

SETH E. DIZARD, ESQ., as Court-Appointed  
Receiver for SXP ANALYTICS LLC,

Plaintiff,

v.

Case No.  
Case Code:

EMMANUEL MAMALAKIS and  
KIMBERLY MAMALAKIS  
7800 N. LAKE DRIVE  
FOX POINT, WI 53217,

EMM HOLDINGS LLC,  
EMMANUEL MAMALAKIS, Registered Agent  
7800 N. LAKE DRIVE  
FOX POINT, WI 53217,

THE MAY FIRST FOUNDATION  
c/o LINDA JOHNSON  
N54W16652 RAVENWOOD DR.  
MENOMONEE FALLS, WI 53051,

THE MAY 1<sup>ST</sup> FINANCIAL, INC.  
c/o LINDA JOHNSON, Registered Agent  
N54W16652 RAVENWOOD DR.  
MENOMONEE FALLS, WI 53051,

MAY 1<sup>ST</sup> FINANCIAL, LTD.  
INTERTRUST CORPORATE SERVICES  
(CAYMAN) LIMITED, Registered Office  
190 ELGIN AVENUE  
GEORGE TOWN, CAYMAN ISLANDS

THE FIRM LLC  
EMMANUEL MAMALAKIS, Registered Agent  
7800 N. LAKE DRIVE  
FOX POINT, WI 53217,

THE INTERNATIONAL NON PROFIT  
ASSISTANCE FOUNDATION  
EMMANUEL MAMALAKIS, Registered Agent  
7800 N. LAKE DRIVE  
FOX POINT, WI 53217,

THE WORLD ASSISTANCE FOUNDATION  
EMMANUEL MAMALAKIS, Registered Agent  
7800 N. LAKE DRIVE  
FOX POINT, WI 53217,

EMM INVESTMENTS 1 LLC  
EMMANUEL MAMALAKIS, Registered Agent  
7800 N. LAKE DRIVE  
FOX POINT, WI 53217,

EMM INVESTMENTS 2 LLC  
EMMANUEL MAMALAKIS, Registered Agent  
7800 N. LAKE DRIVE  
FOX POINT, WI 53217,

EMM INVESTMENTS 3 LLC  
EMMANUEL MAMALAKIS, Registered Agent  
7800 N. LAKE DRIVE  
FOX POINT, WI 53217,

EM DEVELOPMENT LLC  
EMMANUEL MAMALAKIS, Registered Agent  
7800 N. LAKE DRIVE  
FOX POINT, WI 53217,

EM DEVELOPMENT II LLC  
EMMANUEL MAMALAKIS, Registered Agent  
7800 N. LAKE DRIVE  
FOX POINT, WI 53217,

94LABS, LLC  
EMMANUEL MAMALAKIS, Registered Agent  
7800 N. LAKE DRIVE  
FOX POINT, WI 53217,

Defendants.

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**COMPLAINT**

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**NOW COMES** the Plaintiff, Seth E. Dizard, Esq., in his capacity as the court-appointed Receiver for SXP Analytics, LLC (“SXP”), by and through his attorneys, O’Neil, Cannon, Hollman, DeJong & Laing S.C., and complains against the above-named Defendants as follows:

## INTRODUCTION

1. SXP was formed in 2007 by the Defendant, Emmanuel Mamalakis (“Mamalakis”), and two other individuals, Defendant Vitaliy Godlevsky (“Godlevsky”) and Andriy Kuharsky (“Kuharsky”). SXP was engaged in the business of high-frequency stock trading. Since its formation, SXP has been the target of an investigation, search, and seizure by the FBI, an investigation by the United States Attorney’s Office for the Southern District of Texas, a federal court lawsuit that is in its fourth year brought by one of the largest business entities in the high frequency trading industry, several additional lawsuits in Texas and Wisconsin state courts, and a brief bankruptcy in the Eastern District of Wisconsin.

2. The underlying litigation pending in Milwaukee County (Case Number 2012-CV-001478 (the Honorable Paul R. Van Grunsven presiding)) (the “Underlying Litigation”) is between Mamalakis and his former business partner, Godlevsky. Mamalakis owns two-thirds of SXP and Godlevsky owns one-third of SXP, according to a signed Operating Agreement. According to the same signed Operating Agreement, they each have 50% management control of SXP. The two partners split on February 24, 2011 after tens of millions of dollars had passed through SXP, resulting in successful operations over several years.

3. The Court appointed Attorney Dizard as the Receiver over SXP via an Order dated January 18, 2013 in Milwaukee County Case Number 2012-CV-001478. By operation of law, the Receiver stands in the shoes of SXP and is entitled to assert all claims that SXP would be entitled to assert against the Defendants.

4. The Receiver has uncovered substantial evidence and accounting irregularities revealing that Mamalakis is the ringleader of perpetuating significant and stunning financial fraud. Mamalakis and the other Defendants – all of whom acted at the direction and under the

control of Mamalakis – engaged in a complex and widespread scheme to shield SXP’s money and assets from SXP’s shareholders, its creditors, and even state and federal tax authorities.

