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9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 OB1, LLC, a Nevada Limited Liability
Company, and STEPHEN M. KALISH, an
12 individual,

13 Plaintiffs.

14 v.

15 MARK A. JAMES, an individual; THE
JAMES FAMILY TRUST; and FRIAS
16 HOLDING COMPANY, a Nevada company,

17 Defendants.

Case No. A-09-605985-B
Dept. No.:

XXV

COMPLAINT

(Request for Business Court Assignment Pursuant to EDCR 1.61(a)(2)(ii) and (iii))

(Exempt from Arbitration – Equitable Relief Requested)

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19 Plaintiffs OB1, LLC ("OB1") and STEPHEN M. KALISH ("Kalish") (collectively
20 "Plaintiffs"), by and through their undersigned counsel, hereby request that the above-captioned
21 matter be designated as a business court matter and assigned to the Business Docket pursuant to
22 EDCR 1.61(a) because it is a case that arises from business torts and from the purchase and sale of
23 stock of a business, and state as their Complaint against Defendants MARK A. JAMES ("James"),
24 THE JAMES FAMILY TRUST (the "James Trust") and FRIAS HOLDING COMPANY ("FHC")
25 (James, the James Trust, and FHC are sometimes referred to herein as "Defendants") as follows:

26 **PARTIES AND RELATED PERSONS/ENTITIES**

27 1. Plaintiff OB1 is and was at all times relevant hereto a Nevada limited liability
28 company doing business in the State of Nevada.

1 Phyllis Frias believed that James had the experience and expertise to successfully operate the cab
2 companies. James had no such experience or expertise.

3 10. Knowing that he personally had no experience or expertise to operate the cab
4 companies, in or around early November 2006, James approached Kalish and asked him to serve as
5 the CEO of FHC. James and Kalish had a longstanding close personal and professional
6 relationship. Indeed, James had served as Kalish's attorney on several deals. Thus, Kalish placed
7 considerable trust and confidence in his relationship with James.

8 11. In contrast to all others associated with the Frias cab companies, Kalish enjoyed
9 considerable business experience operating and managing similar, multi-million dollar companies
10 that provide service and operating units, particularly those that ran fleets of vehicles. Among other
11 examples, Kalish served for years as President of Republic Services (a \$600,000,000 trash retrieval
12 and disposal company), as well as other similar companies. Since James had served as legal
13 counsel for Kalish in the past, James was well aware of Kalish's skills and abilities.

14 12. Initially, Kalish demurred to James' requests, but after James' repeated insistence, in
15 or around late November, 2006, Kalish proposed to James that if James assumed the position of
16 CEO with FHC (as Phyllis Frias requested), Kalish personally would assist James in the
17 performance of James' duties in exchange for a percentage interest in James' compensation (the
18 "Private Consulting Agreement"). James agreed to this arrangement.

19 13. In or around early December 2006, James accepted the offer to be CEO of FHC.
20 Because James had no experience serving in such capacity, James requested that Kalish prepare a
21 compensation formula to be negotiated into his employment agreement with FHC. Kalish agreed
22 and negotiated the terms of James' employment with FHC on behalf of James. James assumed the
23 CEO position in or around January, 2007.

24 14. In December, 2006, Kalish and James also memorialized their understanding as it
25 related to the compensation element of the Private Consulting Agreement. Specifically, the parties
26 agreed that Kalish, as an individual, would receive twenty percent (20%) of all amounts, if any,
27 over four million dollars (\$4,000,000.00) that James received as CEO of FHC. Kalish began
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1 providing private consulting services to James immediately upon James' acceptance of his position
2 as CEO.

3 15. Sometime after James' acceptance of the position as CEO, James hired Kalish's
4 company, OBI, to provide additional services directly to FHC. On or about February 1, 2007, OBI
5 and FHC entered into a consulting agreement whereby OBI agreed to provide certain insurance and
6 business consulting services in exchange for a flat fee of \$15,000 per month (the "First FHC
7 Agreement"). The First FHC Agreement had a one (1) year term and was set to expire by
8 January 31, 2008, and was distinct from the Private Consulting Agreement Kalish had with James.

