersey limited liability company, with Mr. Klein as VPLLC's sole member." (Joint Pretrial Stip. Agreed Facts ¶ 2.) Yet at trial, Klein claimed that VPLLC had 32 (or 60) members, and it "kept them in as a member, non-participating, so that way we didn't have to redo paperwork all the time and sign that." (Tr. 48:25–49:2, 161:1–9, 187:1–7.) At his January 2016 deposition, Klein testified that he "was self-employed in 2013" with a company named "Victory Partners," but was not employed in 2014. (Frenkel Proposed Facts Ex. 73, at 55:9–17.) Yet at trial, Klein claimed that he was managing partner for VPLLC, a company with 32 (or 60) members, and that he "wound the

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<sup>11</sup> <http://www.state.nj.us/treasury/revenue/pendrev.shtml>.

business down” in 2014. (Tr. 22:2–23:21, 170:19–171:19.) At the same 2016 deposition, Klein testified that he last had partners in VPLLC in 2005 or 2006, and that he had no other partners in VPLLC in 2012, 2013, or 2014. (Frenkel Proposed Facts Ex. 73, at 58:6–59:11.) Yet at trial, Klein testified that he actually meant new partners, and that none of VPLLC’s members ever departed VPLLC “because that way we didn’t have to do documentation.” (Tr. 55:15–56:20, 161:6–9, 185:2–187:10.) At the same 2016 deposition, Klein testified that VPLLC did not have any bank accounts in 2014. (Frenkel Proposed Facts Ex. 73, at 100:5–7.) Yet at trial, Klein stipulated that the JPMorgan Chase bank statements from January 1, 2014, to September 9, 2014, are from VPLLC’s account. (Tr. 172:15–173:11.) At the same 2016 deposition, Klein testified that while unemployed in 2014 he lived on cash that he had saved over several years, but that he did not keep that cash in bank accounts. (Frenkel Proposed Facts Ex. 73, at 55:21–56:10.) Yet at trial, Klein stipulated that the Bank of America statements from December 25, 2013, to December 24, 2014, were for his account. (Tr. 172:22–173:15.) Klein also regularly used the VPLLC bank account for his own personal purchases in 2014. (Tr. 23:22–46:14; Frenkel Proposed Facts Exs. 50–58.)

Second, Klein’s testimony about the note and pledge agreement strains belief. At trial, Klein testified that the two contracts actually represented a “pass-through situation where Mr. Frenkel insisted that I took the money for Victory Partners, for his investment and that money went the next day to [NMP,] the company he invested in and signed a PPM<sup>12</sup> for. . . . There was no benefit whatsoever in Victory Partners.” (Tr. 19:15–22.) Klein later testified that Frenkel

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<sup>12</sup> Klein repeatedly talked about Frenkel signing a PPM, or private placement memorandum. He later testified that he was referring to the subscription agreements signed by Frenkel and Periscope Partners for 450,000 total shares of NMP. (Tr. 69:15–23; Frenkel Proposed Facts. Exs. 7, 8.)

“changed the deal when he signed the PPM and took those. I didn’t know about that at the time, so, he accepted that as collateral.” (Tr. 63:15–18.) Soon after, he testified that NMP’s president told him that Leon wanted to “divert[] his money into stocks,” but he “didn’t know it was over.” (Tr. 71:16–22.) A few minutes later, he testified that Frenkel “had the collateral for the note. He took the collateral.” (Tr. 74:4–11.) Several minutes after that, he testified that Frenkel changed the promissory note by signing the subscription agreements with NMP and “I had nothing to do with that. Once he changed it, that was it.” (Tr. 78:9–11.) A few minutes later, “[Frenkel] took the \$153,000, divided it into this and then in red – on his own, signed the subscription agreement and took those shares in lieu of the money. That’s what he did, period. I didn’t hear from him for years over this.” (Tr. 79:2–8.)

