DOCKET NO.: HHD-CV-23-6169645-S

ERIK WALLACE	:	SUPERIOR COURT
	:	
v.	:	JUDICIAL DISTRICT
	:	OF HARTFORD
HHFC HEALTHCARE ADVISORS, LLC	:	
d/b/a REMEDYONE, ET AL.	:	MAY 31, 2024

MEMORANDUM OF DECISION RE MOTION TO STRIKE (122.00)

STATEMENT OF THE CASE

The plaintiff, Erik Wallace (Wallace), commenced this action, returnable June 6, 2023, against the defendants, HHFC Healthcare Advisors, LLC (HFFC) d/b/a RemedyOne, Goodroot, LLC (Goodroot), Goodroot PI, LLC (Goodroot PI), RxOne, LLC d/b/a CoeoRx (CoeoRx) and Michael Waterbury (Waterbury) (collectively, the defendants). In the eleven-count second amended complaint dated September 12, 2023, Wallace seeks to recover, under the following legal theories, amounts that he claims the defendants owe him following their termination of his employment: breach of fiduciary duty and duty of loyalty (count one); oppression, in violation of General Statutes § 34-267 (a) (5) (count two); breach of employment contract (count three), breach of long-term incentive plan (count four); failure to pay wages, in violation of General Statutes § 31-72 (count five); violation of the implied covenant of good faith and fair dealing (count six); tortious/reckless breach of contract (count seven); negligent misrepresentation (count eight); fraudulent misrepresentation (count nine); promissory estoppel (count ten); and violation of the

169.00

Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a, et. seq.

On October 12, 2023, the defendants filed a motion to strike (122.00) all eleven counts of Wallace's second amended complaint, arguing that all of his claims are "factually deficient and legally implausible" and thus fail to state claims upon which relief may be granted. The plaintiff filed an objection (140.00) and the defendant filed a reply (143.00).

The court conducted a remote hearing on January 22, 2024, and issued an order on May 20, 2024, denying in part and granting in part the defendants' motion to strike, and indicating that a memorandum of decision would follow. The court now issues the following memorandum of decision.

According to the second amended complaint, HHFC is a Connecticut limited liability company owned and controlled by Michael Waterbury. Goodroot is a Connecticut limited liability company with HHFC as its majority owner. Goodroot is a provider of healthcare services with an emphasis on the delivery of pharmaceutical benefits to an array of entities while working with health insurers, brokers, employer groups, and third-party administrators. The common denominator among Goodroot and each of the companies named as defendants in this action is the ownership and/or control of each entity by Waterbury. Goodroot PI is a minority owner of Goodroot. Wallace owns 51,250 award units of Goodroot PI, which is equivalent to an approximate 2.19% ownership of Goodroot. Defendant RxOne, LLC d/b/a CoeoRx is a Connecticut limited liability company owned in

substantial part by Goodroot and is controlled by Waterbury. Wallace is a 20% owner of CoeoRx. Complaint, ¶¶ 2-8.

Further according to the operative complaint, on or about September 8, 2020, Wallace entered into an employment agreement (the "Employment Agreement") with HHFC. Pursuant to the Employment Agreement, Wallace was hired as Goodroot's Chief Commercial Officer. Complaint, ¶¶ 9, 10. At the time Wallace joined Goodroot in September of 2020, he resigned from a 13-year career in the medical device field, where he was earning a substantial salary with significant stock in his then-employer, Smith & Nephew, including a large pool of granted stock vesting on a schedule. As Vice President of U.S. Robotics of Smith & Nephew, he was reporting one degree from the CEO of the $4 billion global enterprise, identified as having high potential, and being groomed for a more significant role in the company. Wallace, while with Smith & Nephew, was very successful. In his last year with Smith & Nephew, he earned nearly $750,000 in compensation. Complaint, ¶ 11.

