EFiled: Jul 21 2015 05:47PM EDT
Transaction ID 57586658
Case No. 11321-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TULUM MANAGEMENT USA LLC, RED CAPITAL INVESTMENT LP, and GEORGE POLK, Plaintiffs, v. THOMAS R. CASTEN, SEAN T. CASTEN, DAMIEN M. CASTEN, FRED O. BROWNSON, CHARLES E. BAYLESS, MARK A. GRAY, RECYCLED ENERGY DEVELOPMENT LLC, and RED INVESTMENT LLC, Defendants, -and- RED PARENT LLC, Nominal Defendant.	C.A. No. ______ - ____

<u>VERIFIED COMPLAINT</u>

Plaintiffs Tulum Management USA LLC ("Tulum"), RED Capital Investments LP "("RED Capital"), and George Polk (collectively, "Plaintiffs"), by their attorneys, Richards, Layton & Finger, P.A., for their Complaint, upon knowledge as to itself and its conduct and upon information and belief as to all other matters, alleges as follows:

NATURE OF THE CASE

1. This Complaint arises from the defendants' unlawful efforts to entrench themselves and maintain control of the Company,[1] and to enrich themselves at substantial expense to the Company and its principal preferred investor, Tulum Management—an investor with a contractual right to take over management of the Company in light of the Castens' poor management, active mismanagement, and corporate waste.

2. Tulum is an asset manager that invests in mid-sized private companies via various investment funds. One of Tulum's investments is in the Company, specifically RED Parent LLC ("RED Parent"), an investment Tulum made via Tulum's subsidiary, RED Capital.

3. Although Tulum has invested the majority of preferred capital in the Company, it agreed to let the founder, Thomas Casten, and his family members retain control of the Company's Board of Managers (the "Board") and run the day-to-day operations of the Company. Tulum agreed to this concession with certain caveats—namely, that the Company's Investment Committee would retain veto or modification rights over certain fiscal items, and that if the value of the Company's assets ever falls below the accrued value of the preferred shares, then Tulum is

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[1] RED Parent LLC operates through its subsidiary Recycled Energy Development LLC, and it holds property in its various investments through its subsidiary RED Investment LLC. RED Parent LLC together with its two subsidiaries, are referred to in this Complaint as the "Company."

entitled to take over control of the Company's subsidiary that holds the Company's assets.

4. Tulum made its investment in the Company in 2012. But by 2013, Tulum began to identify what has now become a documented pattern of active mismanagement by the Castens. This mismanagement included intercompany transfers, expenditures and bonus payouts not authorized by the Company budget, and inflated cash flow projections designed to persuade Tulum to provide additional capital for the Company's projects—actions each in violation of the Castens' contractual obligations and many in violation of their fiduciary obligations.

5. In May 2013, in response to an unauthorized transfer of cash from the Company to a distressed subsidiary, Tulum negotiated to secure added veto, approval, or modification power over both intercompany transfers and the Company budget in an attempt to reign in the Castens' breaches. These modifications availed Plaintiffs nothing. Tulum has learned that the Castens have since self-servingly interpreted the Tulum veto power so as to entirely negate it, freely transferring funds among the Company's subsidiaries so as to drain cash from developing assets and cover up the Castens' poor management of other assets or to fund the Castens' side-development initiatives. Further, the Castens have continued to push through expenditures and payouts with no regard to the

Company's approved budget. And the Castens have also continued with their pattern of issuing inflated cash flow projections year after year despite repeated failure to ever meet those projections.

6. In April 2015, after more than two years of documented mismanagement by the Castens and corresponding poor financial performance of the Company, Tulum was forced to invoke its right to an independent valuation—a mechanism that is used to determine who has the right to control management of the Company's assets. This is the critical right for which Tulum negotiated in order to ensure that if the value of the Company's assets falls below the accrued value of Tulum's preferred investment, Tulum is allowed to take control of the assets and manage them as it feels appropriate in order to create value for all investors, including the Castens.

7. The value of the Company's assets is to be determined by an independent valuation firm selected by the Investment Committee, which shall employ a methodology outlined in the Company's operating agreement.

