

REDACTED (both of whom were Limited Partners), and that REDACTED was planning to contact "more LPs to see how they react to the news."⁵¹

On October 2, 2012, REDACTED requested additional information regarding the Partnership, including audits of the two private equity growth funds.⁵² Figlus, having previously received an audit from the General Partner, provided it to REDACTED with full knowledge that the audit was non-public.⁵³ Also on or about October 2, 2012, REDACTED contacted multiple Limited Partners,⁵⁴ informed them that he possessed "documented proof" of alleged impropriety by the General Partner and requested interviews concerning that alleged impropriety.⁵⁵ The emails from REDACTED included non-public information found only in the Funding Notices issued to the Limited Partners, including the name of the Limited Partners and the amount of their respective capital commitments to the Partnership.⁵⁶

On October 3, 2012, Figlus provided REDACTED with an organizational chart (based upon Figlus' speculation) and the 2011 audited financial statements for the Partnership.⁵⁷ In the cover email, Figlus stated:

I have read thru the LP agreement again, but I believe that

⁵¹ Ex. A, Tab 159 at Figlus 000137; *see also* Figlus Dep. at 188-189.

⁵² Ex. A, Tab 165 at Figlus 001090.

⁵³ Figlus Dep. at 210.

⁵⁴ *See* Ex. C.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Ex. A, Tabs 173-175 at Figlus 001092-1113.

EEGF investors do not have the right to access information about any HCA company.... Per se, I think there is probably nothing illegal about any of the loans, but it is something that I believe investors in the funds would not like if they knew about it and could potentially exert great pressure on HCS management over this.⁵⁸

Although the above email refers to reading the Partnership Agreement "again," during his deposition Figlus testified that he had not (in fact) read the Partnership Agreement as of that date.⁵⁹ As for illegality, Figlus confirmed during his deposition that does not contend in this action that the "HCA loans" were illegal.⁶⁰

Also on October 3, 2012, REDACTED informed Figlus that the General Partner and the Partnership had learned of Figlus' improper disclosures:

Well, [Jaresko] knows. Word has got back to her from some of the investors.

She called two REDACTED editors last night crying, not me, for some reason.

She said I don't know when I'm talking about and that "the damage has already been done" although she says nothing wrong happened.⁶¹

Figlus responded stating, in part:

⁵⁸ *Id.* at Figlus 001092.

⁵⁹ Figlus Dep. at 213, 214 ("Q. And this is October 2012, which is 18 months after you were provided a copy of the partnership agreement; right? A. Yes. Q. And during that 18 months you never went back and actually read it? A. No.").

⁶⁰ Figlus Dep. at 48, 54-55; 257 ("Q. REDACTED also says [Jaresko] didn't break the law; you agree with that, right? A. Right.").

⁶¹ Ex. A, Tab 187 at Figlus 001086.

Interesting. So she knows about me, but does she know about me talking to you specifically? Can you be more specific on what she said about everything?

There were only a couple people that knew I was talking to a reporter plus a couple of others who knew about the facts that I have given you (four total). *Two of them were investors, but they are my close friends who support me in the divorce and would not have discussed this with anyone.* If any investors told her about it, it must have come from elsewhere, not from me. I told three other persons *that I have information that could be damaging to Natalie [Jaresko],* but did not give them details....⁶²

According to REDACTED, Jaresko "easily deduced" that Figlus was the source of the Partnership's non-public information and REDACTED expressed doubt as to the story's credibility because "there's the element of my 'source's' motivation for leaking this."⁶³

REDACTED thereafter confirmed that none of the eight or nine investors that he contacted (which, collectively, hold more than REDACTED of the Partnership interests) responded to his inquiries or would discuss the Partnership with him.⁶⁴

In a later communication on October 3, 2012, REDACTED (again) expressed doubt as to the story's credibility because Limited Partners (other than Figlus) would not respond to him, and because:

[Jaresko] didn't break the law[] and the fact that *I know all this based on documents that aren't publicly available received from her ex-husband . . .* it won't look good, it'll

⁶² *Id.* at Figlus 001085-86 (emphasis added).

