

21-9761-442

CAUSE NO.

	§	IN THE DISTRICT COURT OF
	§	
	§	
IN RE TIMOTHY M. HAAKE	§	
	§	DENTON COUNTY, TEXAS
	§	
	§	
	§	_____th JUDICIAL DISTRICT

**PETITIONER’S VERIFIED PETITION FOR ORAL DEPOSITION BEFORE SUIT
PURSUANT TO RULE 202 OF THE TEXAS RULES OF CIVIL PROCEDURE AND
FOR DOCUMENTS PURSUANT TO RULE 202 AND WRIT OF MANDAMUS FOR
RECORDS PURSUANT TO SECTION 101.502 OF THE TEXAS BUSINESS
ORGANIZATION CODE**

COMES NOW, Timothy M. Haake, Petitioner, and files this, his Verified Petition to take Oral Deposition to investigate a potential claim or suit pursuant to Rule 202 of the Texas Rules of Civil Procedure and Section 101.502 of the Texas Business Organization Code, and, in support thereof, would show as follows:

**I.
BACKGROUND, VENUE AND JURISDICTION**

1. On June 11, 2008, Tim Haake (“*Petitioner*”), Patrick Fallon (“*Fallon*”) Recon Sportswear and Jackets, LLC (“*Recon*”), and the American Airborne Store (“*American Airborne*”) entered into that certain Business and Consulting Agreement, effective as of January 1, 2008 (the “*Agreement*”). Pursuant to the Agreement, Petitioner (a) was granted a 10% “profits interest” in Recon and American Airborne, and (b) is entitled to a 10% “capital interest” in any entity subsequently formed by Fallon (or any of his affiliates) for purposes of conducting business at the Ft. Benning U.S. Army Base in Georgia (collectively, the “*Territory Entities*” and, together

with Recon and American Airborne, the “*Ft. Benning Companies*”).¹

2. Petitioner seeks to obtain the deposition testimony of Fallon to investigate potential claims Petitioner may have against Fallon and certain of his affiliated companies arising out of their acts and omissions with respect to the Ft. Benning Companies, which claims may include, but are not necessarily limited to, fraud, breach of fiduciary duties, tortious interference with Petitioner’s contractual relationships, and breach of the Agreement.²

3. Petitioner also seeks to obtain the deposition testimony of Fallon’s wife, Susan Fallon, to determine whether Susan Fallon has received any conveyances of interests in any of the Ft. Benning Companies, whether Susan Fallon has received an assignment of the Agreement, and, to the extent applicable, Susan Fallon’s acts and omissions for, or on behalf of, any Ft. Benning Companies in which she has obtained an ownership interest.

4. This petition is filed in Denton County, Texas, where Patrick Fallon and Susan Fallon reside. As such, the Court has personal jurisdiction over Patrick Fallon and Susan Fallon.

II. **STATEMENT OF FACTS**

5. Pursuant to the Agreement, Petitioner is entitled to a 10% equity ownership interest in each of the Ft. Benning Companies, whether now existing or formed through July 1, 2015. Petitioner’s ownership interest in each of the Ft. Benning Companies entitles him to, *inter alia*, the

¹ The Agreement uses varying terms and phrases for purposes of characterizing the type of interests granted to Petitioner. However, Petitioner alleges that the intent of the parties to the Agreement (and a reasonable interpretation of the Agreement, taken as a whole) was to grant Petitioner an equity ownership interest in Recon, American Airborne, and each of the Territory Entities.

² Fallon has informed Petitioner that he operates similar affiliated companies out of Sheppard AFB, Goodfellow AFB, Lackland AFB, Keesler AFB, Ft. Sill, OK, and Ft. Jackson, SC, and upon such information and belief, Petitioner is concerned that there may be some interactions between these companies and the Ft. Benning Companies.

right to receive his pro rata portion of any and all distributions made by each company to its equity owners. The Agreement further provides that Petitioner is entitled to receive certain consulting fees, which fees are calculated as a percentage of the aggregate gross revenues derived from the operations of all of the Ft. Benning Companies.³

6. In December of 2020, Fallon offered to “buy-out” Petitioner’s ownership interest in the Ft. Benning Companies as well as Petitioner’s rights to consulting fees under the Agreement. At the time such offer was made, Fallon explained to Petitioner that the purpose of the “buy-out” was part of a larger transaction whereby Fallon would liquidate all of his ownership interests in the Ft. Benning Companies and sell such interests to his relatives, in order to comply with the U.S. House of Representatives Committee on Ethics’ rules before Fallon’s swearing in as a congressman in the 117th United States Congress.⁴ Fallon further intimated that if Petitioner did not agree to sell his interest, Fallon could cancel the contract and re-submit without Petitioner, which would be a violation of the Agreement.

