SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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JACOB FRYDMAN, PRIME UNITED HOLDINGS, LLC, and UNITED REALTY ADVISORS, LP,

Index No. 150679/2023

Plaintiffs,

v.

VERIFIED COMPLAINT

HERRICK, FEINSTEIN LLP and ARTHUR G. JAKOBY, individually and in his capacity as a Partner of HERRICK, FEINSTEIN LLP,

Defendants.

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Plaintiffs Jacob Frydman ("Frydman"), Prime United Holdings, LLC ("PUH"), and United Realty Advisors, LP ("URA") (collectively, "Plaintiffs"), by their undersigned counsel, Jacobs P.C. and Babst, Calland, Clements and Zomnir, P.C., as and for their Verified Complaint against Defendants Herrick, Feinstein LLP ("Herrick") and Arthur G. Jakoby, Esq. ("Jakoby"), individually and in his capacity as a partner of Herrick, allege as follows:

INTRODUCTION

1. This action for legal malpractice, violations of Section 487 of the New York Judiciary Law and breach of fiduciary duty arises from the deliberate failure of a prominent New York "Big Law" firm and its attorneys, particularly partner and executive committee member Jakoby, to comply with a clear and unambiguous Court-ordered deadline ***while lying to two federal judges—United States Magistrate Judge James L. Cott and United States District Judge John G. Koeltl, both of the United States District Court for the Southern District of New York—to cover up that malpractice, a stratagem breathtaking in its audacity,*** leading to the striking of Plaintiffs' expert reports and preclusion of the experts' testimony.

2. In 2016, Plaintiffs retained Herrick to represent them in two consolidated actions that had been pending in federal court for over two years.

3. Jakoby—a well-known Herrick partner, firm executive committee member and seasoned litigator who, at the time, had been an attorney for over 30 years—agreed to serve as lead counsel for Plaintiffs.

4. In total, at least six different Herrick attorneys worked on the underlying action, including Jakoby and another partner.

5. Herrick and Jakoby both knew at the time the firm accepted the engagement that the expert disclosure deadline was less than three months away.

6. Nonetheless, and even though Jakoby determined early in Herrick's representation of Plaintiffs that they could not meet that deadline, neither he nor any of his colleagues requested an extension on behalf of Plaintiffs.

7. Worse, Jakoby and at least one other Herrick attorney ***lied to Plaintiffs' experts*** and told them that their reports were not due until ***after*** the expert disclosure deadline, resulting in Plaintiffs' serving untimely expert reports.

8. Even worse, after defense counsel moved to strike Plaintiffs' expert reports and preclude the experts' testimony due to the belated disclosures, Jakoby, a former SEC prosecutor, ***lied to not one, but two federal judges*** to try to escape liability for his and his law firm's misconduct.

9. Herrick and Jakoby's malpractice resulted in, among other things, the jury awarding Plaintiffs nominal damages on their claim for violation of the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, *et seq.* ("RICO"), and awarding Plaintiffs only $1.43 million in compensatory damages on their remaining claims—even though Herrick's hand-picked expert estimated Plaintiffs' damages to be ***nearly $380 million*** before statutory multipliers.

10. When factoring in statutory multipliers,[1] Plaintiffs' damages exceeded ***more than $1.1 billion***, exclusive of prejudgment interest.

11. The jury's nominal award on the RICO claim should come as no surprise since, according to Jakoby's sworn declaration to the court, Plaintiffs' expert report on damages was "essential for the quantification of damages suffered by Plaintiffs as a result of defendants' conduct."[2]

12. Having been robbed of their ability to be made whole because of Herrick and Jakoby's professional negligence and breaches of their fiduciary duties, Plaintiffs seek to hold them liable for their wrongdoing.

13. That wrongdoing includes violating Section 487 of the New York Judiciary Law, entitling Plaintiffs to treble damages.

14. Accordingly, Plaintiffs bring the instant action and seek damages of ***at least $1.1 billion***.

PARTIES

15. Frydman is an individual residing within the State of New York.

16. PUH is a limited liability company organized and existing under the laws of the State of Delaware doing business within the State of New York.

17. URA is a limited partnership organized and existing under the laws of the State of Delaware doing business within the State of New York.

[1] A plaintiff in a civil action who succeeds on a RICO claim is entitled to treble damages. 18 U.S.C. § 1964(c).

[2] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 273 at ¶ 97; *see id.*, Dkt. 261 at 3, Dkt. 272 at 23, & Dkt. 284 at 13.

18. By Assignment and Assumption of Litigation Claims, made as of September 15, 2015, URA (among others) assigned certain litigation claims, including without limitation those asserted in the RICO action, to Frydman.

19. Herrick is a New York limited liability partnership organized and existing under the laws of the State of New York, with a principal place of business located at Two Park Avenue, New York, New York 10016.

20. Herrick's website, www.herrick.com, states that "[o]ur attorneys provide a full range of legal services to businesses and individuals around the world."

21. The website also states that "Herrick, Feinstein LLP is pleased to announce that multiple practice groups have been ranked nationally and regionally in the *U.S. News – Best Lawyers*® 2023 'Best Law Firms' listing."

22. The website further states that "Herrick is a member of TAGLaw®, a Chambers 'Elite' ranked international legal alliance with more than 160 independent member law firms based in over 90 countries."

23. Jakoby is an individual residing within the State of New York.

24. Jakoby is a well-known Herrick partner and executive committee member who serves as the chair of the firm's Securities Litigation and Enforcement Group and the chair of its Title Insurance Litigation Group.

25. Herrick's website describes Jakoby as follows: "Arthur Jakoby is a seasoned securities and commercial real estate litigator. He is a former SEC prosecutor, who has successfully represented regulated companies, individuals, board directors and corporate executives in a wide range of complex matters."

26. The website also states as to Jakoby: "According to the 2013 edition of *US Legal 500*, Arthur is 'recommended for any matter requiring intelligence, perseverance and litigating and negotiating skills.'"