⁶³ *Id.* at Figlus 001085.

⁶⁴ *Id.*

look like we're after her.⁶⁵

Notably, the foregoing email expressly confirms that both Figlus and REDACTED understood that the Partnership information at issue was non-public. As for the final point, sometimes you cannot hide your true motivation.

IV. FIGLUS IGNORED A CEASE AND DESIST LETTER.

On October 5, 2012, the General Partner delivered a cease and desist letter to Figlus on behalf of the Partnership.⁶⁶ The General Partner demanded that Figlus cease and desist any further disclosure of non-public information concerning the General Partner or the Partnership.⁶⁷ Figlus, however, ignored that demand. In fact, Figlus did not even bother to review the Partnership Agreement at that time to determine whether or not he was bound by the Confidentiality Provision.⁶⁸

Three days later, on October 8, 2012, pursuant to Section 14.14(b)(ii) of the Partnership Agreement, the Partnership demanded that Figlus return all copies of any non-public information in his possession, custody and control concerning the General Partner or the Partnership that was provided to him, directly or indirectly, by the General

⁶⁵ *Id.* at Figlus 001084 (emphasis added).

⁶⁶ Ex. D ("[Y]ou are obligated not to disclose 'information which is non-public information furnished by the General Partner regarding the General Partner and the Partnership ... received by [you] pursuant to the [Partnership Agreement].' Furthermore, as a limited partner of the Fund you have agreed that 'irreparable damage would occur if the provisions of this Section 14.14 were breached.'").

⁶⁷ *Id.*

⁶⁸ Figlus Dep. at 240-241.

Partner or the Partnership.⁶⁹ Figlus ignored that demand as well, and continued his discussions with REDACTED

Figlus contacted REDACTED on October 10, 2012 – the day Plaintiffs filed their Complaint – to explain how the Partnership's funding worked.⁷⁰ In fact, Figlus and REDACTED communicated multiple times via email on October 10, 2012, and also set a time to discuss face-to-face via Skype.⁷¹ Despite Figlus' willingness to continue breaching the Confidentiality Provision, REDACTED suspended the Partnership article related to the Partnership.⁷²

On October 19, 2012, this Court entered an order temporarily restraining Figlus from "disclosing any nonpublic (or confidential) information regarding the General Partner and the Partnership."⁷³

⁶⁹ Ex. E.

⁷⁰ Ex. A, Tab 181 at Figlus 001073.

⁷¹ See Ex. A, Tab 184 at Figlus 001079; Ex. A, Tab 186 at Figlus 001081; *see also* Figlus Dep. at 245-246.

⁷² Figlus Dep. at 246-248.

⁷³ Trans ID. 47163533.

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO A PRELIMINARY INJUNCTION.

The standard governing the issuance of a preliminary injunction is well settled. To obtain a preliminary injunction, plaintiffs must demonstrate: "(1) a reasonable probability of success on the merits at a final hearing; (2) an imminent threat of irreparable injury; and (3) a balance of the equities that tips in favor of issuance of the requested relief."⁷⁴ "[T]here is no steadfast formula for the relative weight each deserves. Accordingly, a strong demonstration as to one element may serve to overcome a marginal demonstration of another."⁷⁵ "[I]n other words, a strong showing on one element may overcome a weak showing on another element."⁷⁶ In sum, this Court has broad discretion to grant or deny a motion for preliminary injunction.⁷⁷ Here, Plaintiffs have satisfied each element and this Court should issue the requested injunction.

Plaintiffs have demonstrated a reasonable probability of success on their claim that Figlus breached the Confidentiality Provision by disclosing non-public Partnership information provided by the General Partner. Moreover, Figlus has contractually conceded that such a breach constitutes irreparable harm. Accordingly, Plaintiffs are

⁷⁴ *In re Micromet, Inc. S'holders Litig.*, 2012 WL 681785, at *5 (Del. Ch. Feb. 29, 2012) (quoting *Nutzz.com, LLC v. Verture, Inc.*, 2005 WL 1653974, at *6 (Del. Ch. July 6, 2005)).

