

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

NEILL CORPORATION

versus

TSP CONSULTING, LLC

CIVIL ACTION NO. 2015-964

JUDGE

MAG. JUDGE

ANSWER, COUNTERCLAIM AND THIRD-PARTY DEMAND

Now into court comes Defendant, Counter-Claimant, and Third Party Plaintiff, TSP Consulting, LLC (“TSPC”), which answers the Petition for Declaratory Judgment (“Petition”) of the Neill Corporation as follows:

ANSWER

With respect to the allegations in Paragraph 1 of the Petition, TPSC admits that Neill Corporation is a Louisiana Corporation, but denies that Neill Corporation has authorized the filing of the Petition for Declaratory Judgment.

2.

TPSC admits that it is a Florida Limited Liability Co., but denies the balance of allegations in Paragraph 2 of the Petition.

3.

TPSC denies the allegations in Paragraph 3 of the Petition.

4.

TPSC denies the allegations in Paragraph 4 of the Petition.

5.

TSPC admits that it is a party to a Consulting Agreement, effective July 1, 2012, a copy of which is attached to the Petition as Exhibit A, and which is the best evidence of its contents. TSPC admits that Neill Corporation is a party to the Consulting Agreement. TSPC avers that there are other parties to the Consulting Agreement, including Neill Technologies, Inc., Beauty Basics, Inc. and Vital Information Systems, Inc., which are indispensable parties to this Declaratory Judgment Action. TSPC denies that Thomas Petrillo is its employee.

6.

TSPC admits that it is a Florida LLC, but denies that it is a single member LLC, or that Thomas C. Petrillo is its sole member.

7.

TSPC denies the allegations in Paragraph 7 of the Petition. TSPC specifically denies that it, or Thomas Petrillo, engaged in any unfair self-dealing. Moreover, Paragraph 7 fails to identify any specific instances of alleged self-dealing. TSPC specifically denies that it “improperly sought to extend the term of the Consulting Agreement.” Nothing in the Consulting Agreement precludes either party from seeking an extension of the agreement, so there was nothing improper about TSPC seeking to extend the agreement. Neill Corporation and other parties to the Consulting Agreement rejected a proposal for the extension that TSPC suggested, and TSPC accepted their decision. TSPC specifically denies that either it or Thomas Petrillo ever attempted to acquire ownership or control of the Neill Corporation’s distributor agreement. TSPC specifically denies that either it or Thomas Petrillo failed to obtain Neill Shareholder Approval for any Material Actions as defined in Section 4.1 of the Consulting Agreement.

8.

TSPC denies the allegations in Paragraph 8 of the Petition. TSPC specifically denies that it took any Material Actions, as that term is defined in Section 4.1 of the Consulting Agreement, without appropriate Neill Shareholder Approval. Further, contrary to the allegations in Paragraph 8 of the Petition, the only Material Actions contemplated by the Consulting Agreement are those expressly set forth in paragraphs (a) through (s) of Section 4.1 of the Consulting Agreement. By admitting that the actions alleged in paragraph 7 of the Petition are “not specifically addressed by the Consulting Agreement,” Neill Corporation has judicially admitted that they are not Material Actions within the scope of Section 4.1 of the Consulting Agreement.

9.

TSPC denies the allegations in Paragraph 9 of the Petition. Further, contrary to the allegations in Paragraph 9 of the Petition, the only Material Actions contemplated by the Consulting Agreement are those expressly set forth in (a) through (s) of Section 4.1 of the Consulting Agreement. By admitting that the actions alleged in paragraph 7 of the Petition are “not specifically addressed by the Consulting Agreement,” Neill Corporation has judicially admitted that they are not Material Actions within the scope of Section 4.1 of the Consulting Agreement. TSPC further avers that Articles 1871 and 1872 of the Louisiana Civil Code, which relate to Tender and Deposit, are inapposite to anything at issue in this declaratory judgment action.

10.

TSPC denies the allegations in Paragraph 10 of the Petition. As Neill Corporation has admitted, the actions alleged in Paragraph 7 of the Petition are not specifically addressed in

Section 4.1 of the Consulting Agreement and therefore are not Material Actions within the meaning of that Section. Further, to the extent that any of the actions are determined to be Material Actions within the meaning of Section 4.1 of the Consulting Agreement (which is denied), then pursuant to the terms of the Consulting Agreement, TSPC is entitled to 30 days to cure any deficiency with respect to a Material Action, once TSPC has been given proper and sufficiently detailed notice as required by the terms of the Consulting Agreement. The Court has no authority to judicially eliminate this cure period. TSPC further avers that Articles 1871 and 1872 of the Louisiana Civil Code, which relate to Tender and Deposit, are inapposite to anything at issue in this declaratory judgment action.

