

IAS PT 72
For

At an IAS Term, Part 4 of the Supreme Court of the State of New York held in and for the County of New York at the Courthouse located at 360 Adams Street, State and City of New York, County of Kings on the 8th day of June, 2009.

HON. SYLVIA O. HINDS-RADIX
For

PRESENT: HON. DAVID B. VAUGHAN
Hon. _____
Justice

-----X
CROWN HEIGHTS JEWISH COMMUNITY COUNCIL,
INC. and VAAD HAKOHOL DESCHUNAS CROWN
HEIGHTS,

Plaintiffs,

-against-

SHLOMO YEHUDA SEGAL, YITZCHOK RAITPORT,
YITZCHOK ZIRKIND, SHMUEL PLOTKIN, HARVEY
B. LANG a/k/a TZVI LANG, MOSHE RUBASHKIN,
SHALOM RUBASHKIN, YAAKOV H. SUFRIN, and
CAPITAL ONE BANK,

Defendants.

Index No. 14094109

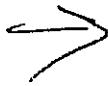
ORDER
TO SHOW CAUSE

KINGS COUNTY CLERK
FEE PD \$ 45 00

Low Argued

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Upon the annexed Emergency Affirmation and Affirmation in Support of Edward S. Rudofsky and the Affidavit of Eli Cohen and the Affidavit of Chanina Sperlin and Leibish Nash and the Affidavit of Eliezer Yisrael Sandhaus and the Affidavit of Shmuel Kraus and the Affidavit of Motel Chein, all affirmed to on the 8th day of June, 2009, along with the exhibits annexed thereto and upon all the prior papers and proceedings in this action,

Let Defendants or their counsel, show cause before this Court, at I.A.S. Part 4, at the Courthouse located at 360 Adams Street, Brooklyn, New York, 11201, on the 17th *TK*



day of June, 2009, at 9:30 a.m. or as soon thereafter as counsel may be heard, why an Order should not be made and entered:

i. Preliminarily enjoining or in the alternative, enjoining pending arbitration, Defendants Shmuel Plotkin, Harvey B. Lang a/k/a/Tzvi Lang, Shalom Rubashkin, and all those acting in concert with them, or with knowledge of the Court's orders, from interfering with or obstructing the management of the affairs of Plaintiff corporations by the Board of Directors thereof, elected on May 24, 2009—to wit, Fishel Brownstein, Chanina Sperlin, Zev Cadaner and Elie C. Poltorak (the "New Board");

ii. Preliminarily enjoining Defendant Capital One Bank ("Bank") from recognizing any person, other than the members of the New Board and their duly designated representative(s), as authorized to transact business in respect of the accounts of the Plaintiff corporations on the books of the Bank, including but not limited to, making deposits and withdrawals and drawing checks thereon; and

iii. Granting Plaintiffs such other and further relief as may be just, necessary and proper.

Sufficient cause being alleged therefor, pending a hearing of this application, it is ORDERED, that Defendants Shmuel Plotkin, Harvey B. Lang a/k/a/Tzvi Lang, Shalom Rubashkin, and all those acting in concert with them, or with knowledge of the Court's orders, are enjoined from interfering with or obstructing the management of the affairs of Plaintiff corporations by the Board of Directors thereof, elected on May 24, 2009—to wit, Fishel Brownstein, Chanina Sperlin, Zev Cadaner and Elie C. Poltorak; and it is further

STAY

JSC

STAY

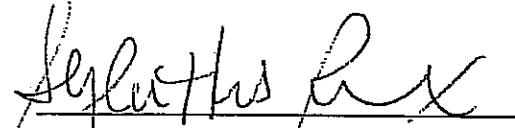
ORDERED, that Defendant Capital One Bank is enjoined from recognizing any person, other than the members of the New Board—to wit, Fishel Brownstein, Chanina Sperlin, Zev Cadaner and Elie C. Poltorak—and their duly designated representative(s), as authorized to transact business in respect of the accounts of the Plaintiff corporations on the books of the Bank, including but not limited to, making deposits and withdrawals and drawing checks thereon; and it is further

~~ORDERED, that Defendants' opposition papers to this Order to Show Cause be filed in Part 4 and served upon Plaintiffs' counsel via overnight delivery on or before June ____, 2009, and that counsel appear for oral arguments on the return date hereof.~~

Personal

Let service of a true copy of this Order and the papers upon which it is based, upon Defendants' counsel ~~via overnight delivery~~, on or before June 9th, 2009, be deemed good and sufficient service.

ENTER:


HON. SYLVIA O. HINDS-RADIX J. S. C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
CROWN HEIGHTS JEWISH COMMUNITY COUNCIL,
INC. and VAAD HAKOHOL DESCHUNAS CROWN
HEIGHTS,

Plaintiffs,

-against-

SHLOMO YEHUDA SEGAL, YITZCHOK RAITPORT,
YITZCHOK ZIRKIND, SHMUEL PLOTKIN, HARVEY
B. LANG a/k/a TZVI LANG, MOSHE RUBASHKIN,
SHALOM RUBASHKIN, YAAKOV H. SUFRIN, and
CAPITAL ONE BANK,

Defendants.
-----X

EDWARD S. RUDOFISKY, an attorney admitted to the practice of law in the
State of New York, hereby affirms the following to be true under the penalty of perjury:

1. I am a member of the firm of Zane and Rudofsky, co-counsel for plaintiffs; am fully familiar with the facts set forth herein; and submit this Affirmation of Emergency to request immediate and expedited processing of Plaintiffs' proposed Order to Show Cause bringing on Plaintiffs' application and motion for Orders (A) temporarily restraining and preliminarily enjoining (i) defendants Shmuel Plotkin, Harvey B. Lang a/k/a Tzvi Lang, and Sholom Rubashkin, and all those acting in concert with them, or with knowledge of the Court's orders, from interfering with or obstructing the management of the affairs of the plaintiff corporations by the Board of Directors thereof elected on May 24, 2009, to wit, Philip (Fishel) Brownstein, Chanina Sperlin, Zev Cadaner and Eliyahu Poltorak ("New Board"), and (ii) defendant Capital One Bank ("Bank") from recognizing any person, other than the members of the New Board and their duly designated representative(s), as authorized to transact business in respect of the

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**AFFIRMATION
OF EMERGENCY**

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accounts of the Plaintiff corporations on the books of the Bank, including but not limited to making deposits and withdrawals and drawing checks thereon; and (B) granting plaintiffs such other, further and different relief as is just, necessary and proper.

2. This matter is emergent because the defendant Bank wrongfully refuses to recognize the authority of the Board of Directors of Plaintiffs elected on May 24, 2009.

3. As a result, Plaintiffs' duly elected directors and officers are being denied control over Plaintiffs' funds, placing Plaintiffs in legal and financial jeopardy with funding agencies and vendors.

4. Moreover, the defendant Bank is wrongfully recognizing continuing authority over Plaintiffs' funds by two former directors and officers, whose terms of office expired on May 24, 2009, as well as two unelected individuals, thereby permitting unauthorized individuals to draw on Plaintiffs' funds and undermining the authority of plaintiffs' duly elected directors and officers, and duly appointed managers, over Plaintiffs' employees.

5. Due notice of the presentation of plaintiff's proposed Order to Show Cause has been given to defendants as follows:

Harvey B. Lang a/k/a Tzvi Lang - by hand-delivered letter;

Shmuel Plotkin - by hand-delivered letter;

Shalom Rubashkin - by hand-delivered letter;

Tenenbaum & Berger - by e-mail;

Goldberg and Cohn - by e-mail; and

Capital One Bank - by fax letter on June 5, 2009.

6. No prior application for the relief requested herein as heretofore been made before any court or judge.

WHEREFORE, affirmant urges the Court to give plaintiff's proposed Order to Show Cause immediate and expedited processing.

