

AMENDED THIS March 6/09 PURSUANT TO
MODIFIÉ LE _____ CONFORMÉMENT À

RULE/LA RÉGLE 26.02 (a)

THE ORDER OF _____
L'ORDONNANCE DU _____

Court File No. CV-08-368234-000

DATED / FAIT LE _____
(m. Brenton) **ONTARIO**
SUPERIOR COURT OF JUSTICE
REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE TRIBUNAL SUPÉRIEUR DE JUSTICE

BETWEEN:

MICHAEL ANDREW WEINCZOK

Plaintiff

- and -

**NEWTON GLASSMAN and
THE CATALYST CAPITAL GROUP INC., CATALYST
FUND GENERAL PARTNER I INC., CATALYST FUND
LIMITED PARTNERSHIP I, CATALYST FUND GENERAL
PARTNER II INC. and CATALYST FUND LIMITED
PARTNERSHIP II**

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

(Handwritten signature/initials in a circle)

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

(Where the claim made is for money only, include the following:)

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$500.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

Date: December 10, 2008

Issued by:

A. Armstrong

Local registrar

Address of Court office

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Solicitors for the defendants

CLAIM

1. The plaintiff, Michael Weinczok (“Weinczok”), claims against the defendants, The Catalyst Capital Group Inc. (“CCGI”); ~~Catalyst Fund General Partner I Inc., Catalyst Fund Limited Partnership I, Catalyst Fund General Partner II Inc. and Catalyst Fund Limited Partnership II~~ (collectively with CCGI, “Catalyst”):

- (a) a declaration that the termination of his employment was wrongful; ~~and,~~
- (b) damages for wrongful dismissal, inclusive of base salary, annual bonus, bonus under the 60/40 bonus program, and benefits over the period of reasonable notice, in the amount of \$1,000,000.;
- (c) a declaration that CCGI has been and/or would be unjustly enriched by retaining the return on investment earned on Weinczok’s 10.4% contribution to CCGI’s capital call to Catalyst Fund General Partner II. Inc and/or Catalyst Fund Limited Partnership II. Inc.(the “Capital Call”), and an order requiring CCGI to deliver to Weinczok, or pay damages equivalent to, the return on investment on his 10.4% share of the Capital Call;
- ~~(a)damages in the amount of \$181,699.40, as repayment for Weinczok’s share of the Fund II capital call (the “Capital Call”);~~
- ~~(b)(d)~~ a declaration that Weinczok has a 10.4% fully vested equity interest in CCGI, or, in the alternative, damages to compensate Weinczok for the value of the promised equity holding of CCGI, in the amount of 10.45% (the “Promised-CCGI Equity”);
- (e) in the alternative, rectification of Weinczok’s employment contract to expressly reflect the agreement between CCGI and Weinczok entitling him to the CCGI Equity;
- ~~(e)(f)~~ damages to compensate Weinczok for his entitlements under the 60/40 bonus program up to the date of his dismissal, and an accounting of same;

(d)(g) damages in the amount of \$318,750.00, for the pro-rata share of Weinczok's 2007 annual bonus, up to the date of his dismissal;

(e)(h) in addition or in the alternative to 2(a), (b) and, (e) and (d), a declaration that the conduct of CCGIthe defendants, including Weinczok's wrongful dismissal, CCGI's failure to repay his share of the Capital Call, failure to provide him with the Promised interference with his agreed-upon CCGI Equity, and unpaid bonuses (under the 60/40 bonus program plan and annual bonus), is oppressive, unfairly prejudicial to, and unfairly disregards Weinczok's interests, contrary to section 248 of the Ontario Business Corporations Act (the "OBCA"), and an order rectifying the matters complained of including,;

(f)also, in the alternative to 2(a), (b) and, (e) and (d), an order requiring Glassman, and/or CCGIatalyst to purchase back from Weinczok, the CCGI Equity, or to compensate Weinczok for the value of his share of the Capital Call, the Promised CCGI Equity, to repay Weinczok's share of the Capital Call with the applicable return on investment, and to pay Weinczok the monies withheld from him under the various unpaid bonuses plans, pursuant to section 248 of the OBCA; and

(i) aggravated damages and/or damages for mental distress for breach of the duty of good faith in the manner of Weinczok's dismissal.

2. (i) Weinczok claims against CCGI and Glassman:

(a) damages for fraudulent and/or negligent misrepresentation in the amount of \$500,000;

(b) damages for defamation in the amount of \$500,000; and

(c) damages for intentional infliction of mental distress in the amount of \$250,000;

(ii) Weinczok claims against Catalyst Fund General Partner II Inc., Catalyst Fund Limited Partnership II Inc. (together, "Fund II"), CCGI and Glassman:

- (a) a declaration that Weinczok is entitled to the repayment of his share of the Capital Call, in the amount of \$181,699.40, and an order requiring its repayment along with the return on the investment of Weinczok's \$181,699.40, equivalent to 10.4% of the return on the Capital Call;
- (b) in addition, or in the alternative to paragraph 2(ii) (a), damages for the tort of conversion and/or detinue for failing or refusing to repay Weinczok his share of the Capital Call, despite repeated demands for its return;
- (c) in the further alternative to paragraph 2(ii) (a), a declaration that the conduct of CCGI, Glassman and Fund II, in failing or refusing to repay Weinczok's share of the Capital Call, is oppressive, unfairly prejudicial to, and unfairly disregards Weinczok's interests, contrary to section 248 of the OBCA, and an order requiring CCGI, Glassman and/or Fund II to return to Weinczok his share of the Capital Call in the amount of \$181,699.40 and the return on the investment of his share of the Capital Call;
- (iii) Weinczok claims against CCGI and Fund II, as well as Catalyst Fund General Partner I Inc. and Catalyst Fund Limited Partnership I Inc. ("Fund I"), damages to compensate Weinczok for the distributions to which he is entitled under the 60/40 bonus plan, both up to the date of his dismissal and over the reasonable notice period, and an accounting of same;
- (iv) Weinczok claims against Glassman personally, damages in the amount of \$1,000,000, for intentional interference with contractual relations, in directing CCGI and/or Fund II to breach the terms of the *Catalyst Fund Limited Partnership II Amended and Restated Limited Partnership Agreement* (the "Fund II Partnership Agreement"), and the terms of Weinczok's employment agreement with CCGI;
- (v) Weinczok claims against CCGI, Glassman, Fund I and Fund II:
- (a) punitive damages, in the amount of \$250,000;

(b) special damages, in an amount to be determined at trial;

(c) prejudgment interest, pursuant to the *Courts of Justice Act*, R.S.O. 1990 c. C-43, section 128; and,

(d) such further and other relief as to this Honourable Court shall seem just.

Background

3. CCGI is incorporated pursuant to the laws of Ontario, with its office located in Toronto. CCGI manages funds on behalf of the limited partners of Catalyst Fund Limited Partnership I and Catalyst Fund Limited Partnership II ("~~Fund I~~" and "~~Fund II~~", collectively "the Funds"). CCGI is also a limited partner of the Funds.

4. Glassman is the founder and Managing Partner of CCGI. By holding approximately 80% of CCGI's equity, Glassman unilaterally controls all aspects of CCGI's affairs.

5. Weinczok is married with a dependent wife and 4 dependent children aged 19, 8, 6 and 5, and resides in Woodbridge, Ontario. Weinczok was admitted to the Ontario Bar in 1992.

6. Beginning about November 2005, Weinczok was approached by CCGI and Glassman to leave the practice of law and join CCGI as a Managing Director and Partner – a deal making non-legal, pure private equity role. Weinczok would join Glassman and Gabriel De Alba ("De Alba"), Managing Director and Partner of CCGI, as the third partner or principal in CCGI. At that time, Weinczok was a successful corporate partner at a Bay Street law firm, who had a solid client base and was well-respected in the business, legal and accounting communities which CCGI and Glassman were attempting to penetrate for the benefit of CCGI and the limited partners of the Funds. Indeed, Weinczok had played a significant role in growing the Toronto office of his firm from nine lawyers when he joined in 1996, to approximately 160 lawyers at the time of his departure.

7. In 2006, Weinczok was earning \$545,000CAD in base salary and expected a bonus in the range of 10-20 per cent of base salary. When CCGI and Glassman approached Weinczok, he was not seeking to leave the practice of law; he was professionally fulfilled, well-compensated

and had invested 14 years to build his reputation and book of business as a corporate insolvency lawyer.

Misrepresentations and Inducements by CCGI and Glassman

8. From the period of November 2005 to May 2006, Glassman and De Alba, initiated numerous meetings with Weinczok in an effort to induce him to leave private practice and join CCGI.

9. During this period, CCGI, under the leadership of Glassman, had raised less than one quarter of the funds required to capitalize Fund II (which at that time had a ceiling of \$500,000,000USD), and was having difficulty convincing potential limited partners (“LPs”) that CCGI had a team capable of managing such a large and long-term fund. Fund I had only \$185,000,000USD to invest over 5 years and the CCGI team of professionals had not grown to the size needed to manage a much larger and longer-term fund. Moreover, potential LPs were expressing concern about Glassman’s reputation as an extremely difficult individual, and the sustainability of a 7 – 10 year fund to be managed by him.

10. Weinczok had worked very closely with CCGI as counsel, and had an excellent working relationship with De Alba, who is well-respected in the business and investing communities. In considering the offer to join as a Managing Director and Partner, Weinczok understood the significantly increased working hours and personal time commitment that the position would entail and the resulting impact on his family (for example, Weinczok would be the only member of CCGI who had children), and specifically discussed these issues with Glassman.

11. During the course of the negotiations leading up to Weinczok’s hiring, between February and April 2006, Glassman made the following representations to Weinczok:

- (a) CCGI needed to “mature” in order to successfully manage Fund II and that Weinczok’s standing in the legal, accounting and business communities would assist in this regard. CCGI had a street reputation as a hard-nosed sweat-shop that was very difficult to deal with, which would have to be “softened” in order to ensure success over the 7-10 term of Fund II.