27. The Herrick website further describes Jakoby as follows: "Prior to joining Herrick, Arthur was Special Trial Counsel in the SEC's Division of Enforcement. While at the SEC, he prosecuted stock and accounting frauds, insider trading matters and stock market manipulation cases involving individuals, public companies, broker dealers and their principals. He was also assigned as a special Assistant U.S. Attorney to the U.S. Attorney's Financial Crimes Unit for the District of New Jersey."

28. The website goes on to state regarding Jakoby: "Real estate developers, owners and title underwriters frequently call on Arthur when faced with 'bet the company' cases involving breach of contract, breach of fiduciary duty and fraud claims involving large commercial properties."

29. The Herrick website then describes Jakoby as follows: "Arthur has consistently been ranked as one of New York City's leading commercial litigation attorneys by Super Lawyers (2006-2021) issued by Thomson Reuters."

30. The Herrick website lists the following "Recognitions and Accolades" for Jakoby:

- *The Best Lawyers in America*© – Commercial Litigation; Litigation – Real Estate (2023).
- *Thomson Reuters* New York Metro *Super Lawyers* (2006 – 2022).

JURISDICTION AND VENUE

31. The court has jurisdiction over this matter pursuant to CPLR 301, because Herrick is a partnership duly authorized to do business in this State, Herrick maintains its principal office in New York, and Herrick is doing business in New York.

32. The court also has jurisdiction over this matter pursuant to CPLR 302, because it arises out of Herrick's transacting business in New York in that, among other things, the complained of decisions and actions were authorized and promulgated within this State.

33. This action is properly laid in New York County pursuant to CPLR 503 because Herrick maintains its primary offices in this County.

FACTUAL BACKGROUND

A. Plaintiffs Retain Herrick and Jakoby to Represent Them in the Underlying Action

34. In 2014, URA and Frydman filed a lawsuit against Eli Verschleiser and other defendants in the United States District Court for the Southern District of New York.[3]

35. Later that same year, Frydman filed a separate lawsuit against Verschleiser, Multi Capital Group of Companies ("Multi Group") and other defendants also in the United District Court for the Southern District of New York.[4]

36. Both lawsuits involved allegations that Verschleiser—Frydman's former business partner—conspired with former URA employees and other co-conspirators to hijack URA's email servers, unlawfully access Frydman's email account, and engage in an anonymous, multi-year internet smear campaign against Frydman and his businesses, including a Real Estate Investment Trust ("REIT").

37. In 2015, the two cases were consolidated (the "Underlying Action").[5]

38. Plaintiffs subsequently filed a Consolidated Second Amended Complaint in the Underlying Action, raising claims of violation of RICO, violation of the federal Computer Fraud

[3] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 1.

[4] *Frydman v. Verschleiser, et al.*, No. 1:14-CV-08084 (S.D.N.Y.), Dkt. 1.

[5] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 63.

and Abuse Act, 18 U.S.C. §§ 1030, *et seq.* (the "CFAA"), violation of the federal Electronic Communications Privacy Act, 18 U.S.C. §§ 2510, *et seq.* (the "ECPA"), violation of the federal Stored Communications Act, 18 U.S.C. §§ 2710, *et seq.* (the "SCA"), and a variety of state law causes of action, including misappropriation of trade secrets, conversion and tortious inference with contract.[6]

39. In mid-August of 2016, Herrick agreed to represent Plaintiffs in the Underlying Action, and Jakoby agreed to serve as lead counsel.

40. Herrick and Jakoby both knew at the time that expert disclosures had to be made by October 19, 2016.[7]

41. Plaintiffs and Herrick agreed that Herrick would only enter its appearance on behalf of PUH and URA to permit Frydman to participate in depositions.

42. Consistent with that arrangement, Jakoby entered his appearance on behalf of PUH and URA in the Underlying Action, on September 1, 2016.[8]

43. Two of Jakoby's firm colleagues—Janice Goldberg ("Goldberg") and Elena McDermott ("McDermott")—subsequently entered their appearances on behalf of PUH and URA as well.[9]

[6] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 71.

[7] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 147.

[8] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 178.

[9] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 179 & 185.

B. The Court Extends the Deadline for Service of Experts Reports to December 16, 2016

44. On October 6, 2016, the Honorable James L. Cott, U.S. Magistrate Judge for the United States District Court for the Southern District of New York, held a conference,[10] the transcript of which is attached as **Exhibit 1**.

45. Jakoby attended the conference.

46. During the conference, Magistrate Judge Cott agreed to amend the Civil Scheduling Order, extend fact discovery to December 16, 2016, and extend expert discovery to January 20, 2017. (Ex. 1 (Tr. 75:3-6)).

47. In doing so, Magistrate Judge Cott made clear that the parties had to exchange their expert reports by December 16, 2016.

48. Specifically, Magistrate Judge Cott remarked: "***You shall provide any expert reports to the other side by December 16th***. Then, to the extent there will be depositions, they will take place between December 16th and January 20th date." (Ex. 1 (Tr. 76:1-4)) (emphasis added).

49. Magistrate Judge Cott added: "You should not wait until the December 16th to start your expert discovery." (Ex. 1 (Tr. 76:1)).

50. On October 7, 2016, Magistrate Judge Cott issued an Order,[11] which is attached as **Exhibit 2**.

51. The Order memorializes what Magistrate Judge Cott said at the conference the previous day, stating:

> [A]s discussed at the conference, the Court amends the Civil Scheduling Order signed by Judge Koeltl on June 30, 2016, Dkt. 147, and hereby sets the following revised schedule:

[10] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 214.

[11] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 195.

1. All fact discovery must be completed by **December 16, 2016**.
2. Parties must exchange expert reports by **December 16, 2016**. All expert discovery must be completed by **January 20, 2017**.
3. Dispositive motions, if any, are to be completed by **February 21, 2017**.
4. A joint pretrial order, together with any motions in limine, shall be submitted by **March 21, 2017**.

