

NOTIFY

18/10

50

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2184CV02858-BLS1

DR. SURESH C. SRIVASTAVA

vs.

SUNITA SRIVASTAVA & others¹

MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS'
MOTIONS TO DISMISS

The plaintiff, Dr. Suresh C. Srivastava (“Suresh”), commenced this action against his wife, Sunita Srivastava (“Sunita”), and his two sons Amar Srivastava (“Amar”) and Anuj Srivastava (“Anuj”) (collectively, “individual defendants”), alleging that he has been “frozen out” of ChemGenes Corporation (“ChemGenes”), the close corporation he founded. The rambling and lengthy First Amended Complaint (“Complaint”) also names as nominal defendants ChemGenes and related corporate entities. The Complaint generally alleges that Amar and Anuj are not proper directors of ChemGenes, questions Sunita’s ownership interest in ChemGenes, and asserts that Suresh has been harmed by the business decisions the individual defendants have made. The defendants now each move to dismiss under both Mass. R. Civ. P. 8(a) and 12(b)(6).² Following a hearing on July 15, 2022, and consideration of the materials submitted, the motions are **ALLOWED**.

Notice sent (S) 08.11.22
hvj

¹ Amar Srivastava, Anuj Srivastava, and, as nominal defendants: ChemGenes Corporation; ChemGenes International Sales NY, Inc.; and CG900 Middlesex LLC.

² The nominal defendants ChemGenes Corporation; ChemGenes International Sales NY, Inc.; and CG900 Middlesex LLC, filed a joint motion to dismiss; the brothers Amar and Anuj filed a joint motion to dismiss; and Sunita filed a motion to dismiss.

BACKGROUND

The Complaint, as well as the materials appended to it and to the motions to dismiss, *see Marram v. Kobrick Offshore Fund, Ltd.*, 442 Mass. 43, 45 n.4 (2004), set forth the following relevant facts, with further facts reserved for later discussion.

Suresh, who has a doctorate in chemistry, formed ChemGenes in 1981 to produce DNA and RNA products for sale to the pharmaceutical and biotech industry. It is a Massachusetts company, headquartered in Wilmington. Since its founding, Suresh has been a director of ChemGenes and its president, while Sunita has been its clerk and secretary. In 1988, she joined the board of directors (the “Board”) with Suresh. As evidenced by the stock certificates attached to the Complaint, Sunita is also a joint shareholder of the majority of ChemGenes’s issued stock with Suresh.³ Sometime between 1999 and 2002, Amar became the third director of ChemGenes; since 2002 he has been listed as a director on ChemGenes’s annual filing to the Secretary of the Commonwealth. On June 1, 2020, Anuj also was named a director by majority vote of the Board (Amar and Sunita), over Suresh’s objection.

Beginning in 2020, ChemGenes experienced a surging demand for certain products, which are components used in the manufacture of the COVID-19 vaccine. To address that additional demand, Amar, Sunita, and Anuj, as directors, voted to create a corporate entity, nominal defendant CG900 Middlesex LLC, to acquire a larger parcel of real estate to be able to expand ChemGenes’s operations, over Suresh’s objection. The sole member of CG900 Middlesex LLC is ChemGenes. They also voted, over Suresh’s objection, to seek funding for

³ The stock certificates attached to pleadings each list both Sunita Srivastava and Suresh C. Srivastava as joint owners of the shares, with the exception of certificate number 23, which lists as the holder the “Srivastava Family One Irrevocable Trust.” A stock issue list ledger also states that they are “joint owners” of stock issued in 1981 and 1982.

the expansion from Harbor Bank, and to terminate ChemGenes's line of credit with Santander Bank. On December 16, 2021, Suresh commenced the present action.⁴