- (b) While Glassman expected Weinczok to work hard, he appreciated that Weinczok had family obligations and expected Weinczok to bring work-life balance to the firm. Glassman told Weinczok that he and De Alba had been working too hard and that Weinczok joining as a “partner” was a first step in achieving such a balance for all at CCGI. At this time, CCGI had 2 partners, 3 associates and 3 assistants. Glassman told Weinczok that additional associates and staff would be hired to handle the increased workload that Fund II would bring.
- (c) CCGI, or Glassman personally, would assist Weinczok to purchase a home in the Rosedale or Forest Hill neighbourhoods of downtown Toronto, by providing Weinczok with a loan on favourable terms, which would make the significant time commitments he would have at CCGI more manageable. Glassman expressed the hope that CCGI and he could assist Weinczok in making such a move within 6 months of his start date, and that Weinczok and De Alba would both purchase homes near Glassman’s Forest Hill residence so that the 3 partners would live close to the office and each other.
- (d) Glassman and CCGI were interested in Weinczok for his reputation, connections and legal expertise. Glassman knew that Weinczok had no formal post-secondary education in business, investment, mathematics or economics and, therefore, faced a significant learning curve in respect of the finance and business end of the fund management business. In all these pre-hire discussions, Glassman made it clear that he and CCGI were committed to training Weinczok and preparing him for a deal making role, a process that would take a minimum of 2 years. Glassman stated that the “partners” of CCGI would work with their respective strengths and weaknesses to develop the “partnership” and that they would “figure things out as they went in the spirit of partnership”. Glassman told Weinczok that this “flexibility” was one of the benefits of being a partner in a small firm, as opposed to the large law firm in which Weinczok was a partner.
- (e) Weinczok’s compensation package would include:

- (i) annual base salary of \$500,000US, to be increased after the first year and each year thereafter;
- (ii) annual guaranteed bonus of between 1.25 – 1.5 times base income, to be increased over time;
- (iii) 10.5% equity interest in CCGI, to be increased over time; and,
- (iv) participation in CCGI's 60/40 bonus program (the "Compensation Promises").

12. In reliance on these representations and Glassman's assurances that CCGI would operate as a "true partnership" where all decisions would be made jointly by Glassman, De Alba and Weinczok, Weinczok expressed interest in joining CCGI and accepted CCGI's offer of employment. However, in late April 2006, Glassman presented an employment contract that, contrary to the parties' earlier discussions, contained significantly less favourable terms, including:

- (a) annual base salary of \$350,000CAD until Fund II reached \$500 million US (which Glassman stated was expected to occur by July 2006), and thereafter increasing to \$425,000CAD;
- (b) 2006 bonus of \$425,000CAD;
- (c) 6.0% equity interest in CCGI; and,
- (d) participation in CCGI's 60/40 bonus program (the "Employment Contract").

13. The Employment Contract also contained other unfavourable terms, including a probationary period, a non-competition and non-solicitation covenant, and a termination provision limiting Weinczok's statutory and common law entitlements (the "Termination Provision"). The Termination Provision entitled CCGI to dismiss Weinczok without cause on "three months' notice", or pay in lieu of notice equal to "one month [of Weinczok's] base salary plus two weeks' per year of employment after the first year of employment, to a maximum of three months."

14. Glassman explained that he was unable to incorporate the Compensation Promises into the Employment Contract because, if such terms were included, De Alba would make “unreasonable demands” regarding his own compensation. Glassman told Weinczok that De Alba was “immature” and “measured power through money” and that Glassman needed Weinczok’s assistance to manage De Alba.

15. Glassman asked Weinczok to accept the Employment Contract and its less favourable terms by representing to Weinczok that all of the Compensation Promises would be honoured by CCGI and Glassman within the first year of Weinczok’s employment. Glassman appealed to Weinczok’s “spirit of partnership” and stated that it was very important to Glassman to ensure that Weinczok would, within the first year, be earning “at least” three times as much as he had been earning in 2006 in private practice. Weinczok pleads that these terms as presented by Glassman and accepted by Weinczok in entering employment with CCGI, constituted a separate and enforceable oral contract (the “Oral Contract”)

16. Glassman told Weinczok, on numerous occasions, that a number of other partner-level candidates were actively pursuing him to join Catalyst and that Weinczok’s selection should be considered an “honour” and an “outstanding opportunity” to both build Fund II and to provide for his family in a manner which could never be achieved in private practice. Glassman knew that Weinczok had played a role in building the Toronto office of his law firm and that the opportunity to be part of the growth of CCGI would be very appealing. Further, Glassman told Weinczok, on several occasions, that with Weinczok’s assistance, Catalyst-CCGI would develop other platforms in addition to Fund II.

17. In the course of these discussions, Weinczok specifically advised Glassman that, since the base salary set out in the Employment Contract was significantly less than what he had been earning in private practice, he would have a “cash flow problem” and was relying on payment of the promised annual bonus and delivery of all of the Compensation Promises provided for in the Oral Contract. In reliance upon Glassman’s and CCGI’s representations regarding delivery of all the Compensation Promises and the terms of the Oral Contract, Weinczok was induced to accept the Employment Contract on or about May 12, 2006. Weinczok pleads that the Employment Contract is unenforceable for want of consideration. In the alternative, or in any event, the

parties entered into the Oral Contract on the basis of the Compensation Promises upon which Weinczok relied and, which is enforceable against CCGI.