Dated: New York, New York
June 8, 2009

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Edward S. Rudofsky

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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CROWN HEIGHTS JEWISH COMMUNITY COUNCIL,
INC. and VAAD HAKOHOL DESCHUNAS CROWN
HEIGHTS,

Plaintiffs,

-against-

SHLOMO YEHUDA SEGAL, YITZCHOK RAITPORT,
YITZCHOK ZIRKIND, SHMUEL PLOTKIN, HARVEY
B. LANG a/k/a TZVI LANG, MOSHE RUBASHKIN,
SHALOM RUBASHKIN, YAAKOV H. SUFRIN, and
CAPITAL ONE BANK,

Defendants.
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AFFIRMATION

Hon. David Vaughn
(I.A.S. Part 4)

EDWARD S. RUDOFISKY, an attorney admitted to the practice of law in the
State of New York, hereby affirms the following to be true under the penalty of perjury:

Introduction

1. I am a member of the firm of Zane and Rudofsky, co-counsel for plaintiffs; am fully familiar with the facts set forth herein; and submit this affirmation in support of plaintiffs' application and motion for Orders (A) temporarily restraining and preliminarily enjoining (i) defendants Shmuel Plotkin, Harvey B. Lang a/k/a Tzvi Lang, and Shalom Rubashkin and all those acting in concert with them, or with knowledge of the Court's orders, from interfering with or obstructing the management of the affairs of the plaintiff corporations by the Board of Directors thereof elected on May 24, 2009, to wit, Fishel Brownstein, Chanina Sperlin, Zev Cadaner and Eliyahu Poltorak ("New Board"), and (ii) defendant Capital One Bank ("Bank") from recognizing any person, other than the members of the New Board and their duly designated representative(s), as authorized to transact business with respect to the accounts of the plaintiff corporations

on the books of the Bank, including but not limited to making deposits and withdrawals and drawing checks thereon; and (B) granting plaintiffs such other, further and different relief as is just, necessary and proper.

2. The bases for the statements made herein as to facts and circumstances which do not involve matters of public record or events in which affirmant personally participated are (a) plaintiffs' Verified Complaint, verified the 8th day of June, 2009 (*Exhibit A*); and (b) the affidavits of (i.) Eli Cohen, affirmed the 8th day of June, 2009, (ii.) Laibish Nash and Chanina Sperlin, affirmed the 8th day of June, 2009, (iii.) Eliezer Yisrael Sandhaus, affirmed the 8th day of June, 2009, (iv.) Motel Chein, affirmed the 8th day of June, 2009, and (v.) Shmuel Krause, affirmed the 8th day of June, 2009.

RELEVANT FACTS CONCERNING THE ELECTION

3. Plaintiff Crown Heights Jewish Community Council, Inc. (CHJCC) is a New York not-for-profit corporation which provides services to the Jewish residents of Crown Heights. A copy of its Certificate of Incorporation is annexed as *Exhibit B*. The CHJCC is primarily funded by grants from the city and state.

4. Plaintiff Vaad Hakohol Deschunas Crown Heights (Vaad) is a New York religious corporation which is the religious counterpart of the CHJCC.¹ A copy of its Certificate of Incorporation is annexed as *Exhibit C*. The Directors of the CHJCC also serve as the trustees of the Vaad.

¹ A "Vaad Hakohol" is a Community Board. Pursuant to the practice in the Crown Heights community since 1986, the election which is the subject of this litigation was simultaneously an election for the leadership of the Vaad Hakohol and for Directors of the CHJCC.

5. A copy of the CHJCC by-laws is annexed as *Exhibit D*. *Inter alia*, the by-laws provide:

(A) That the directors are to be elected every three years.² Art. VIII, § 5.

(B) That the elections are to be organized under the auspices of delegates (N'tzigim) from each of the synagogues which comprise the CHJCC.³ Art. VI, § 6.

(C) That the term of office for the CHJCC directors begins upon election and continues until the next election. Art. VIII, § 5.

(D) That all disputes concerning the election are to be resolved by the Beth Din of Crown Heights ("Beth Din"). Art. V, § 3e. The Beth Din is the rabbinical court of Crown Heights. Before running for office, each candidate to be a director of the CHJCC is required to sign a Statement of Intent pledging to be bound by the rulings of the Beth Din. Art. VIII, § 4.

6. Prior to May 24, 2009, the last election for directors of the CHJCC took place in January, 2005. All attempts to organize elections in a timely manner (i.e., within three years of the 2005 election) foundered on internal disputes within the N'tzigim and the Beth Din described in more detail in the Sandhaus Affidavit.

² In the relevant section of the bylaws the wording is "two years." However, I am informed that the N'tzigim duly amended the bylaws to allow for a three year term.

³ As further explained in the CHJCC By-Laws (Art. V), the members of the CHJCC are the synagogues located within the boundaries of Crown Heights as set forth in the By-Laws. Each synagogue appoints a delegate and an alternate delegate to the Council. The delegates are known collectively as "N'tzigim." The "N'tzigim" arrange for the direct election of the Board of Directors by the community, under the auspices of a Nominations/Elections Committee.

7. As a result of those elections, the board of directors of CHJCC during the years between January, 2005 and May 24, 2009 consisted of Moshe Rubashkin ("Rubashkin"), Harvey (Tzvi) Lang ("Lang"), Shmuel Plotkin ("Plotkin"), Chanina Sperlin ("Sperlin") and Liebish Nash ("Nash") (the "Former Board").

8. For most of its tenure, the Former Board has been substantially dysfunctional and splintered. Sperlin (who was recently elected as a member of the New Board) and Nash have been excluded from all Former Board business meetings since at least 2006. More recently, Rubashkin was sentenced to 16 months in federal prison.⁴ Rubashkin is presently incarcerated in Otisville and not able to attend or participate in Former Board meetings. Rubashkin's incarceration left four (4) members of the Former Board. Accordingly, since at least that time, Lang and Plotkin, a minority of two (2) and less than even a legal quorum (see By-Laws Art. VIII § 12) have been conducting the affairs of the CHJCC, desperately trying to stave off elections until Rubashkin is released from prison.

9. In February 2009, a committee of the N'tzigm announced that elections for a new board would be held on May 24, 2009 (*Exhibit E*).

10. The campaign for election was conducted with all of the required publicity, including announcement of the candidates, position statements, campaign posters, and a special election issue of the Crown Heights Chronicle mailed to all 2,200

⁴ In 2002, Rubashkin pleaded guilty to Federal bank fraud charges and was subsequently imprisoned. In 2008, Rubashkin was convicted illegal storage of hazardous materials, U.S. v. Rubashkin, E.D.Pa. # 07-cr-498, and was again imprisoned, where he remains as of this date.

qualified voters. (Copies of the various and sundry campaign publicity materials are annexed as *Exhibits A – H* to Sandhaus's Affidavit).

11. Unbeknown to the N'tzigim running the election and the candidates themselves, on December 2, 2008, Rabbi Osdoba, one of the members of the Beth Din and a close ally of Rubashkin, along with Defendant Segal, had issued a private purported ruling directing Lang *et al.* to (a) take all possible action to avoid the election until Rubashkin is released from prison, and (b) take instructions from Rubashkin's agent (apparently his son, Sholom)⁵ while Rubashkin is incarcerated (*Exhibit F*).⁶

12. Despite knowing of the scheduling of the May 24th election since February, the Rubushkin forces waited until May to do their dirty work.

13. On May 4, 2009, they purported to serve the N'tzigim running the election and all of the candidates with summonses to the Beth Din, on three (3) days notice, in blatant violation of CPLR 7506(b), requiring a minimum of eight (8) days notice. A large majority of the candidates submitted a written objection to the summons, citing the split in the Beth Din, which precludes the judges of the Beth Din from sitting together and acting in accordance with Jewish law (*Exhibit G*). Rabbi Osdoba had himself

⁵ On May 14, 2009, Sholom Rubashkin was sentenced in U.S. v. Rubashkin, E.D.Pa. # 07-cr-498-2 to four (4) months imprisonment and thirty-six (36) months of supervised released upon his guilty plea to violating 18 U.S.C. § 1001 (false statements) and § 2 (aiding and abetting). All of his misconduct complained of in this action has been committed while free on bail pending imprisonment.

⁶ The CHICC by-laws do not permit this. Moreover, even if they did, it is axiomatic that the responsibilities of a director of a not-for-profit corporation are non-delegable as a matter of law and a director may not give a "proxy" to another person (even another director) to act in his place.

admitted to the existence of such a split in his letter explaining why the elections should not be held at the end of 2007 (*Exhibit H*).

14. Undaunted, the Rubashkin forces served a second round of summonses. These summonses called for a hearing on a Sunday, in blatant violation of Judiciary Law 5, even in the case of Jewish tribunals.⁷ They were again objected to (*Exhibit I*).

15. The Rubashkin faction of the Beth Din promptly (May 17, 2009) issued a sham “p’sak din” (arbitration award) purporting to order candidates and N’tzigim “to refrain from participating in the elections relating to the Vaad Hakohol.”

16. The “p’sak din” was a sham as (i.) it was not conducted before the named arbitrator in the arbitration clause of the CHJCC bylaws and as such, the respondents had the right to insist that the case be heard by a neutral beth din acceptable to both sides, (ii.)

⁷ “Since arbitration is a judicial proceeding and arbitrators perform a judicial function, the arbitration proceedings and award herein were **void upon the ground that hearings held on Sunday were in violation of section 5 of the Judiciary Law.**” See, *Matter of Katz*, 18 Misc.2d 576, 582, 187 N.Y.S.2d 511 (1959), *aff’d on the op. below*, 11 A.D.2d 773, 205 N.Y.S.2d 972 (2d Dept. 1960). “The hearing and the award were also **illegal and void because both occurred on a Sunday.** Arbitration is a judicial proceeding and arbitrators perform a judicial function.” *Matter of Brody v. Owen*, 259 A.D. 720, 721, 18 N.Y.S.2d 28 (2d Dept. 1940). (Emphases added.)