The complaint alleges that prior to joining Goodroot, Wallace and Waterbury had been close personal friends who regularly socialized together, shared mutual interests, and had respect for one another's accomplishments. In or around June of 2018, Waterbury began speaking with Wallace about potential employment, and in or around May of 2020, Waterbury began recruiting Wallace to join his company with his vision for Goodroot and its affiliates. Wallace, who is married with four young children and is the sole economic provider for his family, seriously considered

the risk associated with giving up his career at Smith & Nephew at the age of thirty-eight to join Waterbury. Nevertheless, Wallace believed in and trusted Waterbury, not just as a friend and confidant, but as an established, successful businessperson. Wallace also believed in the pharmaceutical/healthcare products and services that Waterbury and his companies were promoting and selling and shared Waterbury's vision of the tremendous value that could be added to the healthcare systems that they would serve. Complaint, ¶¶ 12-14.

The complaint further alleges that Waterbury offered Wallace the opportunity that he did not have as an employee of Smith & Nephew. Specifically, Waterbury offered him an equity stake as part of Wallace's compensation structure. In light of the opportunity and the circumstances, Wallace determined that it would serve him and his young family well from both a financial and lifestyle perspective. Waterbury, either by himself or through others working for him, drafted the Employment Agreement and presented it to Wallace. Complaint, ¶¶ 15-17.

In addition to salary, commissions, and a severance plan, the Employment Agreement's compensation structure included equity in four separate businesses under the Goodroot umbrella. That Employment Agreement provided, *inter alia*, the following:

> Income Distribution: You will be eligible to receive a distribution from certain affiliate companies (the "Affiliates") at a rate equivalent to a percentage of each Affiliate's annual net income, as follows:
>
> RemedyOne Consulting, LLC dba AlignRx 2.5%
> Famulus Health, LLC 5%
> RxOne, LLC 5%
> Goodroot, LLC 2.5%

> While initially these payments will be a calculated net income distribution, once the aforementioned entities are formed, your percentages will become equity interests in the percentages listed above as outlined in each respective entity's operating agreement. The Company shall form the Affiliates no later than January 1, 2021. You will sign each operating agreement as a member, provided that each such agreement shall contain customary provisions and shall not require you to make any capital contributions.
>
> Complaint, ¶ 18.

As alleged in the complaint, this promise of equity was important to Wallace and was a significant factor that led to his decision to leave his job at Smith & Nephew. In addition, the promise of equity was consistent with the many discussions that took place between Waterbury and Wallace even before the Employment Agreement was provided to Wallace. Complaint, ¶ 19.

Knowing that he received equity positions in the various limited liability companies as part of his compensation, Wallace sought an opportunity to read and sign the operating agreements of those companies prior to signing the Employment Agreement, given that the operating agreements and equity interests he would be provided were specifically mentioned and identified as compensation in the Employment Agreement. Waterbury did not provide the operating agreements for Wallace's review prior to Wallace's agreement to enter into the Employment Agreement, telling Wallace "You are going to have to trust me. If you don't want to join now it will likely not be as strong of an offer in the future." Wallace trusted Waterbury and, equally important, Wallace relied upon the fact that the express terms of his Employment Agreement identified his ownership interests and specified that he would "sign each operating agreement as a member [and] that

each such agreement shall contain customary provisions and shall not require you to make any capital contributions."Complaint, ¶¶ 20, 21.

In addition, and separate and apart from the representations in the Employment Agreement, and during the period of time that Waterbury was recruiting Wallace, he represented to Wallace that Wallace would hold equity in a number of different companies and would therefore enjoy all of the rights of ownership that any owner would enjoy, including voting rights in the management and affairs of the companies and some level of control over the affairs of the company. Wallace thereafter agreed to and did sign the Employment Agreement. Complaint, ¶¶ 22,23.

At some point after he was hired, Wallace was provided copies of the operating agreements for CoeoRx, RemedyOne Consulting, LLC d/b/a AlignRx ("AlignRx"), and Famulus Health, LLC. According to the complaint, the operating agreements confirmed that Wallace was provided an equity position of 2.5% in AlignRx, 5% of Famulus Health, LLC, and an initial equity position of 5% in CoeoRx, which was later increased to 20% in recognition of Wallace's work and success as the President of CoeoRx. Wallace was appointed President of CoeoRx in April of 2021. In addition, under the Employment Agreement, Wallace was entitled to receive a 2.5% equity interest in Goodroot. Wallace was not provided that interest as promised but was instead provided with shares in Goodroot PI that are equivalent to an approximate 2.19% interest in Goodroot. Pursuant to the plain

language of the Unit Award Agreement, Wallace is now fully vested in that interest. Complaint, ¶¶ 24, 25.