Weinczok's Employment with CCGI

(a) The Capital Call/ Non-Payment of Bonus

18. In late November, 2006, Glassman began to raise the prospect of each Partner and Associate (rather than CCGI) personally funding ~~CCGI's Fund II~~ the eCapital eCall based on individual equity interests in CCGI (~~the "Capital Call"~~). A ~~C~~capital ecall had never been discussed with, or agreed to, by Weinczok, De Alba or any of the other CCGI professionals. Glassman justified the Capital Call as necessary due to an "increase in the firm's error rate" and the need to underscore each professional's financial stake in CCGI and the Funds, thereby ensuring discipline and focus amongst the team.

19. At the same time, Glassman was creating extreme anxiety amongst the CCGI professionals by claiming that CCGI did not have the necessary funds available to pay 2006 bonuses, which were to be paid on or before December 31, 2006. Glassman was also taking the position that De Alba was making unreasonable demands in regard to his 2006 bonus. Glassman was extremely abusive and unprofessional in his dealings with De Alba (both written and verbal), including accusing De Alba of being a "thief", "ungrateful", "selfish" and many other derogatory and abusive terms. In a December 2006 Partner's meeting, De Alba asked Glassman to provide written evidence of CCGI's inability to pay bonuses. Glassman screamed in De Alba's face that he would "fire his f---ing a--" if De Alba ever questioned his financial assertions again. Glassman repeatedly attempted to convince Weinczok to "control" De Alba and on numerous occasions threatened Weinczok that his 2006 bonus would not be paid, unless Weinczok convinced De Alba to acquiesce to Glassman's wishes. Throughout this period, De Alba and Weinczok conducted themselves in a professional and respectful manner.

20. On many occasions, De Alba and Weinczok requested Glassman to share CCGI financial details to support his assertions. Glassman refused, telling De Alba and Weinczok that they would simply have to "trust him" and that not doing so was tantamount to accusing Glassman of being a "thief". Throughout Weinczok's employment at CCGI, Glassman refused to share basic

business and financial information with Weinczok and De Alba. The lack of disclosure caused De Alba and Weinczok so much concern that they attempted to recreate CCGI's financial position based on the little information available to them. When Weinczok and De Alba presented their findings to Glassman, in part, in an effort to have Glassman honour the Compensation Promises made to Weinczok, he rejected their findings and accused them of being disloyal.

21. Glassman attempted to placate De Alba and Weinczok, in a meeting in December 2006 in the midst of Glassman's 2006 bonus campaign, by advising them that for financial planning purposes they should assume that they would each be earning total annual compensation of \$1.2-1.5 million CAD in 2007. Glassman also indicated that he was agreeable to increasing their equity in CCGI, and would entertain such discussions in January 2007.

22. Counsel was brought in to assist with bonus and Capital Call issues. At one meeting in January 2007, counsel and the CCGI professionals discussed various structures in an attempt to mitigate the impact upon all CCGI professionals of Glassman's insistence on direct funding of CCGI Capital Calls. When presented with the results of that discussion, Glassman rejected them stating that CCGI "was not a democracy" and that the issue would be resolved as he determined.

23. On or about February 2, 2007, Weinczok was advised that an amount would be deducted from his bonus to satisfy his portion of the Capital Call. On February 5, 2007, Glassman threw Weinczok's bonus cheque on his desk as he left for the day, and commented "see how little you're getting". Weinczok's \$425,000 bonus, had been reduced by athe Capital Call deduction of \$181,699.40CDN, leaving him with the amount of \$47,800CDN after tax. The Capital Call was calculated as if Weinczok's equity interest in CCGI was 10.4 per cent confirming the terms of the Oral Agreement (and a subsequently agreed-upon dilution of 0.1 %).

(b) Working Conditions/Poisoned Work Environment

24. Immediately upon commencing employment with CCGI, Weinczok began working, and was expected to work 70 to 80 hours per week. Despite being new to the business and despite Glassman's commitment to train Weinczok, from the period of May to September 2006, Weinczok was essentially left to run the office on his own. During that time period, De Alba

spent the majority of his time in Portugal on a deal, and Glassman was largely unavailable. In the Fall of 2006, Weinczok and his wife commenced looking for a house in Toronto in order to alleviate the burden of his commute from Brooklin, and the toll that his long work hours were having upon him and his family. In April 2007, Glassman introduced Weinczok to his real estate agent to assist Weinczok with the purchase of a home close to the office. Together with the Glassman's real estate agent, Weinczok and his wife located a house in Forest Hill that they were interested in purchasing. At this time, Weinczok approached Glassman for the promised financial assistance, and was rebuffed. Glassman denied that he had ever made such a promise and expressed outrage at Weinczok's request that Glassman follow through on his promise to assist Weinczok.