DISCUSSION

The parties move for dismissal under both Rule 8(a) and Rule 12(b)(6). The latter allows for dismissal of a complaint when the factual allegations contained within it do not suggest a plausible entitlement to relief. *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 635-636 (2008); *Fraelick v. Perket PR, Inc.*, 83 Mass. App. Ct. 698, 699-700 (2013). In ruling on the motion, the court accepts the factual allegations as true and draws all reasonable inferences in the plaintiff's favor. *Fraelick*, 83 Mass. App. Ct. at 699-700. A dismissal under Rule 8(a)(1), generally without prejudice, occurs when a complaint fails to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief," as required under that rule. Mass. R. Civ. P. 8(a)(1). See *G.E.B. v. S.R.W.*, 56 Mass. App. Ct. 1107, 2002 WL 31487854 at *2 (2002) (Unpublished Opinion).

The Complaint asserts twenty-four causes of action against the various defendants, which the court will address below, grouping the claims together as appropriate to the analysis.

I. Derivative Claims

Many, if not most of the claims Suresh asserts, arise from corporate actions and business decisions the Board took with respect to ChemGenes. These include claims for: breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, civil conspiracy, interference with business relations, failure to hold regular shareholder meetings, violations of various statutes under the Business Corporations Act, G.L. c. 156D ("Act"),⁵ as well as claims for declaratory

⁴ On December 28, 2021, the court denied Suresh's motion for a preliminary injunction in an oral ruling from the bench, following a hearing.

⁵ Specifically, violations of G.L. c. 156D, § 1.20 and 1.29, requiring annual corporate reports, G.L. c. 156D, § 2.02, specifying indemnification limits, G.L. c. 156D, § 6.27, providing for restrictions on transfers of shares; G.L. c.

relief to resolve an illusory bylaw provision, illegal special Board meetings, and unauthorized purchase of real estate. The Complaint, however, fails to explain, detail, or specify the separate injuries Suresh incurred, as distinct from the corporation as a whole. Rather, in conclusory fashion, the Complaint repeats the allegation that the actions alleged “actually and proximately caused and continue[] to cause Suresh harm for which he is entitled to equitable relief and damages.” Absent substantive allegations of individualized harm, Suresh can only pursue these claims derivatively on behalf of the corporation, which requires compliance with the Mass. R. Civ. P. 23.1. *All Tech Networking, LLC v. Pryor*, 2019 WL 2234614 at *3 (Mass. Super. 2019) (citing *Fronk v. Fowler*, 456 Mass. 317, 332 n.23 (2010)). Where it is undisputed that he failed to meet the Rule 23.1 pleading standard, these counts should be dismissed. *See McQuilly v. Belfi*, 99 Mass. App. Ct. 1115, 2021 WL 914034, at *4 (2021) (Unpublished Opinion). *See also* Mass. R. Civ. P. 23.1; *Harhen v. Brown*, 431 Mass. 838, 844 (2000); *Diamond v. Pappathanasi*, 78 Mass. App. Ct. 77, 89 (2010).⁶

Nevertheless, despite this substantial defect, the court, in its discretion, shall address the merits of these claims.

II. Breach of Fiduciary Duty Claims Against Individual Defendants (Counts 1-3, 6-7, 10-11)

Counts 1 through 3 of the Complaint allege breach of fiduciary duty, and aiding and abetting and civil conspiracy to commit the same.⁷ In a close corporation, “shareholders owe

156D, §§ 8.03 and 10.03, regarding articles of organization and board changes, and G.L. c. 156D, §§ 10.20 and 16.21, regarding amendments to bylaws.

⁶ Claims for breach of fiduciary duty may be personal or derivative, depending on the circumstances and the type of harm suffered. *See O'Donnell v. Davidson*, 2017 WL 5559393 at *3 (Mass. Super. 2017) (noting in the context of breach of fiduciary duty that “if the minority shareholder suffers a harm unique to himself . . . he may sue directly. But if the harm perpetrated by the majority is suffered by the corporation, the remedy is a derivative action on behalf of the corporation”). Because the court is addressing the merits of the claims asserted, the determination whether the breach of fiduciary claims are personal or derivative is unnecessary.