While Wallace was provided equity interests in AlignRx, CoeoRx, and Famulus Health, LLC, he learned to his disappointment and surprise that he would not be provided any voting rights or control. Instead, he was limited in each to a non-voting member. Instead, Waterbury and/or entities Waterbury owns or controls have complete and total control over CoeoRx and 50% control over AlignRx. Complaint, ¶ 26.

The complaint further alleges that, pursuant to his Employment Agreement, Wallace was also promised commissions of 10% for sales he closed. He was, likewise, promised a commission overlay for sales closed by other internal members of his sales team at the rate of 3%, which thereafter increased to 5% for AlignRx sales. Pursuant to his Employment Agreement, Wallace was also promised a base annual salary of $275,000. Complaint, ¶¶ 27, 28.

According to the operative complaint, Wallace began his position with Goodroot as Chief Commercial Officer in October of 2020. Wallace's responsibilities as Chief Commercial Officer of Goodroot included building a sales force that was responsible for selling pharmacy benefits in bulk to large organizations, including employers, unions, and municipalities. The sales force, which Wallace assembled, consisted of four sales professionals. Wallace also established, *inter alia*, an internal strategic marketing organization within Goodroot, developed the roles, and recruited a number of professionals to that organization. In addition, Wallace aided

in establishing the social media strategies, vertical reporting package, project management processes, and external vendor strategies in conjunction with the Vice President of Strategic Marketing. He also performed other duties and responsibilities that he was requested to do by Waterbury and entities that were owned and controlled by Waterbury. Complaint, ¶¶ 29-31.

The operative complaint further alleges that Wallace accomplished a number of other objectives for his employer in a short period of time. Waterbury recognized Wallace's performance and provided him with different financial incentives, including a long-term incentive plan ("LTIP") which had an effective date of January 1, 2021. In addition, on or about January 13, 2021, Goodroot PI and Wallace entered into a unit award agreement (the "Unit Award Agreement"). This Unit Award Agreement was in place of the 2.5% equity interest in Goodroot that Wallace was promised through his Employment Agreement. Pursuant to the Unit Award Agreement, Wallace was granted 51,250 award units with an initial participation threshold of $14.15 per award unit, which equates to an approximate 2.19% interest in Goodroot. The award units were fully vested as of January 13, 2021, the date they were provided. Complaint, ¶¶ 32, 33.

In April of 2021, Wallace was further recognized for his efforts and success as Chief Commercial Officer of Goodroot and was also made the President of CoeoRx. Once president, Wallace built CoeoRx from a pass-through shell organization with no employees or profit into a rapidly growing stand-alone organization. He hired CoeoRx's first two employees, rebuilt the product portfolio, executed the current

revenue-generating contracts, and led his sales team to deliver CoeoRx's largest active clients. Specifically, in 2022, Wallace and his team delivered new clients budgeted to deliver significant revenue to CoeoRx. Wallace's sales force also generated significant sales for AlignRx, a consulting arm of the Goodroot companies. In fact, many of the contracts secured by Wallace and his sales team through CoeoRx have consulting fees built in, which provide significant revenue that flows directly to AlignRx. At some point in 2022, CoeoRx was valued as having a fair market value of about $22,296,698. As a 20% owner in that company, the market value of Wallace's share is worth more than $4,400,000. Pursuant to an analysis performed in February of 2023 by Waterbury and Goodroot's Chief Financial Officer, Jim Harper, the value of Wallace's liquidated interest in CoeoRx and AlignRx is, according to each of them, at least $2,478,016. Complaint, ¶¶ 34-38.

On or about March 20, 2023, Waterbury informed Wallace that he was unilaterally reducing the compensation to which Wallace was entitled under the Employment Agreement. After being so informed, Wallace objected, and Waterbury promised he would "get back to" Wallace on the matter. Complaint, ¶ 39.