9 16. In February of 2008, OBI and FHC entered into a second consulting agreement
10 whereby OBI agreed to continue to provide certain insurance and business consulting services in
11 exchange for a flat fee of \$25,000 per month (the "Second FHC Agreement"). Once again, FHC
12 was responsible for obligations owed to OBI under the Second FHC Agreement. The Second FHC
13 Agreement had a one (1) year term and was set to expire in February of 2009. Again, the Second
14 FHC Agreement was distinct from the Private Consulting Agreement Kalish had with James. (The
15 First FHC Agreement and Second FHC Agreement are hereinafter referred to as the "FHC
16 Agreements".)

17 17. From November/December 2006 up to and until late October 2008, Kalish and OBI
18 provided various services under their respective agreements, including, but not limited to,
19 reviewing insurance agreements, creating a management team, hiring a chief financial officer,
20 hiring outside accountants, implementing cash procedures, reviewing financial information,
21 creating budgets and financial models and provided strategies for both state and local government
22 affairs. Kalish also provided personal consultation to James to assist and guide him with the
23 fulfillment of his responsibilities as CEO of FHC.

24 18. Demonstrating the extreme level of trust, confidence and reliance between Kalish
25 and James, Kalish's services under the Private Consulting Agreement during this time period
26 included, but were not limited to, Kalish quietly serving as the acting CEO for periods of time
27 because James would disappear for extended periods and was simply incapable of performing the
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1 duties of a CEO. Because of their close relationship, Kalish covered for James, performed James'
2 duties, and even assisted him in obtaining help as James battled certain personal demons in his life.

3 19. During the period between October, 2006 to October, 2008, due to the efforts,
4 expertise, and service of Kalish, the cab companies' financial success increased exponentially. In
5 accordance with the employment agreement Kalish negotiated for and on behalf of James, James
6 had earned a performance bonus in just 24 months of at least \$17 million. James' performance
7 bonus was a product of the services and expertise Kalish provided to James for the performance of
8 James' duties as CEO. Those services were rendered out in the open, through private
9 correspondence, memos, ideas, and strategies created by Kalish and sent to James' personal, private
10 e-mail address at James' request, and in James' absence (whether James was in treatment,
11 incapacitated and unable to perform his duties, and/or just inexplicably absent from the day-to-day
12 operations for extended periods of time).

13 20. In September 2008, Phyllis Frias informed James of her pleasure with the new
14 success of the company and expressed her intent to transfer to James an ownership interest in FHC
15 as compensation for the successful services provided to FHC.

16 21. Almost immediately following Phyllis Frias' announcement, Kalish and James
17 communicated verbally and through writing of their respective understandings concerning Kalish's
18 entitlement to compensation equal to 20% of James' compensation. James acknowledged that
19 Kalish was entitled to 20% of any such compensation.

20 22. On or about October 6, 2008, Phyllis Frias informed James that she intended to
21 transfer to James a 48% interest in FHC. Upon information and belief, at the time of this
22 announcement, FHC had a net value of approximately \$300 million.

23 23. Despite his promise to compensate Kalish with 20% of all compensation he received
24 from FHC above \$4 million, on or about October 6, 2009, James conceived of and implemented a
25 fraudulent scheme against Kalish designed to conceal the actual compensation he received from
26 FHC.

27 24. On October 8, 2008, James misrepresented to Kalish that he (James) was not getting
28 any equity interest in FHC. James repeated this misrepresentation on several occasions between

1 October 8, 2008 and October 27, 2008. James' misrepresentations were knowingly false and
2 designed to defraud Kalish from compensation owed.

3 25. Based upon their longstanding friendship and relationship of trust, Kalish had no
4 reason to disbelieve James' representation that James was receiving no equity in FHC. Kalish, in
5 fact, believed and relied upon James' representation in that regard. Thus, on October 8, 2008,
6 Kalish and James agreed that OBI will finish out the term of the Second FHC Agreement, and
7 provide consulting services until the spring of 2009. After the expiration of that Second FHC
8 Agreement, Kalish and James also agreed to calculate what James owed Kalish under the terms of
9 their Private Consulting Agreement. In that regard, James wrote to Kalish that "I always honor my
10 agreements."