These deadlines will not be extended under any circumstances.

(Ex. 2) (emphasis in original).

52. Jakoby, Goldberg and McDermott each contemporaneously received a copy of the Order.

C. Herrick Retains K2 to Serve as Plaintiffs' Hacking Expert

53. At or around the same time, Herrick determined that Plaintiffs' case required a hacking expert to interpret the logs from URA's and Verschleiser's corporate servers.

54. On October 17, 2016, Herrick sent an engagement letter to K2 Intelligence ("K2"), which is attached as **Exhibit 3**.

55. Herrick retained K2 to serve as Plaintiffs' hacking expert in the Underlying Action.

56. Jakoby knew at the time that the expert disclosure deadline, *i.e.*, the deadline for submission of expert reports, was 60 days away.

57. Herrick knew at the time that the expert disclosure deadline was 60 days away.

58. On October 19, 2016, Goldberg sent an email to Frydman, which is attached as **Exhibit 4**.

59. In addition to requesting a call with Frydman for later that day to discuss "damages and experts," Goldberg recapped her and Jakoby's conversations with Milan Patel ("Patel") of K2,

adding: "We have fully briefed him on the facts and the urgency to get on board quickly ***due to the time frame***." (Ex. 4) (emphasis added).

60. Upon information and belief, "the time frame" refers to the expert disclosure deadline.

D. Court Confirms December 16, 2016 Expert Disclosure Deadline

61. On October 27, 2016, Magistrate Judge Cott held a telephone conference,[12] the transcript of which is attached as **Exhibit 5**.

62. Jakoby attended the conference.

63. While Magistrate Judge Cott agreed to extend the fact discovery deadline until January 20, 2017, so that fact and expert discovery would conclude on the same date, Magistrate Judge Cott did ***not*** extend the expert disclosure deadline. (Ex. 5 (Tr. 19:11-20:23)).

64. Tellingly, Magistrate Judge Cott said at the conference that extending the fact discovery deadline necessitated the parties' "figur[ing] out how you're going to economically navigate" the extra time provided, so that if the parties needed certain factual information for their prospective experts, they would have to "front load" that discovery to ensure it was available. (Ex. 5 (Tr. 20:23-21:1)).

65. Jakoby understood Magistrate Judge Cott's comments to mean that the expert disclosure deadline remained unchanged.

[12] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 212.

E. Knowing That Herrick Would be Unable to Meet the December 16, 2016 Deadline, Jakoby Seizes an Opportunity to Manufacture an "Agreement" to Extend with Defense Counsel

66. At or around the same time, Herrick determined that Plaintiffs' case required the testimony of at least two damages experts, one for reputational damages and one for REIT damages.

67. On November 11, 2016, McDermott sent an email to Frydman, which is attached as **Exhibit 6**.

68. McDermott explained that, after considering twelve potential damages experts, Herrick recommended three experts, and one of them was James (Jim) Farrell ("Farrell") of Berkely Research Group ("BRG"). (Ex. 6).

69. On November 18, 2016, Jakoby participated in a telephone call with Asher Gulko ("Gulko"), counsel for Verschleiser, Multi Group and other defendants.

70. By that date, Jakoby knew that Herrick would be unable to comply with the December 16, 2016 expert disclosure deadline.

71. During the call, Gulko apparently confused the expert report deadline with the January 20, 2016 expert discovery deadline, and mistakenly told Jakoby that expert reports were not due until "mid-January" during the call.

72. Jakoby knew at the time that Gulko was mistaken.

73. Gulko never said during the call that his clients agreed to extend the expert disclosure deadline.

74. Jakoby did not seek to clarify, correct or otherwise discuss the Court-ordered deadline for submission of expert reports during the call.

75. On November 20, 2016, Jakoby sent a letter to Magistrate Judge Cott,[13] which is attached as **Exhibit 7**.

76. Jakoby misrepresented that "Mr. Gulko during our November 18th phone call ***agreed*** that we need not submit any expert reports to him until January 2017." (Ex. 7 at 4 n.9) (emphasis added).

77. Jakoby then wrote: "As long as the Defendants cooperate and go forward with these depositions ***we will be able to get them expert reports by the second week of January*** so that they can take expert depositions by January 20th and discovery can be completed by January 20th." (Ex. 7 at 5) (emphasis added).

78. Jakoby knew at the time that there was no agreement among the parties to extend the expert report deadline and that the Court-ordered December 16, 2016 deadline for submission of expert reports remained in effect.

79. Herrick knew at the time that there was no agreement among the parties to extend the expert report deadline and that the Court-ordered December 16, 2016 deadline for submission of expert reports remained in effect.

F. Despite the Clear and Unambiguous Deadline Set and Confirmed by the Court, Attorney Jakoby and At Least One Other Herrick Attorney Improperly Advise Plaintiffs' Experts that Their Reports are Not Due Until After December 16, 2016

80. On November 22, 2016, Marc Rosenbaum of BRG sent an email to McDermott, which is attached as **Exhibit 8**.

81. Mr. Rosenbaum asked McDermott for an update on Plaintiffs' choice of a damages experts, and she replied: "After our last conversation with you all, we have decided to just use one

[13] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 220.

expert to evaluate both REIT damages and any additional reputational damages … Jim [Farrell]—Is this something that [you] would be willing to do?" (Ex. 8).

82. McDermott added: "We have secured some additional time for expert reports ***and now have until the first week of January***." (Ex. 8) (emphasis added).

83. Jakoby was copied on the email. (Ex. 8).

84. McDermott knew at the time that there was no agreement among the parties to extend the expert disclosure deadline.

85. Jakoby knew at the time that there was no agreement among the parties to extend the expert disclosure deadline.

86. Herrick knew at the time that there was no agreement among the parties to extend the expert disclosure deadline.

87. On December 8, 2016, Herrick sent an engagement letter to BRG, which is attached as **Exhibit 9**.

88. Herrick retained BRG to serve as Plaintiffs' damages expert in the Underlying Action. (Ex. 9).

89. Jakoby gave Farrell of BRG a deadline of December 24, 2016, to submit a semi-final draft of BRG's expert report on damages.

