

STATE OF NEW YORK
SUPREME COURT COUNTY OF TIOGA

MBR WAVERLY LLC,

Plaintiff,

**VERIFIED
COMPLAINT**

-VS-

Index No.: _____

LIBERTY RESEARCH, INC. and
JOSEPH G. WORTLEY, JR.,

Defendants.

The Plaintiff, MBR Waverly LLC, by its attorneys, Evans Fox LLP, as and for its
Verified Complaint in the above-captioned matter, alleges as follows:

1. At all times hereinafter mentioned, Plaintiff MBR Waverly LLC (hereinafter “MBR” or “Plaintiff”) is a domestic limited liability company formed and organized under the laws of the State of New York, with its principal office located at 5800 Lake Bluff Road, North Rose, New York 14516.
2. Upon information and belief, and at all times hereinafter mentioned, Defendant Liberty Research, Inc. (hereinafter “LRI”) is a corporation formed and organized under the laws of the State of New York, with its principal office located at 263 Fern Palm Road, Boca Raton, Florida 33432.
3. Upon information and belief, Defendant Joseph G. Wortley, Jr. (hereinafter “Wortley”) is an individual who resides at 263 Fern Palm Road, Boca Raton, Florida 33432.
4. Upon information and belief, Wortley is the sole shareholder and sole officer of LRI.
5. Upon information and belief, at all times relevant to this action, LRI and Wortley are and have been *alter egos* of one another (Wortley and LRI are hereinafter collectively referred

to as “Defendants”).

6. Jurisdiction for this matter is based upon an Asset Purchase and Sale Agreement entered into by and between LRI and MBR dated May 14, 2018 (hereinafter “APA”), wherein pursuant to Section 7.11 of the APA, the parties specifically agreed that any and all actions regarding the APA may be commenced in New York State Supreme Court for Tioga County. A copy of the APA is annexed hereto as Exhibit A.

FACTS

7. The APA required, in sum and substance, MBR to purchase the rights, title and interest in and to the business of LRI, which then consisted of animal breeding and research.

8. Through the APA, MBR further purchased all assets listed within the APA belonging to LRI as those assets existed at the time of the closing of the APA.

9. The closing of the APA occurred on May 31, 2018 (hereinafter “Closing”).

10. The purchase price of the APA was \$6,750,000.00 (hereinafter “Purchase Price”), with certain credits owed back to MBR post-Closing.

11. MBR paid LRI the Purchase Price at the time of Closing.

12. Upon information and belief, after the Purchase Price was paid by MBR, Wortley and LRI comingled those funds, and the funds were deposited into bank accounts owned, operated, and controlled by Wortley, both individually and as sole officer and sole shareholder of LRI.

13. Upon information and belief, this comingling of funds was accomplished for the sole and exclusive purpose of preventing MBR, a known creditor, from collecting a significant sum of money due and owing to it from LRI.

14. To that end, pursuant to Section 2.01(b)(ii) of the APA, if there were any prepaid revenues that had been collected by LRI prior to Closing, those prepaid revenues were to be

handled in the following manner:

Prepayments for Research Studies: If, prior to closing, [LRI] has collected any prepayments for Research Studies, the parties shall, in good faith, review each study and allocate revenues for each study as best as possible to account for the proportion of costs that each party incurs, including pre-study and post-study costs. Such prepayments shall be credited back and returned to [MBR] within ten (10) days after closing. (This section of the APA shall hereinafter be referred to as the "Prepayment Section")

15. In reliance upon, and in a good faith effort to comply with, the Prepayment Section, MBR undertook the effort of determining the sum that was collected by LRI as prepayments for research studies, and the costs that each party incurred as a result of conducting those studies.

16. Upon information and belief, LRI collected a total of \$1,735,208.60 in prepayments for research studies prior to the closing of the APA (hereinafter "Deposit Sum").

17. This Deposit Sum was collected for a total of 11 open research studies, and for several studies that were completed at the laboratory stage and were awaiting final reporting.

18. Those 14 open research studies included the following studies for the following companies:

- a. Cronus Pharma (hereinafter "Cronus") study number 16.0566.001;
- b. Cronus study number 16.0566.002;
- c. DSM Nutritional Products AG (hereinafter "DSM") study number 17.0705.002;
- d. Merck Animal Health (hereinafter "Merck") study number 17.2932.056;
- e. Merck study number 17.2932.057;
- f. Merck study number 17.2932.059;
- g. Merck study number 17.2932.060;
- h. Merck study number 18.2932.061;

- i. Piedmont Animal Health, LLC (hereinafter “Piedmont”) study number 18.0249.030;
- j. Piedmont study number 18.0249.031; and
- k. Virbac Corporation (hereinafter “Virbac”) study number 17.3575.005 (all of the above are collectively referred to as “Studies”).