11 26. On or about October 27, 2008, FHC, James, OBI, and Kalish entered into a
12 Settlement of Consulting Agreement (drafted by James) whereby, in exchange for a certain amount
13 of money, OBI and Kalish agreed to terminate and resolve the Private Consulting Agreement and
14 the FHC Agreements (the "Settlement Agreement").

15 27. Unbeknownst to Kalish, at the time of the Settlement Agreement, Phyllis Frias'
16 decision to compensate James with an ownership interest in FHC had not changed. That
17 compensation was merely delayed so as to eliminate Kalish from the benefit of that compensation.

18 28. Kalish is informed and believes that the formal process of transferring the 48%
19 interest in FHC to James commenced as early as December 2008, and culminated in the filing of a
20 formal Notice of Application before the Nevada Transportation Authority (NTA) on February 20,
21 2009, approximately 120 days after James represented to Kalish that he would not be receiving any
22 equity bonus from FHC. The filing provided public notice of Phyllis Frias' intent to transfer a
23 substantial percentage of FHC interest to James, as she had decided and announced on October 6,
24 2008 -- prior to the Settlement Agreement.

25 29. The Application was placed on the April 7, 2009 NTA Agenda and unanimously
26 passed. Shortly thereafter, James received the 48% interest in FHC and then fraudulently
27 transferred the corporate stock to the James Trust in order to avoid his responsibilities owed to
28 Kalish under the Private Consulting Agreement.

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FIRST CAUSE OF ACTION

(Fraudulent Inducement/Misrepresentation Against All Defendants)

30. Kalish repeats and realleges the allegations set forth in Paragraphs 1 through 29 above as though fully set forth herein.

31. In order to induce Kalish to enter into the Settlement Agreement, from on or around October 2006 up to (and past) October 27, 2008, when the parties entered into the Settlement Agreement, James represented to Kalish that he (James) was not being given any equity or ownership interest in FHC.

32. These representations were false and James knew these representations to be false.

33. James made these representations to Kalish with the intent to induce Kalish to enter into the Settlement Agreement for a sum significantly less than the amount Kalish was entitled to receive.

34. Kalish justifiably relied upon James' repeated misrepresentations as he had no way of knowing about James' fraudulent scheme.

35. As a result of James' fraudulent inducement as alleged herein, the Settlement Agreement is void.

36. Kalish intends service of the summons and complaint in this action to serve as notice of rescission of the Settlement Agreement, and hereby demands that James restore to Kalish any and all monies due under the Private Consulting Agreement.

37. Additionally, and as a direct and proximate result of the acts and omissions of James, Kalish has suffered and will continue to suffer direct, incidental and consequential damages in an amount to be proven at trial, but in any event in excess of \$10,000, plus prejudgment interest.

38. In committing the acts herein above alleged, James is guilty of oppression, fraud, and malice toward Kalish. Therefore, in addition to general damages, Kalish is entitled to recover punitive damages from James for the purpose of deterring him and others similarly situated from engaging in like conduct in the future.

39. As a result of the acts and omissions of James, Kalish has been compelled to hire the services of an attorney for the protection of his interests.

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1 SECOND CAUSE OF ACTION

2 (Breach of Contract Against Defendant James)

3 40. Kalish repeats and realleges the allegations set forth in Paragraphs 1 through 39
4 above as though fully set forth herein.

5 41. Kalish has performed all of his obligations under his Private Consulting Agreement
6 with James, including performance of the many services noted herein above.

7 42. To date, James has failed and/or refused to comply with his obligations by, among
8 other things, failing to pay Kalish the monies due thereunder.

9 43. Specifically, James received a 48% equity interest in FHC. According to the
10 agreement between Kalish and James, Kalish is entitled to 20% of all amounts James received from
11 FHC over \$4,000,000.

12 44. Additionally, as a direct and proximate result of the acts and omissions of James,
13 Kalish has suffered and will continue to suffer direct, incidental, and consequential damages in an
14 amount to be proven at trial, but in any event in excess of \$10,000, plus prejudgment interest.

15 45. As a result of the acts and omissions of James, Kalish has been compelled to hire the
16 services of an attorney for the protection of his interests.

17 THIRD CAUSE OF ACTION

18 (Breach of the Implied Covenant of Good Faith and Fair Dealing Against Defendant James)

19 46. Kalish repeats and realleges the allegations set forth in Paragraphs 1 through 45
20 above as though fully set forth herein.