⁷ Count 6, entitled “The Failure of Holding Regular Shareholder Meetings Since the 1990s and Using Special Meetings of the Board of Directors as a Pretext for Rights Reserved to the Shareholders”; Count 7, entitled

each other a fiduciary duty of the utmost good faith and loyalty.” *O’Connor v. Kadrmias*, 96 Mass. App. Ct. 273, 282 (2019) (citations omitted). “[A]s in a partnership, the relationship among the stockholders [of a close corporation] must be one of trust, confidence and absolute loyalty if the enterprise is to succeed.” *Id.* (citation omitted). “This shared obligation, however, is not intended to hamper legitimate corporate activity unduly.” *O’Brien v. Pearson*, 449 Mass. 377, 384 (2007). “Where the alleged wrongdoer can demonstrate a legitimate business purpose for his action, no liability will result unless the wronged shareholder succeeds in showing that the proffered legitimate objective could have been achieved through a less harmful, reasonably practicable, alternative mode of action.” *Id.* (citing *Zimmerman v. Bogoff*, 402 Mass. 650, 657 (1988)). See *Brehm v. Eisner*, 746 A.2d 244, 266 (Del. 2000) (“mere disagreement cannot be the grounds for imposing liability based on alleged breaches of fiduciary duty and waste”).

To succeed on a breach of fiduciary claim, a plaintiff also must prove harm and causation. *Eisenstein v. David G. Conlin, P.C.*, 444 Mass. 258, 267 (2005); *Hanover Ins. Co. v. Sutton*, 46 Mass. App. Ct. 153, 164 (1999). “The proper remedy for breach of fiduciary duty is to restore to the minority shareholder those benefits which she reasonably expected, but has not received because of the fiduciary breach.” *Brodie v. Jordan*, 447 Mass. 866, 870-871 (2006) (citation omitted).

The Complaint alleges that the individual defendants breached their fiduciary duty to Suresh by voting to diminish his decisional control over the direction of ChemGenes. They allegedly did so by removing his banking authority with Santander Bank, starting a new banking

“Infringement Upon the Rights of Suresh as President”; Count 10, entitled “Violation of [G.L. c. 156D, § 2.02],” noting a corporate director’s duty of loyalty to the corporation and its shareholders; and Count 11, entitled “The Guaranty by ChemGenes of the Harbor One Bank Loan is Not in the Best Interest of ChemGenes” do not assert recognized causes of action. The court accordingly considers them to be duplicative of Count 1 alleging breach of fiduciary duty.

relationship with Harbor Bank, forming CG900 Middlesex LLC to purchase additional property, and making changes to the Board's size and composition and ChemGenes's management. The Complaint fails, however, to explain, even in the most general terms, why these business decisions were illegitimate, fell outside of Suresh's reasonable expectations, or otherwise were not in ChemGenes's best interests, particularly in light of the increased demand for its products due to the COVID-19 pandemic. It also fails to explain how Suresh personally has been harmed in the absence of allegations that his shares, compensation, or status as director and president have been altered.⁸ Under these circumstances, the defendants' motions to dismiss Counts 1-3, 6-7, 10-11 are **ALLOWED**. See *All Tech Networking, LLC vs. Pryor*, 2019 WL 2234614 at *5 (Mass. Super. 2019) (motion to amend denied where conduct alleged in proposed breach of fiduciary duty counterclaim did not place plaintiff in worse position); *Pearson vs. Boylston Cypress, LLC*, Mass. Super., 2012 WL 3139748 at *9 (Mass. Super. 2012) (no breach of fiduciary duty in absence of evidence of fraud, conversion, mismanagement, or other bad faith misconduct).