90. Jakoby knew at the time that the expert disclosure deadline was ***eight days earlier***.

91. Herrick knew at the time that the expert disclosure deadline was ***eight days earlier***.

92. Plaintiffs did not serve any expert reports by December 16, 2016, and no request to extend the expert disclosure deadline was ever made to the Court in the Underlying Action.[14]

[14] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 258 at 2.

G. Attorney Jakoby Continues to Mislead Plaintiffs and Their Experts on the Expert Disclosure Deadline

93. On December 22, 2016, Patel of K2 sent an email to Jakoby, which is attached as **Exhibit 10**.

94. Patel wrote: "Hi Arthur – forgot to mention. Does due date of Jan 6th work for you guys? I have the team working nonstop last couple of days but some of them are traveling for the holiday." (Ex. 10).

95. Jakoby responded: "Yes, but we would have to turn around the final draft within a day or two thereafter." (Ex. 10).

96. Jakoby knew at the time that the expert disclosure deadline had passed.

97. Herrick knew at the time that the expert disclosure deadline had passed.

98. On January 1, 2017, Jakoby sent an email to Frydman, which is attached as **Exhibit 11**.

99. Jakoby wrote, in part:

> When we hired Jim Farrell ***I had given him a Christmas eve deadline for a semi-final draft of his report***. He said that he could meet that deadline. I'm worried that he still has not produced a draft and we haven't heard from him . . . . I really believe that we need to produce expert reports by the end of this week, or at the latest by Monday.
>
> Can you please send him an email and ***remind him that he was supposed to get out a semi [sic] draft report before Christmas Eve*** and tell him that we need it within the next day or two.

(Ex. 11) (emphasis added).

100. That same day, Jakoby sent an email to Patel, Matteo Tomasini and Vincent D'Agostino of K2, which is attached as **Exhibit 12**.

101. Mr. Jakoby wrote, in part: "Can you give me an idea of when we can expect a semi final draft of the report?" (Ex. 12).

102. On January 4, 2017, Farrell submitted a draft of his expert report on damages to Jakoby.

103. On January 11, 2017, K2 submitted a draft of its expert report on hacking to Jakoby.

H. Herrick Serves Untimely Expert Reports, and Defendants Object

104. Later that day, Plaintiffs served K2's expert report on hacking and Farrell's expert report on damages, which are attached as **Exhibit 13** and **Exhibit 14**, respectively.

105. In his expert report, Farrell concluded to a reasonable degree of professional certainty that Frydman sustained $137,464,683 in damages associated with the REIT and $242,224,858 in damages relating to his loss of future investment and business reputation—for a total of $379,689,541 in compensatory damages. (Ex. 14 at 10-11).

106. Defendants did not disclose any expert reports.

107. Joshua Summers ("Summers"), then co-counsel for Verschleiser, Multi Group and other defendants, sent an email to Jakoby in response to the disclosure of Plaintiffs' expert reports, which is attached as part of **Exhibit 15**.

108. Summers wrote:

> Your expert reports (which were received by email this morning) are untimely. Expert Reports were due on or before December 16, 2016. The Court has set a date of January 20, 2017 as the deadline for expert discovery to be completed. We are rejecting your expert reports and do not accept them almost one month after their deadline and only one week before the end of discovery.

(Ex. 15).

109. Avrohom Gefen, counsel for Albert Akerman, another defendant in the Underlying Action, sent a follow-up email, writing:

> I do not recall Judge Cott extending the time for expert reports. In fact, he specifically admonished the parties at the October 6, 2016 conference to not wait until December 16th to start expert discovery. Moreover, especially with respect to the report of the expert on damages, there was no fact discovery that had to be completed before the report could be prepared.

(Ex. 15).

I. Jakoby Admits to Plaintiffs that He Fabricated the "Agreement" with Defendants to Extend the Expert Disclosure Deadline

110. Jakoby then forwarded the email chain to Frydman, writing:

I want you to be aware that Gulko and Summers are taking the position that our expert reports are late and therefore, the day after they got them, they rejected them as untimely. They are referring to Judge Cott's initial order directing expert reports to be produced by December 20th. They have forgotten that in a November 18th conversation that I had with Gulko he ***mistakenly*** told me that the expert reports were not due until "mid-January." ***I knew, at the time, that he was mistaken***, but I agreed with him. ***Knowing that he was mistaken and might one day deny—and that I'd have no proof of what he said—I stuck in his "agreement" in my November 20th email to Judge Cott***. See attached letter***. I knew at the time that we'd never make the 12/20 deadline***. At footnote 9 I wrote:

> [9] At the Court's October 27th conference call, the court, when extending fact discovery until January 20th advised the parties to work together on expert discovery deadlines. Mr. Gulko during our November 18th phone call agreed that we need not submit any expert reports to him until January 2017.

And, ***to make it clear that our reports were not due until the second week of January***, the final paragraph of the letter again memorialized our due date as follows:

> As long as the Defendants cooperate and go forward with these depositions we will be able to get them expert reports by the second week of January so that they can take expert depositions by January 20th and discovery can be completed by January 20th.

We produced reports on Wednesday 1/11 and therefore in the middle of the second week of January (consistent with my last paragraph in the 11/20 letter) giving them 9 days to take depositions. As you will see, in the email below, I didn't remind Gulko of his agreement or reference my letter to Judge Cott but rather simply offered our experts up for deposition any day until the 20th. . . .

We are taking a risk that Judge Cott would tell us that we didn't have the right to amend his prior Order, BUT, he hinted at that during his 10/27 conference call when, after he extended fact discovery from 12/20 to 1/20 and I asked about expert discovery he didn't want to deal with that and merely said that we'd need to work it out by frontloading certain discovery. It is after the 10/27 conference that I wrote my 11/20 letter complaining that their obstruction was hurting our ability to get out our expert reports.