11.

TSPC denies the allegations in Paragraph 11 of the Petition. TSPC further avers that Paragraph 11 does not allege any specific instances where the consent of Neill Shareholders was allegedly obtained “on the basis of false or misleading information or a lack of disclosure of all material facts.” Nor has Neill Corporation given TSPC any prior notices of such instances. Accordingly, Paragraph 11 seeks an advisory opinion which is not the proper subject for a declaratory judgment.

AFFIRMATIVE DEFENSES

And now by way of further answer and affirmative defense, TSPC avers as follows:

12.

The Neill Corporation is without authority to bring this suit in that filing suit was never authorized by the Board of Directors of the Company. Thomas C. Petrillo is an officer and director of Neill Corporation and was never consulted as to whether suit should be filed. TSPC

avers, on information and belief, that none of the other Directors of Neill Corporation who were not members of the Neill family, were consulted about this decision.

13.

The Petition fails to state a claim for which relief can be granted.

14.

The Petition is vague and does not allege actions on behalf of TSPC with sufficient particularity to allow a meaningful response. Additionally, to the extent that the allegations intended are intended to serve as a basis for terminating the Consulting Agreement “for cause” pursuant to Section 7.3 , the insufficiency of the allegations prevent TSPC from an opportunity to attempt a timely cure as authorized by the Consulting Agreement (if one were required).

15.

The suit is premature in that the Neill Corporation has failed to give TSPC meaningful, detailed pre-suit notice of alleged events of breach in order to allow TSPC an opportunity to cure the breaches within 30 days as expressly authorized by the terms of the Consulting Agreement.

16.

The Neill Corporation has failed to join indispensable parties to its Petition for Declaratory Judgment. Neill Corporation seeks to have the Court to interpret the Consulting Agreement and enter a declaratory judgment as to the meaning of certain of its provisions, and yet Neill Corporation has failed to join all of the parties to the Consulting Agreement as parties. Among the indispensable parties that Neill Corporation has failed to join are Neill Technologies, Inc. , Beauty Basics, Inc., and Vital Information Systems, Inc. Pursuant to Section 12.13 of the Consulting Agreement, each of these companies “shall be jointly and severally liable to make all

payments owed by any Neill Company under this Agreement. . . .” Any declaratory judgment interpreting the Consulting Agreement will necessarily affect their rights and interests.

17.

To the extent that Neill Corporation contends that the allegations of breach set forth in Petition are intended to serve as a basis for terminating the contract for cause pursuant to Section 7.3 of the Consulting Agreement, then Neill Corporation failed to give timely notice to TSPC of the “for cause” event within 10 days of when Neill Corporation learned of such event. Neill Corporation’s failure to provide timely notice as required by the express terms of the Consulting Agreement precludes Neill Corporation from asserting such action as a basis for terminating the Consulting Agreement for cause.

18.

To the extent that TPSC took any Material Actions as defined in Section 4.1 (a) - (s) of the Consulting Agreement, it obtained necessary Neill Shareholder Approvals based on full and accurate disclosure of the material facts.

19.

Under the terms of the Consulting Agreement, proposals and preliminary discussions were not Material Actions (as defined in Section 4.1) that required Neill Shareholder Approval. Nevertheless, TSPC kept the Neill Shareholders fully informed of proposals and openly engaged them in all preliminary discussions that would affect them.

20.

As Neill Corporation has admitted, many of the items alleged in Paragraph 7 are not specifically addressed as Material Actions in Section 4.1 of the Consulting Agreements. This Court lacks authority to modify the Consulting Agreement to add new categories of Material

Actions beyond those expressly agreed to by the parties and listed in Section 4.1 (a)-(s) of the Consulting Agreement. Section 12.12 of the Consulting Agreement provides in pertinent part: “This Agreement sets forth the entire agreement and understanding between the Parties with respect to its subject matter”

21.

Section 4.1(s) of the Consulting Agreement includes within the definition of “Material Action”: “any other act that under Applicable Law requires the approval of the board of directors or shareholders.” To the extent that Neill Corporation contends that any of the allegations in the Petition violate this provision, it is obligated to identify the specific provisions of “Applicable Law” that require shareholder or board approval that TSPC failed to obtain. Neill Corporation has failed to do so.