5. This case involves a cutting edge high-frequency trading company making tens of millions of dollars using allegedly stolen trade secrets; it is rife with evidence of inconsistent and manipulated accounting records; highly suspicious financial transfers among numerous “non-profit” entities that seemingly serve no real “non-profit” purpose abound; records reveal tens of millions of dollars flowing among entities in accounts both within the United States and offshore with no discernable valid purpose; SXP transactions were mischaracterized on its books to lessen its tax burden; and Mamalakis engaged in egregious self-dealing with entities such as a governmental and public relations company and various investment companies. Mamalakis did not hesitate to capitalize on the wobbly house of cards he so carefully built; he lived an incredibly lavish lifestyle, spending over \$1 million of SXP’s money on travel, meals, and entertainment. However, the house of cards has come crashing down – SXP is no more, and the extent of Mamalakis’ deceit is out of the bag.

6. The Receiver brings these claims against Mamalakis and the Defendants in an attempt to recoup the funds that Mamalakis and his entities intentionally, fraudulently, and wrongfully converted and used in blatant disregard of the law to the detriment of SXP’s estate, shareholders, and creditors.

#### **PARTIES**

7. Plaintiff, Seth E. Dizard, Esq., was appointed as the Receiver over SXP via Order dated January 18, 2013.

8. Upon information and belief, Defendants Mamalakis and Kimberly Mamalakis are married adult residents of the State of Wisconsin, residing at 7800 North Lake Drive, Fox Point, Wisconsin 53217.

9. Upon information and belief, Defendant EMM Holdings LLC (“EMM Holdings”) is a limited liability company organized and existing under the laws of the State of Wisconsin, with its principal address located at 7800 North Lake Drive, Fox Point, Wisconsin 53217. Mamalakis is its registered agent.

10. Upon information and belief, Defendant The May First Foundation (“May First”) is an organization with no known state of incorporation whose principal office is a home owned by Mamalakis at 2710 Chadwick Ct., Brookfield, WI 53045. Further, upon information and belief, May First is operated by Mamalakis’ personal accountant, Linda Johnson, and his personal lawyer, Hugo Rojas. Also upon information and belief, May First represents itself as a non-profit organization and has been approved by the United States Internal Revenue Service to operate as a 501(c)(3) tax-exempt organization.

11. Upon information and belief, The May 1<sup>st</sup> Foundation, Inc. is a corporation organized and existing under the laws of the State of Wisconsin and its principal office is located at a home owned by Mamalakis, 2710 Chadwick Ct., Brookfield, WI 53045. Linda Johnson is its registered agent. Upon information and belief, The May First Foundation, Inc. is a wholly owned subsidiary of May First.

12. Upon information and belief, May 1<sup>st</sup> Financial, Ltd. is a corporation organized and existing under the laws of the Cayman Islands and its Registered office is located at Intertrust corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Cayman Islands.

13. Upon information and belief, Defendant The Firm LLC (“The Firm”) is a limited liability company organized and existing under the laws of the State of Wisconsin, with its principal address located at Mamalakis’ personal residence, 7800 North Lake Drive, Fox Point, Wisconsin 53217. Mamalakis is its registered agent.

14. Upon information and belief, Defendant The International Non Profit Assistance Foundation (“INPAF”) is an organization with no known state of incorporation and is operated out of Mamalakis’ personal residence, 7800 North Lake Drive, Fox Point, Wisconsin 53217. Also upon information and belief, INPAF represents itself as a non-profit organization and has been approved by the United States Internal Revenue Service to operate as a 501(c)(3) tax-exempt organization. Mamalakis, Erin Pajak and Kimberly Mamalakis are directors of INPAF.

15. Upon information and belief, Defendant The World Assistance Foundation (“WAF”) is an organization with no known state of incorporation and is operated out of Mamalakis’ personal residence, 7800 North Lake Drive, Fox Point, Wisconsin 53217. Also upon information and belief, WAF represents itself as a non-profit organization and has been approved by the United States Internal Revenue Service to operate as a 501(c)(3) tax-exempt organization. Mamalakis, Erin Pajak and Kimberly Mamalakis are directors of INPAF.

16. Upon information and belief, Defendant EMM Investments 1 LLC (“EMM1”) is a limited liability company organized and existing under the laws of the State of Wisconsin, with its principal address located at Mamalakis’ personal residence, 7800 North Lake Drive, Fox Point, Wisconsin 53217. Mamalakis is its registered agent.

17. Upon information and belief, Defendant EMM Investments 2 LLC (“EMM2”) is a limited liability company organized and existing under the laws of the State of Wisconsin, with

its principal address located at Mamalakis' personal residence, 7800 North Lake Drive, Fox Point, Wisconsin 53217. Mamalakis is its registered agent.

18. Upon information and belief, Defendant EMM Investments 3 LLC ("EMM3") is a limited liability company organized and existing under the laws of the State of Wisconsin, with its principal address located at Mamalakis' personal residence, 7800 North Lake Drive, Fox Point, Wisconsin 53217. Mamalakis is its registered agent.

19. Upon information and belief, Defendant EM Development LLC ("EM Development") is a limited liability company organized and existing under the laws of the State of Wisconsin, with its principal address located at Mamalakis' personal residence, 7800 North Lake Drive, Fox Point, Wisconsin 53217. Mamalakis is its registered agent.

20. Upon information and belief, Defendant EM Development II ("EM Development II LLC") is a limited liability company organized and existing under the laws of the State of Wisconsin, with its principal address located at Mamalakis' personal residence, 7800 North Lake Drive, Fox Point, Wisconsin 53217. Mamalakis is its registered agent.