⁷⁵ *Id.* (quoting *Alpha Builders, Inc. v. Sullivan*, 2004 WL 2694917, at *3 (Del. Ch. Nov. 5, 2004)).

⁷⁶ *Roseton OL, LLC v. Dynegy Holdings Inc.*, 2011 WL 3275965, at *9 (Del. Ch. July 29, 2011).

⁷⁷ *Id.*

entitled to an order preliminary enjoining Figlus from further disclosing any non-public information regarding the General Partner or the Partnership.

A. Plaintiffs Have A Reasonable Probability Of Success On The Merits.

"To establish a reasonable probability of success on the merits of [a breach of contract] claim, [Plaintiffs] must prove that the [Partnership] Agreement is enforceable, that [Figlus] materially breached that [Partnership] Agreement, and that [Plaintiffs] suffered damages as a result of [Figlus'] breach."⁷⁸ Here, Plaintiffs have demonstrated a reasonable probability of success that (1) the Partnership Agreement is enforceable; (2) that Figlus breached the Confidentiality Provision contained therein; and (3) the parties' contractually-stipulated that "irreparable damage would occur if" the Confidentiality Provision was breached. That is, as a Limited Partner, Figlus is bound by the Confidentiality Provision, which precludes him from disclosing non-public information related to the General Partner or the Partnership that he received from the General Partner pursuant to the Partnership Agreement. Figlus breached the Confidentiality Provision by disclosing non-public Partnership information to REDACTED and, as a result, the Partnership has been irreparably harmed.

⁷⁸ *Hough Assocs., Inc. v. Hill*, 2007 WL 148751, at *14 (Del. Ch. Jan. 17, 2007) (citing *VLIW Technology, LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003)).

1. Figlus Is Bound By The Confidentiality Provision.

"The first step in evaluating [Plaintiffs'] breach of contract claim is to determine whether the covenants are valid and enforceable."⁷⁹ "A contract is valid if it manifests mutual assent by the parties and they have exchanged adequate consideration."⁸⁰ Here, there can be no question that the Partnership Agreement is valid and enforceable. Figlus and Jaresko executed the Subscription Agreement, authorizing the General Partner to execute the Partnership Agreement on their behalf, and committed REDACTED in exchange for Limited Partnership interests. As of June 30, 2012, Figlus and Jaresko had contributed REDACTED to the Partnership in relation to their Limited Partnership interests, an amount in excess of their commitment.⁸¹ Accordingly, by executing the investment documents and consummating the transactions contemplated thereby, the parties manifested mutual assent and exchanged adequate consideration, *i.e.*, cash contributions in exchange for Limited Partnership interests.⁸²

⁷⁹ *Concord Steel, Inc. v. Wilmington Steel Processing Co.*, 2008 WL 902406, at *4 (Del. Ch. Apr. 3, 2008); *see also In re K-Sea Trans. Partners L.P. Unitholders Litig.*, 2011 WL 2410395, at *8 (Del. Ch. June 10, 2011) ("Consistent with the underlying policy of freedom of contract espoused by the Delaware Legislature, limited partnership agreements are to be construed in accordance with their literal terms.... By focusing on the partnership agreement, the courts give 'maximum effect to the principle of freedom of contract' and maintain the preeminence of the intent of the parties to the contract.") (citations omitted).

⁸⁰ *Concord Steel*, 2008 WL 902406, at *4.

⁸¹ Ex. A, Tabs 154-156 at Figlus 0190.