Cronus Study Number 16.0566.001

19. Upon information and belief, the total collected by LRI as a deposit for Cronus study number 16.0566.001 was \$24,678.00.

20. The total of that deposit earned by MBR based upon the proportion of the costs incurred by MBR for Cronus study number 16.0566.001 was \$17,831.56, and thus, the total amount due and owing by LRI to MBR for Cronus study number 16.0566.001 is \$17,831.56.

Cronus Study Number 16.0566.002

21. Upon information and belief, the total collected by LRI as a deposit for Cronus study number 16.0566.002 was \$15,836.00.

22. The total of that deposit earned by MBR based upon the proportion of the costs incurred by MBR for Cronus study number 16.0566.002 was \$9,127.52, and thus, the total amount due and owing by LRI to MBR for Cronus study number 16.0566.002 is \$9,127.52.

DSM Study Number 17.0705.002

23. Upon information and belief, the total collected by LRI as a deposit for DSM study number 17.0705.002 was \$229,253.00.

24. The total of that deposit earned by MBR based upon the proportion of the costs incurred by MBR for DSM study number 17.0705.002 was \$58,392.53, and thus, the total amount due and owing by LRI to MBR for DSM study number 17.0705.002 is \$58,392.53.

Merck Study Number 17.2932.056

25. Upon information and belief, the total collected by LRI as a deposit for Merck study number 17.2932.056 was \$104,540.05.

26. The total of that deposit earned by MBR based upon the proportion of the costs incurred by MBR for Merck study number 17.2932.056 was \$15,077.37, and thus, the total amount due and owing by LRI to MBR for Merck study number 17.2932.056 is \$15,077.37.

Merck Study Number 17.2932.057

27. Upon information and belief, the total collected by LRI as a deposit for Merck study number 17.2932.057 was \$207,304.40.

28. The total of that deposit earned by MBR based upon the costs incurred or budgeted to be incurred for Merck study number 17.2932.057 was \$94,994.47, and thus, the total amount due and owing by LRI to MBR for Merck study number 17.2932.057 is \$94,994.47.

Merck Study Number 17.2932.059

29. Upon information and belief, the total collected by LRI as a deposit for Merck study number 17.2932.059 was \$98,887.00.

30. The total of that deposit earned by MBR based upon the cost incurred or budgeted to be incurred by MBR for Merck study number 17.2932.059 was \$39,419.98, and thus, the total amount due and owing by LRI to MBR for Merck study number 17.2932.059 is \$39,419.98.

Merck Study Number 17.2932.060

31. Upon information and belief, the total collected by LRI as a deposit for Merck study number 17.2932.060 was \$135,936.00.

32. The total of that deposit earned by MBR based upon the “cost incurred or budgeted to be incurred by MBR for Merck study number 17.2932.060 was \$81,192.58, and thus, the total

amount due and owing by LRI to MBR for Merck study number 17.2932.060 is \$81,192.58.

Merck Study Number 18.2932.061

33. Upon information and belief, the total collected by LRI as a deposit for Merck study number 18.2932.061 was \$85,228.75.

34. The total of that deposit earned by MBR based upon the proportion of the costs incurred by MBR for Merck study number 18.2932.061 was \$80,179.55, and thus, the total amount due and owing by LRI to MBR for Merck study number 18.2932.061 is \$80,179.55.

Piedmont Study Number 18.0249.030

35. Upon information and belief, the total collected by LRI as a deposit for Piedmont study number 18.0249.030 was \$58,142.00.

36. The total of that deposit earned by MBR based upon the proportion of the costs incurred by MBR for Piedmont study number 18.0249.030 was \$5,298.76, and thus, the total amount due and owing by LRI to MBR for Piedmont study number 18.0249.030 is \$5,298.76.

Piedmont Study Number 18.0249.031

37. Upon information and belief, the total collected by LRI as a deposit for Piedmont study number 18.0249.031 was \$19,420.00.

38. The total of that deposit earned by MBR based upon the proportion of the costs incurred by MBR for Piedmont study number 18.0249.031 was \$2,428.24, and thus, the total amount due and owing by LRI to MBR for Piedmont study number 18.0249.031 is \$2,428.24.