Without ever hearing back from Waterbury concerning the purported unilateral reduction in his compensation, Wallace was called into a meeting on April 17, 2023, by Waterbury and the newly hired Chief People Officer for Goodroot, Taylor Coskren. Wallace was told during that meeting that his position was being eliminated and he was terminated. Wallace was given no other reason for his

termination. Following the April 17, 2023 meeting, Wallace was joined in his office by Ms. Coskren as he packed up most of his personal belongings and was escorted out of the building. Despite repeated requests by Wallace for a return of his personal items, they were only returned to him after Wallace hired an attorney and made a demand for them, along with COBRA benefits. Until the involvement of counsel, his requests for a return of his personal items and COBRA benefits were being ignored by the defendants. Complaint, ¶¶ 40, 41.

Within hours of being terminated, Wallace was presented with an agreement entitled "Separation and General Release Agreement" (the "Separation Agreement"). In the Separation Agreement, Wallace was asked to agree that his termination was for cause. At the April 17, 2023 meeting, Wallace specifically asked what the cause for his termination was, and he was told by Waterbury that the Separation Agreement would state the cause, but it does not. Wallace was also never provided "written notice" of cause, as is required pursuant to the terms of his Employment Agreement. Complaint, ¶¶ 42, 43.

According to Wallace, all of his performance appraisals were favorable and showcased the amount of work and value he was creating for the defendants, including Waterbury. Indeed, on November 22, 2022, Waterbury in a company-wide email bestowed extensive praise on Wallace for his efforts with CoeoRx. In fact, less than a month before Wallace's termination, Waterbury wrote in an email on March 20, 2023, that Waterbury is "very confident in the work [Wallace] and the team are doing to grow the value of the CoeoRx business. [Waterbury] know[s] the future in

the upcoming years will be very successful." At no time did Waterbury or anyone acting on his behalf or at his direction criticize Wallace's performance or suggest that Wallace's performance was such that there was cause to terminate him. Complaint, ¶¶ 44, 45.

DISCUSSION

I

A motion to strike shall be used whenever any party wishes to contest: (1) the legal sufficiency of the allegations of any complaint. . . or of any one or more counts thereof, to state a claim upon which relief can be granted . . . or (4) the joining of two or more causes of action which cannot properly be united in one complaint, whether the same be stated in one or more counts . . . ." Practice Book § 10-39 (a). Additionally, "the exclusive remedy for misjoinder of parties . . . is by motion to strike." *Bender* v. *Bender*, 292 Conn. 696, 722 n.23, 975 A.2d 636 (2009); see Practice Book § 11-3.

"[A] motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court. . . . [The court] construe[s] the complaint in the manner most favorable to sustaining its legal sufficiency. . . . Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . . Moreover, [the court notes] that [w]hat is necessarily implied [in an allegation] need not be expressly alleged. . . . It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily

implied from the allegations are taken as admitted . . . . Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically." (Internal quotation marks omitted.) *Geysen* v. *Securitas Security Services USA, Inc.*, 322 Conn. 385, 398, 142 A.3d 227 (2016). "If any facts provable under the express and implied allegations in the plaintiff's complaint support a cause of action . . . the complaint is not vulnerable to a motion to strike." *Bouchard* v. *People's Bank*, 219 Conn. 465, 471, 594 A.2d 1 (1991).

"A motion to strike admits *all facts* well pleaded; it does not admit *legal conclusions, or the truth or accuracy of opinions* stated in the pleadings." (Emphasis in original; internal quotation marks omitted.) *Faulkner* v. *United Technologies Corp.*, 240 Conn. 576, 588, 693 A.2d 293 (1997). "A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." (Internal quotation marks omitted.) *Santorso* v. *Bristol Hospital*, 308 Conn. 338, 349, 63 A.3d 940 (2013).