Besides being internally inconsistent, these statements belie emails between Klein and Frenkel’s attorney JBF,<sup>13</sup> who repeatedly emailed Klein about the NMP shares between 2010 and 2013. (Frenkel Proposed Facts Exs. 15–19, 21–22, 25, 28, 36–37, 39, 44.) In February 2011, JBF asked Klein about “the status of free trading shares” of NMP. (*Id.* Ex. 16.) In response, Klein stated that “NMP has progressed nicely..it is expected that the audit period will finish in next few years and then file the S-1.” (*Id.*)<sup>14</sup> Two months later, Klein emailed that, “New Media is progressing to filing an s-1. I was told yesterday within 3-4 weeks.” (*Id.* Ex. 18.) In June 2011, Klein and JBF emailed about filling out an “investment doc” for 150,000 and 300,000 shares of NMP; Klein requested that JBF “use May 8 2010 as the date invested.” (*Id.* Ex. 19.) Two months later, JBF and Klein again exchanged emails; Klein provided JBF with an update about the S-1

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<sup>13</sup> Frenkel’s attorney is Jerrold B. Frankel. Because his name is so similar to Plaintiff’s, the Court will refer to Frankel by his initials.

<sup>14</sup> Form S-1 is used to register new securities under the Securities Act of 1933, and is typically filed before a company can be publically traded on a national exchange. *Form S-1*, SEC, <https://www.sec.gov/files/forms-1.pdf>.

process for NMP, and JBF asked Klein about the repayment status of the “\$150k loan.” (*Id.* Ex. 22.) When asked about the NMP shares in January 2012, Klein wrote, “I spoke to Leon on tuesday on New Media. I am trying to set up a call with them and Leon early in the week. I have spoken to Leon on this several times. My feeling is that they merge with another company and go into the public market afterwards.” (*Id.* Ex. 37.) JBF followed up with Klein through at least July 2013, but received no further reply. (*Id.* Exs. 39, 44.) At no point during these three years of communications did Klein protest that the deal was a pass-through for Frenkel’s investment in NMP, that Frenkel had changed the deal by signing the subscription agreements, or that Frenkel had already received the collateral in satisfaction of the pledge agreement.

Finally, Klein’s explanations for failing to provide any documents to Frenkel are absurd, and border on perjury. The Court simply cannot believe that, while going through a contentious divorce during which evidence of Klein’s assets would have been essential, Klein’s then-wife drilled open Klein’s safe and stole or shredded all of VPLLC’s business records. To the contrary, their divorce settlement reveals that Klein “failed to produce documents responsive to the Wife’s Request for the Production of Documents (other than his vehicle registrations) and provided incomplete answers to Interrogatories.” (Klein Divorce Settlement ¶ 56.) As a result, when Klein represented in the divorce settlement that VPLLC and VPLLC’s investment account have “no value,” his ex-wife was forced to “acknowledge[] that she has not received proof” of VPLLC’s investment account, the investment account’s value, Klein’s business interests, or the value of Klein’s businesses. (*Id.* ¶¶ 39–40.) The Court does not understand why Klein and his ex-wife would agree to these statements had Klein’s ex-wife actually stolen or destroyed Klein’s business records.

Nor does the Court believe that Klein made any attempt to locate VPLLC's business records elsewhere. It is inconceivable that multiple lawyers and accountants—especially accountants who are “owed money” by Klein (Tr. 51:22–25)—would not have copies of their client's records. It is inconceivable that Klein lost the contact information for dozens of VPLLC's members, all of whom were his friends and many of whom were high net worth individuals. (Tr. 29:9–30:1, 180:15–20.) It is inconceivable that the two members he supposedly did contact had no records of any of their investments in VPLLC. It is inconceivable that Klein would not understand how to provide copies of his own emails. And it shows a flagrant disregard for the civil litigation process that he would not even attempt to get copies of VPLLC's tax returns and other organizational documents from state and federal government agencies.

For these reasons, plus Klein's demeanor in court and behavior throughout this litigation, the Court wholly discounts his testimony.

The only credible evidence before the Court demonstrates Klein's domination and misuse of VPLLC. Klein admits that he is the sole member of VPLLC, and lists his former home address as VPLLC's principal place of business. He signed, as “Manager” of VPLLC, a promissory note and a pledge agreement that placed obligations on VPLLC while it was not authorized to do business in New Jersey. He used VPLLC's bank account to regularly make personal purchases in 2014, and allowed the account to reach a negative balance of several thousand dollars before the bank had to write off the loss. He allowed VPLLC's status in New Jersey to be revoked in November 2014, and has made no effort to have VPLLC reinstated. And he has done nothing to fulfill VPLLC's obligations to Frenkel.