Virbac Study Number 17.3575.005

39. Upon information and belief, the total collected by LRI as a deposit for Virbac study number 17.3575.005 was \$75,7058.40.

40. The total of that deposit earned by MBR based upon the proportion of the costs

incurred by MBR for Virbac study number 17.3575.005 was \$64,728.53, and thus, the total amount due and owing by LRI to MBR for Virbac study number 17.3575.005 is \$64,728.53.

Pre-Billed Piedmont Reports

41. In addition to the collection of deposits for the Studies, LRI also had pre-Closing collections of deposits from Piedmont for a total of 19 studies that were complete at the laboratory phase and were simply awaiting the finalization of a report (hereinafter "Piedmont Deposits").

42. The study numbers and amounts collected by LRI for the finalization of the reports for the Piedmont Deposits, and amount due to MBR for these Piedmont Deposits based upon the proportion of the costs incurred by MBR, are as follows:

- a. \$4,000.00 was collected for Piedmont study number 15.0249.005, and \$4,000.00 of that sum is due and owing to MBR;
- b. \$4,000.00 was collected for Piedmont study number 15.0249.007, and \$1,500.00 of that sum is due and owing to MBR;
- c. \$5,000.00 was collected for Piedmont study number 15.0249.008, and \$1,875.00 of that sum is due and owing to MBR;
- d. \$6,000.00 was collected for Piedmont study number 15.0249.009, and \$6,000.00 of that sum is due and owing to MBR;
- e. \$4,000.00 was collected for Piedmont study number 15.0249.010, and \$4,000.00 of that sum is due and owing to MBR;
- f. \$6,000.00 was collected for Piedmont study number 15.0249.013, and \$6,000.00 of that sum is due and owing to MBR;
- g. \$4,000.00 was collected for Piedmont study number 15.0249.014, and \$1,500.00 of that sum is due and owing to MBR;
- h. \$4,000.00 was collected for Piedmont study number 16.0249.015, and \$1,500.00 of that sum is due and owing to MBR;
- i. \$6,000.00 was collected for Piedmont study number 16.0249.017, and \$2,250.00 of that sum is due and owing to MBR;
- j. \$6,000.00 was collected for Piedmont study number 16.0249.018, and

\$2,250.00 of that sum is due and owing to MBR;

- k. \$6,000.00 was collected for Piedmont study number 16.0249.019, and \$2,250.00 of that sum is due and owing to MBR;
- l. \$6,000.00 was collected for Piedmont study number 16.0249.020, and \$2,250.00 of that sum is due and owing to MBR;
- m. \$6,000.00 was collected for Piedmont study number 16.0249.021, and \$2,250.00 of that sum is due and owing to MBR;
- n. \$5,500.00 was collected for Piedmont study number 16.0249.022, and \$2,063.00 of that sum is due and owing to MBR;
- o. \$5,000.00 was collected for Piedmont study number 16.0249.025, and \$1,875.00 of that sum is due and owing to MBR;
- p. \$6,500.00 was collected for Piedmont study number 17.0249.026, and \$6,500.00 of that sum is due and owing to MBR;
- q. \$6,500.00 was collected for Piedmont study number 17.0249.027, and \$6,500.00 of that sum is due and owing to MBR;
- r. \$6,500.00 was collected for Piedmont study number 17.0249.028, and \$6,500.00 of that sum is due and owing to MBR; and
- s. \$6,500.00 was collected for Piedmont study number 17.0249.029, and \$2,438.00 of that sum is due and owing to MBR.

43. Upon information and belief, the total amount collected by LRI for these Piedmont Deposits was \$103,500.00.

44. The total of that deposit earned by MBR based upon the proportion of the costs incurred by MBR for the work associated with the Piedmont Deposits was \$63,501.00, and thus, the total amount due and owing by LRI to MBR for the work associated with the Piedmont Deposits is \$63,501.00.

Centre R&D Nestle SAS Deposit

45. In addition to the credits due and owing to MBR pursuant to Section 2.01 (b)(ii) of the APA, MBR is also entitled to credits under Section 2.01(b)(i) of the APA, which states:

If, prior to closing, Seller has collected any prepayments for Animal Sales for which the subject animal has not yet been delivered to the prepaying customer, such prepayments shall be credited back and returned to Buyer within ten (10) days after closing.

46. Upon information and belief, prior to Closing, LRI invoiced and collected from Centre R&D Nestle SAS (hereinafter "Nestle") the sum of \$5,557.50 (hereinafter "Nestle Deposit") as a deposit by Nestle for eight (8) cats to be delivered to Nestle.