25. It soon became apparent that the only partner of CCGI who would achieve any work-life balance was Glassman. From May 30, 2006 to October 11, 2007, Weinczok took 3 vacation days – two of which were to recover from having all 4 wisdom teeth removed – and De Alba took very little vacation time. On the other hand, during the same period, Glassman took 34 days of vacation (23 in the first 8 ½ months of 2007 alone), as well as spending Mondays and Fridays throughout the summer at his cottage. Additionally, Glassman was regularly out of the office dealing with his dogs' illnesses and meeting contractors who were renovating his home. It was at this same time that Glassman claimed that CCGI was "falling apart" and that he had "lost faith in his firm".

26. Weinczok pleads that Glassman regularly conducted himself in an outrageous and abusive manner in the office, and that such conduct created a poisoned work environment. In particular, Glassman was often observed screaming at CCGI partners, associates and staff, insulting their intelligence by referring to them as "stupid", "f---ing idiots", and in one instance threatening an associate, Millicent Poon, during a regular team meeting that "she should think very carefully about her answer or he [Glassman] would reach across the table and throttle her". In another instance, Glassman entered a firm meeting late, asked the firm's CFO about an issue and then commented, "by the way your wife was great last night, she says hi". Everyone present was appalled. Glassman's behaviour was so abusive that all of CCGI's professionals and staff ceased relying on him and turning to him for assistance, and avoided him whenever possible.

Combined with Glassman's frequent refusal to assist in files, staff and professionals lost respect for him, and turned to de Alba, who, by early 2007, had become the functional leader of CCGI.

27. During Weinczok's tenure with CCGI and since, a steady stream of staff and some professionals left the firm as a result of Glassman's conduct. CCGI's Human Resources Consultant, Deb Robinson ("Robinson"), admitted to Weinczok that she was unable to control Glassman, that he was abusive to her as well, that she was having difficulty sleeping, and her health was suffering as a result of Glassman's behaviour towards her. Robinson also told Weinczok that Glassman refused to accept her recommendations regarding his inappropriate treatment of CCGI professionals, and refused to take executive training. Robinson advised Weinczok that Glassman's reputation in the industry was so poor that not only was it difficult to recruit new staff and professionals, but that a number of search firms had refused to act for CCGI, a situation she had never before encountered.

28. Glassman's productivity decreased following Weinczok's hiring. Glassman would regularly arrive late, leave early, and spend significant parts of the day attending to his personal affairs. Glassman's conduct worsened, in or about early 2007, when he began to fly privately, often refusing to use commercial flights even to nearby destinations such as New York, and staying at extravagant hotels, all at the expense of CCGI's LPs.

29. Glassman would strictly, and in some cases, arbitrarily enforce his own rules of office etiquette, while refusing to apply them to himself. For example, in weekly team meetings (held at noon on Mondays and 9 am on Thursdays), Glassman expected all CCGI professionals to be prompt and in attendance at the meetings. Yet, Glassman himself would often show up late or not at all, sometimes without an explanation. In the Fall of 2006, Glassman introduced an "Error Recognition" column in the weekly meetings. Errors (such as using the wrong name in an email, or spelling a company name incorrectly in an agenda) required payment of \$250 to the firm by Partners, and \$50 by Associates. However, any error made by Glassman was not recognized. In or about November 2006, Glassman missed a huge funding need in a Fund II investment which had been identified by the team, and blamed his error on Weinczok and Poon. The Error Recognition column fell into disuse shortly after that incident, when Weinczok and Poon confronted Glassman with written evidence that he was responsible for the error.

30. Though Glassman's outrageous conduct was not initially directed towards Weinczok, by early 2007, following the compensation discussions and Weinczok's request that Glassman fulfill his promise to assist in purchasing a house, Weinczok became the recipient of Glassman's unsupportive, arbitrary, and abusive conduct, the particulars of which are as follows:

- (a) While Glassman purported to recognize and support Weinczok's need to learn the finance aspect of the business, and induced him to join CCGI, in part, on those representations, Glassman failed to honour this promise and was unsupportive and impatient with Weinczok's attempts to learn or take courses in furtherance of developing the necessary skills. When approached for assistance, Glassman almost always refused, telling Weinczok he "was trying to take the easy way out" by asking for help. Weinczok actively sought the support and guidance of De Alba and Robinson in making a variety of proposals to Glassman – all of which were ignored or rejected by Glassman. On numerous occasions, Glassman would tell Weinczok and other CCGI professionals when asked for help that "he would not do their work for them" and if he did he "would take their pay." Rather than assisting Weinczok, Glassman put him in charge of creating and running a continuing education program for everyone at CCGI and then criticized Weinczok whenever he suggested topics which would assist in his own development.
- (b) Glassman berated Weinczok telling him that he was not "cutting it as a partner" and "not showing a commitment to improve", despite evidence that Weinczok was putting in long hours, at the expense of his personal and family life, to learn the business and attend to CCGI's affairs. In one instance, Glassman made such comments and severely reprimanded Weinczok for working at home on a day his wife was ill with chronic migraine headaches, yet Glassman himself took numerous days off to attend to his own personal affairs, including, on many occasions, his sick dog. Ultimately, Weinczok felt compelled to attend at the office that day, arriving at 2:30 p.m., after arranging for his parents to care for his wife and children.