III. Remaining Claims Against Individual Defendants (Counts 4, 5, 13, 15-17, 18)

Count 4 alleges that the individual defendants tortiously interfered with Suresh's "mutually beneficial banking relationship on behalf of ChemGenes" with Santander Bank, with an improper motive "including the motivation for personal gain to take operational and financial control of ChemGenes away from [Suresh]." Where ChemGenes, not Suresh individually, had a business relationship with Santander, Suresh has no standing to bring this claim on his own behalf. The Complaint likewise fails to explain how the purported interference was not a

⁸ Because the sole member of CG900 Middlesex LLC is ChemGenes, the allegation that Suresh has no ownership interest in the new real estate, or that this manner of structuring the purchase has further frozen him out, is unsupported.

legitimate business decision, or how it personally harmed Suresh. *See Pembroke Country Club, Inc. v. Regency Sav. Bank, F.S.B.*, 62 Mass. App. Ct. 34, 38 (2004) (discussing elements of tortious interference with an advantageous business relationship claim). Accordingly, the motions to dismiss Count 4 are **ALLOWED**.

Count 5, which alleges violations G. L. c. 93A, requires dismissal because disputes among shareholders in a closely held corporation fall outside the scope of the statute. *First Enterprises, Ltd. v. Cooper*, 425 Mass. 344, 347 (1997); *Szalla v. Locke*, 421 Mass. 448, 451, (1995). Accordingly, the motions to dismiss Count 5 are **ALLOWED**.

Count 13 appears to seek reversal of actions undertaken pursuant to a “Waiver of Restriction of Transfer of Stock” document (“Waiver”) executed by Suresh, Sunita, and Amar in connection with the creation and funding of the Srivastava Family One Irrevocable Trust (“Family Trust”) with ChemGenes stock.⁹ The Complaint alleges that Suresh’s and Sunita’s signatures on the Waiver are “suspect,” and that in 2013, when it was signed, Amar was not a legitimately appointed director. The claim requires dismissal for multiple reasons. First, the Complaint’s allegations and the documents in the record undermine any allegation of wrongdoing in connection with the Waiver or the Family Trust. The Complaint acknowledges that Suresh worked with his then attorney on an estate plan in 2013, which included the Waiver and the funding of the Trust with ChemGenes stock. Moreover, Amar has been listed as a director in ChemGenes’s filings and other corporate records for the last twenty years, and Suresh’s unchallenged signature appears on the stock transfers. Second, Count 13 fails to

⁹ Count 13 is entitled “Violation of [G.L. c. 156D, § 6.27] Restriction of Share and Other Securities.” The statute provides that a corporation or shareholders may impose restrictions on the transfer of shares of that corporation. However, the facts alleged in this count are unrelated to the statute and no private cause of action appears to exist either on the face of the statute or in the caselaw.

specify a cause of action, plead facts in relation to the elements of any such cause of action, or explain the specific harm Suresh suffered. Under these circumstances, the motions to dismiss Count 13 are **ALLOWED**.

Counts 15 and 16 allege that the expansion of the Board and creation of new officers in 2020 were invalid, as the actions were not approved by the shareholders. The counts cite G.L. c. 156D, §§ 8.03, 10.03, 10.20, and 16, which provide that amendments to the bylaws and articles of organization, and changes to a board's composition, may be taken by a corporation's board of directors, subject to certain conditions and requirements. *See id.* To the extent the counts attempt to state a cause of action under the Act, they likewise require dismissal where neither the Act nor caselaw establish separate causes of action for their violation. Looking at the facts alleged, they generally assert a breach of the original articles of incorporation and bylaws. To the extent a breach of fiduciary duty is alleged on this basis, it fails for the same reasons already discussed. Counts 21 and 22, which concern similar issues, are addressed, *infra*. The motions to dismiss Counts 15 and 16 are therefore **ALLOWED**.