"[A] motion to strike is essentially a procedural motion that focuses solely on the pleadings. . . . It is, therefore, improper for the court to consider material outside of the pleading that is being challenged by the motion. . . . Nonetheless, '[a]ny plaintiff desiring to make a copy of any document a part of the complaint may, without reciting it or annexing it, refer to it as Exhibit A, B, C, etc., as fully as if it had been set out at length. . . . A complaint includes all exhibits attached thereto." (Citation omitted; internal quotation marks omitted.) *Tracy* v. *New Milford Public Schools*, 101 Conn. App. 560, 566, 922 A.2d 280, cert. denied, 284 Conn. 910, 931

A.2d 935 (2007). The law is clear that "[w]here the legal grounds for . . . a motion [to strike] are dependent upon underlying facts not alleged in the plaintiff's pleadings, the defendant must await the evidence which may be adduced at trial, and the motion should be denied." (Internal quotation marks omitted.) *Commissioner of Labor* v. *C.J.M Services, Inc.*, 268 Conn. 283, 293, 842 A.2d 1124 (2004).

II

A. Breach of Fiduciary Duty and Duty of Loyalty (Count One)

The first count alleges that "as the controlling and voting members of CoeoRx defendants HHFC, Goodroot and Waterbury owe a fiduciary duty to Wallace" which they breached when they took actions to deprive Wallace of his hard-earned equity interest in CoeoRx and Goodroot/Goodroot PI, unilaterally reduced his compensation, terminated him for no cause, required him to sign a severance agreement that falsely stated that his termination was for cause, and advanced their own interests to the detriment of Wallace.

The defendants argue that the allegations in count one fall short of a legally valid claim for breach of fiduciary duty, because Wallace fails to plead that HHFC, Goodroot, or Waterbury owed him any fiduciary duty and relies instead on a conclusory allegation that, as voting members of CoeoRx, these defendants owed him a duty of loyalty. The defendants argue that the complaint fails to set forth any facts demonstrating how these defendants' interests in CoeoRx give rise to any duty to Wallace, nor what that duty would be. The defendants also fault Wallace for not providing to the court copies of the defendant LLC operating agreements, which

they argue would allow the court to determine whether the defendants' actions were in compliance with those agreements and whether they breached any duties to Wallace. Moreover, they argue that "there is no consensus in Connecticut's courts regarding whether such a duty even exists among members of an LLC." (Def. Mem. P. 7). The defendants argue further that the allegations of the first count are devoid of any claim that their conduct was intentional, fraudulent or disloyal and thus fail to adequately plead any breach of fiduciary duty.

Wallace argues that, construing the allegations of the first count in the light most favorable to the non-moving party, the allegations establish the necessary fiduciary relationships among the parties and multiple violations of those duties sufficient to withstand the defendants' motion to strike.

Whether a fiduciary relationship existed between the parties is a threshold issue. "[A] prerequisite to finding a fiduciary duty is the existence of a fiduciary relationship . . . ." *Ahern* v. *Kappalumakkel*, 97 Conn. App. 189, 194, 903 A.2d 266 (2006). "In the seminal cases in which [the Supreme Court of Connecticut] has recognized the existence of a fiduciary relationship, the fiduciary was either in a dominant position, thereby creating a relationship of dependency, or was under a specific duty to act for the benefit of another. . . . In the cases in which this court has, as a matter of law, refused to recognize a fiduciary relationship, the parties were either dealing at arm's length, thereby lacking a relationship of dominance and dependence, or the parties were not engaged in a relationship of special trust

and confidence." (Internal quotation marks omitted.) *Biller Associates* v. *Peterken*, 269 Conn. 716, 723-24, 849 A.2d 847 (2004).

Our Appellate Court has held that "[a] plaintiff . . . ha[s] the burden of establishing four essential elements with respect to her claim of breach of fiduciary duty: [1] [t]hat a fiduciary relationship existed which gave rise to . . . a duty of loyalty . . . an obligation . . . to act in the best interests of the plaintiff, and . . . an obligation . . . to act in good faith in any matter relating to the plaintiff; [2] [t]hat the defendant advanced his or her own interests to the detriment of the plaintiff; [3] [t]hat the plaintiff sustained damages; [and] [4] [t]hat the damages were proximately caused by the fiduciary's breach of his or her fiduciary duty." (Emphasis omitted; internal quotation marks omitted.) *Rendahl* v. *Peluso*, 173 Conn. App. 66, 100, 162 A.3d 1 (2017).