21. Upon information and belief, Defendant 94Labs, LLC ("94Labs") is a limited liability company organized and existing under the laws of the State of Wisconsin, with its principal address located at a residence owned by Mamalakis, 2710 Chadwick Court, Brookfield, Wisconsin 53045. Mamalakis is its registered agent.

### **JURISDICTION AND VENUE**

22. Jurisdiction and venue is proper before this Court. The claims set forth herein arose in Milwaukee County, Wisconsin, and all Defendants either reside in or have done substantial business in Milwaukee County, Wisconsin.

## FACTS

### I. Steps Taken By the Receiver.

23. The Receiver has expended substantial effort, time, and resources in discovering the facts and developing the allegations asserted herein.

24. These efforts include engaging in substantial electronic discovery efforts. As of the date of filing of this Complaint, the Receiver has taken control of 260 hard drives and 252 backup tapes from SXP.

25. The Receiver also has deposed Mamalakis, Linda Johnson (“Johnson”), and Brittany Kwiatkowski. Johnson is related to Mamalakis through marriage and acted as SXP’s Chief Financial Officer with control over and access to all accounting records. Johnson still acts as Mamalakis’ personal accountant.

26. Johnson and Mamalakis have been highly evasive to the Receiver’s discovery efforts. As an example of Johnson and Mamalakis’ evasive behavior, at their depositions, which took place over 6 days, the Receiver hoped that Johnson and Mamalakis would provide a full explanation of what transpired at SXP. Mamalakis and Johnson repeatedly remained oblivious to basic questions involving SXP, Mamalakis’ other companies, and the many non-profit entities in this case. Specifically, Mamalakis and Johnson provided a total of 791 non-responsive answers at their depositions. Their unresponsive answers can be broken down as follows:

Mamalakis used the following phrases in response to the Receiver’s counsel’s questions:

- “I don’t know” 259 times;
- “I’d have to check” 20 times;
- “I don’t recall” 2 times;
- “I didn’t prepare [for that]” 3 times;



- “I don’t remember” 207 times; and
- “I can’t remember” 5 times.

Likewise, Johnson used the following phrases in response to the Receiver’s counsel’s questions:

- “I don’t know” 211 times;
- “I’d have to check” 14 times;
- “I don’t recall” 31 times;
- “I didn’t prepare [for that]” 4 times;
- “I don’t remember” 31 times; and
- “I can’t remember” 4 times.

Neither Mamalakis or Johnson have offered to supplement their deposition responses.

27. Many of these unresponsive answers related directly to large dollar transfers to or from SXP. For example, Mamalakis testified that he could not recall any of the details of a \$700,000 withdrawal from SXP, a \$1.6 million withdrawal from SXP, a \$557,666.78 deposit into his real estate development company, EM Development, from “CM Gold and Silver” that was immediately followed by a similar sized deposit into SXP, and a \$102,000 *cash* deposit into SXP.

28. The Receiver has uncovered numerous egregious facts and asserts them with specificity herein, but given the status of discovery to date, the Receiver believes that additional discovery will reveal further significant misconduct by Mamalakis and his related entities.

## **II. An Accounting of SXP’s Funds Show Numerous Irregularities.**

### **A. Irregular Capital Contributions Were Made Into SXP.**

29. SXP's accounting records appear to disguise numerous withdrawals and the amount and source of much of SXP's initial funding.

30. Undoubtedly, SXP was a highly profitable business. Approximately \$44 million was deposited into its primary checking account between 2007 and 2012.

31. Through its high frequency trading operations, it appears that SXP was able to turn approximately \$530,000 in capital contributions and roughly \$3 million in funding into approximately \$37 million in gross revenue in a few short years.

32. There were three main sources of start-up capital for SXP. **First**, Godlevsky contributed approximately \$500,000 in start-up capital. **Second**, upon information and belief, Mamalakis contributed funds directly for SXP's expenses. And **third**, money was provided by a charitable foundation controlled by Mamalakis: the Defendant, INPAF.

33. The first two sources of funding are largely straightforward. However, the nature and suitability of the third and largest source of initial funding for SXP is problematic. Funds began to flow into SXP from INPAF on January 29, 2008. According to SXP's bank statements and wire transfer records, INPAF provided \$2,448,429.30 in capital during an initial funding period that lasted until August 2009. According to Mamalakis's deposition testimony, the funds were provided by INPAF as a loan.

34. Over a year after the last deposit from INPAF, SXP and INPAF executed a multi-draw note (the "INPAF Loan") that was prepared by the law firm Reinhart Boerner Van Deuren S.C. Mamalakis signed the INPAF Loan for both SXP and for INPAF. The INPAF Loan memorialized that the money provided by INPAF over a year earlier was a loan. Further, the INPAF Loan also memorialized that all payments made to INPAF by SXP were payments on the INPAF Loan.

35. The funding from INPAF does not follow standard lending practices. The SXP general ledger states that INPAF funded \$4.2 million of the loan to SXP. But the bank statements are not consistent with the general ledger. According to SXP's bank statements, SXP received only \$2,448,429.30 from INPAF.

36. Part of the discrepancy between the bank statements and the general ledger may be explained by documents suggesting that Mamalakis and his wholly-owned real estate development business, Defendant EM Development, borrowed over \$1.1 million of the money from INPAF. That is to say, according to SXP's general ledger, INPAF gave \$700,000 to Mamalakis directly and \$400,000 to EM Development, instead of SXP. Specifically, there are two entries that stand out on the INPAF Loan section of SXP's general ledger. One states "Due from Mamalakis - \$700,000" and the other states "Due from EM Development - \$400,000."