The sole reported decision upholding arbitration on a Sunday, *Isaacs v. Beth Hamedash Soc.*, 1 Hilt 469 (1857), is a pre-Civil War, Court of General Sessions decision, and clearly not good law despite passing references in later cases to Jewish arbitration as an exception to the general rule. **The statute simply does not admit of such an exception.** It absolutely bars Sunday proceedings **and** also bars Saturday proceedings “in any case where such day is kept as a holy day by any party to the case.” Thus, there **is** a “special rule” for Jewish arbitration, but **not** that urged by petitioners. Rather, the statute bars Jewish arbitration on **both** Saturday **and** Sunday [i.e., when an objection is raised pursuant to CPLR 7511(b)(1)(iv)]. Furthermore, the statute includes certain express exceptions to the “no proceedings on Sunday” rule, but no such exception for Jewish arbitration. Thus, under every traditional rubric of statutory interpretation, the objection to Sunday arbitration in this case was valid and requires vacating the “award.”

there was significant evidence of partiality and/or collusion with petitioners by the purported arbitrators, (iii.) there was a failure to follow the normal and customary procedures of a Beth – as set forth in the accompanying Affidavit of Shmuel Kraus and/or (iv.) there was a failure to follow the procedure of CPLR Article 75, over the objection of the respondents in arbitration.

17. On May 20, 2009, based on this sham “p’sak din,” Plotkin and a dissident member of the N’tzigim, Yaakov Sufrin (“Sufrin”), commenced a special proceeding in the name of the CHJCC and Vaad, and in their own right, individually, to confirm the purported “award in arbitration” and sought a temporary restraining order (TRO) enjoining the holding of the election. This Court (Jacobson, J.) granted the TRO (*Exhibit J*), but **the Appellate Division, Second Department (Anguilillo, J.) immediately stayed the TRO in its entirety (*Exhibit K*) and accordingly the election took place as scheduled on May 24, 2009.**⁸

18. The election was conducted in accordance with the CHJCC by-laws and supervised by the Honest Ballot Association (HBA). 924 eligible voters participated. In order to be elected, a candidate had to receive more than 50% of the votes cast (i.e., more than 462 votes). See Rules and Regulations § R (*Exhibit M*).

⁸ Insofar as that proceeding was commenced and is purported to be maintained in the name of the CHJCC and Vaad, the New Board has instructed Plotkin and Sufrin’s (i.e., Rubashkin’s) attorney, David Berger, to discontinue the proceeding and has discharged him in writing (*Exhibit L*). Berger has thus far refused to follow the New Board’s directions in this regard.

19. Both the N'tzigim and the HBA certified that Brownstein, Sperlin, Cadaner and Poltorak had received the requisite number of votes to be elected (*Exhibit N*).⁹

20. Thereafter, the New Board organized, elected officers, and began to assert control over the offices, employees and affairs of the CHJCC and the Vaad, including but not limited to its eighteen (18) accounts at defendant Bank.

21. The Rubashkin forces, however, refused to accede to the will of the voters and accept defeat. On May 27, 2009, they amended their petition to challenge the results (rather than the holding) of the election and applied to this Court for a TRO restraining respondents from "taking any action whatsoever to enforce or confirm the results of the May 24 election." That application was summarily **denied** (Vaughan, J.) (*Exhibit O*). Later that same day, they applied to the Appellate Division, Second Department, for a TRO staying respondents "from enforcing or taking any action on the May 24, 2009 election results and from interfering with petitioners' operation and control of the Crown Heights Jewish Community Council and Vaad Hakohol and its offices." That Appellate Division application was likewise summarily **denied** (Fisher, J.) (*Exhibit P*).

22. On June 3, 2009, upon the return of the May 20, 2009 and May 27, 2009 Orders to Show Cause (*Exhibits J and O*), this Court (Vaughan, J.) (a) denied both Orders to Show Cause as moot insofar as they sought to confirm an award in arbitration which prohibited an election which has taken place (*Exhibit Q*), and (b) referred the election challenge for a hearing before a JHO.

⁹ Brownstein received 719 votes, Sperlin 639, Poltorak 595 and Cadaner 513 (50 more than required for election). The candidate receiving the next highest vote total (Rogalsky) received 421 votes, 42 fewer than required for election.

RELEVANT FACTS CONCERNING THE BANK ACCOUNTS

23. On May 26, 2009, Rabbi Eli Cohen, the interim Executive Director appointed by the New Board (Rabbi Cohen), visited the branch of the Bank located at 185 Broadway, Brooklyn, to advise of the election of the New Board and arrange for (a) new bank resolutions (*Exhibit R*), and (b) a smooth transition, so that checks issued by the Former Board in the ordinary course of business could be quickly reviewed and approved.

THE BANK ACCEPTED AND RETAINED THE NEW RESOLUTIONS.

24. Thereafter, however, representatives of the Bank, including the branch manager, have advised Rabbi Cohen that the Bank had been orally advised by Lang and by Sholom Rubashkin and advised in writing by David Berger, Esq., attorney for the Former Board, that the Former Board remains in control of CHJCC. As a consequence, **the Bank has wrongfully refused to recognize the authority of the New Board.**

25. Plaintiffs, through counsel, have repeatedly advised the Bank of the authority of the New Board, to no avail. Not only will the Bank not recognize the New Board, its executive personnel and in-house legal staff refuse to return calls or respond to written requests for communication (*Exhibit S*).

26. Control over the bank accounts of the CHJCC and the Vaad is urgently required by plaintiffs because, among other things, the New Board is legally responsible for the funds on deposit and how they are spent. Moreover, the Bank's refusal to recognize the New Board's authority is interfering with the New Board's ability to manage the affairs of the CHJCC and Vaad, as more fully described in the accompanying Affidavit of Rabbi Eli Cohen.

**THE CAMPAIGN TO UNDERMINE
THE AUTHORITY OF THE NEW BOARD**

27. Lang continues to pretend to hold himself out and conduct himself as a director and officer of the CHJCC, to falsely advise the employees of the CHJCC that the Former Board is “still in charge,” and to purport to “instruct” them “not to cooperate” with the New Board.

28. Among other things, on Thursday, June 4, 2009, Lang arranged for payroll reports and approximately 4 payroll checks to be delivered to his **home**. He then signed the checks, **notwithstanding that his term of office expired on May 24, 2009**, and they were distributed to the employees on June 5, 2009.¹⁰

29. Upon information and belief, the Bank has or will shortly wrongfully pay on these checks signed by Lang, notwithstanding that the account signature cards were changed on May 26, 2009.

30. Lang’s signature and distribution of payroll checks has served to undermine the authority of the New Board in the eyes of the CHJCC employees and wreak havoc on the organization. The employees simply do not know who is in charge. It is imperative that the Court take effective action to restrain the defendants from continuing their campaign to undermine the authority of the New Board.

¹⁰ Upon information and belief, among the payroll checks signed by Lang was one for Feige Rubashkin, referred to on the payroll records as Fay Friedman, the wife of Moshe Rubashkin, who is on the payroll of the CHJCC for a sham **\$70,000 per year “no show” job, with few, if any, duties or responsibilities**, and one for Sholom Rubashkin, who is supposed to be paid by the hour for work in the Weatherization Assistance Program but in fact has spent most of his working hours in the attempt to prevent the elections and failed **to turn in time cards**. The New Board has given both Rubashkins written notice of termination of their employment (*Exhibit T*).

**FURTHER ARBITRATION PROCEEDINGS
ARE UNNECESSARY**

31. Although the Bylaws of the CHJCC and the Vaad contain an arbitration clause, arbitration in the current action is unnecessary. Before the Court will enforce an arbitration clause, it must first find that an arbitrable dispute exists. "A claim may be so unconscionable or a defense so frivolous as to justify the court in refusing to order the parties to proceed to arbitration." *S. A. Wenger & Co. v. Propper Silk Hosiery Mills*, 239 N.Y. 199, 202, 146 N.E. 203, 204 (1924).

32. Here, Defendants may argue that, since the Beth Din is not functional, should a dispute arise regarding the installation of the New Board, a resolution of such dispute would not be possible and therefore, the election of the New Board should not be allowed to become effective. In doing so, they have manufactured a sham dispute where no actual arbitrable dispute exists, for the sole purpose of using the existence of this "dispute" to attempt to invalidate the elections.