22.

To the extent that the Neill Corporation is seeking damages as part of the “other legal or equitable relief this Honorable Court is permitted to grant,” any damages that it suffered were as a result of its own fault, or decisions over which TSPC has no control.

23.

To the extent that the Neill Corporation is seeking damages as part of the “other legal or equitable relief this Honorable Court is permitted to grant,” Neill Corporation has failed to mitigate its damages.

24.

To the extent that the Neill Corporation is seeking damages as part of the “other legal or equitable relief this Honorable Court is permitted to grant,” pursuant to Section 12.3 of the Consulting Agreement, “TSP Consulting shall not be liable for any failure to perform under this

Agreement, to the extent such failure is due in whole or in part to any Neill Company's failure to provide accurate, timely information or other information as required or contemplated by this Agreement."

25.

To the extent that the Neill Corporation is seeking damages as part of the "other legal or equitable relief this Honorable Court is permitted to grant," Section 12.4 of the Consulting Agreement provides in pertinent part: "No Party shall be liable under this Agreement for loss of profit or data, or for indirect, incidental or consequential damages, or for any other special damages such as, but not limited to, exemplary or punitive damages, or for loss of revenue or profit or lost business opportunities, even if it has been advised of the possibility of such damages, and regardless of whether such liability arises from breach of contract, tort, or any other theory of liability."

COUNTERCLAIM AND THIRD-PARTY DEMAND

Now assuming the role of Counter-Claimant and Third-Party Plaintiff, TSPC avers as follows:

PARTIES

26.

TSPC is a Florida Limited Liability Co. whose members are The Salon People (TSP), a Florida corporation with its principal place of business in Florida, and the Thomas C. Petrillo Trust, a Florida trust, whose sole trustee, Thomas C. Petrillo is a resident of Florida.

27.

Defendant-in-Counterclaim, Neill Corporation, is a Louisiana corporation with its principal place of business in Hammond Louisiana.

28.

Third-Party Defendant, Neill Technologies, Inc., is a Louisiana corporation with its principal place of business in Hammond Louisiana.

29.

Third-Party Defendant, Beauty Basics, Inc. (“BBI”), is a Louisiana corporation with its principal place of business in Hammond Louisiana.

30.

Third-Party Defendant, Vital Information Systems, Inc., is a Louisiana corporation with its principal place of business in Hammond Louisiana.

31.

Third-Party Defendant, Edwin H. Neill, III, is a person of the full age of majority and resident of Louisiana and this District.

32.

Unless otherwise specified, Neill Corporation, Neill Technologies, Inc., Vital Information Systems, Inc., and Beauty Basics, Inc. are hereinafter collectively referred to as the “Neill Companies.” Edwin H. Neill, III, Debra Neill Baker and certain trusts that they control are sometimes hereafter collectively referred to as the “Neill Shareholders.”

JURISDICTION AND VENUE

33.

This Court has jurisdiction over the Counterclaim and the Third-Party Demand pursuant to 28 U.S.C. §1332. There is diversity of citizenship between TSPC and Neill Corporation and between TSPC and all Third-Party Defendants. The amount in controversy with respect to both

the Counterclaim and the Third-Party Demand is in excess of \$75,000.00 exclusive of interest and costs.

34.

Venue is proper in this district in that Defendant-in-Counterclaim and each Third-Party Defendant resides or has its principal place of business within the District and conducts business within the District that is at issue in this suit.

FACTS

35.

Thomas Petrillo was formerly a successful senior executive with Aveda, an international company involved in the manufacture, distribution and wholesale sale of women's beauty products. After leaving, he obtained the exclusive distributorship and opportunity to develop Aveda beauty schools for the entire state of Florida. In 2002, Thomas Petrillo established the successful businesses known as The Salon People ("TSP"), which he solely owns, and TSP Institute, Inc. ("TSPI"), which he owns with other family members and which owns and operates schools to train hairdressers, estheticians, and massage therapists. The TSP distributorship agreement expires in 2017.

36.

In 2010, because of his expertise, success and relationships, Thomas Petrillo formed a consulting company, TSPC, in order to help others in the beauty industry become more successful.

37.

The Neill Companies have been owned and run by the Neill family since their founding. Neill Corporation has the Aveda distributor contract for several different states that expires in

2019. Neill Corporation also owns and operates the Paris Parker Salons and Spas. BBI owns and operates beauty schools in several states. Neill Technology, Inc. owns and licenses software that helps beauty salon operators manage their businesses.