Count 17 alleges that Suresh did not receive financial reports to which he was entitled as a shareholder under G.L. c. 156D, § 16.20 of the Act. *See id.* ("A corporation shall furnish to its shareholders upon request annual financial statements"). Again, the statute sets forth no private right of action, and none appears to exist in the caselaw.¹⁰ By contrast, G.L. c. 156D, §§ 16.02 and 16.04, together provide a right of inspection of corporate records and a right of action in the Superior Court in the event the corporation fails to comply with a valid request. *See id.*; *Chitwood v. Vertex Pharm., Inc.*, 476 Mass. 667, 667-668 (2017). Where Suresh does not seek

¹⁰ No cases appear to address § 16.20 directly; however, a shareholder's right to review financial records arose in the context of breach of fiduciary duty claim in *Brodie v. Jordan*, 66 Mass. App. Ct. 371, 378-379, reviewed on other grounds, 447 Mass. 866 (2006).

relief under § 16.02, or allege that he complied with its notice and demand requirements, the motions to dismiss Count 17 are **ALLOWED**.

Count 18 alleges elder abuse under G.L. c. 19A, §§14-26. Chapter 19A defines and enumerates the duties and responsibilities of the Department of Elder Affairs. It does not, however, contain language suggesting that a private citizen can sue based on a violation of its provisions. *See Muffin Tr. v. MONY Life Ins. Co. of Am.*, 2019 WL 1141349 at *4 (Mass. Super. 2019) (concluding that no private right of action exists under statute). The motions to dismiss Count 18 are accordingly **ALLOWED**.

IV. Claim Against Amar (Count 8)

Count 8 alleges that Amar failed to file annual reports conforming with the requirements of G.L. c. 156D, § 1.20 of the Act, namely that such reports be filed “by the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers.” G.L. c. 156D, § 1.20(f)(1). The Complaint alleges that when Amar filed the reports as “other officer,” he was not an officer of ChemGenes. However, as with so many claims in this case, no private right of action exists under this statute. Rather, under G.L. c. 156D, § 1.29(b), “[t]he secretary of state shall refer to the attorney general for action evidence of offenses under this section.” For this reason, Amar’s motion to dismiss Count 8 is **ALLOWED**.

V. Claims Against Sunita (Counts 9, 12, 14, 19)

Count 19 seeks a declaratory judgment concerning Sunita joint ownership of the ChemGenes shares with Suresh. A declaratory judgment claim requires proof of an actual controversy, G.L. c. 231A, § 1; the plaintiff’s legal standing to sue; and that all necessary parties have been joined. *Buffalo-Water 1, LLC v. Fid. Real Estate Co., LLC*, 481 Mass. 13, 18 (2018). “The ‘actual controversy’ requirement of G.L. c. 231A, § 1, is to be liberally construed, . . . and a

party seeking declaratory judgment need not demonstrate an actual impairment of rights.”

Boston v. Keene Corp., 406 Mass. 301, 304 (1989) (citation omitted). “An express purpose of declaratory judgment is to ‘afford relief from . . . uncertainty and insecurity with respect to rights, duties, status and other legal relations.’” *Id.* at 304-305 (quoting G.L. c. 231A, § 9).

Count 19 asserts: “There is an actual case or controversy between Suresh and Sunita as to whether Sunita has the right to any shares alleged[] to be jointly owned by them and whether Sunita has the right to unilaterally transfer allegedly jointly owned shares . . . and whether she may transfer half or all of these shares to the Sunita Srivastava Business Interest Trust without Suresh’s consent.” The Complaint seeks a declaration that Suresh solely owns the shares because he supplied the sole consideration for them, and that Sunita’s transfer of her interest to the Business Interest Trust was invalid.