(Ex. 15) (emphasis added).

111. Frydman replied: "I'm counting on you to fix this." (Ex. 15).

J. Jakoby Advises Co-Counsel of Plan to Repeat Fabricated "Agreement" to Court

112. Meanwhile, Jakoby sent an email to his co-counsel, which is attached as **Exhibit 16**.

113. Jakoby wrote, in part: "I am hoping Gulko doesn't take me up on my offer to have Farrell and Milan deposed next week, that he makes a motion to strike our reports. ***I will then explain to Cott that our agreement was memorialized in my letter to him*** and since discovery is over, they blew their opportunity to depose our experts." (Ex. 16) (emphasis added).

114. Jakoby knew at the time that there was no agreement among the parties to extend the expert disclosure deadline.

115. Herrick knew at the time that there was no agreement among the parties to extend the expert disclosure deadline.

K. Defendants Move to Strike Plaintiffs' Expert Reports as Untimely, and Jakoby Lies About "Agreement" with Defendants to Extend Expert Disclosure Deadline in Written Submission to Federal Judge

116. Shortly thereafter, Verschleiser and Multi Group filed a Letter Motion seeking to strike Plaintiffs' expert reports and preclude their testimony at trial, "as a result of Plaintiffs' inexcusable failure to timely produce the expert reports in accordance with this Court's Order."[15]

117. On January 18, 2017, Herrick filed a Response to the Letter Motion on behalf of Plaintiffs,[16] which is attached as **Exhibit 17**.

118. Jakoby signed the Response. (Ex. 17).

[15] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 251.

[16] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 253.

119. In the Response, Jakoby repeatedly asserts, among other things, the existence of an agreement to extend the expert discovery deadline to January 20, 2017:

a. "In his January 17, 2017 letter, Mr. Summers does not disclose to the Court that ***the Defendants had agreed that we can submit reports during the second week of January 2017***."

b. "[N]one of the defendants complained or challenged the fact that, as I represented in my November 20th letter to the Court, ***the parties had agreed that expert reports would be due the second week of January with expert depositions to be conducted by January 20th***. ***They didn't complain because that was our agreement***. If that was not the agreement of the parties why didn't Defendants' counsel send me an email or advise the Court that no such agreement had been agreed to by the parties? . . . ***[T]he Defendants didn't complain because that is was what we agreed to do*** as a result of the Defendants' delays."

c. "Now, after remaining silent and waiting for Plaintiffs to serve expert reports during the second week of January they are complaining. I realize that Mr. Summers is new to this case, but clearly Mr. Gulko—who has chosen to not directly address this issue with the Court—***is well aware that he agreed that expert reports were not due until the second week of January***—which is exactly when we produced our expert reports."

d. "In fact, it is only because the ***Defendants had already agreed that expert reports did not need to be produced until the second week of January*** that Mr. Gulko could suggest to move all of the depositions—including Verschleiser's deposition—until after December 19th. Clearly, he could not have requested to move the scheduled depositions until the week of December 19th if expert reports were still due on December 20th."

e. "It is ironic that following this Court's October 6th Order the Defendants failed to go forward in October and most of November, with the very depositions we claimed we needed for our expert reports, ***then agreed to extend the date for us to submit our expert reports to the second week of January*** and now seek to profit from their discovery delays by reneging on their agreement—documented in my November 20th letter—and seek to exclude our expert reports."

(Ex. 17 at 3, 5) (emphasis added).

120. Jakoby knew at the time that there was no agreement among the parties to extend the expert report filing deadline.

121. Herrick knew at the time that there was no agreement among the parties to extend the expert report filing deadline.

L. Court Grants Motion to Exclude Expert Reports and Testimony

122. On January 18, 2017, Magistrate Judge Cott issued an Order,[17] which is attached as **Exhibit 18**.

123. Magistrate Judge Cott granted the Letter Motion, finding that "Plaintiffs have ignored the deadline for expert disclosure in this case" and "[t]heir belated disclosures cannot be justified on the record before the Court." (Ex. 18 at 5). Magistrate Judge Cott further stated that "the Court's greater concern here is that Plaintiffs essentially take it upon themselves to override an explicit order of the Court, never modified, that the expert disclosures were due by December 16. Nothing the Court said at the October 27 conference changed the schedule." (Ex. 18 at 3).

124. Later that day, Jakoby sent an email to Frydman, which is attached as **Exhibit 19**.

125. Jakoby wrote, in part: "We got a bad decision this evening from Judge Cott on the expert reports. He is not allowing them. . . . ***This is obviously not a good turn of events***." (Ex. 19) (emphasis added).

M. Jakoby Perpetuates Lie Concerning Parties' "Agreement" to Extend Expert Report Deadline in Submissions to Second Federal Judge

126. On January 24, 2017, Herrick filed Objections to Magistrate Judge Cott's Order on behalf of Plaintiffs,[18] which are attached as **Exhibit 20**.

127. Jakoby signed the Objections. (Ex. 20).

128. In the Objections, Jakoby asserted, among other things, that:

> In the November 20th application [Dkt. No. 220], Plaintiffs advised that ***lead defense counsel, Asher Gulko, had agreed that expert reports would be due the***

[17] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 258.

[18] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 261.

> ***second week of January***, with expert depositions to be concluded by January 20, 2017. ***The agreement was reached with Mr. Gulko*** because he is the lead defense counsel and the primary counsel who had responded to Plaintiffs' discovery motions to Magistrate Judge Cott. No defendant—advised that they would not be receiving Plaintiffs' expert reports until the second week of January—responded, disputed, complained, or objected to the accuracy of that representation in the November 20th letter.

(Ex. 20) (emphasis added).