8. But the Castens, rather than engage in a good faith valuation consistent with the terms of the Operating Agreement, have erected several barriers to any independent valuation:

a. ***First***, the Castens attempted to avoid choosing a valuation firm, refusing to agree to the engagement of a specific firm;

b. ***Second***, when the firm was eventually chosen, they tried to restrict the firm's access to any information from any entity or person other than the Company—effectively guaranteeing that they could fix the outcome of the valuation by supplying the valuation firm with (the Casten's typical) inflated projected cash flows;

c. ***Third***, when the Castens failed to restrict the flow of information to the valuation firm, they directed the Casten-appointed members of the Board of Managers to rubberstamp the filing of a lawsuit against Tulum's board representative, George Polk, in Illinois where he is simply not subject to such a suit (the "Illinois Proceeding"); and

d. ***Fourth***, when the Investment Committee sought to engage a second independent valuation firm, this time one nominated by the Casten-appointed member of the Investment Committee, the Castens were not content to even engage the firm they nominated and succeeded in scaring off a second independent valuation firm.

9. This latest of the Castens' moves underscores their resolve in avoiding a legitimate, independent valuation. But perhaps their most cunning and brazen move is the initiation of the Illinois Proceeding. It is a carefully calculated maneuver of entrenchment designed not to secure a judicial resolution of any dispute with Tulum, but to indefinitely delay the start of any independent

valuation. Several facts render the Castens' motives transparent. For example, the Castens did not seek a resolution of their dispute with either Tulum or its investment vehicle, RED Capital. Rather, the Castens and their appointed Board members named only Polk, who they know is a resident of England and in no way subject to personal jurisdiction in Illinois. In short, the Casten's Illinois Proceeding artfully invokes the imprimatur of judicial intervention without any threat of an actual judicial resolution of the substance at the core of the dispute. It can only secure a single outcome: delay after delay after delay until finally the case is inevitably dismissed on procedural grounds.

10. And the Castens' maneuver has been successful: two valuation firms have refused to move forward with the engagement in light of the fact that the Castens have initiated suit. Further, the Castens have thus far been unable to serve Polk and in any event would not be able to obtain jurisdiction over him in Illinois. In short, they have sought at every turn since March 2015 to avoid an independent valuation of the Company and chosen instead to entrench themselves in violation of their contractual and fiduciary obligations.

11. The Castens' breaches are not those that result in nominal harm. They threaten real and irreparable harm. The principal Company asset requires an immediate injection of approximately $100 million in capital in order to continue development, meet regulatory deadlines, avoid regulatory fines, and stave off the

irreparable revocation of all regulatory approval. Further, should the Company miss certain development benchmarks, one of which has already passed, the previous owner of the asset has the right to repurchase the asset (at a significant discount to fair market value)—a loss to the Company that could not be remedied through monetary compensation.

12. As if contractual and fiduciary breaches were not enough, the Castens have added insult to injury, refusing without explanation to advance fees to Polk—a member of the Company's Board of Managers. And they have refused to do so despite the fact that, at the direction of the Castens and the Board members they control, the Company itself has launched a baseless suit against Polk, and despite the fact that the Company's operating agreement expressly indemnifies Polk and mandates the advancement of his legal fees and costs.

13. Swift judicial intervention by a court with both subject matter and personal jurisdiction is warranted here in order to end ongoing breaches of fiduciary duties by Managers of a Delaware limited liability company and avoid irreparable harm to that Company and its principal preferred investor, Tulum. Such intervention is further warranted to secure advancement to Tulum's representative, Polk, who faces the specter of a spurious Company-initiated suit coupled with a Company refusal to grant him the indemnification and advancement properly owed him both by contract and statute. The Court of Chancery is that

court—the sole court with full and exercisable jurisdiction over the parties to this dispute. This Court can and should provide such intervention, ordering a swift end to the Castens' mismanagement and entrenchment via the rapid resolution of the valuation dispute.