7. In December of 2020, Petitioner commenced an investigation into the Ft. Benning Companies to determine (a) the value of Petitioner’s ownership interests in each such company, (b) any amounts owed to Petitioner from such companies on account of his ownership interest

³ Section 3(c) of the Agreement provides that the amounts paid to Petitioner in the form of consulting fees may be offset against any distributions to which Petitioner would otherwise be entitled to the effect that Petitioner is entitled to, on an annual basis, the greater of (a) the aggregate amount of consulting fees received by Petitioner during such year or (b) the difference derived by subtracting the aggregate distributions payable to Petitioner during the year *less* the amount of consulting fees received by Petitioner during such year.

⁴ As of January 3, 2021, Patrick Fallon was sworn into the 117th United States Congress. He is currently a member of the U.S. House of Representatives Armed Services Committee and Personnel Subcommittee. Presumably, Fallon’s intended transfer of his ownership in the Ft. Benning Companies to immediate family members was an attempt to comply with the legal and ethical requirements imposed on congressmen upon taking office. Petitioner does not believe that the “shell game” played by Fallon with respect to the Ft. Benning Companies complied with his legal and ethical obligations as a congressman. However, Fallon’s breach of any ethical or legal duties as a congressman is outside the scope of this Petition.

therein, and (c) whether each party to the Agreement has fully complied with its obligations thereunder. To facilitate his investigation, Petitioner requested a full audit and accounting of the books and records of Recon and American Airborne. Fallon refused to conduct (or even permit) such an audit and accounting. Instead, Fallon took the position that Petitioner must be content with the scant information provided to Petitioner, which was (and continues to be) woefully inadequate for any meaningful analysis.

8. Notably, in the course of Petitioner's investigation, he discovered evidence indicating that Fallon had formed a company, Virtus Apparel, LLC ("**Virtus**"), for purposes of conducting business at Ft. Benning. Petitioner is informed and believes that Virtus does substantial business at Ft. Benning. Yet, Fallon failed to notify Petitioner of the formation of the entity or provide Petitioner with his ownership interests in, and consulting fees with respect to Virtus, as required under the Agreement. Petitioner has requested information and records from Fallon concerning Virtus to investigate whether it should be considered a "Territory Entity" as defined in the Agreement. To date, Fallon has refused to produce *any* information on Virtus.

9. By January 2021, the "buy out" discussions had fallen through; however, Petitioner's attempts to investigate the Ft. Benning Companies continued. On January 22, 2021, Petitioner again requested a full accounting of the books and records of Recon, American Airborne, and Virtus from 2008 through the date of the request. More specifically, Petitioner requested the following materials:

- (1) the monthly sales figures for each month since the inception of the Agreement;
- (2) the P&L for each year, (3) the balance sheets for each year, (4) the ledgers of all costs of goods sold for each year; and (5) a break-down of all employee salaries.

Additionally, because Petitioner had not received any payment from American Airborne, Petitioner requested American Airborne's monthly sales figures and tax returns from 2008 through

the date of the request to verify that no payments or distributions had been improperly withheld from Petitioner. Fallon, Recon, American Airborne, and Virtus ignored Petitioner's request.

10. On May 5, 2021, Petitioner again requested the financial records and business information to which he is entitled. In Petitioner's request, he pointed out that Fallon's continued refusal to provide Petitioner with any meaningful opportunity to review the books and records of the Ft. Benning Companies (including, to the extent applicable, Virtus) was in contravention of Petitioner's contractual rights as well as Petitioner's rights under Section 101.502 of the Texas Business Organization Code. In responsive correspondence from his Counsel, dated May 24, 2021, Fallon produced limited additional unaudited financials regarding Recon and informed Petitioner—*for the first time*—that all of Fallon's ownership interest in "the business" had been transferred to Susan Fallon. Notably, Fallon's conveyance of his interest in the Ft. Benning Companies without providing prior notice to Petitioner would have been a breach of Section 5(b) of the Agreement, which requires Fallon to provide prior notice to Petitioner of any such sale transaction, disclose to Petitioner the material terms of any such sale transaction, and provide Petitioner with an opportunity to invoke his "tag-along" rights under the Agreement.