33. Alternatively, if this Court finds a legitimate dispute to exist, the court must determine the appropriate forum for resolving this dispute.

34. The overall principle applied by the courts in enforcing an arbitration clause is the "Dominant Purpose" of the clause. Here the operable clause reads:

ARTICLE XII

These bylaws are to be interpreted according to Jewish Law and tradition as contained in the Torah and Shulchan Aruch (Code of Jewish Law)

Any question which shall arise as to the interpretation of these Bylaws shall be decided by the Beth Din of Crown Heights.

Any question as to whether any action of the Council, its Board of Directors, committees, members, employees, or any other persons or organizations performing such action on behalf of the Council, is appropriate, or whether it is in accordance with these Bylaws or with the

Torah and Shulchan Aruch shall be decided by the Beth Din of Crown Heights.

35. In our case, the three undisputed members of the Beth Din of Crown Heights are irreconcilably deadlocked, with Rabbis Osdoba and Schwei expressing opposing opinions and Rabbi Heller refusing to participate in community disputes. Defendants Raitport, Segal and Zirkind are not members of the Beth Din and have no official standing in the resolution of community disputes. Moreover, they are interested parties and cannot sit as arbitrators to decide on the validity of their own disputed membership in the Beth Din (a threshold question in resolving proper constitution of the arbitral board).

36. The dominant purpose of the arbitration clause cited above is to have all disputes resolved by a single comprehensive community authority, the Crown Heights Beth Din. Specification of the "Crown Heights Beth Din" is the Dominant Purpose of the arbitration clause, to the exclusion of any other arbitral boards. Thus the arbitration clause must fail. *Somerset Holding Corp. v. Taub*, 276 A.D. 864, 93 N.Y.S.2d 634 (2d Dept. 1949). *See also, Golenbock v. Komoroff*, 2 A.D.2d 742, 153 N.Y.S.2d 309 (1st Dept. 1956) (matter remitted to determine dominant intention). The arbitration clause as intended failing, the court is not at liberty to fashion, as a matter of common law, a new procedure for the selection of arbitrators. The Court must then hear and decide all issues before it as though no arbitration clause exists.

37. Moreover, Defendants have waived their right to arbitrate by pursuing an election challenge with this Court in their Amended Verified Petition.

38. Even if this Court should find that the dominant purpose of the arbitration clause cited above is to conform all dispute resolution to the procedures specified in the

Code of Jewish Law and the identity of the specific arbitrators is an auxiliary incident, the court should name substitute arbitrators. *Klines v. Green*, 2 A.D.2d 373, 375, 156 N.Y.S.2d 242 (2d Dept. 1956); *see also, Lipschutz v. Gutwirth*, 304 N.Y. 58, 106 N.E.2d 8 (1952). However, in such a case the court must use that method which adheres to the original arbitration clause "as close as possible." Here, the intentions of the arbitration clause is clearly to have all arbitrations conducted in accordance with the Code of Jewish Law. Said Code specifies that when an arbitral board cannot be agreed upon by the parties, each side shall select an arbitrator, and the two so selected shall chose a neutral. Thus, this court would order each side to select an impartial arbitrator. *See, William Faehndrich, Inc. v. Local Union No. 277*, 15 Misc. 2d 370, 181 N.Y.S. 918 (Sup. Ct. N.Y. County 1959), and the two arbitrators so selected will then select a third.

39. **Indeed, plaintiffs have stated their willingness to submit to such an arbitration procedure regardless of this Court's decision regarding the enforceability of the arbitration clause.**

40. Plaintiffs have served a Demand for Arbitration before a *Zabl"a* panel, under the aegis of the Beth Din of Crown Heights, upon Defendants Plotkin, Lang, and Rubashkin (Exhibit U).

41. In such a case, this Court should grant interim injunctive relief as requested herein, pending arbitration.

NO UNDUE PREJUDICE

42. For all of the reasons set forth in the Verified Complaint, moving affidavits and this affirmation, there will be no undue prejudice to defendants by the granting of the relief requested herein.

43. In the highly unlikely event that Plotkin and Sufrin prevail in their election challenge pursuant to Not-For-Profit Corporation Law § 618, the Court may, at that point, "take such other action as justice may require" including restoring the *status quo ante*. However, no such order has been entered to date; both this Court and the Appellate Division have denied applications to stay respondents "from enforcing or taking any action on the May 24, 2009 election results and from interfering with petitioners' operation and control of the Crown Heights Jewish Community Council and Vaad Hakohol and its offices." (See Exhibits O and P); the hearing ordered by the Court is at least six (6) weeks away and likely to be time-consuming; and the likelihood of any such order ever being entered is slim at best.

44. Under the circumstances, the balancing of the hardships tips decidedly in favor of plaintiffs.

IRREPARABLE HARM

45. For all of the reasons set forth in the Verified Complaint, moving affidavits and this affirmation, plaintiffs have suffered, are suffering and will continue to suffer irreparable harm unless defendants are restrained and enjoined as requested herein.

46. Plaintiffs have no adequate remedy at law

REQUEST FOR MINIMAL UNDERTAKING

47. Plaintiffs request that the Court fix the preliminary injunction undertaking herein in the lowest possible amount, inasmuch as the likelihood of defendants suffering damage by the wrongful issuance of an injunction herein is *nil*.

WHEREFORE, affirmant urges the Court to grant the within Order to Show Cause and Temporary Restraining Order, and upon the return thereof, to issue an Order preliminarily enjoining or in the alternative, enjoining pending arbitration, (i) defendants Shmuel Plotkin, Harvey B. Lang a/k/a Tzvi Lang, Moshe Rubashkin, Shalom Rubashkin, and all those acting in concert with them, or with knowledge of the Court's orders, from interfering with or obstructing the management of the affairs of the plaintiff corporations by the Board of Directors thereof elected on May 24, 2009, to wit, Fisel Brownstein, Chanina Sperlin, Zev Cadaner and Elie C. Poltorak ("New Board"), and (ii) defendant Capital One Bank ("Bank") from recognizing any person, other than the members of the New Board and their duly designated representative(s), as authorized to transact business in respect of the accounts of the plaintiff corporations on the books of the Bank, including but not limited to making deposits and withdrawals and drawing checks thereon; and (B) granting plaintiffs such other, further and different relief as is just, necessary and proper.

Dated: New York, New York
June 8, 2009

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Edward S. Rudofsky

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
CROWN HEIGHTS JEWISH COMMUNITY COUNCIL,
INC. and VAAD HAKOHOL DESCHUNAS CROWN
HEIGHTS,

Plaintiffs,

-against-

SHLOMO YEHUDA SEGAL, YITZCHOK RAITPORT,
YITZCHOK ZIRKIND, SHMUEL PLOTKIN, HARVEY
B. LANG a/k/a TZVI LANG, MOSHE RUBASHKIN,
SHALOM RUBASHKIN, YAAKOV H. SUFRIN, and
CAPITAL ONE BANK,

Defendants.
-----X

Index No.

**VERIFIED
COMPLAINT**

Hon. David Vaughn
(I.A.S. Part 4)

Plaintiffs Crown Heights Jewish Community Council, Inc. a/k/a Vaad Hakohol and Vaad Hakohol Deschunas Crown Heights (“Plaintiffs”), by their attorneys, Zane and Rudofsky and Poltorak PC, as and for their Complaint against Defendants Shlomo Segal, Yitzchok Raitport, Yitzchok Zirkind, Shmuel Plotkin, Harvey Lang a/k/a Tzvi Lang, Moshe Rubashkin, Shalom Rubashkin, and Yaakov H. Sufrin, respectfully allege as follows:

Introduction

1. This action involves a gang of criminal conspirators who have undertaken to indefinitely retain control of the governing bodies of the Jewish Community of Crown Heights. The facts alleged herein are reminiscent of Chicago circa 1920—complete with rigged elections, “judges” on the take, and a gang leader issuing orders from prison.

Parties and Jurisdiction

2. Plaintiff Crown Heights Jewish Community Council, Inc. (the "JCC"), is a domestic not for profit corporation consisting of member synagogues.

3. Plaintiff Vaad Hakohol Deschunas Crown Heights (the "Vaad") is a domestic religious corporation that operates in conjunction with the JCC. Directors and officers of the JCC are *ex officio* directors and officers of the Vaad.

4. Defendant Shlomo Yehuda Segal ("Segal") is an individual residing in the County of Kings, State of New York, who falsely claims to be a Member of the Beth Din of Crown Heights.

5. Defendant Yitzchok Raitport ("Raitport") is an individual residing in the County of Kings, State of New York, who falsely claims to be a Member of the Beth Din of Crown Heights.

6. Defendant Yitzchok Zirkind ("Zirkind") is an individual residing in the County of Kings, State of New York, who falsely claims to be a Member of the Beth Din of Crown Heights.