"The fiduciary duty comprises two prongs: a duty of care, and a duty of loyalty. . . . While the duty of care requires that the . . . fiduciar[y] exercise [its] best care and judgment . . . the duty of loyalty derives from the prohibition against self-dealing that inheres in the fiduciary relationship." (Internal quotation marks omitted.) *Gurski* v. *Rosenblum & Filan, LLC,* Superior Court, judicial district of Stamford, Docket No. CV-00-0179063-S (February 23, 2001, *D'Andrea, J.*) (28 Conn. L. Rptr. 717, 718), citing *Saginaw Products Corp.* v. *Cavallo*, Superior Court, judicial district of New Haven, Docket No. CV-92-0326329-S (August 10, 1994, *Burns, J.*), aff'd, 40 Conn. App. 771, 673 A.2d 120 (1996); see also *Ives Bros., Inc.* v. *Keeney*, Superior Court, judicial district of Windham, Docket No. CV-06-4004952-S

(October 27, 2009, *Swords, J.*) (in action seeking injunctive relief and monetary damages for alleged breach of contract containing noncompete clause as well as claim for breach of fiduciary duty, holding that "by virtue of the employment contract between the parties, the defendant owed the plaintiff a duty of loyalty and an obligation to act in the plaintiff's best interest and good faith").

With respect to the duty of loyalty, "[i]t is a thoroughly well-settled equitable rule that anyone acting in a fiduciary relation shall not be permitted to make use of that relation to benefit his own personal interest. This rule is strict in its requirements and in its operation. It extends to all transactions where the individual's personal interests may be brought into conflict with his acts in the fiduciary capacity, and it works independently of the question whether there was fraud or whether there was good intention." (Internal quotation marks omitted.) *Murphy* v. *Wakelee*, 247 Conn. 396, 401-02, 721 A.2d 1181 (1998), citing *State* v. *Culhane*, 78 Conn. 622, 628, 63 A. 636 (1906).

In the corporate context, as noted by our Supreme Court, "[a]n officer . . . occupies a fiduciary relationship to the corporation . . . ." (Internal quotation marks omitted.) *Pacelli Bros. Transportation, Inc.* v. *Pacelli*, 189 Conn. 401, 407, 456 A.2d 325 (1983); see also *Risdon-AMS (USA), Inc.* v. *Levine*, Superior Court, judicial district of Waterbury, Docket No. CV-03-0181029-S (February 10, 2004, *Schuman, J.*) (36 Conn. L. Rptr. 534, 535) (holding that defendant "indisputably owed a fiduciary duty to [the plaintiff] as one of its vice presidents during the relevant time

period and also as [the plaintiff's] key player in its efforts to find an Asian manufacturer for its products").

In the context of limited liability companies, fiduciary duties among members of an LLC have now been codified with the enactment of the Limited Liability Company Act, which took effect in July of 2017. See Conn. Pub. Acts 16-97.[1] Contrary to the defendants' argument, however, the law is now clear that members of a member-managed LLC[2] stand as fiduciaries toward one another. See Conn. Gen. Stat. § 34-255h(a) ("A member of a member-managed [LLC] owes to the company and, subject to subsection (b) of [§] 34-271, the other members the duties of loyalty and care..."); Conn. Gen. Stat. § 34-255h (b) ("The fiduciary duty of loyalty of a member in a member-managed [LLC] includes the duties. . ."). These codified duties apply to the relationships at issue in count one.

From its review of the complaint and reading the allegations in the light most favorable to Wallace, the court concludes that there are multiple allegations in the

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[1] Even before the Limited Liability Act was passed, our courts recognized that a fiduciary relationship may exist among members of a limited liability company. "Like a partner in a partnership, a member of a limited liability company has a fiduciary duty to the other members." (Internal quotation marks omitted.) *Yavarone v. Jim Moroni's Oil Service, LLC,* Superior Court, judicial district of Middlesex, Docket No. CV–03–0102318–S (Feb. 18, 2005, *Aurigemma, J.*). Cf. *AW Power Holdings, LLC v. FirstLight Waterbury Holdings, LLC,* Superior Court, judicial district of Hartford, Docket No. CV–14–6047836–S (Feb. 17, 2015, *Peck, J.*) (58 Conn. L. Rptr. 889) (denying motion to strike claim for breach of fiduciary duty against sole owner of manager of limited liability company).