11. On June 18, 2021, Petitioner requested, yet again, the complete business records for Recon, American Airborne, and Virtus. Petitioner also requested information concerning Fallon's purported transfer of his ownership interest in the Ft. Benning Companies to Susan Fallon. Specifically, Petitioner requested:

- (1) the name of the businesses in which she owns an interest;
- (2) how she acquired such interest(s);
- (3) the consideration paid by her for such interest(s);
- (4) the manner in which such interest(s) are held by her (i.e., in her individual capacity or through some affiliated company); and
- (5) copies of the written documents by which she acquired her interest in the "business."

12. Petitioner further requested Fallon to clarify whether he had attempted to assign his interest in the Agreement to Susan Fallon without providing prior written notice to Petitioner. In the request, Petitioner pointed out to Fallon that any such assignment of the Agreement would be in breach of Section 10 thereof, which requires all parties thereto to obtain the prior written consent of the other parties before assigning any interest in the Agreement to a third party, subject to certain exceptions not applicable to Fallon. In Petitioner's June 18, 2021 request, he demanded that the requested information be provided no later than July 15, 2021.

13. Through his continued investigation, Petitioner also learned of Fallon's involvement in the creation of another company, A-2 Screen Printing, LLC ("**A-2 Printing**"), in Columbus, Georgia, which, based on information and belief, conducts business at Ft. Benning. However, Fallon again failed to notify Petitioner of the formation of the entity or provide Petitioner with his ownership interests in, and consulting fees with respect to, A-2 Printing as required under the Agreement.

14. As part of his investigation, Petitioner also obtained a copy of Respondent Patrick Fallon's Financial Disclosure Report filed with the Clerk of the House of Representatives on August 13, 2021 ("**Disclosures**"). These Disclosures identify another company known as Scouts Out ("**Scouts Out**"). Petitioner is informed and believes that Scouts Out conducts business at Ft. Benning. However, Fallon again failed to notify Petitioner of the formation of the entity or provide Petitioner with his ownership interests in, and consulting fees with respect to Scouts Out.

15. On September 7, 2021 Petitioner advised Fallon of his investigation concerning A-2 Printing and Scouts Out and requested the financial information concerning those entities as well. While Fallon's counsel did finally respond to this request by email, no substantive communications or information concerning Virtus, A-2 Printing, or Scouts Out has, to date, been

provided to Petitioner. Patrick Fallon and Susan Fallon continue to ignore Petitioner in violation of Petitioner's contractual and statutory rights and in breach of their duties to Petitioner.⁵

III.
REQUEST TO DEPOSE

16. Based upon the forgoing, Petitioner asks the Court to issue an Order authorizing him to examine the following persons by oral deposition:

- a. Patrick Fallon, who resides at 3876 Shady Creek Ct., Frisco, TX 75033-2896; and
- b. Susan Fallon who, resides at 3876 Shady Creek Ct., Frisco, TX 75033-2896.

17. Petitioner expects to elicit the following testimony from **Fallon**:

- a. Full disclosure of the existence of any and all entities formed by Fallon or any other persons to the extent such entities may be properly characterized as Territory Entities under the Agreement;
- b. Full disclosure regarding the existence, status, location and contents of any and all books and records pertaining to any Ft. Benning Company now in existence or that has, at any time, existed during the period commencing on January 1, 2008 and continuing to the present;
- c. A complete and accurate accounting of the financial statements and related financial materials pertaining to each Ft. Benning Company;
- d. A statement of Fallon's relationship with A-2 Printing and a full disclosure of the books and records and other financial information concerning A-2 Printing's business at Ft. Benning;
- e. A statement concerning the business of Scouts Out and a full disclosure of the books, records, and other financial information concerning Scouts Out's business at Ft. Benning
- f. A statement of the current management and ownership of each of the Ft. Benning Companies; and

⁵ Although Petitioner's requests for operating agreements and information related to the Ft. Benning Companies have been ignored, it is Petitioner's understanding that Fallon is the operating manager of the Ft. Benning Companies, as all of his business dealings in connection with the Agreement have been facilitated through