Suresh argues that Sunita has no interest in the shares because they were placed jointly in her name for probate and estate planning purposes only. The claim is unsupported by the facts pleaded, record, and the relevant caselaw. The corporate records establish that Sunita has worked for decades as the corporate clerk and secretary, began working for ChemGenes full time in 1988 after being a part-time lab technician, and, according to 2020 meeting minutes, still works for ChemGenes. Meeting minutes also indicate that she cast votes, gave input, and has been involved in ChemGenes’s corporate affairs since its inception. These facts accordingly do not indicate a gift or an estate plan, but rather that Sunita provided consideration in exchange for her ownership interest. *Blanchette v. Blanchette*, 362 Mass 518 (1972), upon which Suresh relies, is easily distinguishable. *See id.* at 520-522 (in divorce action, wife’s interest in husband’s company stock turned on husband’s donative intent; despite use of words “joint tenants” on shares, court affirmed finding of no intent to make a present gift where wife had no

involvement in stock purchase, thought they would be hers only after husband's death, and "did not think she had the right to sell any interest in them or to do anything with them without his signature"). Where Sunita has a present joint ownership and interest in the shares on the facts here, that interest is hers to assign as she chooses. Sunita's motion to dismiss Count 19 is **ALLOWED**.¹¹

Counts 9, 12, and 14 also assert claims against Sunita. Count 9 is entitled "Violation of [G.L. c. 156D, § 1.42]." The statute provides that three or fewer co-owners of shares constitute "one shareholder" in a corporation's current record of shareholders. *Id.* Count 12 is entitled "violation of [G.L. c. 156D, § 6.21]." The statute concerns the consideration received in exchange for shares issued. *Id.* Where these Counts do not assert separate causes of action under the Act, and are duplicative of the declaratory judgment claim, the court need not address them further. Count 14 is entitled "Violation of [G.L. c. 156D, § 6.31]," and alleges that as clerk, Sunita failed to facilitate the repurchase by ChemGenes of certain shares of company stock.¹² It likewise requires dismissal where neither the statute cited, nor the facts alleged therein assert an identifiable cause of action. Accordingly, Sunita's motion to dismiss Counts 9, 12, and 14 is **ALLOWED**.

VI. Remaining Claims for Declaratory Judgment (Counts 20-24)

Count 20 seeks a declaration "as to [an] illusory provision of corporation bylaws." The apparently illusory provision is in a continuation sheet regarding the validity of corporate contracts in light of interested directors, and provides that the failure of shareholders to approve such contracts will have no effect on their validity. The Complaint seeks to invalidate this

¹¹ Count 19 also seeks a declaration concerning stock issued to Suresh in 1994. Because the court cannot discern how the issuance of this stock concerns the jointly owned shares that are the subject of the claim, the court does not address these additional allegations.

¹² The statute permits a corporation to acquire its own shares. G.L. c. 156D, § 6.31.

language and asserts that that Suresh has been deprived of his right as a shareholder “to approve or disapprove of all contracts entered into by the Board.” The claim, however, cites no conflicts of interest in ChemGenes’s contracts implicating the provisions of the continuation sheet.

Neither does it provide support in the articles of organization or bylaws for the right claimed.

Thus, Count 20 fails to state a claim, and the motions to dismiss it are **ALLOWED**.

Count 21 seeks a declaratory judgment “as to the illegality of all special meetings of the board of directors, the appointment of additional directors and officers and all votes taken at special meetings of the board of directors.” The original 1981 bylaws state that two directors may call a special meeting. The claim alleges that because Amar was never properly elected as a director, the special meetings, called by Amar and Sunita, are void. Where Amar has been listed as a ChemGenes director in corporate filings and other documents since at least 2002, and where Suresh, his father, the company’s founder, director, and president, has never challenged that status until the present, the claim is both contrary to the record and entirely implausible. *See generally Commonwealth v. Carson*, 349 Mass. 430, 433 (1965) (regularity of internal corporate proceedings is presumed and some amount of evidence must be introduced to overcome that presumption). The motions to dismiss Count 21 are **ALLOWED**.