7. Defendant Shmuel Plotkin ("Plotkin") is an individual residing in the County of Kings, State of New York, who is a former member of the Board of Directors and Treasurer of the JCC and Vaad.

8. Defendant Harvey B. Lang a/k/a Tzvi Lang ("Lang") is an individual residing in the County of Kings, State of New York, who is a former member of the Board of Directors and Vice Chairman of the JCC and Vaad.

9. Defendant Moshe Rubashkin is an individual residing in the County of Kings, State of New York, who is a habitual felon, currently incarcerated in the federal penitentiary located in Ottesville, New York and is a former director and Chairman of the JCC and Vaad. Moshe Rubashkin's checkered past includes the following:

i. Rubashkin ignored a subpoena and a National Labor Relations Board ("NLRB") finding that Rubashkin unlawfully attempted to bribe a witness not to appear for a hearing.

ii. In a subsequent lawsuit, the NLRB found that Rubashkin was involved in improperly failing to remit union dues that Rubashkin's company had deducted from employees' wages.

iii. On July 31, 2002, in the United States District Court for the Eastern District of Pennsylvania, Rubashkin pleaded guilty to the federal crime of felony bank fraud regarding his uttering of bad checks in the amount of several hundred thousand dollars in violation of 18 U.S.C. § 1344. As a result of his guilty plea to felony bank fraud, Rubashkin was sentenced to 15 months incarceration, which Rubashkin served at Fort Dix Federal Prison in New Jersey. Rubashkin, federal inmate #56932-066, was in federal custody until February 23, 2004.

iv. While still on a lengthy 5-year supervised release for his bank fraud conviction, Rubashkin was again convicted of federal felony charges of illegally storing hazardous waste. Rubashkin was sentenced to 16 months incarceration, \$450,000 in restitution, and a \$7,500 fine. Rubashkin remains incarcerated on this charge.

v. Rubashkin was previously engaged in prior conduct that resulted in a

“diversionary disposition.” Rubashkin's prior wrongful conduct involved a separate punishable offense in connection with his failure to secure required workers' compensation insurance. As a result, Rubashkin was ordered to pay fines, costs, and restitution.

vi. In 1983, Rubashkin was charged with felony assault. Rubashkin reportedly plead guilty to obstruction of administration of justice and riot in the second degree.

vii. Rubashkin is also indebted to the IRS due to this failure to pay taxes. In fact, Rubashkin has IRS tax liens in excess of \$1.2 million filed against him, as follows: (a) \$879,503.85 - lien filed on March 24, 2005; (b) \$906.91- lien filed on June 3, 2005; (c) \$278,194.57 - lien filed on October 29, 1997; and (d) \$66,853.69 - lien filed on November 15, 1995.

viii. Rubashkin was also arrested for violently assaulting JCC Executive Committee Chairman Yisroel Best at a meeting of Delegates. In fact, on September 12, 2006, Judge Picket issued a witness protection order precluding Rubashkin from having any contact with, and from “assaulting, stalking, harassing, menacing, or endangering” Yisroel Best.

10. Defendant Shalom Rubashkin is an individual residing in the County of Kings, State of New York, who is a son of Moshe Rubashkin and is a former employee of the JCC. Shalom Rubashkin is currently free on post-sentencing bail and is due to join his father in federal prison shortly, having plead guilty to making a materially false statement.

11. Defendant Yaakov H. Sufrin ("Sufrin") is an individual residing in the County of Kings, State of New York, who falsely claims to be a Delegate and the Chairman of the Executive Committee (as defined *supra*).

12. Defendant Capital One Bank ("Capital One") is a bank with branches located in the County of Kings, State of New York. Plaintiffs' funds are deposited in accounts maintained with Capital One.

13. Venue is proper in Kings County because most parties are residents of Kings County, and substantial underlying events took place in Kings County.

JCC

14. The purpose of the JCC is, among other things, to manage and address matters of local concern that affect the Jewish Community of Crown Heights, Brooklyn, New York, including facilitating community services throughout the community and acting as a representative of the Jewish residents of Crown Heights.

15. Through grants and fund-raising efforts, the JCC receives funds from the public and from governmental agencies, which are used, and have been used, to implement its activities as herein described.

16. JCC has adopted certain bylaws with which its members, officers, and directors are required to comply (the "Bylaws"). The Bylaws provide the purpose, agenda, goals, and structure of the JCC, membership criteria, meeting notification requirements, election procedures, and mandatory dispute resolution procedures.

17. Under the Bylaws, the membership of the JCC consists of synagogues located within the boundaries of the neighborhood of Crown Heights, as delineated by the Bylaws.

18. The Bylaws require that the Board of Directors of the JCC (the "Board") consist of no less than three, but no more than seven, directors. The directors also serve as officers of the JCC.

19. The Bylaws require the Board to be elected to a three-year term by a popular vote of the Jewish residents of Crown Heights.

Delegates

20. The member synagogues of the JCC are represented by a body of N'tzigm ("Delegates"), who are empowered and authorized to establish rules and regulations for conducting elections of members of the JCC Board of Directors, conduct such elections, audit the activities and finances of the JCC, and establish subcommittees as needed. Each synagogue is entitled to appoint one Delegate and one alternate Delegate, and each synagogue is entitled to one vote at meetings of the Delegates.

21. Pursuant to the Bylaws, the Delegates are to elect an executive committee consisting of five Delegates (the "Executive Committee"). The Executive Committee is to be elected at the Delegates' first meeting of the Jewish calendar year.

22. The Executive Committee ensures that the objectives of the Delegates are achieved, that the Delegates function in an orderly manner, that the required meetings take place, and that the candidates for the Board of Directors comply with eligibility requirements.

Former JCC Board of Directors

23. In or about January of 2005, Moshe Rubashkin, Lang, Plotkin, Leibish Nash ("Nash"), and Chanina Sperlin ("Sperlin") were elected to the Board.

24. Upon being elected to the Board, Moshe Rubashkin, Lang and Plotkin (collectively, the "Rubashkin Faction"), without formal Board consideration: Seized control of JCC and Vaad funds, books and records, to the exclusion of other Board members; refused to provide other members of the Board with financial information concerning JCC and Vaad; disbursed JCC and Vaad funds without Board consent; used JCC and Vaad funds to pay for expenses unrelated to the operations of the JCC and Vaad; expended JCC and Vaad funds for purposes other than those authorized or mandated by the JCC and Vaad; failed to properly notice and conduct meetings of the Board; scheduled Board meetings during times when certain members of the Board were unavailable; failed to provide adequate notice of Board meetings and elections; refused to notice meetings of the Board when requested by Nash; failed to provide agendas for Board meetings; engineered an election of three additional Beth Din members in violation of the Bylaws; interfered with the operation and the conducting of arbitration proceedings by the Beth Din; engineered a purported election of the Executive Committee of the Delegates that was extralegal and fraudulent; deceived the community by falsely holding Segal, Raitport and Zirkind out as Members of the Beth Din; continually acted to interfere with and divest Rabbi Schwei of his position in the Beth Din; evicted Rabbi Schwei from the Beth Din offices; assisted Osdoba, Segal, Raitport, and Zirkind in carrying out their successful plan and scheme to divest the Vaad of its right to operate and receive revenues derived from Vaad Hakashrus of Crown Heights ("Kashrus")—the organization created by the Vaad for the purposes of supervision of the preparation and sale of foods complying with Jewish ritual requirements; transferred and or permitted the use, without consideration, of intellectual property owned by Vaad to Kashrus; aided Kashrus in deceiving individuals and the public in general in

the acts of the Kashrus in falsely holding itself out as being authorized and or sponsored by the Beth Din by, among other things, using and affixing the logo, trademark and service mark “*Under the supervision of the Beth Din of Justice of the holy community of Crown Heights*”; aided the Incorporated Beth Din (defined *infra*) to interfere with the operation of the Beth Din in an attempt to supplant the Beth Din and in misrepresenting itself to be the Beth Din; assisted Zalman Osdoba and others in misrepresenting themselves to be the operators and or managers of the Beth Din and in Zalman Osdoba falsely holding himself out to be the secretary of the Beth Din; sold real property owned by 252 Kings, LLC., without the approval of the Members of 252 Kings LLC and or the Board of JCC, which is the owner of 252 Kings, LLC; failed to account for the revenues due the JCC and Vaad from the sale of the real property owned by 252 Kings LLC.; failed to account for the revenues due the JCC and or Vaad due on account of the supervision of the preparation and sale of Kosher foods; and failed and refused to account for the financial activities of JCC and Vaad to the Delegates.

25. Significantly, no Board meeting was noticed or held between the end of 2006 and May 23, 2009.

26. At Nash and Sperlin’s behest, Rabbi Schwei, acting on behalf of the Beth Din, summoned the Rubashkin Faction to arbitrate before a neutral *Zabl”a* (tripartite) panel.