These facts—particularly Klein's “siphoning of funds” from VPLLC's bank account and his apparent abandonment of VPLLC without bothering to file for dissolution—suggest that

VPLLC is “merely a façade” for Klein, with “no separate mind, will[,] or existence of its own.” *Craig*, 843 F.2d at 150 (internal quotation marks omitted). That Klein failed to produce any corporate records further allows the Court to infer that VPLLC failed to observe corporate formalities. *See id.* Klein has offered such transparently unreasonable explanations for this refusal that the Court is left with no choice but to conclude either that VPLLC never had any corporate records of any kind—and thus was certainly Klein’s alter ego, created to advance his personal interests—or that Klein is concealing unfavorable records that would reveal his abuse of the corporate form. *See Sean Wood, L.L.C.*, 29 A.3d at 1076. And the evidence suggests that Klein used VPLLC to “perpetrate a fraud or injustice, or otherwise to circumvent the law”: VPLLC breached the note, and Klein has made no effort to acknowledge VPLLC’s obligations, much less mitigate damages. *See Ventron Corp.*, 468 A.2d at 164.

The Court finds *Taylor Steel, Inc. v. Keeton* instructive, in which the U.S. Court of Appeals for the Sixth Circuit upheld the trial court’s decision to pierce the corporate veil. 417 F.3d 598 (6th Cir. 2005). Keeton Corp.—of which Lana Keeton was the sole shareholder, officer, director, and employee—contracted to purchase steel from Taylor Steel, Inc. *Id.* at 602–03. Taylor Steel shipped the steel, but Keeton Corp. never paid. *Id.* at 603. When Taylor Steel sued, Keeton shuttered Keeton Corp. and refused to comply with any discovery requests. *Id.* at 603, 607. Although the record contained incomplete proof that Keeton Corp. was Keeton’s alter ego, the Sixth Circuit noted that “Keeton [had] intransigently refused, despite repeated requests from Taylor Steel and judicial orders, to turn over the relevant documents.” *Id.* at 607. Finding that “Keeton should not be permitted to profit from her refusal to produce evidence legitimately requested by Taylor Steel during discovery,” the court held that “had Keeton turned over all of the documents Taylor Steel sought, Taylor Steel would have been able to meet its burden of

showing failure to maintain corporate formalities and at least some degree of commingling.” *Id.* at 607–08. The Sixth Circuit also held that “us[ing] the corporation to commit fraud or an illegal act” included “a harmful, unfair, unjust, inequitable, or wrongful act rather than solely a criminal one.” *Id.* at 608 (internal quotation marks omitted). The court found that Keeton had committed such an act by preventing Taylor Steel from being able to recover against Keeton Corp. for the breach. *Id.* at 610. The Sixth Circuit ultimately held “that Keeton exercised complete dominion over Keeton Corp. and that she alone decided on behalf of the corporation to withhold payment for the 5 truckloads of steel,” and therefore concluded that she “used her control over Keeton Corp. to commit an unjust and harmful act.” *Id.* at 606, 610.

Klein cannot hide behind a corporate shield he himself rendered incorporeal to avoid a corporate debt he himself created. As in *Taylor Steel*, the evidence indicates that Klein dominated VPLLC, decided on behalf of VPLLC to borrow \$153,000 from Frenkel, and then gutted the company rather than fulfill its obligations or allow Frenkel recourse against its assets. Piercing the corporate veil in New Jersey is ultimately an equitable remedy, used to correct “the fundamental unfairness that will result from a failure to disregard the corporate form.” *Verni*, 903 A.2d at 498 (internal quotation marks and brackets omitted); *accord Pappas Bus. Servs., LLC*, 646 F. Supp. 2d at 679. Adhering in this case to “the fiction of separate corporate existence” would condone flagrant discovery misconduct and incentivize corporate entities to withhold all records whenever anyone tries to peer behind the curtain. *See Pappas Bus. Servs., LLC*, 646 F. Supp. 2d at 679. Klein “should not be permitted to profit from [his] refusal to produce evidence legitimately requested by [Frenkel] during discovery,” *see Taylor Steel, Inc.*, 417 F.3d at 607, and from his use of VPLLC to “perpetrate a fraud or injustice, or otherwise to circumvent the law,” *see Ventron Corp.*, 468 A.2d at 164.