37. Johnson testified that loans from SXP were recorded through a "due from" entry in the SXP General Ledger. Accordingly, at least \$1.1 million of the loan from INPAF wrongfully and improperly was given to Mamalakis and his real estate company instead of SXP.

**B. Inconsistencies Exist Between the SXP Ledger and the SXP Bank Statements.**

38. The payments on the INPAF Loan do not coincide with the entries on SXP's general ledger. Based upon SXP's bank statements, SXP transferred at least \$2,234,764 to INPAF that should have paid down the INPAF Loan. However, the SXP general ledger does not reflect that \$2,234,764 of the INPAF Loan was paid down. Instead, the ledger shows that, at the end of 2010, SXP still owed INPAF \$3,236,208.

39. Part of the discrepancy may be explained by the fact that, according to Johnson and the SXP ledger, \$790,000 worth of payments made to INPAF were treated by SXP as personal donations made by Godlevsky. Johnson testified that Godlevsky personally donated

\$790,000 to Mamalakis' foundation. Godlevsky disputes this and has informed the Receiver he was completely unaware that his money was given to INPAF.

40. The SXP ledger entries on the \$700,000 loan to Mamalakis and the \$400,000 loan to EM Development also do not match the bank records. First, Mamalakis never paid off the \$700,000 loan. However, the ledger wiped out the loan to Mamalakis through unexplained cash transactions and accounting entries. Approximately \$600,000 of the loan disappeared through adjusting journal entries that reclassified the loan to Mamalakis as a "guaranteed payment" to Mamalakis. Then the remainder of the loan to Mamalakis was paid off through the \$102,000 cash deposit. Again, neither Mamalakis nor Johnson can recall any details of the \$102,000 in cash that was deposited into SXP, where it came from, or who deposited it to pay off Mamalakis' loan.

41. Likewise, no bank statements show that EM Development paid off the \$400,000 loan from INPAF to EM Development. EM Development then borrowed even more money from SXP beyond this initial \$400,000. These additional loans were recorded on SXP's general ledger on an account labeled "Due from EM Development." The original loan of \$400,000 does not appear on the ledger for EM Development, and EM Development never paid it back.

42. Ultimately, SXP continued to owe money to INPAF while it paid off the personal loan to Mamalakis and the EM Development loan. At the end of 2010, according to SXP's books, SXP owed \$3,236,208 to INPAF – more than INPAF actually ever gave SXP, according to bank records. This intentional misconduct unjustly enriched INPAF and was detrimental to SXP.

43. In December of 2010, Mamalakis shut down INPAF and created the Defendant WAF. Mamalakis testified at his deposition that he did not know the extent of his involvement

with WAF and could not name any other individual involved with WAF. This is particularly peculiar since, according to WAF tax records, Mamalakis is the director of WAF, and SXP began sending large amounts of money to WAF in 2011. WAF ultimately received \$1,885,825.16 from SXP according to SXP's bank records. Again, these payments do not match SXP's general ledger.

### **III. The May First Transaction.**

44. Once SXP began operating, it almost immediately began to generate tremendous profits. In the second half of 2010, SXP's lawyers developed a complicated scheme for moving and shielding SXP's profits. The plan was this: a large portion of SXP's trading pool would be taken out of SXP and given to a tax qualified, non-profit foundation, and that foundation would give the money back to SXP as SXP's "client." Profits could then be sent to the foundation out of the reach of other shareholders, creditors, and taxing authorities. The client foundation was the Defendant, May First.