Count 22 seeks a declaration that the financing for ChemGenes’ 2020 acquisition of a parcel of real estate is void because Amar and Anuj, who signed the relevant contracts, were not properly elected as directors and thus had no authority to bind the company. As to Amar, the claim fails for the reasons already discussed, and the motions to dismiss the portion of Count 22 as to him are **ALLOWED**.

Anuj’s election, which occurred in 2020, does not have the same presumption of regularity based on the corporate records coupled with the passage of time. However, the

Complaint fails to cogently and succinctly allege why, and under what authority in the operative bylaws and/or articles of incorporation, Anuj's election by a majority of the Board, or the delegation to him of signing authority, was improper. Of equal concern is the failure to join the other parties interested in the real estate transaction, including Harbor Bank and the seller. *See Kitras v. Town of Aquinnah*, 64 Mass. App. Ct. 285, 290 (2005) ("A person with an interest in land ordinarily should be joined if a judgment could affect that interest").

If, as Suresh urges, the Board was without authority to appoint Anuj, he, as a shareholder and director of the close corporation, may have standing to pursue declaratory relief to resolve uncertainty about his own, and the other directors', corporate authority. The Complaint, however, must allege a cause of action, supported by facts, that the court can follow and understand, and join all interested parties. The motion to dismiss Count 22 as to Anuj is **ALLOWED** under Rule 8, without prejudice to cure the above deficiencies.

Count 23 seeks a declaration that the Family Trust never came into existence. In support, the Complaint asserts that Suresh and Sunita never executed the trust instrument, the shares were never delivered to the trustee, Suresh has no memory of signing the Waiver, and no formal resolution concerning the Family Trust exists in any corporate meeting minutes. This claim, like so many others, is entirely unsupported, and indeed directly contradicted by the record and facts alleged. As discussed in the context of Count 13, nowhere does the Complaint allege that in 2013, when the Family Trust was created, Suresh had no intent to either create it, or fund it through ChemGenes stock. Rather, the Complaint describes how Suresh worked with his attorney to create the Trust, for the benefit of his children. See paras. 102-110. It then notes technical objections that apparently were of no concern to him in 2013, and a vague reference to family discord. Attached to Sunita's motion to dismiss are copies of stock transfers, signed by

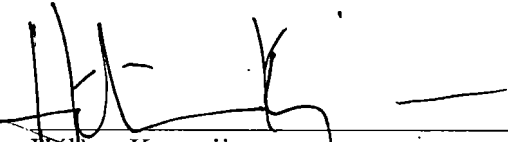
Suresh. Under these circumstances, Count 23 fails to state a claim, and the motions to dismiss it are **ALLOWED**. See generally *Houser Buick, Inc. v. Houser*, 89 Mass. App. Ct. 1113, 2016 WL 1079402 at *1 (2016) (Unpublished Opinion) (director complicit in years of corporate informality may not rely on same informality to support his position in court) (*and cases cited, including Trager v. Schwartz*, 345 Mass. 653, 568-659 (1963) (small family corporation conducted without overemphasis on corporate formalities reasonably not to be held to strict standards of larger commercial organizations)).

Finally, Count 24 seeks a declaration that Suresh is a victim of wrongful discharge. Where the Complaint acknowledges, however, that Suresh remains employed as ChemGenes's president, no actual discharge or forced resignation has occurred. The motions to dismiss Count 24 are **ALLOWED**.

ORDER

For the forgoing reasons, the motions to dismiss the First Amended Complaint are **ALLOWED** under Mass. R. Civ. P. 12(b)(6), with prejudice, with the exception of the portion Count 22 seeking a declaration as to Anuj's election as director and delegation of signing authority for ChemGenes. The motions to dismiss that portion of Count 22 are **ALLOWED**, without prejudice under Mass. R. Civ. P. 8(a). The plaintiff shall have thirty days to amend his declaratory judgment claim as to Anuj, consistent with the requirements described in the court's decision.

Dated: August 8, 2022


Helene Kazanjian
Justice of the Superior Court