38.

Just prior to 2010, the Neill Companies were struggling financially. As a result, Debra Neill Baker, one of the principal Neill Shareholders, approached Thomas Petrillo and TSPC to enlist their aid in helping turn the Neill Companies around.

39.

Thomas Petrillo agreed and upon forming TSPC , TSPC entered into an initial Consulting Agreement with the Neill Companies in 2010. The original Consulting Agreement was replaced and superseded by a new Consulting Agreement between TSPC and the Neill Companies effective as of July 1, 2012. This is the Consulting Agreement that is in effect today and which is at issue in this litigation. A copy of this Consulting Agreement is attached to the Petition.

40.

In conjunction with, and as a requirement of, the Consulting Agreement, Thomas Petrillo, Edwin H. Neill, III, Debra Neill Baker each executed Side Letters in which they committed (i) to abide by the terms of the Consulting Agreement and (ii) to ensure that the companies that they controlled also abided by the terms of the Consulting Agreement. The Side Letters were attached as Exhibits to the Consulting Agreement, and copies are part of the attachment to the Petition.

41.

TSPC's assistance to the Neill Companies helped them improve their financial performance dramatically since 2010 to the point where they are now very successful financially.

42.

Since 2010, Thomas Petrillo and the Neill Principals have collaborated on all aspects of their businesses, to the great benefit of the Neill Companies. Although the Neill Companies and companies owned and controlled by Thomas Petrillo (the TSP Companies) never merged, the Principals of all the affected companies, agreed that in order to achieve the benefits of synergies and economies of scope and scale, many of the TSP and Neill Companies would be operated on a coordinated basis. These coordinated operations were done with the knowledge and approval of the Neill Shareholders, and costs were allocated between the Neill Companies and the TSP Companies as had been agreed. These decisions were discussed at length during management, strategy and budget planning meetings with the leadership teams of TSP and Neill Companies, and at the annual budget plan meetings with the bankers of TSP and Neill Companies, and furthermore, were approved by the boards of directors of TSP and the Neill Companies at the March 28, 2013 and March 17, 2014 meetings. The majority of the Neill Shareholders were present and/or represented at the meetings and discussions.

43.

Pursuant to the terms of the Consulting Agreement, Thomas Petrillo became a director and Chief Operating Officer of each Neill Company. Thomas Petrillo also acquired a 15% ownership interest in BBI.

44.

As part of the coordinated business operations, and in order to achieve and offer equal employee benefits across all companies, as well as achieve significant cost savings with respect to health care costs, all former TSP Company employees became BBI employees and, in turn, those employees were leased back at cost to the TSP companies.

45.

As part of the coordinated business operations, the Neill Companies and the TSP companies jointly operate a common website, NeillTSP.com. As is explained on this website: “Neill-TSP is an innovative collaboration of 2 companies, Neill Corporation and The Salon People. We have partnered together to share our talent and resources to better serve our customers and our employees. It’s a unique business concept and one we think speaks to our core value of reaching our full potential.”

46.

The Neill Corporation owns and operates a distribution and fulfillment center where products are stored and subsequently shipped to their customers. TSP also uses this distribution center and pays its share of the associated costs. That fulfillment center needs renovation and upgrading, which will require a significant capital investment. With Neill Corporation distributor agreements set to expire in four years, it was in Neill Corporation’s best interest for Thomas Petrillo to seek assurance that Neill Corporation would be able to continue to distribute Aveda products for a longer period of time before Neill Corporation committed the necessary capital investment to improve the distribution center.

47.

At a principals’ meeting at Debra Neill Baker’s house on October 21, 2014, the Neill Principals and Thomas Petrillo agreed that they would jointly seek an extension of their respective distributor agreements. They further agreed that Thomas Petrillo would discuss that proposal with the leadership of Aveda the following week.

48.

When Thomas Petrillo subsequently discussed the matter with representatives of Aveda, they expressed some concerns about the proposal and informed Thomas Petrillo that approval would probably be conditioned on a requirement that the extended distributorship arrangement be structured in a manner where Thomas Petrillo had control.

49.

Thomas Petrillo kept Edwin Neill and Debra Neill Baker (as the majority Neill shareholder) and the other Neill shareholders fully informed of his conversations about extending the distributorship agreement throughout the process. Furthermore, at Debra's and Edwin's request, Thomas Petrillo also communicated with Marty Hebesin acting as representative of the other Neill Shareholders.