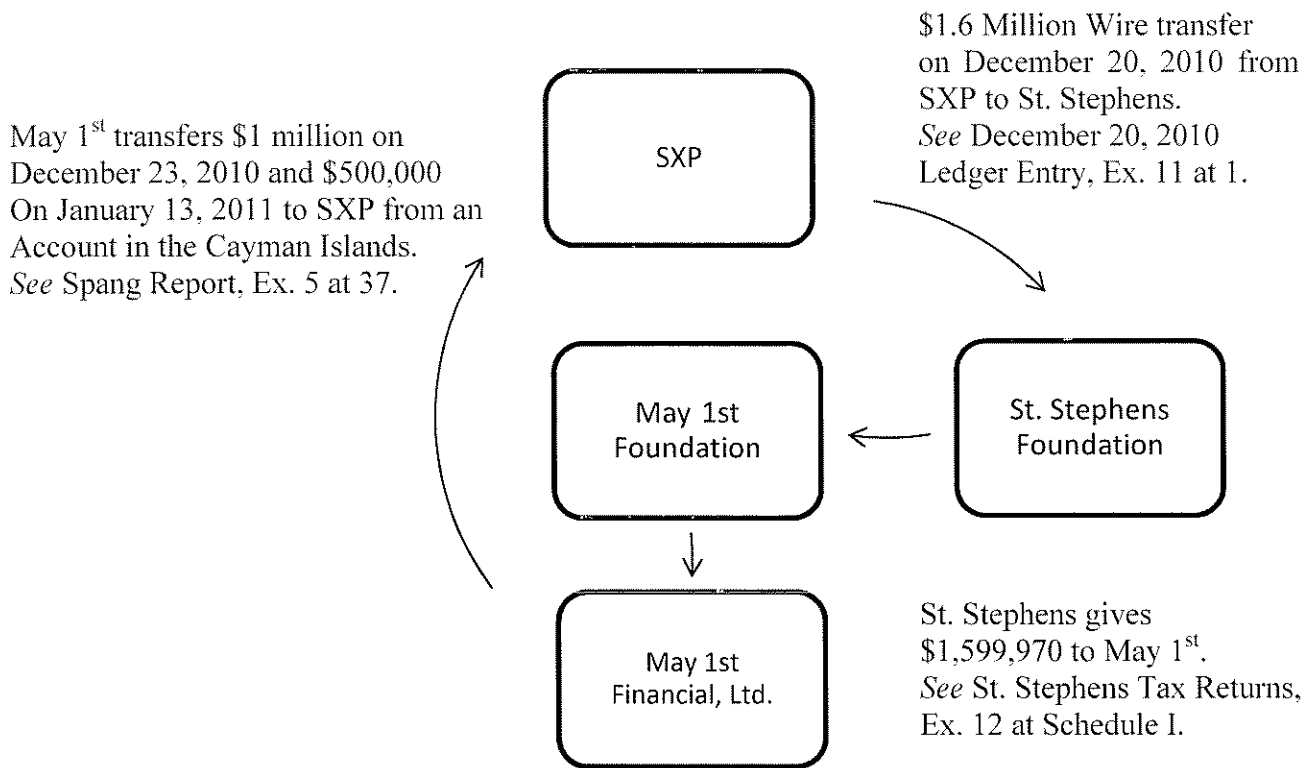
45. The plan was laid out clearly in an email from SXP's counsel at Reinhart to Johnson:

SXP will withdraw funds from its trading account and use such funds to repay a loan it received from INPAF. INPAF will then donate such funds to Foundation, which will subsequently contribute those funds to its Cayman Islands subsidiary, May 1st Financial Ltd. ("Financial"). Financial will then deposit its funds into SXP's trading account pursuant to the management agreement. In essence, the funds complete a "circle" and eventually end up back in SXP's trading account (although the funds are owned by Financial rather than SXP when the transfers are complete).

46. The bank and tax records reveal that Mamalakis and his entities followed through with the plan concocted by SXP's counsel – with further additional steps taken to attempt to hide the transaction. First, Mamalakis withdrew \$1.6 million out of SXP's trading pool and sent it to a foundation called the St. Stephens Foundation. Based upon tax records and correspondence,

the St. Stephens Foundation then gave the money to the Defendant, May First. May First gave the money to Defendant May 1<sup>st</sup> Financial, Ltd, its subsidiary in the Cayman Islands, who in turn gave the money back to SXP. This transaction will be referred to herein as the “May First Transaction.”

47. As seen in the below diagram, the transaction resulted in \$1.6 million leaving SXP and roughly \$1.5 million returning as a “client’s” money for SXP to continue using for its trading pool:



48. Mamalakis acknowledges that no one other than he had authority to withdraw \$1.6 million from SXP, but claims he knew nothing about this transaction. According to

Mamalakis, SXP's attorneys advised him not to be involved with the transaction. However, Johnson testified that Mamalakis, in fact, knew of the transaction:

Q. Do you recall ever having any discussions with Mr. Mamalakis about effectuating this transaction?

A. I'm sure he knew that a million -- over a million dollars was leaving the account, yes.

49. This \$1.6 million transaction had the intended effect of diverting future SXP profits to be labelled as May First's profits. After the transaction was complete, future profits from SXP were diverted to May First.

50. The \$1.6 million that was taken out of SXP and given to May First was withdrawn from SXP as a "partner withdrawal" to Mamalakis. Because SXP was an LLC with Godlevsky as a one-third owner, \$1.6 million could not be withdrawn without also giving Godlevsky a corresponding partner withdrawal of \$800,000. Godlevsky has informed the Receiver that he did not receive such a partner withdrawal of \$800,000.

51. On May 30, 2011, five months after the May First Transaction was completed and after Godlevsky was no longer working at SXP, Johnson altered the SXP general ledger to show that Godlevsky had received a corresponding partner withdrawal. Upon information and belief, Johnson acted at the direction of Mamalakis and pursuant to his instruction. Specifically, Johnson modified the \$790,000 worth of payments on the INPAF Loan to show that those payments were actually partner withdrawals given to Godlevsky and donated by Godlevsky to INPAF. Johnson selected 28 different wire transfers that were made to INPAF between April 22, 2010 and October 27, 2010 and modified SXP's journal to show that these transactions were "donations" from Godlevsky to INPAF. Again, Godlevsky has informed the Receiver he was not aware that any of his money was ever given to INPAF.

52. The fact that SXP's books were altered is not evident on the surface of SXP's ledger. When Johnson was asked about these entries during her deposition, she originally testified that she made the entries in SXP's general ledger as donations to INPAF at Godlevsky's direction *in 2010*. After she was shown the audit trail for these transactions, however, she revised her testimony to state that she was "really busy" in 2010 and did not get around to modifying these transactions until months after Godlevsky left SXP in May 2011. Nevertheless, she acknowledges that she modified the transactions according to Mamalakis' instructions.