27. However, Rabbi Osdoba opined to the Rubashkin Faction that they were free to ignore the Beth Din summons, which they did.

28. As a result, Moshe Rubashkin, Lang, and Plotkin have been held in contempt of the Beth Din.

29. Subsequently, Moshe Rubashkin was convicted, yet again, of federal felony charges and returned to federal prison. Upon his reincarceration, Moshe Rubashkin was forced to resign from the Board by the agencies that fund the JCC.

30. In a letter dated November 11, 2008, Rabbi Osdoba and Segal instructed Lang and Plotkin to:

- i. Postpone elections to the Board until after Moshe Rubashkin's release from prison; and
- ii. Enable Moshe Rubashkin "to appoint a replacement who should stay in communication with him and obey his instructions, without affecting in any way the position to which he was elected by the community."

31. Upon information and belief, Moshe Rubashkin appointed his son, Shalom Rubashkin (who is due to begin serving his own sentence in federal prison on June 24), to carry out his instructions in his absence, so as to further the conspiracy set forth herein.

32. Shalom Rubashkin, a person with no elected status and with no known qualifications, apart from being the son of the jailed former Chairman of the JCC, functioned as the de facto executive director of the JCC and controlled the operation of the JCC.

33. In spite of the fact that Shalom Rubashkin was employed for work related to the JCC's government funded weatherization program, it is apparent that his major preoccupation over the last two weeks of May was to interfere with the electoral process and the peaceful transfer of power from the Former Board to the New Board.

34. Shalom Rubashkin wasted over \$2,000 of JCC funds to post security guards to attempt to bar the New Board from the JCC offices, repeatedly called JCC staff and ordered

them to go home and not cooperate with the New Board, and called Capital One and instructed the branch manager to revert the JCC/Vaad accounts to the Rubashkin Faction's control.

35. Since Moshe Rubashkin's incarceration, his wife, Fayge Rubashkin a/k/a Fay Friedman, was allocated a JCC salary of approximately \$6,000 per month by the Rubashkin Faction. Upon information and belief, Fayge Rubashkin a/k/a Fay Friedman did not perform any services for the JCC to earn said salary.

36. The Rubashkin Faction wasted the JCC's assets and incurred enormous deficits.

37. Upon Moshe Rubashkin's resignation, the Board consisted of Lang, Plotkin, Nash, and Sperlin.

38. Nevertheless, Lang and Plotkin continued to illegally exclude Nash and Sperlin from the JCC's finances and activities and to perform certain activities requiring Board action, without the Board having authorized such activities.

Beth Din of Crown Heights

39. The Beth Din of Crown Heights (the "Beth Din") is an unincorporated rabbinic arbitration tribunal, operating under the aegis of the Vaad, which is composed of elected member rabbis ("Members"). The Beth Din arbitrates disputes between and amongst individuals of the Jewish faith and entities with whom such individuals are associated.

40. The Beth Din was originally constituted in 1987, on the instructions of the Lubavitcher Rebbe—the supreme religious authority for the Crown Heights Jewish community.

41. At the time of its inception, Rabbis Yehuda Kalman Marlow ("Rabbi Marlow"), Yosef Heller ("Rabbi Heller"), and Avrohom Osdoba ("Rabbi Osdoba") were elected as Members of the Beth Din.

42. Several years later, Rabbi Heller withdrew from all communal affairs and arbitration proceedings. Rabbi Heller restricts his activities to ruling on questions of ritual law. Nevertheless, Rabbi Heller has not formally resigned from the Beth Din.

43. In 2000, Rabbi Marlow passed away, and Rabbi Yaakov Schwei was elected as a full-time Member to fill Rabbi Marlow's seat.

44. The Members may enlist the assistance of additional rabbis/judges to serve as *dayanim* on arbitration panels to arbitrate private disputes ("Magistrates"); however, such Magistrates have no inherent authority, beyond that delegated to them by the elected Members.

45. Nevertheless, at the time of his election, Rabbi Schwei entered an agreement with Rabbi Osdoba that, in case of dispute between them, they would defer to a long-time Magistrate and respected communal elder, Rabbi Nissan Mangel ("Rabbi Mangel") to break the tie.

46. In or about 2003, Rabbis Osdoba and Schwei publicly feuded and have since been engaged in open warfare.

47. As a result of the foregoing, the Beth Din was and is deadlocked between its two active members.

48. Rabbi Osdoba refuses to honor his agreement with Rabbi Schwei to submit disagreements between himself and Rabbi Schwei to Rabbi Mangel and to honor Rabbi Mangel's final ruling.

49. Instead, he conspired with Moshe Rubashkin, Lang, and Plotkin to illegally stack the Beth Din with his cronies (Defendants Segal, Raitport, and Zirkind, collectively, the "Imposters") and force out Rabbi Schwei.

50. Rabbi Osdoba has been held in contempt of a tripartite beth din arbitration panel in a personal matter, causing him to be excommunicated by said beth din, which excommunication has been reinforced by leading rabbis in the United States and Israel. Having been excommunicated, Rabbi Osdoba is arguably disqualified from serving on the Beth Din.

Bogus Executive Committee Elections

51. In or about September of 2005, the Delegates elected a new Executive Committee at a meeting attended by 21 of the 27 Delegates serving at that time.

52. Yisroel Best was elected Chairman; Yisroel Sandhaus was elected Vice Chairman; Yisroel Landa was elected Secretary; Mendel Schneersohn was elected; and Mendel Schechter was elected Treasurer.

53. Pursuant to the Bylaws, in February 2006 the Executive Committee of the Delegates requested and then demanded that the Board, chaired by Moshe Rubashkin, provide an accounting of JCC funds to the Delegates' Audit Committee.

54. The Rubashkin Faction, which then controlled the Board, refused to provide any accounting.

55. Instead, Moshe Rubashkin unilaterally and illegally purported to notice a meeting of the Delegates **in his home**, at which a select group of self-appointed Delegates purported to elect a new executive committee for the Delegates, chaired by Yaakov Wice (the "Bogus Executive Committee").

56. The Bogus Executive Committee election was improper in that, i) there was no quorum present at the so-called meeting; ii) many of the Delegates present had not been properly appointed by the synagogues they purported to represent; iii) the vote to elect a new Executive

Committee was passed by less than the two-thirds majority required by the bylaws for an election prior to the conclusion of the incumbent Executive Committee's term.

57. At the legitimate Executive Committee's behest, Rabbi Schwei, acting on behalf of the Beth Din, summoned the Bogus Executive Committee to arbitrate before a neutral *Zabl"a* (tripartite) panel.

58. However, Rabbi Osdoba opined to the Bogus Executive Committee that they were free to ignore the Beth Din summons, which they did.

59. As a result, the members of the Bogus Executive Committee have been held in contempt of the Beth Din.

Bogus Beth Din Election

60. In or about May of 2006, the Rubashkin Faction purported to conduct an election to the Beth Din (the "Bogus Beth Din Election"), without the consent of Beth Din Members Rabbis Heller and Schwei.

61. Moshe Rubashkin unilaterally handpicked Segal, Raitport, and Zirkind as the candidates for the bogus election, but did not publicize the candidates' identity until 5 days prior to the purported election.

62. Rabbi Schwei issued an order prohibiting the election from proceeding.

63. Segal had previously defied numerous summonses to appear before the Beth Din—rendering him ineligible to be a candidate for election to the Beth Din.

64. On or about April 30, 2006, Rabbi Osdoba and Rabbi Schwei executed an agreement, whereby the elections were to be postponed for three weeks, either Member could approve candidates, and the elections would be conducted by neutral monitors.

65. Nevertheless, the Rubashkin Faction persisted in holding the elections, **contrary to an agreement by both active Beth Din Members.**

66. Subsequently, Rabbi Osdoba disclaimed said agreement, claiming he had been duped into signing it.

67. During the course of the election, Segal represented that his election was null and void, and he would therefore not assume office on the basis thereof.

68. The elections were purportedly noticed and scheduled for April 30, 2006 between the hours of 8:00 a.m. to 11:00 p.m., in the central synagogue at 770 Eastern Parkway. However, due to the abysmal turnout, the Rubashkin Faction rescheduled and expanded the time period of the balloting by **four additional days**, and instituted a roving ballot box for the purpose of traveling throughout the neighborhood and purportedly merely collecting ballots.

69. Thus, the Rubashkin Faction reduced the Bogus Beth Din Election to a farce.

70. Upon information and belief, Rubashkin arranged for ineligible voters to cast ballots in the Bogus Beth Din Election.