- (c) Rather than supporting and mentoring Weinczok, Glassman continually criticized Weinczok, advising him, on one occasion, that he was “sucking resources out of the firm”, was not leading a single deal, and was a “net cost” to CCGI. These comments were made despite the fact that Weinczok had been put in charge of the first deal for ~~Catalyst~~ CCGI, which De Alba acknowledged on many occasions was the most difficult investment the firm had ever made due to the uncertainties and large capital requirements in the biotech industry, and leading the creation of an asset based lending arm which Glassman acknowledged was a “number one priority” for Fund II.
- (d) When Weinczok indicated a desire to enrol in finance courses recommended by De Alba, Glassman dismissed them as “short cuts” and advised him he had to learn the “basics of finance” first, before taking such courses. Yet, Glassman made no efforts to assist him, and, in fact, interfered with Weinczok’s efforts in that regard. Throughout, De Alba was extremely supportive and helpful and often expressed the view to Weinczok that while he still had much to learn, he was an integral part of the team and very clearly performing at a Partner level.
- (e) In mid-2007, Glassman advised Weinczok that he was not meeting the “partner metrics” and that, as a result, his bonus for that year would be “very little, if anything.” When Weinczok asked for a copy of the “partner metrics” document, he was advised that it had not been completed.
- (f) During a partners’ meeting, in the course of discussing client business, Glassman referred to Weinczok and De Alba as “idiots” and stated that working with them was like “dealing with children”. Glassman would often pound the table, swear, and throw paper at these, and the CCGI team meetings.
- (g) Glassman made demeaning and sarcastic remarks to Weinczok on many occasions, questioning his experience and contributions, often remarking “did you ever go to law school?” On many occasions Glassman would make incorrect statements about the law, and then would berate and ridicule Weinczok (often in front of the team), if Weinczok disagreed.

- (h) In the context of discussing 2007 compensation, Glassman continually took the position that Weinczok and De Alba were “overcompensated” and that Glassman was “under-compensated” relative to the market, despite being provided with market reports which indicated the contrary. Glassman claimed to have reports which supported his assertions, but consistently refused to produce them.

31. Weinczok pleads that he witnessed Glassman conduct himself in an unprofessional, unreliable and flippant manner during important client meetings, and that Weinczok was regularly called upon to assuage LPs, potential LPs, and business professionals who had expressed concerns about Glassman’s erratic behaviour. Weinczok pleads that in many instances, it was only with his involvement and the leadership of De Alba, that LPs were persuaded to continue investing with CCGI, and that deals were closed. Glassman often sent clients extremely abusive emails and berated them in person and over the telephone. He failed to show up at meetings without explanation, or cancelled them at the last minute, thereby damaging his own, and CCGI’s, reputation. In many instances, when he did appear at scheduled meetings with LPs and other business people, he would appear disconnected, uninterested and would leave shortly after the commencement of the meeting, leaving Weinczok and/or De Alba to reassure the individual involved that they (Weinczok and De Alba), could provide the much needed stability to CCGI. Weinczok further pleads and relies upon section 10.5 of the Fund II Partnership Agreement.

Termination of Weinczok’s Employment

32. On or about September 4, 2007, Glassman met with Weinczok and advised him that he would have to find a new role in CCGI or leave the firm. Glassman advised Weinczok to think about it and provide him with a plan, which either proposed a suitable role for him to play in CCGI, or, a workable transition plan for leaving the firm. Approximately two days later, Glassman commented to Weinczok that he didn’t think that there was a role for Weinczok at CCGI and that he would be better off at a law firm.

33. On or about September 26, 2007, Weinczok provided Glassman with a draft Action Plan and confirmed that he was committed to executing it, and continuing in the role of Managing Director and Partner of CCGI. Glassman rejected the Action Plan.

34. By letter dated September 29, 2007, Weinczok's employment was terminated, effective immediately (the "Termination Letter"). The Termination Letter, however, purported to give him three months' working notice in accordance with the terms of the Employment Contract, during which he was expected to attend at CCGI's offices and perform his duties. In the event Weinczok executed a Release, he would be provided with an additional lump sum payment equivalent to three months' base salary. The Termination Letter did not address the repayment of Weinczok's share of the Capital Call.

35. On October 11, 2007, Glassman told Weinczok not to return to the office the following day and to remain out of service until "issues had been discussed between the lawyers." Weinczok was never permitted to return to the office, and was prevented from retrieving his personal belongings, was not permitted to assist in the transition of files, and from ~~was never provided with an opportunity to saying~~ saying goodbye to his colleagues.

36. On October 17, 2007, CCGI, through its counsel, reiterated the offer in the ~~September 29, 2007~~ Termination Letter, and admitted that the Capital Call was payable to Weinczok, though not committing to its repayment. Moreover, CCGI's counsel alleged for the first time, that CCGI had cause to dismiss Weinczok, paying out his statutory minimum payments on a "gratuitous" basis only.