53. Godlevsky has informed the Receiver that he was never told that any of his money was being donated to Mamalakis' foundation, he was never told that SXP was giving away an additional \$1.6 million of its money to a "client" foundation, and he was never told SXP was now trading money that was owned by someone else. Further, the Receiver is not aware of any document suggesting Godlevsky was informed that (i) he personally was donating \$790,000 to Mamalakis' foundation, (ii) SXP was giving away \$1.6 million of its trading pool, or (iii) SXP was even trading money for someone else.

54. After the May First Transaction was complete, an "independent" board was put in place to govern May First. However, money continued to flow from May First back to Mamalakis' foundations. According to May First's Tax Returns, WAF received \$416,000 from May First in 2011. Johnson also regularly requested donations for other entities from May First and could not recall any time those requests were refused.

55. Upon information and belief, May First is still paying for Mamalakis' professional services. In 2012, May First's "independent" board resigned. Today, Johnson is the director of May First. Further, both Johnson and Mamalakis' attorney – Hugo Rojas – are each receiving a salary of \$90,000 to \$120,000 per year, respectively, directly from May First. May



First appears to have less than \$500,000 in assets. Yet, Rojas and Johnson are receiving a salary as if they were full-time employees for this Foundation.

#### **IV. Tax Burdens Placed Upon Godlevsky.**

56. Not only did Johnson modify the general ledger to reflect that Godlevsky donated \$790,000 to SXP, but she also modified the general ledger to increase Godlevsky's tax burden. After Godlevsky and Mamalakis separated, Mamalakis directed Johnson to change SXP's general ledger so every transaction that could be considered a personal expense for Godlevsky was altered on the books to classify it as a personal expense. Once an item was booked on SXP's ledger as a personal expense, Godlevsky was required to pay income taxes as if the expense was personal income. On February 25, 2011, the day after Godlevsky and Mamalakis separated, the audit trail on SXP's general ledger shows that Johnson began changing entries on the ledger.

57. Many of the entries Johnson modified were over one year old. For example, Johnson modified the payments made by SXP over a year earlier to Godlevsky's attorneys in the Texas litigation to show that those payments should be considered his personal expenses. Some of the entries that were modified are not related to personal expenses for Godlevsky. For example, Johnson modified entries for payments made to **SXP's** counsel and **SXP's** litigation consultant, thereby wrongfully increasing Godlevsky's income on its books. In total, Godlevsky was charged with \$359,817.99 in legal expenses as personal income. Modifications also were made for travel, gasoline, and meals and entertainment expenses long after the entries were originally made to reflect that these expenses were for personal income. Ultimately, according to the SXP general ledger, \$1,473,696.21 was passed on to Godlevsky's K1 for his taxes. Godlevsky has informed the Receiver that he has been forced to appeal his assessment.

## **V. Self-Dealing With Related Companies.**

58. Mamalakis also intentionally and fraudulently engaged in self-dealing, and his explanation for these transactions is unsupported by written documentation. For instance, Mamalakis set up a government relations and public relations company known as Defendant The Firm. The Firm received over \$1.5 million in direct wire transfer payments from SXP between August 2010 and June 2012 for its services. There is no evidence that The Firm ever performed services for SXP.

59. Mamalakis testified before the United States Bankruptcy Court that The Firm sent invoices to SXP for its services. However, Johnson testified that no such invoices exist.

60. According to Mamalakis, SXP also received administrative services from Mamalakis' holding company, Defendant EMM Holdings. During the period when SXP was operating, SXP paid EMM Holdings approximately \$3.6 million. Mamalakis testified before the U.S. Bankruptcy Court that EMM Holdings sent invoices to SXP for administrative services. Again, Johnson testified that no such invoices have ever existed. There is ample evidence to suggest EMM Holdings existed to act as a "holding company" for Mamalakis' other companies.

61. Mamalakis also loaned SXP's money to his other companies without sufficient consideration or documentation. In addition to EM Development and EM Development II, Mamalakis gave money to his three investment companies – Defendants EM Investments I, II and III. Collectively, EM Investments I, II and III received \$1,645,873. There is no evidence that any of these entities repaid or even intended to repay these "loans" from SXP.

62. In total, Mamalakis caused SXP to transfer at least \$16,350,343.42 to Mamalakis personally, causes he supported, and the companies and foundations he either owns or controls.

This amount does not include possible personal expenses that were paid by SXP that may have been recorded as SXP business expenses.

63. The Receiver has not been provided with a single invoice for any of the work performed by any of Mamalakis' different companies for SXP. However, through various adjusting journal entries and limited payments, SXP's balance sheet was modified to reflect that today SXP is only owed money from three remaining companies – Defendants The Firm and EMM Holdings, and an entity called 94 Tradings. Based upon information presently available to the Receiver, these three companies appear to be defunct and have no assets.

#### **VI. Commingling Payments for Personal Expenses.**

64. Upon information and belief, Mamalakis does not dispute that hundreds of thousands of Mamalakis' personal expenses were paid out of SXP's bank account. These payments include payments for his mortgage, credit card expenses, work done on his house, five different nannies, and payments for private school tuition. At his deposition, Mamalakis provided the following explanation for SXP's payment of his personal expenses:

[T]he IRS doesn't permit someone in my position to be on a standard salary. I was told by lawyers and accountants that I had to be on a draw schedule instead of a salary. And so my draw schedule was if there's any time that I received money for personal issues from SXP, it was placed -- it was recorded and tabbed in a draw account.