- g. A complete and accurate statement of Petitioner's capital account with each of the Ft. Benning Companies as well as a complete and accurate accounting of Petitioner's interest therein and any distributions or other amounts to which Petitioner may be entitled from each of the Ft. Benning Companies.
18. Petitioner expects to elicit testimony from **Susan Fallon** with respect to:
- a. Any ownership interest in a Ft. Benning Company that has been transferred to her after January 1, 2008;
 - b. Her position on providing full disclosure of the books and records of the Ft. Benning Companies in which she purportedly now owns an interest;
 - c. Full disclosure of the accounting and operations of the Ft. Benning Companies in which she purportedly now owns and interest;
 - d. Her relationship with Virtus, A-2 Printing and Scouts Out;
 - e. The current management and ownership of all of the Ft. Benning Companies;
 - f. An explanation of the interest and distributions owed to Petitioner with respect to the Ft. Benning Companies; and
 - g. Full disclosure regarding the existence, status, location and contents of any and all books and records pertaining to any Ft. Benning Company now in existence or that has, at any time, existed during the period commencing on January 1, 2008 and continuing to the present.

19. The testimony of Patrick Fallon and Susan Fallon is necessary in order to gain a full disclosure of the management, operations, financial status, historical revenues, historical distributions, equity ownership and related matters pertaining to each of the Ft. Benning Companies, including a determination of any and all amounts owed to Petitioner pursuant to the Agreement.

20. To enable Petitioner to determine if any breaches of the agreement exist and to assess the extent thereof, Petitioner also requests that the Court, pursuant to Rule 202 and Section 101.502 of the Texas Business Organization Code, order Patrick Fallon and/or Susan Fallon to produce at their deposition the following documents with respect to each of the Ft. Benning

Companies for the period commencing on January 1, 2008, and ending on the date of the applicable deposition:

- a. The monthly sales figures for each month since the inception of the Agreement as required under Section 3(a) of the Agreement;
- b. Profit and Loss Statements for each year;
- c. Balance Sheet statements for each year;
- d. Bank statements for each year;
- e. Ledgers of all costs of goods sold for each year;
- f. A break-down of all employee salaries;
- g. Tax Returns and/or Schedule C's for 2008 through 2020;
- h. Documentation on Notes Payable and Notes Receivable; and
- i. Any and all company agreements or operating agreements (including any amendments or restatements thereof) for each Ft. Benning Company.

21. The likely benefit of allowing the Petitioner to obtain these documents and to take the requested depositions to investigate potential claims outweighs the burden or expense for the procedure. Fallon is contractually required to provide the requested documents and information but has refused to do so voluntarily. Although the Agreement provides for a resolution of disputes concerning the Agreement itself through arbitration with the American Arbitration Association, Section 101.502 of the Texas Business Organization Code entitles Petitioner to the financial records and business information requested herein. Petitioner should therefore be permitted to obtain the records to which he is entitled so he can determine whether he has a sufficient basis to commence arbitration.⁶ These purposes far outweigh the burden for the Court to Order Susan

⁶ Similar to a party's right to seek injunctive relief before commencing arbitration.

Fallon and Patrick Fallon to appear for a deposition and produce documents and information as required by Section 101.502 of the Texas Business Organization Code and the Agreement.

IV.
HEARING

22. After service of this petition and notice, Rule 202.3(a) requires that the Court hold a hearing on the Petition.

V.
ATTORNEY'S FEES AND COSTS

23. Pursuant to Section 101.503 of the Texas Business Organization Code, Petitioner respectfully requests the Court to award Petitioner the costs and expense, including attorney's fees, incurred in bringing this Petition and enforcing his rights under Section 101.502 of the Texas Business Organization Code.

VI.
PRAYER

24. For these reasons, Petitioner asks the Court to set this petition for hearing and, after the hearing, to order the deposition of Patrick Fallon and Susan Fallon and the production of documents listed in this petition. *See* Tex. R. Civ. P. 202.2(h). Petitioner further requests the Court, pursuant to Section 101.503 of the Texas Business Organization Code, to award Petitioner the cost and expense, including attorney's fees, incurred in bringing this Petition and enforcing his rights.

Respectfully Submitted,

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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October 2021 a true and correct copy of the foregoing instrument was served on the following pursuant to Rule 21a, Texas Rules of Civil Procedure:

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ATTORNEY FOR

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Wade L. McClure