129. Jakoby knew at the time that there was no agreement among the parties to extend the expert disclosure deadline.

130. Herrick knew at the time that there was no agreement among the parties to extend the expert disclosure deadline.

131. Jakoby also claimed that "Plaintiffs acted with the understanding (per Magistrate Judge Cott's October 27 direction) that the parties were to 'navigate in that extra period of time,' including the exact timing for expert reports given the changes in the fact discovery timetable. ***Plaintiffs did not understand that the expert reports still had to be completed one month before the conclusion of fact discovery***." (Ex. 20) (emphasis added).

132. Jakoby knew at the time that Magistrate Judge Cott did not extend the expert disclosure deadline at the October 27th conference.

133. Herrick knew at the time that Magistrate Judge Cott did not extend the expert disclosure deadline at the October 27th conference.

134. Jakoby further maintained that "the two proffered experts are ***essential*** for Plaintiffs' proof of their claims" adding:

> The first expert concerns Mr. Verschleiser's liability for the hacking allegations by interpreting logs from the United Realty's and Verschleiser's corporate servers. . . . The second expert is ***essential*** for the quantification of damages suffered by Plaintiffs as a result of defendants' conduct[.]

(Ex. 20) (emphasis added).

135. The Honorable John G. Koeltl, U.S. District Judge for the United States District Court for the Southern District of New York, subsequently scheduled a conference for February 7, 2017.[19]

136. Jakoby then sent an email to Frydman, which is attached as **Exhibit 21**.

137. Jakoby wrote, in part:

> [The conference] does look promising but I hesitate to read too much into it. The other side repeatedly violated discovery and did everything to delay discovery and our acquisition of the Intermedia files and EV's [Eli Verschleiser's] deposition which we were trying to reschedule since August 18th and he delayed it repeatedly by over 120 days. I am going [sic] have a list of examples ready for Judge Koeltl. Gulko submitted every letter on behalf of EV and made appearances on his behalf, ***agreed to extend our date during our November 18th meet and confer and luckily I documented that in a letter to Judge Cott on November 20th and no one disputed the agreement. It is not like we just had a phone call. I documented the agreement in my letter and filed it via ECF***.

(Ex. 21) (emphasis added).

138. Jakoby knew at the time that there was no agreement among the parties to extend the expert disclosure deadline.

139. Herrick knew at the time that there was no agreement among the parties to extend the expert disclosure deadline.

140. On February 8, 2017, Herrick filed a Memorandum of Law in Support of Plaintiffs' Objection to Magistrate Judge Cott's Order on behalf of Plaintiffs,[20] which is attached as **Exhibit 22**.

141. Jakoby signed the Memorandum of Law. (Ex. 22).

142. In the Memorandum of Law, Jakoby represented that:

> Plaintiffs acted with the understanding (per Magistrate Judge Cott's direction) that the parties were to "navigate in that extra period of time," including the exact timing

[19] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 262.

[20] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 272.

> for expert reports given the changes in the fact discovery timetable. ***Plaintiffs did not understand that the expert reports still had to be completed one month before the conclusion of fact discovery***. Under this understanding of the Magistrate's order, Plaintiffs conferred with and agreed with Mr. Gulko, acting as lead defense counsel coordinating discovery for Defendants, that Plaintiffs would provide expert reports during the second week of January with expert depositions to be conducted and concluded the following week in advance of the January 20, 2017 discovery end date. ***Plaintiffs documented this agreement in correspondence to the Court, copied to all parties, and, in compliance with that agreement, served their expert reports on January 11 and 12, 2017***.

(Ex. 22 at 2-3) (emphasis added).

143. Jakoby knew at the time that there was no agreement among the parties to extend the expert disclosure deadline.

144. Jakoby knew at the time that Magistrate Judge Cott did not extend the expert disclosure deadline at the October 27th conference.

145. Herrick knew at the time that there was no agreement among the parties to extend the expert disclosure deadline.

146. Herrick knew at the time that Magistrate Judge Cott did not extend the expert disclosure deadline at the October 27th conference.

147. In addition to the Memorandum of Law, Herrick submitted a Declaration of Jakoby, which is attached as **Exhibit 23**.[21]

148. Jakoby asserted that, given Magistrate Judge Cott's instructions at the October 27th conference, "Plaintiffs did not understand that the expert reports still had to be completed one month before the conclusion of fact discovery." (Ex. 23 ¶77).

149. Jakoby knew at the time that Magistrate Judge Cott did not extend the expert disclosure deadline at the October 27th conference.

[21] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 273.

150. Herrick knew at the time that Magistrate Judge Cott did not extend the expert disclosure deadline at the October 27th conference.

151. Jakoby also claimed that "the parties had agreed that expert reports would be due the second week of January with expert depositions to be concluded by January 20, 2017." (Ex. 23 ¶ 87).

152. Jakoby knew at the time that there was no agreement among the parties to extend the expert disclosure deadline.

153. Herrick knew at the time that there was no agreement among the parties to extend the expert disclosure deadline.

154. Thereafter, Herrick filed a Reply Memorandum of Law on behalf of Plaintiffs,[22] which is attached as **Exhibit 24**.

155. Jakoby signed the Reply Memorandum. (Ex. 24).

156. Jakoby again asserted that "the parties reached an agreement whereby experts would be served during the second week of January." (Ex. 24 at 3).

157. Jakoby knew at the time that there was no agreement among the parties to extend the expert disclosure deadline.

158. Herrick knew at the time that there was no agreement among the parties to extend the expert disclosure deadline.

N. <u>Court Overrules Herrick's Objections and Excludes Expert Reports and Testimony</u>

159. On March 27, 2017, Judge Koeltl issued a Memorandum Opinion and Order, which is attached as **Exhibit 25**.[23]

[22] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 284.

[23] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 294.

160. Judge Koeltl overruled Plaintiffs' objections to Magistrate Judge Cott's Order, finding that "the discovery schedule was clear" and Plaintiffs "offered no reasonable explanation for their failure to comply with the unambiguous deadline for expert disclosure." (Ex. 25 at 7).