So if someone -- if my mortgage was paid, it was identified to the draw account. If I repaired the -- if I repaired the plumbing in my kitchen, that was assigned to my draw account.

Mamalakis testified that he does not remember which attorney provided this advice.

Mamalakis spent over \$1 million of SXP's money on travel, meals, and entertainment, including approximately \$160,000 on restaurants owned by the Surge Group alone that was purportedly on behalf of SXP. Mamalakis could not identify at his deposition any marketing material, reports,

or other documents evidencing that the many travel and entertainment events were for or on behalf of SXP. Mamalakis intentionally and wrongfully used SXP's funds for his personal use.

65. At least some of the payments made for Mamalakis' personal expenses were not placed on his draw or "guaranteed payment" account. For example, Mamalakis had at least four different nannies. Each nanny either was a salaried employee at one of Mamalakis' companies, or received direct payments from SXP as an independent contractor for SXP. In total, these nannies were paid at least \$107,000, none of which was recorded as part of Mamalakis' draw and none of which was counted as SXP income for tax purposes.

**COUNT I – AGAINST ALL DEFENDANTS**  
***(Theft in Violation of Wis. Stat. § 943.20(1)(b))***

66. Plaintiff restates and incorporates all preceding paragraphs.

67. The Defendants, by virtue of their office, business, and/or employment, and/or as trustee or bailee, having possession or custody of money or of a negotiable security, instrument, paper, or other negotiable writing of SXP, intentionally used, transferred, concealed, or retained possession of such money, security, instrument, paper, or writing without SXP's consent, contrary to their authority, and with intent to convert to their own use or to the use of any other person except SXP.

68. SXP was harmed as a result.

69. Pursuant to Wis. Stat. § 895.446(3), SXP is entitled to recover actual damages, investigative costs, and exemplary damages equal to three times the amount awarded for actual damages.

**COUNT II – AGAINST ALL DEFENDANTS**  
*(Conversion)*

70. Plaintiff restates and incorporates all preceding paragraphs.

71. The Defendants intentionally controlled and/or took possession of property belonging to SXP without SXP's consent, including, but not limited to, SXP's capital and monetary value, thereby resulting in serious interference with the rights of SXP to possess this property.

72. SXP was harmed as a result.

**COUNT III – AGAINST ALL DEFENDANTS**  
*(Violation of the Wisconsin Organized Crime Control Act, Wis. Stat. § 946.83)*

73. Plaintiff restates and incorporates all preceding paragraphs.

74. The Defendants received proceeds with knowledge that they were derived, directly or indirectly, from a pattern of racketeering activity, and they each used or invested, directly or indirectly, part of the proceeds or the proceeds derived from the investment or use thereof in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

75. The Defendants, through a pattern of racketeering activity, acquired and maintained, directly or indirectly, interest in or control of any enterprise or real property.

76. The Defendants conducted or participated, directly or indirectly, in the enterprise through a pattern of racketeering activity.

77. The pattern of racketeering activity caused harm to SXP.

78. The incidents comprising the pattern of racketeering activity occurred within seven years of each other and included, but are not limited to, violations of Wis. Stat. § 943.20(3)(c) (theft), § 943.90 (wire fraud), and § 943.89 (mail fraud).

79. Pursuant to Wis. Stat. § 946.84, the Defendants should be fined not to exceed 2 times the gross value gained or 2 times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

**COUNT IV – AGAINST ALL DEFENDANTS**  
***(Conspiracy)***

80. Plaintiff restates and incorporates all preceding paragraphs.

81. The Defendants combined to act together to agree to violate or disregard the law and knowingly commit wrongful acts. They came to a mutual understanding to try to accomplish a common and unlawful plan. The Defendants had an agreement, explicit or otherwise, on the common end sought and some cooperation toward the attainment of that end.

82. SXP incurred damages by acts performed by the Defendants pursuant to the conspiracy.

**COUNT V – AGAINST DEFENDANT MAMALAKIS**  
***(Equitable Subordination)***

83. Plaintiff restates and incorporates all preceding paragraphs.

84. Mamalakis engaged in inequitable conduct, this misconduct resulted in injury to other creditors of SXP or an unfair advantage to Mamalakis, and subordination of the debt is consistent with principles governing receiverships.

85. To the extent Mamalakis has an allowed claim in this matter, it should be equitably subordinated to the claims of SXP and its creditors.

**COUNT VI – AGAINST DEFENDANT MAMALAKIS**  
***(Declaratory Judgment – Piercing the Corporate Veil)***

86. Plaintiff restates and incorporates all preceding paragraphs.

87. Plaintiff seeks a declaratory judgment that Mamalakis should be held personally liable for SXP's debts.

88. Despite the signed agreement that did not give him the authority, Mamalakis exercised control and complete domination, not only of finances but also of policy and business practice in respect to the misconduct described herein so that SXP had at the time no separate mind, will, or existence of its own.

89. Mamalakis used this control to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of SXP's legal rights.

90. This control and breach of duty proximately caused SXP's injury or unjust loss.

**COUNT VII – AGAINST DEFENDANT MAMALAKIS**  
***(Breach of Fiduciary Duty)***

91. Plaintiff restates and incorporates all preceding paragraphs.

92. As the 66% owner of SXP that forced himself into a position of complete authority over SXP, despite the contractual split in management authority, Mamalakis owed SXP a fiduciary duty of loyalty and good faith.