50.

Based on his discussions about extending the distributor agreement, Thomas Petrillo proposed to the Neill Shareholders a joint distributor arrangement that would both meet Aveda's requirements and address issues raised by the Neill Companies. Although Thomas Petrillo proposed a modified approach to the notice and consent procedures in the Consulting Agreements, at no time did he propose that the Neill Shareholders' relinquish their right to consent to the annual budget and Material Actions.

51.

Ultimately, the Neill Shareholders rejected Thomas Petrillo's proposal for a joint distributor arrangement and he accepted their decision.

52.

With the complete participation, knowledge and approval of the Neill Companies' principals, boards of directors and shareholders, and as part of the coordinated business operations, many business operations of the Neill Companies were coordinated with the operations TSPC and its affiliates. The customer call center operations for Beauty Basics, Inc. were transferred to St. Petersburg, Florida where the TSP companies are based. Additionally, the financial operations for Beauty Basics, Inc. were also transferred to St. Petersburg, Florida. These operations were transferred to Florida with the knowledge of the board of directors of the Neill Companies and were specifically discussed and approved.

53.

It eventually became apparent that neither TSP nor the Neill Companies were capable of handling the operation and maintenance of their computer systems in house, they decided to outsource these operations to another company, Tribridge, pursuant to separate contracts with TSPI and Beauty Basics, Inc. This arrangement was implemented with the knowledge and consent of the Neill Shareholders.

54.

Where TSPC and the Neill Shareholders agreed upon coordinated operations, costs were allocated between the Neill Companies and the TSPC and its affiliates using a plan that was approved by the Neill Shareholders and intended to fairly allocate the costs between the companies.

55.

Despite the success that the TSPC consulting arrangement and the coordinated business operations have brought to the Neill Companies, they now seek to end that relationship. The

Neill Shareholders mistakenly contend that TSPC was attempting a “hostile takeover” of their distributorship arrangement, which was never TSPC’s intent. Perhaps they believe that they no longer need TSPC’s guidance and assistance now that the Neill Companies have become more successful.

56.

Although the Neill Shareholders want to terminate the consulting relationship with TSPC, if they simply terminate the relationship, the Neill Companies will have to pay TSPC significant sums pursuant to the terms of the Consulting Agreement. On the other hand, if the Neill Companies were able to find a basis to terminate the agreement “for cause,” then the amount that they would have to pay TSPC pursuant to the Consulting Agreement is significantly less. Accordingly, in recent weeks, the Neill Shareholders have attempted to manufacture reasons for which they can attempt to terminate the Consulting Agreement for cause.

57.

The Neill Shareholders have another reason for attempting to terminate the Consulting Agreement for Cause. They are actively trying to sell Neill Technologies, Inc.. Pursuant to Section 5.2 of the Consulting Agreement, if any Neill Company is sold during the Agreement Term, then TSPC is entitled to “a payment equal to 20% of the net Proceeds from such Change in Control or Asset Sale.” On the other hand, pursuant to Section 7.6(d) (i), TSPC would not be entitled to any Net Proceeds Payment if the Neill Companies terminate the Consulting Agreement “for cause” before the sale of Neill Technologies, Inc.. As set forth herein, there is no basis for any of the Neill Companies to terminate the Consulting Agreement for cause.

58.

TSPC and Thomas C. Petrillo received a March 6, 2015 letter from Joseph L. Caverly “written at the request of Neill Corporation acting for itself and on behalf of Neill Technologies, Inc., Beauty Basics, Inc. and Vital Information Systems, Inc.” The March 6, 2015 letter stated: “The purpose of this letter is to provide notice of breaches by TSP Consulting and Petrillo of certain of their obligations under the Consulting Agreement.” The letter contained six allegations of breach with respect to alleged Material Actions, each of which relates to the preliminary discussions that Petrillo had about the extension of the distributor agreements and/or Petrillo’s subsequent proposal to the Neill Shareholders for restructuring the distributorship arrangement, (which the Neill Shareholders rejected).

59.

The only specific provision of the Consulting Agreement that the March 6, 2015 cites is Section 4.1(s), which includes among the categories of Material Actions for which Neill Shareholder approval is required: “any other act that under Applicable Law requires the approval of the board of directors or shareholders.” The letter, however, fails to identify any provision of “Applicable Law” that required shareholder or board of director approval for any of the alleged Material Actions set forth in the letter.

60.