⁸² *See* Ex. A, Tab 1 § 7(g) (Subscription Agreement) ("The signature on the signature page of this Subscription Agreement is genuine, and the Subscriber has legal competence and

Figlus' failure to read the Subscription Agreement or the Partnership Agreement cannot somehow justify his breach or render the contracts unenforceable as to Figlus.⁸³

As the Delaware Supreme Court has observed,

[i]t will not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained. If this were permitted, contracts would not be worth the paper on which they are written. But such is not the law. *A contractor must stand by the words of his contract; and, if he will not read what he signs, he alone is responsible for his omission.*⁸⁴

Nor can Figlus "silently accept [the Partnership Agreement's] benefits and then object to its perceived disadvantages."⁸⁵

Accordingly, Figlus is bound by the clear and unambiguous Confidentiality Provision. As a result, Figlus was required to maintain the confidentiality of non-public information relating to the General Partner or the Partnership, which he received from the General Partner pursuant to the Partnership Agreement.

capacity to execute the same, and this Subscription Agreement constitutes, and the Partnership Agreement when executed and delivered will constitute, a valid and binding agreement of the Subscriber, enforceable against the Subscriber in accordance with its terms.").

⁸³ *Graham v. State Farm Mut. Auto. Ins. Co.*, 565 A.2d 908, 913 (Del. 1989) ("[N]or can a party's failure to read a contract justify its avoidance.").

⁸⁴ *Pellaton v. Bank of New York*, 592 A.2d 473, 477 (Del. 1991) (quoting *Upton, Assignee v. Tribilcock*, 91 U.S. 45 (1875)).

⁸⁵ *Graham*, 565 A.2d at 913.

2. Figlus Breached The Confidentiality Provision.

As set forth above, the Confidentiality Provision provides that

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As an initial matter, Figlus has admitted that he breached the Confidentiality Provision:

Q: So you have the option of breaching the agreement and bearing the consequences; right?

A: Apparently, yes.

Q: And you made the decision to do that?

Mr. Pazuniak: Objection.

Q: Correct?

Mr. Pazuniak: Objection.

A: Yes.⁸⁷

⁸⁶ Ex. A, Tab 5 § 14.14 (Partnership Agreement).

⁸⁷ Figlus Dep. at 278.

Accordingly, based on the above admission alone, this Court should conclude that Plaintiffs demonstrated a reasonable probability of success on their claim that Figlus breached the Confidentiality Provision contained in the Partnership Agreement.

Nevertheless, the limited record developed in discovery establishes that Figlus, a Limited Partner, obtained non-public information furnished by the General Partner relating to the General Partner and the Partnership and disclosed such information to, among others, REDACTED . First, Plaintiffs do not dispute whether Figlus is a Limited Partner. Plaintiffs alleged that Figlus is a Limited Partner in their Complaint and Figlus admitted as much in his answer.⁸⁸ Second, Figlus conceded that he disclosed information to REDACTED .⁸⁹ Third, Figlus also admitted that the information he disclosed to REDACTED was non-public.⁹⁰ Fourth, Figlus received the non-public information from Koszarny, the General Partner's CFO, who was acting in such capacity when she furnished the non-public information at issue to Figlus. Fifth, it cannot be reasonably disputed that the non-public information was provided to Figlus pursuant to the Partnership Agreement – *i.e.*, it clearly would not have been provided to him if he were not a Limited Partner.

⁸⁸ See Compl. ¶ 3 (Trans. ID 46878969); Answer ¶ 3 (Trans. ID 47292497).

⁸⁹ See Answer ¶ 7 ("Defendant admits that Defendant provided certain information to an investigative reporter at the REDACTED "); Ex. F ¶ 7 (Amended Responses to Interrogatories).

⁹⁰ See Figlus Dep. at 264; Ex. G ¶ 13 (admitting that some or all of the documents and information Figlus provided to the REDACTED were non-public).

In sum, Figlus disclosed non-public information related to the General Partner and the Partnership, which he received from the General Partner, to a newspaper reporter in Ukraine. That disclosure by Figlus breached the Confidentiality Provision. Accordingly, Plaintiffs have demonstrated a reasonable probability of success on the merits.