93. By and through the actions and/or inactions as outlined herein, including, but not limited to, those actions and/or inactions as outlined in paragraphs 33-35, 37-41, 42-56, and 58-64, Mamalakis breached that duty.

94. Mamalakis' breach of his fiduciary duty caused damage to SXP.

**COUNT VIII – AGAINST DEFENDANT MAMALAKIS**  
***(Negligence)***

95. Plaintiff restates and incorporates all preceding paragraphs.

96. As the 66% owner of SXP that forced himself into a position of complete authority over SXP, despite the contractual split in management authority, Mamalakis owed SXP a duty of care.

97. By and through the actions and/or inactions as outlined herein, including, but not limited to, those actions and/or inactions as outlined in paragraphs 33-35, 37-41, 42-56, and 58-64, Mamalakis breached that duty.

98. Mamalakis' breach of his duty of care caused injury to SXP.

99. SXP suffered actual loss/damage resulting from Mamalakis' breach of his duty of care.

**COUNT IX – AGAINST DEFENDANT MAMALAKIS**  
***(Fraudulent Transfer in Violation of Wis. Stat. § 242.04)***

100. Plaintiff restates and incorporates all preceding paragraphs.

101. The Receiver is a creditor with a claim within the meaning of Wis. Stat. § 242.01(4) with respect to SXP's assets that were fraudulently transferred away.

102. Defendant Mamalakis exercised dominion and control over SXP and is a debtor of SXP within the meaning of Wis. Stat. § 242.01(6) for his fraudulent activities.

103. Defendant Mamalakis made transfers and/or incurred obligations that were fraudulent as to SXP. Defendant Mamalakis made these transfers or incurred these obligations either (a) with actual intent to hinder, delay, or defraud any of his or SXP's creditors; or (b) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and Defendant Mamalakis (i) was engaged or was about to engage in a business or a transaction for which his remaining assets were unreasonably small in relation to the business or transaction; or (ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

104. As a result of these fraudulent transfers, SXP and its creditors have suffered damages.



**COUNT X – AGAINST DEFENDANT MAMALAKIS**  
***(Intentional Misrepresentation)***

105. Plaintiff restates and incorporates all preceding paragraphs.

106. Mamalakis made the false representations of fact to SXP as outlined herein, including, but not limited to, those false representations as outlined in paragraphs 26-62.

107. SXP believed these representations to be true and relied on them to its detriment.

108. Mamalakis either knew these representations were untrue or made these representations recklessly without caring whether they were true or false.

109. Mamalakis made these representations with the intent to deceive SXP and induce SXP to act on these representations.

110. These representations caused harm to SXP.

**COUNT XI – AGAINST DEFENDANT MAMALAKIS**  
***(Strict Liability Misrepresentation)***

111. Plaintiff restates and incorporates all preceding paragraphs.

112. Mamalakis made the false representations of fact to SXP as outlined herein, including, but not limited to, those false representations as outlined in paragraphs 26-62.

113. SXP believed these representations to be true and relied on them to its detriment.

114. These misrepresentations were made on Mamalakis' personal knowledge or under circumstances in which he necessarily ought to have known the truth or untruth of these statements.

115. Mamalakis had an economic interest in the transactions stemming from these misrepresentations.

116. These representations caused harm to SXP.

**COUNT XII – AGAINST DEFENDANT MAMALAKIS**  
*(Negligent Misrepresentation)*

117. Plaintiff restates and incorporates all preceding paragraphs.

118. Mamalakis made the false representations of fact to SXP as outlined herein, including, but not limited to, those false representations as outlined in paragraphs 26-62.

119. SXP believed these representations to be true and relied on them to its detriment.

120. Mamalakis had a duty of care to SXP or voluntarily assumed a duty of care.

121. Mamalakis failed to exercise ordinary care in making the representation or in ascertaining the facts.

122. These representations caused harm to SXP.

**COUNT XII – AGAINST ALL DEFENDANTS**  
*(Injunctive Relief - Wis. Stat. § 813)*

123. Plaintiff restates and incorporates all preceding paragraphs.

124. Upon information and belief, Defendants, including but not limited to May First, are continuing to dissipate or otherwise alleviate funds earned by SXP.

125. The dissipation of funds by Defendants amounts to waste.

126. A preliminary and permanent injunction barring Defendants from disposing of, spending, alleviating, or otherwise removing assets is necessary to prevent waste.

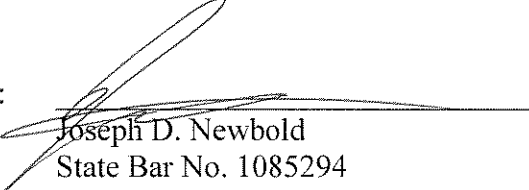
**WHEREFORE**, the Plaintiff, Seth E. Dizard, Esq., in his capacity as the court-appointed Receiver for SXP Analytics, LLC, respectfully requests that this Court enter judgment against Defendants in an amount to be determined at trial, plus interest, costs, fines, and exemplary damages. Further, Plaintiff, Seth E. Dizard, Esq., respectfully requests that this Court enter injunctive relief in the form of a preliminary and permanent injunction barring and for such other relief as this Court deems equitable and just.

**A TRIAL BY JURY IS HEREBY DEMANDED**

**O'NEIL, CANNON, HOLLMAN, DEJONG  
& LAING S.C.**

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