TSPC and Thomas Petrillo received a March 18, 2015 letter from Joseph L. Caverly that was “also provided at the request and on behalf of Neill Corporation and related Neill Companies to provide notice of certain additional material breaches of the Consulting Agreement.” This letter asserted two additional alleged breaches by TSPC and Thomas Petrillo:

- “relocating critical functions of the Neill Companies to Florida, moving or changing administrative offices of Neill Companies, and transferring operations or cost and/or profit centers of Neill Companies to another entity by subcontract or otherwise, without the approval of the Neill Companies boards of directors and without full disclosure of TSP Consulting. . . .” The letter did not provide any further detail as to these alleged breaches. The letter asserted that these were Material Actions as set forth in Sections 4.1 (e), (p), (q) and (s) of the Consulting Agreement.
- “engaging in self-dealing transactions that are unfair to the Neill Companies, including but not limited to the structuring and implementation of the fulfillment arrangement, inventory carrying costs and related expenses, and cost-sharing arrangements, in each case without the approval of the Neill Companies’ boards of directors or shareholders after full disclosure by TSP Consulting. . . .” The letter did not provide any further detail as to these alleged breaches. The letter asserted that these alleged actions were in breach of Section 4.1(s) of the Consulting Agreement, but failed to cite any specific provision of Applicable Law that required either Neill Shareholder approval or approval of the board of directors of any of the Neill Companies.

61.

Neill Corporation filed its Petition for Declaratory Judgment on March 18, 2015, the same day as the second Caverly letter, and a service copy was mailed the following day. In doing so, the Neill Corporation did not allow TSPC 30 days to cure any alleged breach as expressly provided in the Consulting Agreement.

62.

Section 4.1 of the Consulting Agreement provides that no Neill Company shall take a Material Action (as defined), “unless such Neill Company provides TSP Consulting with at least thirty (30) days advance written notice of such Material Action (or if such period of advance notice is not practicable under the circumstances, such lesser time period as may be reasonable under the circumstances), and gives TSP Consulting an opportunity to advise such Neill Company with respect thereto, and to object thereto as applicable.”

63.

Among the Material Actions listed in Section 4.1 is “(n) commenting, dismissing or settling any claim, lawsuit, arbitration or other proceeding involving any Neill Company, with an amount in controversy of \$100,00 or more.”

64.

Neill Corporation’s Petition for Declaratory Judgment raises disputes that have amounts in controversy well in excess of \$100,000, and yet Neill Corporation failed to give TSPC thirty days advance written notice and an opportunity to advise Neill Corporation with regard to the Company’s action in filing the suit. Neill Corporation’s action in filing the suit was therefore a breach of Section 4.1 of the Consulting Agreement.

65.

TSPC and Petrillo responded to the two Caverly letters with a letter dated March 30, 2015, in which they explained (among other things) that: (1) many of the alleged actions were not Material Actions within the meaning of Sections 4.1 (a) - (s) and therefore did not require Neill Shareholder Approval or approval of the boards of directors of the Neill Companies; (2) there was insufficient information with respect to a number of alleged breaches to allow a

meaningful response or an attempted cure (if appropriate); (3) TSPC had kept the Neill Shareholders informed of its actions, and where appropriate, and obtained their advance consent as to its proposed courses of action.

66.

In the response to the Caverly letters, and pursuant to Section 4.1 of the Consulting Agreement, TSPC also delivered written notice of its objection to the filing of the Petition for Declaratory Judgment.

67.

Edwin H. Neill, III has disclosed TSPC Confidential Information to Neill Company employees, in breach of his obligations under his Side Letter and Section 8.2(a)(b) of the Consulting Agreement, and in breach of his fiduciary duties as an officer and director of Neill Companies. Edwin has told some Neill Company employees that Thomas C. Petrillo is trying to “take over the Neill Companies.” The negotiations between TSPC and the Neill Companies were confidential, and those employees had no need to know information about those discussions. What is worse, Edwin mischaracterized the nature of the negotiations, suggesting that Thomas Petrillo intended a “hostile takeover” of the Neill Companies, which has never been the case.

68.