The Court will pierce the corporate veil and hold Klein personally liable for VPLLC's breach of the note.

### **C. Damages**

Frenkel has not alleged any damages for the breach of the pledge agreement itself. (Frenkel Proposed Facts ¶¶ 83–84.) But this is consistent with the structure of the two contracts. The pledge agreement guarantees the note, and both share the same consideration: the \$153,000 loan. *See Erie Cty. Sav. Bank*, 11 N.E. at 56 (“Where a contract of guaranty is entered into concurrently with the principal obligation, a consideration which supports the principal contract supports the subsidiary one also.”). The shares were meant to be collateral; were VPLLC to default on the note, Frenkel could sell the shares and recover some of his money. With VPLLC in default and NMP seemingly defunct, traditional breach of contract damages are not applicable. Therefore, the Court will award Frenkel's estate \$1.00 for Klein and VPLLC's breach of the pledge agreement.

Last December, the Court concluded that VPLLC breached the note, but withheld assigning damages until after the trial. That question is now ripe for calculation. The note states that in the event of default, VPLLC “shall pay interest calculated from the date of this note until such time as the principal and interest is repaid at a rate of fifteen percent (15%) per annum.” (Note ¶ 1.) The note, signed on May 7, 2010, was for \$153,000. The default interest owed on the note is \$22,950 per year, or \$62.88 per day. Therefore, the Court will award Frenkel's estate:

- \$153,000 (principal);
- \$165,743.01 (interest through July 24, 2017); and
- \$62.88 for every day subsequent to the date of this opinion that VPLLC does not remit payment.

Because the Court has pierced VPLLC's corporate veil, Klein will be personally liable for all payments owed by VPLLC.

Finally, both the note and the pledge agreement allow Frenkel to claim costs and reasonable attorneys' fees related to enforcement of the two contracts. Frenkel's estate requests \$185,486.09 in fees and \$1,960.65 in costs, but provides no billing records that would allow the Court to determine whether these costs and fees are reasonable. Therefore, the Court will order Frenkel's estate to prepare a detailed petition for reasonable attorneys' fees and costs, to which Klein and VPLLC will have an opportunity to respond.

### **III. CONCLUSION**

For the foregoing reasons, the Court finds that Klein and VPLLC breached the pledge agreement. The Court will set aside the corporate form of VPLLC and hold Klein personally liable for VPLLC's obligations arising from the breach of the note and pledge agreement.

An Order consistent with this Memorandum will be docketed separately.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>ALLA PASTERNAK, Executrix</b>	:	
<b>of the Estate of Leon Frenkel,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>BRUCE K. KLEIN, et al.,</b>	:	<b>No. 14-2275</b>
<b>Defendants.</b>	:	

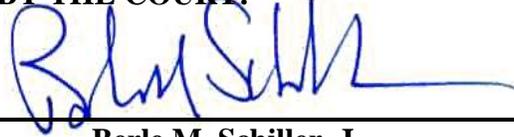
**JUDGMENT & ORDER**

AND NOW, this 24<sup>th</sup> day of July, 2017, following a bench trial conducted on January 9, 2017, pursuant to Federal Rule of Civil Procedure 58, and for the reasons provided in this Court’s Memorandum dated July 24, 2017, it is hereby **ORDERED** that:

1. Judgment is entered in Plaintiff’s favor and against Defendants Bruce K. Klein and Victory Partners, LLC in the amount of:
  - (A) \$1.00 (breach of pledge agreement);
  - (B) \$153,000 (breach of note, principal);
  - (C) \$165,743.01 (breach of note, interest at the default rate through July 24, 2017); and
  - (D) \$62.88 per day, beginning on July 25, 2017 and continuing until judgment is paid (breach of note, interest at the default rate).
2. The corporate form of Defendant Victory Partners, LLC is set aside, and Defendant Klein is personally liable to Plaintiff for the full judgment specified in Paragraph 1.

3. By **August 7, 2017**, Plaintiff will submit a petition for attorneys' fees and costs associated with enforcing the note and pledge agreement. Defendant will file a response by **August 21, 2017**.

**BY THE COURT:**

A handwritten signature in blue ink, appearing to read "Berle M. Schiller", is written over a solid black horizontal line.

**Berle M. Schiller, J.**