[2] CoeoRx is member-managed. Since neither Goodroot nor Goodroot PI have operating agreements, they are by default member-managed under the LLC Act. See Conn. Gen. Stat. § 34-255f (a).

complaint that support the imposition of a fiduciary relationship among Wallace and the defendants named and identified as fiduciaries in count one. First, paragraph eight of the complaint expressly alleges that "Wallace is a 20% owner of CoeoRx [and] CoeoRx is owned in substantial part by Goodroot." Based on this allegation, the court concludes that Wallace has stated facts to support a claim that Goodroot owes him a fiduciary duty.

Second, Wallace has alleged facts which, if proven, establish a fiduciary relationship between Waterbury and him. For instance, he alleges in paragraph four that CoeoRx is owned by "Goodroot and is controlled by Waterbury." He also alleges in paragraph six that "[t]he common denominator among Goodroot and each of the companies named as defendants[3] in this action is the ownership and/or control of each entity by Waterbury." See also Complaint at ¶ 26 ("Waterbury and/or entities Waterbury owns or controls have complete and total control over CoeoRx and 50% control over AlignRx."). Wallace maintains that, because Waterbury controls all the entities in which he has an equity position, he necessarily placed his trust in Waterbury's ability to oversee the management and operation of these companies, as well as in Waterbury's good faith and fairness toward Wallace in how he did so.

Moreover, in paragraph twenty-one, Wallace alleges that Waterbury required Wallace to "trust him" as to the terms and conditions of the operating agreements of

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[3] Wallace alleges his equity position in each of these companies in paragraph twenty-four.

the companies in which Wallace would receive an equity position when he refused to let Wallace review them before Wallace accepted the employment offer Waterbury had extended. Thus, not only has Wallace alleged that he placed his trust and confidence in Waterbury once he accepted his offer of employment, but he also alleged that he was required to trust that Waterbury was dealing fairly with him in the very formation of their relationship because Waterbury alone knew the terms and conditions that he would seek to impose on Wallace.

It is axiomatic that the hallmarks of a fiduciary relationship are "trust and confidence" on one side and "superior knowledge, skill or expertise" on the other, such that the "superior position of the fiduciary or dominant party affords him great opportunity for abuse of the confidence reposed in him." *Konover Development Corp.* v. *Zeller*, 228 Conn. 206, 219, 635 A.2d 798 (1994). Wallace alleges that Waterbury had all the power and knowledge in their business relationship and therefore Wallace was forced to trust him from the inception of their relationship until the moment Waterbury terminated Wallace.

Finally, in paragraph four, Wallace alleges "HHFC is the majority owner of Goodroot and controls Goodroot." In other words, it is alleged that HHFC owns and controls the entity which owes Wallace a fiduciary duty as a result of their common ownership of CoeoRx and, through its ownership of Goodroot, HHFC thus has dominion and control over the affairs of CoeoRx. Moreover, paragraph three alleges HHFC is owned by Waterbury, meaning HHFC is the vehicle through which Waterbury exercises control over all the entities identified in paragraph six. These

allegations are sufficient to establish a fiduciary relationship between Wallace and HHFC, because, if true, the allegations would prove that HHFC was in exactly the same position vis-à-vis Wallace as were Goodroot and Waterbury—both of whom owed Wallace fiduciary duties.

The defendants argue that "[t]he [c]omplaint does not set forth any facts demonstrating how" their denial of the equity interests Wallace had earned and received "were anything but routine employment actions or how these defendants advanced their interests at [sic] the detriment of [p]laintiff's." (Def. Mem p. 8) Wallace has clearly alleged that Goodroot and Waterbury were using their control over HHFC to deprive Wallace of his equity in companies that he had already earned. Allegations setting forth these facts are set forth in paragraphs forty-six section c and forty-six section f of count one.[4] See also ¶¶ 3, 40, 42, Exhibit B ¶¶ 2-4.