EFiled: Sep 28 2016 10:52AM EDT
Transaction ID 59621018
Case No. 11321-VCS

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TULUM MANAGEMENT USA LLC, RED CAPITAL INVESTMENT L.P., and GEORGE POLK, Plaintiffs, v. THOMAS R. CASTEN, SEAN T. CASTEN, DAMIEN M. CASTEN, FRED O. BROWNSON, CHARLES E. BAYLESS, MARK A. GRAY, RECYCLED ENERGY DEVELOPMENT LLC, and RED INVESTMENT LLC, Defendants, -and- RED PARENT LLC, Nominal Defendant.	)	C.A. No. 11321-VCS

JOINT STIPULATION OF DISMISSAL

IT IS HEREBY STIPULATED AND AGREED by the parties, through their undersigned counsel, pursuant to Chancery Court Rule 41(a)(1)(ii), that the above-captioned action is hereby dismissed with prejudice, with each party to bear his or its own costs and attorney's fees.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RED CAPITAL INVESTMENT L.P. and GEORGE POLK,	)	
	)	
Plaintiffs,	)	C.A. No. ______ - ____
v.	)	
	)	
RED PARENT LLC,	)	
	)	
Defendant.	)	

VERIFIED COMPLAINT

Plaintiffs George Polk ("Polk") and RED Capital Investment, L.P. ("RED Capital"), by their undersigned counsel, for their Complaint, upon knowledge as to themselves and their conduct and upon information and belief as to all other matters, allege as follows:

NATURE OF THE CASE

1. This Complaint concerns the latest in a series of wrongful acts taken by defendant RED Parent LLC ("Red Parent," the "Company," or "Defendant"), through its controlling family, the Castens, against plaintiffs RED Capital, a Member of RED Parent, and George Polk, a Manager of Red Parent (together, "Plaintiffs"), to deprive them of their rights under the Amended and Restated Operating Agreement of Red Parent, LLC ("Red Parent Operating Agreement," attached hereto as Exhibit A) and the Delaware Limited Liability Company Act (the "Act").

THE PARTIES

2. Plaintiff George Polk is a member of the Board of Managers of RED Parent and serves as the representative of Tulum Management USA LLC ("Tulum"), the general partner of an investor in RED Parent, on that Board. In addition, he is an Investment Committee Member of RED Parent. Polk resides in London, England.

3. Plaintiff RED Capital Investment, L.P., is a Limited Partnership organized under the laws of Delaware, with its principal place of business at 1250 24th Street NW, Suite 350, Washington, District of Columbia 20037. It is a wholly owned subsidiary of Tulum and a Member of RED Parent.

4. Defendant RED Parent LLC is a Limited Liability Company organized under the laws of Delaware, with its principal place of business at 640 Quail Ridge Drive, Westmont, Illinois 60559.

JURISDICTION

5. This Court has subject-matter jurisdiction over this action pursuant to 10 *Del. C* § 341 and 6 *Del. C.* § 18-111.

6. This Court has personal jurisdiction over Defendant RED Parent, as a Delaware limited liability company, pursuant to 6 *Del. C.* § 18-105.

7. Plaintiff Polk is a Manager of RED Parent and, thereby, a party to the Operating Agreement.

8. Plaintiff RED Capital is a Member of RED Parent and, thereby, a party to the Operating Agreement.

9. RED Parent is a proper party to this action for breach of contract and violation of the Act. Under Delaware law, a limited liability company is a party to its own operating agreement.

EFiled: Sep 28 2016 10:48AM EDT
Transaction ID 59620961
Case No. 11575-VCS

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RED CAPITAL INVESTMENT L.P. and GEORGE POLK,	)	
Plaintiffs,	)	C.A. No. 11575-VCS
v.	)	
RED PARENT LLC,	)	
Defendant.	)	

JOINT STIPULATION OF DISMISSAL

IT IS HEREBY STIPULATED AND AGREED by the parties, through their undersigned counsel, pursuant to Chancery Court Rule 41(a)(1)(ii), that the above-captioned action is hereby dismissed with prejudice, with each party to bear his or its own costs and attorney's fees.

/s/ Brock E. Czeschin
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