The Neill Companies and Edwin H. Neill, III are also in breach of their obligations to provide Thomas Petrillo with the information and cooperation he needs to comply with his obligations under the Consulting Agreement. (*See* Consulting Agreement Sections 3.1(a), 5.10, and 12.3.) Among other things, they have breached this obligation in the following ways:

Edwin H. Neill, III and the Neill Companies have failed to provide TSPC and Thomas Petrillo with corporate governance documents, despite repeated requests. Among other things, the Neill Companies and Edwin H. Neill, III have failed to provide proper documentation of (i) the parties' consent to corporate actions; and (ii) annual Shareholder and Board actions that appoint Thomas Petrillo as a director and officer of the Neill Companies. For example, Edwin H. Neill, III and the Neill Companies have failed to timely complete the minutes of board meetings and to convene necessary meetings of the board of directors. The failure to provide information also constitutes a breach of Edwin H. Neill, III's fiduciary duties as an officer and director of the Neill Companies. This breach is particularly egregious given that the obligation to provide this information falls within Edwin's responsibility as General Counsel for the Neill Companies, and as Secretary for some of them.

69.

Edwin H. Neill, III has also breached his obligation to provide Thomas Petrillo with notice of, and an opportunity to consult on, Material Actions. (*See* Section 4.1). For example, Edwin H. Neill, III allowed Neill Corporation to over extend credit to a salon owned by Edwin's personal friend. That extension of credit was significantly higher than any credit provided to other customers, and was far outside the ordinary course of business, and thus was a Material Action defined in Section 4.1(h) of the Consulting Agreement. Not only did Edwin fail to comply with the requirements of Section 4.1(h) with respect to the extension of credit, he did not discuss the matter with Thomas Petrillo or provide Thomas Petrillo with even informal notice. Rather, Thomas Petrillo learned about the credit extension independently.

70.

To the extent that the Neill Companies contend that certain actions that Thomas Petrillo took constitute a breach of the fiduciary duties that he owed as an officer or director of those companies, the Neill Companies breached the following obligation in Article IX of the Consulting Agreement by failing to give him adequate legal advice concerning his duties: “ Each Neill Company shall ensure that, as an officer and director of the Neill Companies, Petrillo receives the legal advice from the Neill Companies’ counsel with respect to corporate governance, fiduciary duty and other corporate matters, as well as with operational questions to the same extent as such advice is provided to the Neill Principals and other Neill Company officers and directors.”

REQUEST FOR DECLARATORY JUDGMENT RE BREACH OF CONTRACT

71.

TSPC re-alleges its averments and allegations as set forth in paragraphs 1-70 above.

72.

In light of the disputes between the parties set forth above, and pursuant to 28 U.S.C. §2201, TSPC seeks a declaratory judgment against Defendant-in-Counterclaim and Third-Party Defendants declaring:

(i) that the only Material Actions under the Consulting Agreement and contemplated by the parties are the ones to which the parties expressly agreed and which they enumerated in Section 4.1 (a) – (s) of the Consulting Agreement;

(ii) that the concept of Material Actions under the Consulting Agreement only requires Neill Shareholder approval prior to the time that any of the enumerated actions are

taken; no Neill Shareholder Approval is required for preliminary discussions, or proposals that do not result in final actions;

(iii) that where required, TSPC sought and obtained Neill Shareholder Approval with respect to Material Actions;

(iv) that before any of the Neill Companies can attempt to terminate the Consulting Agreement for cause, they must provide TSPC with notice of an alleged breach, with sufficient detail, within 10 days of when they learn of a “for cause” event (*see* Consulting Agreement, Section 7.3);

(v) that with respect to the allegations of breach set forth in the March 6, 2015 and March 18, 2015 Caverly letters and in their Petition for Declaratory Judgment, the Neill Companies failed to provide timely notice within ten days of when they learned of the event as required by Section 7.3;

(vi) that any notice of an alleged failure to obtain Neill Shareholder approval for a Material Action must contain sufficient detail to allow TSPC and Petrillo to form a meaningful response, and if necessary, to effect a cure of any alleged breach;

(vii) the notices of alleged breach set forth in the March 6, 2015 and March 18, 2015 Caverly letters and in their Petition for Declaratory Judgment, the Neill Companies failed to provide sufficiently detailed notice to allow TSPC and Petrillo to make a meaningful response or, if appropriate, attempt a cure;

(viii) that TSPC and Petrillo are entitled under Section 7.3 (b)(ix) of the Consulting Agreement to 30 days in which to cure any alleged breach of Article IV of the Consulting Agreement;

(ix) that because Neill Corporation failed to provide sufficiently detailed notice of alleged breaches, the 30 day cure period for those alleged breaches has not yet commenced;

(x) that the Neill Corporation filed the Petition for Declaratory Judgment before allowing TSPC 30 days to cure the breaches in the March 6, 2015 and March 18, 2015 Caverly letters and in the Petition for Declaratory Judgment;