71. Upon information and belief, Rubashkin bribed, threatened, intimidated, and coerced voters to vote despite Rabbi Schwei's prohibition.

72. Upon information and belief, fraudulent votes were recorded.

73. At the behest of several community members, Rabbi Schwei, acting on behalf of the Beth Din, summoned the Imposters to arbitrate before a neutral *Zabl"a* (tripartite) panel.

74. However, Rabbi Osdoba opined to the Imposters that they were free to ignore the Beth Din summons, which they did.

75. As a result, the Imposters have been held in contempt of the Beth Din.

76. Shortly after the Bogus Beth Din Elections, the Rubashkin Faction, with the Imposters' support, forcibly and illegally evicted Rabbi Schwei from the Beth Din offices by changing the locks to said offices, ceased paying his and his secretary's salaries, and terminated his health insurance.

77. On or about January 27, 2006, Rabbi Osdoba's son, Zalman Osdoba, formed a corporation with the name "Beth Din of Crown Heights, Inc." (the "Incorporated Beth Din").

78. The legitimate Beth Din of Crown Heights did not authorize Zalman Osdoba to incorporate the Beth Din.

79. Upon information and belief, Zalman Osdoba illegally and fraudulently formed the Incorporated Beth Din to further a conspiracy by the Imposters and the Rubashkin faction, to undermine the legitimate Beth Din, to promote the Imposters' impersonation of the Beth Din, and to confuse the public.

80. Upon information and belief, Zalman Osdoba also illegally obtained control of the Kashrus, so as to divert funds from the Vaad for his and his family's benefit.

81. Upon information and belief, Rabbi Osdoba has or had three sons on the payroll of the JCC, the Vaad, or Kashrus—Zalman Osdoba, Yaakov Osdoba, and Levi Osdoba.

82. Upon information and belief, one or more of Rabbi Osdoba's sons were fraudulently paid with funds from government contracts, allotted to specific purposes.

83. Upon information and belief, as recently as May 27, 2009, Yaakov Osdoba illegally and fraudulently incorporated the Kashrus as "Vaad Hakashrus of Crown Heights, Inc.," so as to maintain his family's lucrative control of the Kashrus.

84. Upon information and belief, Segal and Zirkind also financially benefit from the Osdoba family's illicit usurpation of the Kashrus from the Vaad.

May 24, 2009 Election

85. In or about November of 2007, the term of office of the Rubashkin Board was drawing to an end. Accordingly, the Executive Committee called for elections, as required by the Bylaws.

86. By that time, the Bogus Executive Committee was "chaired" by Defendant Yanky Sufirin.

87. In order to promote peace and harmony in the community, the Executive Committee reached out to the Bogus Executive Committee and offered to jointly administer the scheduled elections to the Board.

88. The Bogus Executive Committee agreed on the need for elections and began to work with the legitimate Executive Committee to prepare for them.

89. In or about January of 2008, Sufirin announced to a purported meeting of Delegates, held by the Bogus Executive Committee, that some sort of proceeding had been held (without the participation of the group in favor of elections), at the conclusion of which Rabbi Osdoba had ruled that the election must be postponed. As a result, the Bogus Executive Committee withdrew its cooperation.

90. On or about February 13, 2009, over a year after the expiration of the term of the Rubashkin Board, the Executive Committee noticed an election date of May 24, 2009 (the "May Elections").

91. The May elections were held in full compliance with the published Rules and Regulations for elections to the JCC Board, including the following:

- i. 90 day notice and call for candidates;
- ii. Ten nominating petitions were received each with the required 100 valid signatures;
- iii. All candidates paid the \$50 fee and signed a letter of intent to abide by the published rules and bylaws;
- iv. The list of candidates was published for challenge;
- v. Having received no challenges, the list of candidates was finalized and publicized; and
- vi. At every stage of the process, announcements to the public were distributed in all the member synagogues as well as on community websites and bulletin boards.

92. During the period leading up to the election, Rabbi Osdoba issued a letter declaring that this was the wrong time for elections, stating among other reasons, (i.) **that the Beth Din of Crown Heights was hopelessly split and therefore unable to resolve election disputes** and (ii.) that he held that some of the proposed candidates should be disqualified from holding public office. Rabbi Schwei reissued his order from the previous year supporting the election and pointing out that the Rebbe had taught (i.) that the Beth Din should not be involved in vetting candidates for CHJCC Board and (ii.) that no rabbi could issue a ruling to prevent an election.

93. The preparations for the May Election continued:

i. A "Meet the Candidates" forum was arranged and announced to the public.

ii. Posters were hung on every street in the neighborhood, announcing the candidates' forum.

iii. The forum attracted a larger crowd than in any prior CHJCC election. The candidates' short speeches were again published online on community websites and on the official election website, "elections5769.com."

94. In the week before the election:

i. A booklet profiling all the candidates was published and widely distributed;

ii. The candidate speeches were published in the Crown Heights Chronicle, which was mailed to all 2200 listed homes of community residents;

iii. A large 25 foot banner was hung across the main shopping street in Crown Heights;

iv. Reminder posters ("Don't forget to Vote!") were hung throughout the neighborhood; and

v. Many of the individual candidates also caused posters to be hung promoting their candidacies.

95. On the day of the elections, polling was conducted in the manner prescribed in the Rules and Regulations and in accordance with the practice of the six previous elections for the Board. There were three innovations over prior elections: i) three polling locations were arranged and announced to the public ii) voting machines were used in place of the customary

ballot slips and iii) the polling was monitored by Honest Ballot Association (“HBA”) an independent ballot watching organization. HBA officials operated the voting machines, maintained the right to secret vote, and checked that each voter recorded only one vote. Designees of the Elections Committee of the Delegates verified IDs and checked each voter against the master directory of eligible voters, before having them sign their name and receive a ticket to hand to the machine attendant, as required by the Rules. A special system was added for personnel in the alternate locations to call in names to the person maintaining the master list to prevent duplicate voting.

96. At the conclusion of polling at 9 p.m., as required in the Rules, a public reading of the vote counters was made by HBA personnel. The next day, after verification, HBA personnel issued a certification of the result. On Monday, May 25, 2009, Yisroel Sandhaus also executed a written certification of the election results, as provided for in the Bylaws and Rules.

97. In sum, there can be no question that the elections were conducted fairly and properly in accordance with the Rules and Regulations, Jewish Law and the custom of our community.

98. Nevertheless, shortly before the elections, the Rubashkin Faction changed the locks to the JCC/Vaad offices and posted security guards to deny the New Board, as well as half of the Former Board, access to the premises.

99. After the New Board took control of Plaintiffs’ offices, Plotkin, Lang, and Shalom Rubashkin continued their obstruction, harassment, and intimidation.

100. The Rubashkin faction continues to intimidate the JCC’s employees.

101. At one point, Plotkin entered the JCC offices swinging an umbrella and cracked a glass desk top with such umbrella.

102. On or about June 5, 2009, Lang fraudulently caused payroll reports and checks to be delivered to his home. Lang signed such checks despite his term as director/officer of the JCC having expired.

Capital One

103. Subsequent to the May 24 election, the New Board held its first meeting at the JCC's offices on May 25, 2009.

104. At such meeting, the New Board adopted banking resolutions and authorized the JCC's Executive Director, Rabbi Eli Cohen ("Rabbi Cohen"), to obtain information and issue instructions pertaining to the JCC/Vaad accounts.

105. Subsequently, the New Board executed signature cards for Plaintiffs' accounts with Capital One.

106. On or about May 26, 2009, Rabbi Cohen presented the new signature cards to Angel Charriez, manager of the Capital One branch located at Broadway, Brooklyn, New York, wherein Plaintiffs' accounts are held.

107. Capital One accepted the New Board's signature cards and has not returned or rejected them to date.

108. Subsequently, Capital One removed the New Board as signatories on Plaintiffs' accounts and substituted Lang, Plotkin, Shalom Rubashkin, and Avrum N. Gross—individuals who are not authorized to sign on Plaintiffs' accounts.

109. Lang and Plotkin's terms as members of the Board expired when the New Board was elected on May 24, 2009.

110. Shalom Rubashkin is not and never was a member of the Board or an officer of the JCC or Vaad.

111. Avrum N. Gross, a/k/a Nuchi Gross, served on the Board prior to the Former Board. His term of office expired upon election of the Former Board in January of 2005.

112. Virtually all of Plaintiffs' funds are on deposit with Capital One.

113. Capital One unjustly refuses to honor the New Board's signature on accounts maintained by Plaintiffs, thereby paralyzing Plaintiffs' operations.

114. Without access to its funds, the JCC's direly needed constituent services will grind to a halt, it will be unable to fulfill the government contracts that fund its operations, and it will be unable to pay its employees.