B. Plaintiffs Have Established Irreparable Harm.

The contractual stipulation of irreparable harm "alone suffices to establish the element of irreparable harm, and [Figlus] cannot be heard to contend otherwise."⁹¹ That is, the parties to the Partnership Agreement, including Figlus, agreed that breaches of the Confidentiality Provision would result in irreparable harm, and that the Partnership would "be entitled to an injunction or injunctions to prevent breaches of [the Confidentiality Provision] and to enforce specifically the terms and provisions [t]hereof."⁹² "This Court 'has repeatedly held that contractual stipulations as to irreparable harm alone suffice to establish that element for the purposes of issuing preliminary injunctive relief.'"⁹³

⁹¹ *Vitalink Pharm. Servs., Inc. v. Grancare, Inc.*, 1997 WL 458494, at *9 (Del. Ch. Aug. 7, 1997).

⁹² Ex. A, Tab 5 § 14.14 (Partnership Agreement).

⁹³ *Potter v. Cmty. Commc'ns Corp.*, 2004 WL 550747, at *3 n.10 (Del. Ch. Mar. 11, 2004) (quoting *Cirrus Holding Co. v. Cirrus Indus., Inc.*, 794 A.2d 1191, 1209 (Del. Ch. 2001)); see also *True N. Commc'ns, Inc. v. Publicis, S.A.*, 711 A.2d 34, 44 (Del. Ch. 1997); *Vitalink Pharmacy Servs., Inc.*, 1997 WL 458494, at *9; *SLC Beverages, Inc. v. Burnup & Sims, Inc.*, 1987 WL 16035, at *2 (Del. Ch. Aug. 20, 1987).

Accordingly, Plaintiffs have established the requisite showing of irreparable harm sufficient to support this Court's issuance of a preliminary injunction.⁹⁴

Even in the absence of such a contractual stipulation, "under Delaware law, the improper use and disclosure of information that was subject to a confidentiality agreement has been held to constitute irreparable harm."⁹⁵ For instance, in *Stirling Investment Holdings, Inc. v. Glenoit Universal, Ltd.*, the Court held that plaintiff's "claim of irreparable harm ... [was] clearly valid" because "of a contractual right to maintain the confidentiality of the terms of the Agreement."⁹⁶ The Court further observed in *Stirling* that if the confidentiality provision was validated, "it would be irretrievably lost if the prohibited information were publicly disclosed, and that loss could not be adequately remedied by an award of damages."⁹⁷ Thus, "[o]n that basis, [plaintiff] ... demonstrated that it would be irreparably harmed by the disclosure of the contractually prohibited information."⁹⁸ Further, the Court has also held that "[d]amages would not adequately

⁹⁴ See *Emerging Europe Growth Fund, L.P. v. Figlus*, C.A. No. 7936-VCP, at 18 (Del. Ch. Oct. 16, 2012) ("In preliminary injunction situations where I have a more developed record, I'm more likely to enforce those provisions and generally have.").

⁹⁵ *Martin Marietta Materials, Inc. v. Vulcan Materials Co.*, 2012 WL 5257252, at *58 n.286 (Del. Ch. May 4, 2012) (citing *Stirling Inv. Hldgs., Inc. v. Glenoit Universal, Ltd.*, 1997 WL 74659, at *2 (Del. Ch. Feb. 12, 1997) and *Horizon Pers. Commc'ns, Inc. v. Sprint Corp.*, 2006 WL 2337592, at *20 (Del. Ch. Aug. 4, 2006)).

⁹⁶ *Stirling*, 1997 WL 74659, at *2.

⁹⁷ *Id.*

⁹⁸ *Id.*

compensate Plaintiffs for a breach of the confidentiality provisions because the purpose of such provisions is to prevent harm and misuse before it occurs"⁹⁹ Accordingly, irreparable harm has been established.

C. The Balance Of Equities Weighs In Favor Of The Plaintiffs.

The balance of the equities tilts greatly in favor of a preliminary injunction. Disclosure of non-public Partnership information will irreparably harm the General Partner, the Partnership and the Limited Partners. Accordingly, Plaintiffs are simply attempting to receive the benefit of their bargain in the Partnership Agreement and to protect the expectations and interests of their Limited Partners.