(xi) that none of the Neill Companies have established a basis for terminating the Consulting Agreement for cause and therefore, the Consulting Agreement remains in full force and effect;

(xii) that pursuant to Section 3.1 of the Consulting Agreement, Thomas Petrillo is and remains as Chief Operating Officer for each of the Neill Companies;

(xiii) that pursuant to Section 3.2 of the Consulting Agreement, Thomas Petrillo is and remains as director of each of the Neill Companies;

(xiv) that under Section 4.1(r) of the Consulting Agreement, TPSC is to get 30 days advance notice of a sale or change of control of any Neill Company, including Neill Technologies, Inc.;

(xv) that in the event of a sale of Neill Technologies, Inc., as currently contemplated, TSPC would be entitled to the Net Proceeds payment as set forth in Section 5.2 of the Consulting Agreement;

(xvi) that Neill Corporation breached Section 4.1 of the Consulting Agreement by failing to give TSPC thirty days advance written notice of its intent to file the Petition for Declaratory Judgment;

(xvii) that pursuant to Section 4.1 of the Consulting Agreement, TSPC provided an objection to Neill Corporation with respect to the filing of the Petition for Declaratory Judgment;

(xviii) that Edwin H. Neill, III's revelation of TSPC Confidential Information is a breach of Section 8.2(a)(b) of the Consulting Agreement;

(xix) that the diversion of funds from the Neill Companies to pay personal expenses of the Neill Shareholders or their family members constitutes a breach of Sections 4.1 and 5.12 of the Consulting Agreement;

(xx) that Edwin H. Neill, III and Neill Corporation breached the Consulting Agreement by failing to provide Thomas Petrillo and TSPC on a timely basis with the information that they need in order to fulfill their duties under the Consulting Agreement;

(xxi) that Edwin H. Neill, III and Neill Corporation breached Sections 4.1(h) and 5.12 by of the Consulting Agreement by overextending credit to another company; and

(xxii) that to the extent that any of TSPC's or Thomas Petrillo's actions are deemed to be a breach of fiduciary duty, which is denied, then the Neill Companies breached the Consulting Agreement by failing to provide Petrillo adequate legal counsel as required by Article IX of the Consulting Agreement.

DAMAGES FOR BREACH OF CONTRACT

73.

TSPC re-alleges its averments and allegations as set forth in paragraphs 1-72 above.

74.

As set forth above, the Neill Corporation and Third Party Defendants have breached the Consulting Agreement in numerous respects. These breaches have damaged TSPC in various ways as will be shown at trial. Accordingly, in addition to any payments due under the Consulting Agreement, and subject to the limitation on Remedies as provided in Section 12.4, TSPC is entitled to recover such damages as will be proven at trial.

PRAYER

WHEREFORE, Defendant, Counterclaimant, and Third-Party Plaintiff, TSP Consulting, Inc., prays:

a) That its Answer and affirmative defenses be deemed good and sufficient and after due proceedings are had, this Court dismiss the Petition for Declaratory Judgment, with prejudice, at Plaintiffs sole cost;

b) That its Counterclaim and Third-Party Demand be deemed good and sufficient and that Plaintiff, Neill Corporation, and Third-Party Defendants, Neill Technologies, Inc., Beauty Basics, Inc., Vital Information Systems, Inc. and Edwin H. Neill, III be cited to appear and answer the same;

c) That after due proceedings are had, that there be judgment rendered on the Counterclaim and Third-Party Demand in favor to TSP Consulting, Inc. and against Neill Corporation, Neill Technologies, Inc., Beauty Basics, Inc., Vital Information Systems, Inc. and Edwin H. Neill, III granting the declaratory relief as requested above;

d) That after due proceedings are had, that there be judgment rendered on the Counterclaim and Third-Party Demand in favor to TSP Consulting, Inc. and against Neill Corporation, Neill Technologies, Inc., Beauty Basics, Inc., Vital Information Systems, Inc. and Edwin H. Neill, III awarding such damages as may be proven at trial; and

e) That TSP Consulting, Inc. be granted such further legal or equitable relief to which it might be entitled.

Respectfully submitted,

s/Edward H. Bergin

EDWARD H. BERGIN (#2992) (Trial Attorney)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served upon all counsel of record by United States mail, postage prepaid and properly addressed, this 30th day of March, 2015.

s/ Edward H. Bergin