37. Despite the requests of Weinczok's counsel, ~~Glassman and CCGI~~ the defendants have refused to return Weinczok's share of the Capital Call. Moreover, in mid-October 2007, CCGI ceased Weinczok's salary continuance, and despite CCGI and Glassman being aware that Weinczok and his family were heavily dependent upon his benefit coverage, CCGI discontinued his benefit coverage as well, without notice to him. Weinczok pleads that CCGI and Glassman have maintained the allegations of just cause for his dismissal in order to avoid paying Weinczok out his clear contractual entitlements, and in bad faith.

Damages

38. Weinczok pleads that the Termination Provision included in the Employment Contract is unenforceable as failing to meet minimum termination and severance obligations under the

Employment Standards Act, 2000, and further pleads that, in any event, the Termination Provision is unenforceable for want of consideration. In any event, despite its offer to comply with the Termination Provision, CCGI has failed to do so. Accordingly, Weinczok pleads that it was an implied term of his employment agreement that he be provided with reasonable notice or pay in lieu thereof at the time of his dismissal. CCGI has failed to provide reasonable notice or pay in lieu thereof of his dismissal and, accordingly, Weinczok has suffered a loss of salary, bonus and benefits over the period of reasonable notice.

39. In addition, Weinczok pleads that the bad faith manner of his dismissal, as evidenced by CCGI's conduct, warrants a sum of ~~additional aggravated damages~~ or damages for mental distress. Weinczok pleads that CCGI was untruthful, misleading and unduly insensitive by:

- (a) terminating his working notice and benefit coverage, upon which he and family heavily relied, without notice, and prior to the end of the three month working notice period which CCGI had agreed to provide; and,
- (b) thereafter playing "hardball" by maintaining vague allegations of just cause for Weinczok's dismissal without explanation, in order to justify refusing to pay him his clear contractual entitlements.

Weinczok pleads that it was in the reasonable contemplation of the parties at the formation of the employment relationship that mental distress ~~would damages~~ would arise if his employment was terminated in this manner.

40. In the alternative, in the event that the Employment Contract is found to be enforceable, which is not admitted but specifically denied, Weinczok seeks damages for CCGI's breach of the Termination Provision, having failed to pay him in accordance with its terms.

41. Weinczok pleads that he has a possessory interest in his share of the Capital Call, and states that the defendants have acted wrongfully and intentionally by retaining his share of the Capital Call for their own benefit, and accordingly, depriving Weinczok of his right to possession. Weinczok further pleads that the conduct of CCGI, Fund II and Glassman amounts to fraudulent conversion. Weinczok further pleads that he has made repeated demands for the

repayment of his share of the Capital Call, but CCGI and/or Fund II (at the direction of Glassman) have refused, -which constitutes the tort of detinue.

42. Weinczok pleads that as a result of retaining his share of the Capital Call for its own benefit (to satisfy, in part, its Capital Call requirements under the Fund II Partnership Agreement), CCGI has been, or will become, unjustly enriched by realizing a rate of return on the capital that belongs to Weinczok. Accordingly, Weinczok is also entitled to 10.4% of the return on the investment of his \$181,699.40 and/or damages to compensate him for the loss of that return on his share of the Capital Call.

43. CCGI, at the direction of Glassman, has not only refused to repay Weinczok's share of the Capital Call, but has also failed or refused to compensate Weinczok for the CCGI Equity, has failed or refused to pay Weinczok's annual bonus, and has failed or refused to pay Weinczok's entitlements under the 60/40 bonus plan. Weinczok pleads that he is entitled to damages for breach of contract, resulting from CCGI's refusal to pay out these amounts. Moreover, Weinczok pleads that Glassman intentionally interfered with the contractual relationship between Weinczok and CCGI, when, having direct knowledge of, by personally negotiating, the terms of the Employment Contract and Oral Contract between Weinczok and CCGI, he has directed CCGI to refuse to pay Weinczok the amounts owing to Weinczok. Glassman's conduct has caused a breach of both the Employment Contract and the Oral Contract, and resulting damage to Weinczok, for which Glassman is personally liable, in tort, for inducing breach of contract.

42.44. In the alternative, Weinczok pleads that due to the termination of his employment, he can no longer protect his interests as a shareholder, given his inability to influence the corporation's strategic direction, financial position, and, ultimately, the value of his equity position in CCGI. By refusing to repay his share of the Capital Call and to compensate him for the ~~Promised~~CCGI Equity, and his entitlements to the annual bonus and under the 60/40 bonus program, the conduct of CCGI and Glassman (and Fund II as it relates to the failure of refusal to repay his share of the Capital Call) is oppressive, unfairly prejudicial to, and unfairly disregards the interests of Weinczok as a shareholder of CCGI, contrary to section 248 of the OBCA.

45. Weinczok pleads that, in taking his share of the Capital Call, CCGI fulfilled the Compensation Promises in confirming the grant of 10.4% in CCGI vested equity, or, in the alternative, that, in exchange for CCGI making the Capital Call deduction, he entered into a new agreement with CCGI entitling him to 10.4% in CCGI Equity, to vest immediately. Weinczok pleads that the amount of his share of the Capital Call was based upon his 10.4% in CCGI Equity. In the further alternative, the parties amended the Employment Contract, to grant Weinczok 10.4% in immediately vested CCGI Equity, in consideration for the Capital Call, equivalent to his equity interest in CCGI, and said amendments were confirmed in writing.