115. The inability to conduct business imperils Plaintiffs' continued existence and endangers its constituents' welfare.

AS AND FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment—Segal, Zirkind, and Raitport)

116. Plaintiffs repeat, reallege, and incorporate by reference herein the entirety of the allegations contained in Paragraphs "1" through "111" inclusive, as if more fully stated herein.

117. The Imposters wrongly claim to be Members of the arbitration panel provided for in the Bylaws.

118. Plaintiffs are entitled to a declaratory judgment declaring that Segal, Zirkind, and Raitport are not Members of the arbitration panel provided for in the JCC Bylaws and have no authority over the JCC and Vaad.

AS AND FOR A SECOND CAUSE OF ACTION

(Declaratory Judgment—Plotkin and Lang)

119. Plaintiffs repeat, reallege, and incorporate by reference herein the entirety of the allegations contained in Paragraphs “1” through “111,” inclusive, as if more fully stated herein.

120. Plotkin and Lang wrongfully claim to be members of the Board of the JCC.

121. Plaintiffs are entitled to a declaratory judgment, declaring Plotkin and Lang to no longer be members of the Board.

AS AND FOR A THIRD CAUSE OF ACTION

(Permanent Injunction—Plotkin, Lang, and Shalom Rubashkin)

122. Plaintiffs repeat, reallege, and incorporate by reference herein the entirety of the allegations contained in Paragraphs “1” through “111” inclusive, as if more fully stated herein.

123. Plotkin, Lang, and Shalom Rubashkin continue to wrongly hold themselves out as directors and/or officers of the JCC/Vaad, intimidate the JCC’s employees, and interfere with the New Board’s activities.

124. Plaintiffs are entitled to a permanent injunction enjoining Plotkin, Lang, and Shalom Rubashkin from engaging in the aforesaid conduct.

AS AND FOR A FOURTH CAUSE OF ACTION

(Accounting—Plotkin, Lang, Moshe Rubashkin, and Shalom Rubashkin)

125. Plaintiffs repeat, reallege, and incorporate by reference herein the entirety of the allegations contained in Paragraphs “1” through “111” inclusive, as if more fully stated herein.

126. Upon information and belief, Defendants Plotkin, Lang, Moshe Rubashkin, and Shalom Rubashkin expended Plaintiffs’ funds for personal purposes, unrelated to Plaintiffs’ purposes.

127. Hence, Plaintiffs are entitled to an accounting from Defendants Plotkin, Lang, Moshe Rubashkin, and Shalom Rubashkin.

AS AND FOR A FIFTH CAUSE OF ACTION

(Fraud—Plotkin, Lang, and Moshe Rubashkin)

128. Plaintiffs repeat, reallege, and incorporate by reference herein the entirety of the allegations contained in Paragraphs “1” through “111” inclusive, as if more fully stated herein.

129. Upon information and belief, Defendants Plotkin, Lang, and Moshe Rubashkin fraudulently diverted money from Plaintiffs.

AS AND FOR A SIXTH CAUSE OF ACTION

(Replevin—Plotkin, Lang, and Shalom Rubashkin)

130. Plaintiffs repeat, reallege, and incorporate by reference herein the entirety of the allegations contained in Paragraphs “1” through “111” inclusive, as if more fully stated herein.

131. Upon information and belief, Defendants Plotkin, Lang, and Shalom Rubashkin took possession of various chattel belonging to Plaintiffs, including, but not limited to, motor vehicles, books and records, checkbooks, and computers.

AS AND FOR A SEVENTH CAUSE OF ACTION

(Breach of Fiduciary Duty—Plotkin, Lang, and Moshe Rubashkin)

132. Plaintiffs repeat, reallege, and incorporate by reference herein the entirety of the allegations contained in Paragraphs “1” through “111” inclusive, as if more fully stated herein.

133. Defendants breached their fiduciary duties as directors and trustees of Plaintiff corporations, by conducting Plaintiffs’ business for personal gain, rather than for the corporations’ purposes.

AS AND FOR AN EIGHTH CAUSE OF ACTION

(Declaratory Judgment—Sufirin)

134. Plaintiffs repeat, reallege, and incorporate by reference herein the entirety of the allegations contained in Paragraphs “1” through “111” inclusive, as if more fully stated herein.

135. Sufirin wrongly holds himself out to be the Chairman of the Executive Committee.

136. Plaintiffs are entitled to a declaratory judgment that he is not the Chairman of the Executive Committee.

AS AND FOR A NINTH CAUSE OF ACTION

(Aiding and Abetting Fraud and Breach of Fiduciary Duty—Segal, Zirkind, and Raitport)

137. Plaintiffs repeat, reallege, and incorporate by reference herein the entirety of the allegations contained in Paragraphs “1” through “111” inclusive, as if more fully stated herein.

138. By shielding the Rubashkin Faction from any accountability, Defendants Segal, Zirkind, and Raitport aided and abetted the Rubashkin Faction's breach of fiduciary duty.

AS AND FOR A TENTH CAUSE OF ACTION

(Declaratory Judgment—All Defendants)

139. Plaintiffs repeat, reallege, and incorporate by reference herein the entirety of the allegations contained in Paragraphs "1" through "111" inclusive, as if more fully stated herein.

140. Defendants dispute the validity of the May Elections.

141. Plaintiffs are entitled to a declaratory judgment, adjudging the May Elections to be valid and the New Board to be the legitimate, legal Board of the JCC and the Vaad.

AS AND FOR AN ELEVENTH CAUSE OF ACTION

(Permanent Injunction—Capital One)

142. Plaintiffs repeat, reallege, and incorporate by reference herein the entirety of the allegations contained in Paragraphs "1" through "111" inclusive, as if more fully stated herein.

143. Despite accepting the New Board's signature cards, Capital One has refused to honor such cards and has denied Plaintiffs control over their accounts.

144. Plaintiffs are entitled to a permanent injunction enjoining the bank from refusing to honor said signature cards and from recognizing any person, other than the members of the New Board and their duly designated representative(s), as authorized to transact business in respect of the accounts of the plaintiff corporations on the books of the Bank, including but not limited to making deposits and withdrawals and drawing checks thereon.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs respectfully demand:

- i. On their First Cause of Action: A declaratory judgment that Segal, Zirkind, and Raitport are not Members of the arbitration panel provided for in the JCC Bylaws and have no authority over the JCC and Vaad;
- ii. On their Second Cause of Action: A declaratory judgment that Plotkin and Lang are no longer members of the JCC/Vaad Board of Directors;
- iii. On their Third Cause of Action: A permanent injunction enjoining Plotkin, Lang, and Shalom Rubashkin from holding themselves out as officers or directors of the JCC and/or Vaad, interfering with JCC/Vaad activities, and intimidating the JCC/Vaad's employees;
- iv. On their Fourth Cause of Action: An injunction ordering Plotkin, Lang, Moshe Rubashkin, and Shalom Rubashkin to furnish an accounting of JCC/Vaad funds to Plaintiffs;
- v. On their Fifth Cause of Action: A money judgment in favor of Plaintiffs and against Defendants Plotkin, Lang, Moshe Rubashkin, and Shalom Rubashkin in an amount to be determined but no less than one million dollars;
- vi. On their Sixth Cause of Action: An order of the Court requiring Defendants to turn over to Plaintiffs all of Plaintiffs' chattel that is presently in their possession;
- vii. On their Seventh Cause of Action: A money judgment in favor of Plaintiffs and against Defendants Plotkin, Lang, and Moshe Rubashkin in an amount to

be determined but no less than one million dollars, such amount to be trebled, along with exemplary damages;

viii. On their Eighth Cause of Action: A declaratory judgment that Suffrin is not the Chairman of the Executive Committee of the Delegates;

ix. On their Ninth Cause of Action: A money judgment in favor of Plaintiffs and against Defendants Segal, Zirkind, and Raitport in an amount to be determined but no less than one million dollars, such amount to be trebled, along with exemplary damages;

x. On their Tenth Cause of Action: A declaratory judgment that the election to the JCC/Vaad Board, which took place on May 24, 2009, is valid and that the members of the JCC/Vaad Board of Directors are Fishel Brownstein, Chanina Sperlin, Elie C. Poltorak, and Zev Cadaner;

xi. On their Eleventh Cause of Action: A permanent injunction enjoining Capital One enjoining the bank from refusing to honor said signature cards and from recognizing any person, other than the members of the New Board and their duly designated representative(s), as authorized to transact business in respect of the accounts of the plaintiff corporations on the books of the Bank, including but not limited to, making deposits and withdrawals and drawing checks thereon.

xii. On all of their causes of action: Allowable costs, disbursements and attorneys' fees herein; and

xiii. Such other and further relief as the Court may deem to be good, just, proper, and equitable.

Dated: Brooklyn, New York
June 8, 2009

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-and-

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