Moreover, the defendants argue that their proposal to exchange a release for a contractually agreed upon severance package is a "routine employment action," but the plaintiff would characterize such action as an attempt to coerce a former employee to forfeit his equity interest in several companies, including a company in which he had a 20% ownership interest. Reading the plaintiff's allegations in a light most favorable to him, this conduct may violate their fiduciary obligations to

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[4] See *Lomas v. Partner Wealth Management, LLC*, Superior Court, judicial district of Stamford-Norwalk, Docket No. FST-CV-15-5014808-S (September 19, 2017, *Heller, J.*) (allegations that remaining members of an LLC who retroactively amended LLC agreement to devalue withdrawn member's interest stated a cause of action for breach of fiduciary duty).

Wallace, and the fact that the defendants characterize their conduct as "routine" does not change the court's analysis at this stage. Given the allegations of the complaint, the argument that Wallace's allegations do not sufficiently state a claim for breach of fiduciary duty is without merit. See Complaint, Count One at ¶¶ 3, 40, 42-45, Exhibit B ¶¶ 2-4; *Cf.* Def. Mem. at 8-9.

Second, Wallace clearly alleges that the defendants were motivated by their own self-interest when they took his equity interest without paying him for it. See Complaint, Count One at ¶¶ 3, 4, 8, 24, 46e. First, because Goodroot and Wallace are co-owners of CoeoRx, Goodroot stands to benefit from the uncompensated forfeiture of Wallace's equity interest in Goodroot; it will own a larger share of a profitable company after taking Wallace's 20% interest. Second, because HHFC owns Goodroot, and Waterbury owns HHFC, HHFC and Waterbury stand to gain from Wallace's loss of his equity interest in CoeoRx. These allegations, if proven, are classic violations of fiduciary duty and duty of loyalty among members of a limited liability company.[5]

The motion to strike as to the first count is denied.

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[5] Determining whether, and under what circumstances, the members of a limited liability company owe a fiduciary duty to each other, is a fact-specific inquiry. See *Ruotolo v. Ruotolo,* Superior Court, judicial district of New Haven, Docket No. CV–09–5026804–S (December 29, 2009, *Jones, J.*). In *Ruotolo,* the plaintiff's allegations for a breach of fiduciary duty arose from the defendants' deliberate actions to devalue the plaintiff's interest in the limited liability company. The court found that "[t]hough [the defendant's] actions harmed the limited liability company, he allegedly sought to and did harm the plaintiff individually by rendering worthless [the plaintiff's] interest in [the LLC]." *Ruotolo v. Ruotolo, supra,* Superior Court, Docket No. CV–09–5026804–S.

B. Oppression, in Violation of General Statutes § 34-267 (a) (5) (Count Two)

Count two alleges that the actions of Waterbury, HHFC constitute oppression in violation of General Statutes § 34-267 (a) (5), and thus Wallace claims entitlement to relief pursuant to General Statutes § 34-267 (b), including monetary damages based on the value of his 20% interest in CoeoRx. Central to Wallace's claim of oppression is that "Wallace was provided an equity interest in CoeoRx and Goodroot/Goodroot PI" which was a motivating factor in his decision to leave his previous employment and that he accordingly "had a reasonable expectation of continued ownership in each of those entities." The defendants' alleged conduct reflects a concerted effort to "cause [a] forfeiture of his interests and/or a repudiation of his interests in those entities" sufficient to constitute oppression.

The defendants argue that this claim must be stricken because it does not apply where, as here, Wallace has not applied for a dissolution of any of the entities involved and where he is seeking only monetary damages. The defendants concede that, under § 34-267, a court may order relief other than dissolution, but contends that the statute does not contemplate an award such relief outside of an action to dissolve an LLC. Moreover, citing *Manere* v. *Collins*, 200 Conn. App. 356, 384, 241 A.3d 133 (2020), the defendants argue that Wallace's claims must be stricken because he fails to allege that "the majority conduct substantially defeats expectations that, objectively viewed, were both reasonable under the circumstances and were central to the petitioner's decision to join the venture." Id.