47. The eight (8) cats were not delivered to Nestle by LRI prior to Closing, and were delivered to Nestle by MBR after Closing; thus, pursuant to Section 2.01(b)(i) of the APA, the entirety of the Nestle Deposit collected by LRI is credited to, and should thus be paid to, MBR.

48. LRI has not paid MBR any portion of the Nestle Deposit.

49. Thus, the sum of \$5,557.50 is due and owing from LRI to MBR.

Total Due and Owing to MBR from Defendants

50. Defendants have failed to comply with the requirements of Section 2.01(b)(ii), wherein the Defendants were to exercise good faith in coming to the sum due and owing from LRI to MBR.

51. The total sum due and owing to MBR from the Defendants pursuant to Section 2.01(b)(ii) of the APA is \$532,172.09.

52. To that end, the Defendants have only acknowledged that the sum due and owing to MBR under Section 2.01(b)(ii) is the sum of \$170,348.44.

53. Upon information and belief, the Defendants arrived at the sum of \$170,348.44 by crediting to it sums which are not "costs", as required by the APA, and thus, this figure was arrived at by the Defendants in bad faith.

54. This sum of \$532,172.09 has been duly demanded by MBR from the Defendants,

with the Defendants failing to make payment of the same.

55. Additionally, the Defendants have failed to pay the totality of the Nestle Deposit to MBR in the sum of \$5,557.50 to MBR within ten (10) days of the Closing, pursuant to Section 2.01(b)(i) of the APA.

56. As such, the total due and owing from LRI and Wortley, jointly and severally, to MBR is \$537,729.59.

AS AND FOR THE FIRST CAUSE OF ACTION
AGAINST THE DEFENDANTS FOR BREACH OF CONTRACT

57. The Plaintiff repeats and reiterates each and every allegation heretofore previously plead in Paragraphs 1-56 above as if each and every allegation set forth therein is more fully set forth herein.

58. On or about May 14, 2018, the Plaintiff and LRI entered into the APA.

59. Section 2.01(b)(ii) of the APA required the parties to act in good faith when reviewing each research study for which LRI collected prepayments prior to Closing.

60. Despite the clear and unequivocal mandates of the APA, the Defendants, as *alter egos* of one another, failed to conduct themselves in good faith.

61. Based upon the Defendants' bad faith, MBR has not been paid the total sum of \$532,172.09, which is due and owing from the Defendants to the Plaintiff pursuant to Section 2.01(b)(ii) of the APA..

62. This sum was due to be paid by the Defendants to the Plaintiff within ten (10) days of the Closing.

63. The Plaintiff has performed all of its obligations under the APA.

64. The Defendants did breach the APA by failing to conduct themselves in good faith and failing to make the requisite payment to MBR within ten (10) days of the Closing.

65. As a result of the Defendants' breach, the Defendants are each jointly and severally liable for damages suffered by the Plaintiff in the amount of \$532,172.09, with interest thereon, or such other amount as may be determined at the time of trial, together with its attorney's fees, costs and expenses associated with this matter.

AS AND FOR THE SECOND CAUSE OF ACTION
AGAINST THE DEFENDANTS FOR BREACH OF CONTRACT

66. The Plaintiff repeats and reiterates each and every allegation heretofore previously plead in Paragraphs 1-65 above as if each and every allegation set forth therein is more fully set forth herein.

67. Pursuant to Section 2.01(b)(i) of the APA, the Defendants, as *alter egos* of one another, were to pay to MBR any prepayments LRI collected prior to Closing for which the subject animal had not been delivered to the pre-paying customer within ten (10) days of Closing.

68. The Defendants collected \$5,557.50 for the Nestle Deposit.

69. The subject animals associated with the Nestle Deposit had not been delivered prior to Closing.

70. MBR made delivery of the subject animals to Nestle after Closing.

71. The Defendants have failed to pay the Nestle Deposit to MBR and are thus in breach of the APA.

72. MBR has performed all of its obligations under the APA.

73. As a result of the Defendants' breach, the Defendants are jointly and severally liable for damages suffered by the Plaintiff in the amount of \$5,557.50, with interest thereon, or such other amount as may be determined at the time of trial, together with its attorney's fees, costs and expenses associated with this matter.