46. In the alternative, Weinczok pleads that CCGI is estopped from relying upon the strict terms of the Employment Contract, including the “entire agreement and waiver” provision, to defeat Weinczok’s promised or agreed-upon compensation. In the further alternative, Weinczok pleads and relies upon the doctrine of rectification, in asking this Honourable Court for relief.

43-47. Weinczok claims, under CCGI’s 40/60 bonus plan and the terms of the Employment Contract, a 10.45% entitlement to all previous, existing and future Fund I 40% distributions, as well as a beneficial interest in the 60 portion relating to the Snowbear and other accounts, and any future 60/40 distributions relating to Fund II to which Weinczok would have been entitled. In addition, Weinczok claims a *pro-rata* share of his 2007 bonus, up to the date of his dismissal, which CCGI has failed to pay to him, although it is owed.

44-48. Weinczok pleads that Glassman engaged in negligent and/or fraudulent misrepresentations for which he and CCGI are both liable. Specifically, a duty of care arose as a result in the course of Weinczok’s recruitment and hiring by CCGI. Glassman, on behalf of CCGI, Glassman made the representations, including the Compensation Promises, in order to induce Weinczok to leave the practice of law and join CCGI, in order to successfully complete the capitalization of Fund II and improve CCGI’s reputation, standing and profile. Glassman made such misrepresentations either knowing they were inaccurate and misleading, and that CCGI could not and would not fulfill such promises, or in breach of the duty to ensure they were not inaccurate or misleading. Weinczok relied on such representations to his detriment when he left a secure and lucrative law practice to join CCGI, and has suffered damages as a result. Weinczok further pleads that it is likely that Glassman viewed Weinczok as disposable and

would have terminated his employment once Fund II was fully capitalized, had matters not come to a head sooner.

45.49. Weinczok claims against Glassman, damages for defamation. In particular, following his dismissal, Weinczok learned that Glassman held a number of meetings of the entire firm, including staff, using him as an example of what happens when someone does not perform properly and calling Weinczok a “rogue” who consistently acted beyond his authority, and not in the best interests of ~~Catalyst~~ CCGI, and that Weinczok had put the LPs’ interests in jeopardy. The statements made about Weinczok are without factual foundation and defamatory in their natural and ordinary meaning. The statements meant and were understood to mean that Weinczok was incompetent, dishonest, and that he conducted himself improperly, negligently or fraudulently. Weinczok pleads that in making said defamatory statements, Glassman was actuated by malice. As a result of these grossly defamatory statements, Weinczok’s personal and professional reputation has been damaged, for which he is entitled to be compensated.

46. Weinczok further pleads that Glassman’s actions amounted to intentional infliction of mental distress. In particular, Glassman’s conduct towards Weinczok, as detailed further herein, was flagrant and outrageous, and calculated to produce harm to Weinczok. Moreover, as a result of Glassman’s abusive conduct, Weinczok’s health suffered and he was under the care of a physician and required to take medication in order to alleviate his symptoms.

~~47. Weinczok pleads that CCGI is vicariously liable for Glassman’s actions to the extent permitted by law.~~

48.50. Weinczok pleads that CCGI has acted in a harsh, vindictive, reprehensible and malicious fashion, through the actions of Glassman, and pleads that such conduct is high handed and callous and ought to be sanctioned by this Honourable Court, Weinczok further pleads that the negligent and/or fraudulent misrepresentations made by Glassman, the intentional infliction of mental distress, and the defamatory conduct constitute independent actionable wrongs, entitling Weinczok to punitive damages.

51. Weinczok pleads that CCGI is vicariously liable for Glassman’s actions and the damages caused by Glassman’s misconduct and tortious wrongdoing, to the extent permitted by law

49.52. As a result of the termination of his employment, Weinczok incurred a number and variety of out-of-pocket expenses related to his efforts to seek alternate employment. The details of such expenses will be provided to the defendants prior to trial. Weinczok pleads that his former association with CCGI, and Glassman, and specifically, Glassman's poor reputation in the business and legal communities, made it exceedingly difficult for him to mitigate his damages by finding other employment.

The plaintiff proposes that this action be tried at Toronto.

DATED: ~~December 11, 2008~~ ~~March 6, 2009~~ ✓

December 10, 2008

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Court File No. CV-08-368234-000

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Plaintiff

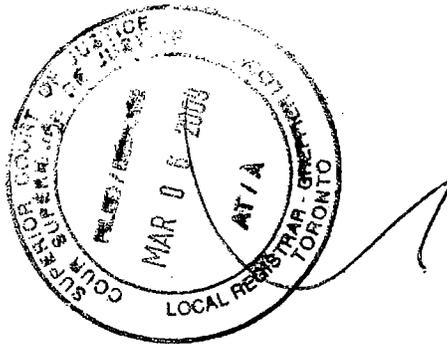
- and -

**NEWTON GLASSMAN AND THE CATALYST
CAPITAL GROUP INC**
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT
TORONTO

**AMENDED
STATEMENT OF CLAIM**



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