161. Judge Koeltl added: "Despite the rhetoric, it is clear based on the submissions that the plaintiffs were perfectly capable of engaging their experts long before December 16, 2016, and of making their expert disclosures by that deadline." (Ex. 25 at 8).

162. In sum, Herrick and Jacoby blew a clear and unambiguous Court-ordered deadline, and then lied to not one, but two federal judges to cover up their malpractice.

O. Herrick Withdraws as Plaintiffs' Counsel in the Underlying Action, Plaintiffs File Suit Against Herrick and Jakoby for Legal Malpractice, and Plaintiffs and Herrick Enter into Tolling Agreement

163. Herrick subsequently withdrew as counsel of record for PUH and URA.[24]

164. Herrick charged Plaintiffs more than $100,000 in assisting the experts in the preparation of their reports, in unsuccessfully opposing Defendants' motion to strike those experts' reports and their testimony, and in objecting to Magistrate Judge Cott's Order.

165. These fees were in addition to the many tens of thousands of dollars that Plaintiffs paid to the experts and the hundreds of thousands of dollars in legal fees charged by Herrick.

166. On August 7, 2019, Plaintiffs filed a Summons and Verified Complaint against Herrick and Jakoby in New York state court, which are attached as **Exhibit 26**.

167. Plaintiffs asserted a claim for negligence/legal malpractice arising from Herrick and Jakoby's representation of them in the Underlying Action.

168. On July 12, 2022, Plaintiffs, Herrick and Jakoby entered into a Tolling Agreement, which is attached as **Exhibit 27**.

[24] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 350, 370.

169. Pursuant to the Tolling Agreement, Plaintiffs agreed to voluntarily discontinue their legal malpractice action against Herrick and Jakoby without prejudice. (Ex. 27 ¶ 2).

170. In exchange, Plaintiffs and Herrick agreed not to commence any litigation against the other for a specified period. (Ex. 27 ¶ 3).

171. Plaintiffs and Herrick also agreed to waive the right to count the time period from August 7, 2019, through 60 days after the entry of a final judgment or final resolution of the Underlying Action and the conclusion of any appeals therefrom. (Ex. 27 ¶ 4).

172. The Tolling Agreement also provided that Plaintiffs or Herrick could terminate it at any time upon written notice to the other, with such termination being effective 60 calendar days from service of the notice of termination. (Ex. 27 ¶ 5).

173. The Tolling Agreement further stated that, in the event of a termination, Plaintiffs or Herrick could commence litigation 60 calendar days after the termination notice. (Ex. 27 ¶ 3).

P. Trial Commences in the Underlying Action, and the Jury Returns a Verdict of $1.43 Million in Favor of Plaintiffs—a Tiny Fraction of the Damages Set Forth in Plaintiffs' Unopposed Damages Expert Report

174. Meanwhile, Plaintiffs entered a default judgment against Multi Group.[25]

175. After several days, trial took place in the Underlying Action from October 24 to November 7, 2022.

176. Defendants did not present any expert testimony at trial.

177. As reflected in the transcript attached hereto as **Exhibit 28**, defense counsel referenced or alluded to Plaintiffs' lack of a damages' expert on at least five occasions during his closing statements.

178. Examples include the following:

[25] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 475.

a. "Even if you believe that somehow Mr. Verschleiser and Mr. Pinhasi did the actions claimed by the plaintiffs, where are the damages? Just because liability may exist and just because they are defendants in this case and didn't settle doesn't mean there are damages. Damages mean that they have to be proven. The burden of proof is on the plaintiff to establish damages, not the defendants, to offset them or reduce them. It's on them. They have the responsibility to prove damages. ***The plaintiffs didn't call a single expert. Not one. No experts called***."

b. "Two witnesses were called to establish how they arrived at any damages. That's a valuable piece of information that should to be here if you're going to claim that you have damages. ***Where are the experts?***"

c. "[Mr. Frydman's] testimony was filled with entire speculation on what he believes he was hoping would happen in the future. We would all like to say we'll win the lottery. It's at $1.2 billion. We all want to win the lottery. Projections. That's not damages. Mr. Frydman is guessing about what the numbers are. He didn't come forward with anything. ***He's not an accountant. He's not a financial analysis expert.*** Everything he said was pure guesswork."

d. "You will hear from a judge about damages for each one of the claims. ***The plaintiffs need experts***. They need somebody other than Mr. Frydman, who didn't know what he was referring to, to come forward with the proof based on prior tax returns, formulas, financial statements, profit and loss statements. This is a trial. You're supposed to come forward with the proof. There's no proof."

e. "You are the finders of fact. Show us the facts. You need the facts. No damages. You can't just say I experienced $1.4 million. That's what the story is. Show me the facts, the comparison. The side-by-side. ***That's why you need experts***."

(Ex. 28 (11/1/22 Tr. 880:15-25, 880:25-881:3, 881:20-882:2, 882:11-17, 885:2-6)) (emphasis added).

179. The jury returned a unanimous verdict, which is attached as **Exhibit 29**.

180. The jury ruled in favor of Plaintiffs and against Verschleiser on their claims for violation of RICO, violation of the CFAA, violation of the SCA, misappropriation of trade secrets, breach of contract, tortious interference with existing contractual relations, tortious interference with future contractual relations, and conversion. (Ex. 29).

181. The jury awarded Plaintiffs $1.4 million for Verschleiser's misappropriation of trade secrets and $33,000 for his violation of the computer hacking statutes. (Ex. 29).

182. However, the jury only awarded Plaintiffs $1.00 for Verschleiser's RICO violations, $1.00 for his breach of contract, $1.00 for his tortious interference with Plaintiffs' existing contractual relations and future contractual relations, and $1.00 for conversion. (Ex. 29).

183. The jury also found that Verschleiser engaged in conduct warranting an award of punitive damages. (Ex. 29).

184. The jury awarded Plaintiffs $700,000 in punitive damages. (Ex. 29).

185. Plaintiffs' expert report on damages—which was unopposed—stated that their damages totaled $379,689,541 in compensatory damages. (Ex. 14 at 10-11).