21 47. Implied in the Private Consulting Agreement between the parties was the obligation
22 of good faith and fair dealing.

23 48. James breached the implied covenant of good faith and fair dealing by, among other
24 things, misrepresenting how Phyllis Frias and FHC agreed to compensate James for the services he
25 performed as CEO of FHC; namely that James was being given 48% ownership interest in FHC.

26 49. Kalish's reasonable and specific expectations under his Private Consulting
27 Agreement with James were thus denied.

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SIXTH CAUSE OF ACTION

(Quantum Meruit Against Defendants James and FHC)

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67. Kalish repeats and realleges the allegations set forth in Paragraphs 1 through 66 above as though fully set forth herein.

68. At the request, knowledge, and acquiescence of James, Kalish performed services including, without limitation, each and every duty and responsibility belonging to the Frias CEO. This is true when James was physically unable to serve on his own, when James was absent from FHC due to personal issues, and when James was in treatment or otherwise incapacitated (thus, requiring Kalish to serve as de facto interim CEO).

69. James, as CEO of FHC, had actual authority to act on behalf of FHC. Thus, at the request, knowledge, and acquiescence of FHC through the actual authority of its CEO, Kalish performed the services listed herein.

70. The services listed herein were of value to James and FHC, and both James and FHC accepted and retained the value of those services in the form of the new success and growth of the cab companies.

71. Despite demand therefore, Kalish has not been compensated in accordance with the reasonable value of his services.

72. As a result, Kalish demands compensation for the reasonable value of his services in an amount to be proven at trial, but in any event, in excess of \$10,000 plus prejudgment interest.

73. As a result of the acts and omissions of James and FHC, Kalish has been compelled to hire the services of an attorney for the protection of his interests.

SEVENTH CAUSE OF ACTION

(Unjust Enrichment Against Defendant James)

74. Kalish repeats and realleges the allegations set forth in Paragraphs 1 through 73 above as though fully set forth herein.

75. Kalish provided valuable services to James to assist and guide James with the fulfillment of his duties and responsibilities as CEO of FHC.

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1 76. Without Kalish's assistance and services, James would have been unable to perform
2 his duties as CEO and FHC would not have been as successful as it was.

3 77. James has been compensated by FHC for the services provided by Kalish under the
4 Private Consulting Agreement.

5 78. It would be unjust to allow James to retain the benefit of such compensation without
6 fairly compensating Kalish as agreed to in the Private Consulting Agreement.

7 79. As a result, Kalish demands compensation for the reasonable value of his services in
8 an amount to be proven at trial, but in any event, in excess of \$10,000 plus prejudgment interest.

9 80. As a result of the acts and omissions of James, Kalish has been compelled to hire the
10 services of an attorney for the protection of his interests.

11 WHEREFORE, Plaintiff's pray for judgment as follows:

12 1. On the First Cause of Action:

13 (a) For compensatory and special damages against James in an amount to be
14 determined at trial;

15 (b) For rescission of the Settlement Agreement;

16 (c) For a constructive trust over 20% of the 48% stock ownership in FHC;

17 (d) For punitive damages against James.

18 2. On the Second Cause of Action: For compensatory and special damages against
19 James in an amount to be determined at trial.

20 3. On the Third Cause of Action: For compensatory and special damages against
21 James in an amount to be determined at trial;

22 4. On the Fourth Cause of Action:

23 (a) For compensatory and special damages against James in an amount to be
24 determined at trial;

25 (b) For punitive damages against James.

26 5. On the Fifth Cause of Action:

27 (a) For compensatory and special damages against James in an amount to be
28 determined at trial;

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(b) For a constructive trust over 20% of the 48% stock ownership in FHC; and

(c) For punitive damages against James.

6. On the Sixth Cause of Action, for direct, incidental and consequential damages against James and FHC in an amount to be proven at trial.

7. On the Seventh Cause of Action, for direct, incidental and consequential damages against James and FHC in an amount to be proven at trial.

8. For an award of reasonable costs and attorneys' fees;

9. For prejudgment and post-judgment interest on the foregoing sums at the highest rate permitted by law; and

10. Any additional relief this Court deems just and proper on the evidence presented at trial.

DATED this 15th day of December, 2009.

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