AS AND FOR THE THIRD CAUSE OF ACTION
AGAINST THE DEFENDANTS FOR UNJUST ENRICHMENT

74. The Plaintiff repeats and reiterates each and every allegation heretofore previously pled in Paragraphs 1-73 above as if each and every allegation set forth therein is more fully set forth herein.

75. The Defendants collected a sum totaling \$537,729.59, all of which was for work performed by MBR.

76. Therefore, the entirety of the sum of \$537,729.59 belongs to MBR, and not the Defendants.

77. The Defendants, as *alter egos* of each other, are obligated, jointly and severally, to pay the sum of \$537,729.59 to MBR.

78. Despite due demands, the Defendants have yet to pay MBR the sum of \$537,729.59.

79. Accordingly, the Defendants were unjustly enriched by accepting the payments of \$537,729.59 and not paying that sum to MBR.

80. The unjust enrichment of the Defendants is at the Plaintiff's expense.

81. It is against equity and good conscience to permit Defendants to retain the money due and owing to the Plaintiff in the sum of \$537,729.59.

82. As such, the Defendants are jointly and severally liable for the damages suffered by the Plaintiff in the sum of \$537,729.59, or such other amount as may be determined at the time of trial, with interest thereon, together with the Plaintiff's attorney's fees, costs and expenses associated with this matter.

AS AND FOR A FOURTH CAUSE OF ACTION
AGAINST WORTLEY FOR TORTIOUS
INTERFERENCE WITH CONTRACTUAL RELATIONS

83. The Plaintiff repeats and reiterates each and every allegation heretofore previously pled in Paragraphs 1-82 above as if each and every allegation set forth therein is more fully set forth herein.

84. The APA has at all times relevant to this action been a valid contract by and between LRI and MBR.

85. Upon information and belief, Wortley, as the sole shareholder and sole officer of LRI, at all times had knowledge of the APA and the obligations of LRI stemming from the APA.

86. Upon information and belief, Wortley induced LRI into breaching the APA by causing LRI to fail to pay those sums of money due and owing from LRI to MBR.

87. As a result of the conduct of Wortley, Wortley is liable for damages suffered by the Plaintiff in the amount of \$537,729.59, with interest thereon, or such other amount as may be determined at the time of trial, together with its attorney's fees, costs and expenses associated with this matter.

WHEREFORE, the Plaintiff, MBR Waverly LLC, demands judgment awarding to it the following relief:

- (a) As and for the First Cause of Action for Breach of Contract, a Money Judgment against Defendants Wortley and LRI, jointly and severally, for the sum of \$532,172.09, or such other amount as may be determined at the time of trial, with interest thereon, together with the Plaintiff's attorney's fees, costs and expenses associated with this matter;
- (b) As and for the Second Cause of Action for Breach of Contract, a Money Judgment against Defendants Wortley and LRI, jointly and severally, for the sum of \$5,557.50, or such other amount as may be determined at the time of trial, with interest thereon, together with the Plaintiff's attorney's fees, costs and expenses associated with this matter;

- (c) As and for the Third Cause of Action for Unjust Enrichment, a Money Judgment against Defendants Wortley and LRI, jointly and severally, for the sum of \$537,729.59, or such other amount as may be determined at the time of trial, with interest thereon, together with the Plaintiff's attorney's fees, costs and expenses associated with this matter;
- (d) As and for the Fourth Cause of Action for Tortious Interference with Contractual Relations, a Money Judgment against Defendant Wortley for the sum of \$537,729.59, or such other amount as may be determined at the time of trial, with interest thereon, together with the Plaintiff's attorney's fees, costs and expenses associated with this matter; and
- (e) For such other and further relief that this Court deems to be just and proper.

Dated: May 3, 2019
Rochester, New York

EVANS FOX LLP


By: 

Matthew M. Piston, Esq.
Attorneys for Plaintiff
100 Meridian Centre Boulevard, Suite 300
Rochester, New York 14618
Telephone: (585) 787-7000

Verification

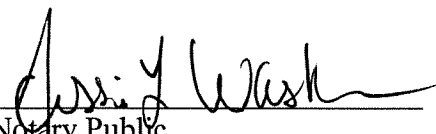
STATE OF NEW YORK)
COUNTY OF Wayne)

Scott Marshall, being duly sworn, deposes and says that deponent is the Managing Member of MBR Waverly LLC, the Plaintiff in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters deponent believes them to be true.



Scott Marshall

Sworn to be before me this
23rd day of April, 2019.



Notary Public

JESSICA L WASHBURN
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01WA6330385
Qualified in Wayne County
My Commission Expires September 14, 2019