186. Jakoby stated under penalty of perjury that Plaintiffs' expert report on damages was "essential for the quantification of damages suffered by Plaintiffs as a result of defendants' conduct." (Ex. 23 ¶ 97).

187. By statute, Plaintiffs were entitled to treble damages if they prevailed on their RICO claims. 18 U.S.C. § 1964(c).

188. But for Herrick's and Jakoby's malpractice, Plaintiffs would have recovered $1,139,068,623 in compensatory damages, exclusive of prejudgment interest.

189. But for Herrick's and Jakoby's malpractice, Plaintiffs would have recovered punitive damages of $1.139 billion or more.

Q. Plaintiffs Terminate Tolling Agreement and Seek Relief for Herrick and Jakoby's Malpractice

190. On November 10, 2022, Plaintiffs sent Herrick a notice of termination of the Tolling Agreement, which is attached as **Exhibit 30**.

191. The Court subsequently awarded Plaintiffs $1.4 million in prejudgment interest on their misappropriation of trade secrets claim.[26]

[26] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 590.

192. On November 25, 2022, the Court entered judgment in favor of Plaintiffs and against Verschleiser for $3,234,906.04.[27]

193. Plaintiffs now file the instant malpractice and Judiciary Law Section 487 action against Herrick and Jakoby.

FIRST CAUSE OF ACTION
Legal Malpractice
(against Herrick and Jakoby)

194. The allegations contained in Paragraphs 1 through 193 are incorporated as if fully set forth here.

195. Herrick and Jakoby had a duty to provide competent representation to Plaintiffs, including without limitation exercising the ordinary reasonable skill and knowledge commonly possessed by a member of the legal community.

196. Herrick and Jakoby breached that duty by, among other things, failing to comply with a clear and unambiguous Court-ordered deadline, leading to the striking of Plaintiffs' expert reports and preclusion of the experts' testimony.

197. As a direct and proximate cause of Herrick and Jakoby's malpractice, Plaintiffs suffered actual and sustainable damages.

198. Defendants acted intentionally, willfully, maliciously and with reckless disregard of Plaintiffs' rights and of their own obligations, entitling them to punitive damages.

SECOND CAUSE OF ACTION
Violations of Section 487 of the New York Judiciary Law
(against Herrick and Jakoby)

199. The allegations contained in Paragraphs 1 through 198 are incorporated as if fully set forth here.

[27] *United Realty Advisors, et al. v. Verschleiser*, No. 1:14-CV-05903 (S.D.N.Y.), Dkt. 591.

200. Herrick and Jakoby are guilty of deceit or consenting to the same.

201. Herrick and Jakoby intended to deceive Plaintiffs and the Court by misrepresenting that Defendants had agreed to extend the deadline for expert reports when they knew no such agreement existed, and by perpetuating this misrepresentation on several occasions.

202. Herrick and Jakoby engaged in extreme and egregious conduct and a chronic, extreme pattern of behavior that caused damage to Plaintiffs in the amount of at least $3.3 billion.

203. Herrick and Jakoby violated Section 487 of the New York Judiciary Law.

204. Plaintiffs suffered actual and sustainable damages as a direct and proximate cause of Herrick and Jakoby's violation of Section 487.

205. Because Herrick and Jakoby violated Section 487, they are guilty of a misdemeanor.

206. Plaintiffs are also entitled to treble damages pursuant to Section 487.

THIRD CAUSE OF ACTION
Breach of Fiduciary Duty
(against Herrick and Jakoby)

207. The allegations contained in Paragraphs 1 through 206 are incorporated as if fully set forth here.

208. By virtue of their legal representation of Plaintiffs, Herrick and Jakoby owed a fiduciary duty to Plaintiffs.

209. Herrick and Jakoby breached that duty by the actions set forth above and incorporated here.

210. Among other things, Herrick and Jakoby inexplicably blew a clear and unambiguous Court-ordered deadline, which lead to the striking of Plaintiffs' expert reports and preclusion of the experts' testimony.

211. Moreover, in a shocking act of dishonesty unheard of for an attorney of his caliber and pedigree, after defense counsel moved to strike Plaintiffs' expert reports and preclude the experts' testimony due to the belated disclosures, Jakoby, a former SEC prosecutor, ***lied*** to not one, but two federal judges to try to escape liability for his and his law firm Herrick's misconduct.

212. In deliberately deceiving their client and the federal judiciary, Herrick and Jakoby engaged in misconduct that clearly constitutes a breach of their fiduciary duties owed to Plaintiffs.

213. As a direct and proximate cause of Herrick and Jakoby's misconduct, Plaintiffs have sustained damages.

214. Defendants acted intentionally, willfully, maliciously and with reckless disregard of Plaintiffs' rights and of their own obligations, entitling Plaintiffs to punitive damages.

WHEREFORE, Plaintiffs Jacob Frydman, Prime United Holdings, LLC and United Realty Advisors, LP respectfully request that this Court enter judgment in favor of Plaintiffs and against Defendants Herrick, Feinstein LLP and Arthur G. Jakoby on each of the First, Second, and Third Causes of Action of the Complaint in the amount of at least $1.1 billion, together with punitive damages, the costs of this action, and such other and further relief as the court deems just and proper.

Dated: New York, New York
May 5, 2023

JACOBS P.C.

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VERIFICATION

I, JACOB FRYDMAN, affirm pursuant to CPLR 2016(b), this 5th day of May, 2023, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law.

1. I am the assignee of Plaintiff United Realty Advisors, LP's claims asserted in the foregoing Complaint; the manager of Plaintiff Prime United Holdings, LLC; and the individual Plaintiff in this action.

2. I have read the foregoing Complaint and know the contents thereof. The same are true to my own knowledge, except as to matters alleged on information and belief, and as to those matters, I believe them to be true.

JACOB FRYDMAN

May 5, 2023