

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JEREMY LEBEWOHL et al.,

Plaintiff,

-v-

HEART ATTACK GRILL, LLC et al.,

Defendants.  
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11 Civ. 3153 (PAE)

ORDER

**PAUL A. ENGELMAYER, District Judge:**

The Court has received plaintiffs' January 3, 2012 letter alleging that defendant HAG LLC has failed to provide adequate responses to plaintiffs' interrogatories (attached). In particular, plaintiffs continue to seek, pursuant to the Court's December 20, 2011 Order (Dkt. No. 39), the identities of the owners and managers of Diet Center LLC (Delaware). The parties discussed this dispute at a conference before the Court today.

The Court's December 20 Order declined to enforce interrogatories calling for the identification of HAG investors, but did compel disclosure of the identities of HAG owners and managers. Thus, if an owner or manager is also an investor, their identity as an owner or manager cannot be hidden under the cloak of investor status; their identity with respect to their position as owner or manager must be disclosed. Accordingly, HAG is hereby directed to respond in good faith to plaintiffs' second set of interrogatories, within one week of this order, and to produce all requested identities of HAG owners and manager.

SO ORDERED.

*Paul A. Engelmayer*  
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Paul A. Engelmayer  
United States District Judge

Dated: January 4, 2012  
New York, New York

# JAKUBOWITZ & CHUANG LLP

## ATTORNEYS AT LAW

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January 3, 2012

**BY HAND**

**CONTAINS HAG AEO CONFIDENTIAL INFORMATION**

Hon. Judge Paul A. Engelmayer  
U.S. District Judge  
United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

**RE: Lebewohl et al. v. Heart Attack Grill LLC, et al., Case No. 11-cv-3153.**

Dear Judge Engelmayer:

My firm represents the Plaintiffs in this case. I write to seek enforcement of the Court's December 20th Order compelling Defendants HAG to provide good faith responses to Plaintiffs' Second Set Of Interrogatories. In particular, the Plaintiffs seek the identities of the owners and managers of Diet Center LLC (Delaware).

Despite the Court Order, HAG's Supplemental Responses to Plaintiffs' Interrogatory No. 9 do not identify the owners and managers of Diet Center LLC (Delaware).<sup>1</sup> HAG claims that the Court Order barred the disclosure of the identities of investors *and owners* when in fact it only forbids the disclosure of "the identification of (or communication among) HAG investors." HAG also argues that the members are all passive investors notwithstanding the "legal words" in the Limited Liability Company Agreement Of Diet Center, LLC (hereinafter, the "LLC Agreement") because Jon Basso has assured counsel that he controls all operations of the company.

Simply put, the Plaintiffs should not have to take Mr. Basso's word as gospel to the exclusion of all other sources of discovery. The Diet Center LLC (Delaware) operates the

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<sup>1</sup> Plaintiffs' Interrogatory No. 9 reads: "Identify all officers, directors, owners, managers, and employees of (1) Diet Center LLC (Texas) and (2) Diet Center LLC (Delaware)."

only Heart Attack Grill in the country. The Plaintiffs seek discovery from the owners and managers of this entity, who would presumably know about any plans to expand to New York, the damage, if any, caused by the Plaintiffs' use of the "Instant Heart Attack Sandwich" and "Triple Bypass Sandwich" marks, and other issues relating to the HAG Marks.

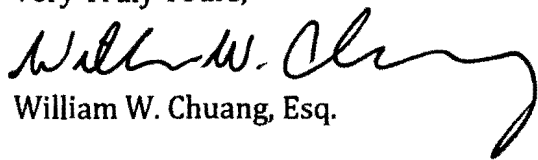
The need for discovery from other owners and managers is particular severe in light of the incomplete and contradictory discovery responses provided by Jon Basso. For instance, Mr. Basso failed to disclose the existence of the Diet Center LLC (Texas) and Diet Center LLC (Delaware) until late October 2011. Moreover, in an attempt to prevent Plaintiffs from deposing Fred Mossler, HAG claimed he was "not a manager nor a person who is running the GRILL" and that he was just an "investor-director." HAG later claimed on January 2, 2012 that Mr. Mossler is not a "manager nor a director" but rather an "investor representative."

Also, as HAG acknowledges, its responses contradict the documentary evidence it belatedly provided. HAG's Supplemental Responses identify Jon Basso as the managing member and President, and state that there are no other officers or directors. The Supplemental Responses also state that Mr. Basso is the only manager, and that Tracy Chamberlin is sometimes the manager on the floor. This contradicts the LLC Agreement, which states that the company "shall be managed, controlled and operated exclusively by the Members..." (HAG—002311.) Any Member has the authority to sign "any contract, agreement, deed, lease, note or other document or instrument" on behalf of the Company. (HAG—002311.)

Furthermore, the LLC Agreement does not provide for a managing member. The LLC Agreement defines "Required Members," whose determination "to take any action or make any decision shall control." (Id.) "The Members shall take action only by a positive vote of the Required Members." (HAG—002309.) It is clear that Mr. Basso cannot be a Required Member. A Required Member is defined as "members having at least a majority of the aggregate Percentage Interests held by Members as such time." (HAG—002321.) Mr. Basso's "Percentage Interest shall be zero until each other Member has received Distributions from the Company that equal or exceed such Member's Initial Capital Commitment." (Id.)

In conclusion, the Plaintiffs respectfully requests that the Court clarify its December 20th Order and compel HAG to identify all members of the Diet Center LLC (Delaware) and identify the Required Members. To be clear, Plaintiffs do not seek the disclosure of the capital commitment, percentage interest of any member in the company.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "William W. Chuang". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

William W. Chuang, Esq.

Enclosures (3)

CC: Robert C. Kain, Jr. (by e-mail)  
Darren Spielman (by e-mail)