In contrast, there are no equities weighing in favor of Figlus. Indeed, Figlus did not even bother to read the Partnership Agreement before he executed the Subscription Agreement and purchased interests in the Partnership.¹⁰⁰ Even at his deposition in this action, Figlus admitted that he *still* had not read the Partnership Agreement.¹⁰¹ Having executed the Subscription Agreement voluntarily, Figlus cannot now be heard to argue that the restrictions contained in the Partnership Agreement are unreasonable or otherwise do not apply to him.

⁹⁹ *Horizon Pers. Commc'ns, Inc.*, 2006 WL 2337592, at *20.

¹⁰⁰ *See, e.g.*, Ex. A, Tab 1 (Subscription Agreement).

¹⁰¹ Figlus Dep. at 296.

II. FIGLUS IS OBLIGATED TO REIMBURSE PLAINTIFFS' ATTORNEYS' FEES "AS THEY ARE INCURRED."

Not only did Figlus breach the Confidentiality Provision, he also breached the Subscription Agreement. As noted above, the indemnification/advancement obligations contained in Section 8 of the Subscription Agreement arise in actions relating to, among other things, a (i) false representation or warranty in the Subscription Agreement, (ii) breach or failure to comply with any covenant or agreement in the Subscription Agreement, or (iii) breach or failure to comply with any covenant or agreement in the Partnership Agreement.

First, Figlus admits that he did not read the Private Placement Memorandum or the Partnership Agreement before he executed the Subscription Agreement in February 2006, and again in September 2006,¹⁰² or the "Investor Suitability Certificate" in September 2006¹⁰³ (which certified that the representations and warranties in the Subscription Agreement remained true).¹⁰⁴ As such, the representation and warranty that Figlus "ha[d] carefully read, the Private Placement Memorandum and the Partnership Agreement" was

¹⁰² Ex. Ex. A, Tab 1 at Figlus 006231 (February 2006), Figlus 006234 (September 2006).

¹⁰³ Ex. Ex. A, Tab 1 at Figlus 006235 (September 2006).

¹⁰⁴ Figlus Dep. at 10, 12, 15, 20-21, 22, 130, 180-181, 213, 214, 217-218, 240, 296. *See also* Answer, Second Affirmative Defense (alleging that the Plaintiffs failed to advise Figlus of the Confidentiality Provision); Ex. G at ¶ 2 (denying Figlus read the Partnership Agreement before he signed the Subscription Agreement); Ex. B ¶ 14 (denying Figlus read the Partnership Agreement); Ex. B ¶ 19 ("Defendant did not read the Partnership Agreement prior to executing the Subscription Agreement.").

false.¹⁰⁵ During his deposition, Figlus candidly admitted that his failure to read the investment documents led to the filing of this action:

... So the fact that you didn't read some of the materials, would you agree with me that that is one of the reasons we are here today?

MR. PAZUNIAK: Objection.

A. Yes, one of the reasons.¹⁰⁶

Stated differently, this action arises (in whole or in part) out of Figlus' false representation and warranty.

Second, Figlus failed to acknowledge (or comply) with his contractual obligations under the Subscription Agreement. For example, in this action Figlus:

- contested that he was bound by the Confidentiality Agreement in the Partnership Agreement (Answer ¶¶ 6, 17, 22), which is inconsistent with the agreement in Section 7(g) of the Subscription Agreement that the Partnership Agreement constitutes a valid and binding agreement, enforceable against Figlus in accordance with its terms;
- contested that he was bound by Paragraph 8 of the Subscription Agreement (Answer ¶ 26), which is inconsistent with the agreement in Section 7(g) of the Subscription Agreement that the Subscription Agreement constitutes a valid and binding agreement, enforceable against Figlus in accordance with its terms;
- contested the validity of the power of attorney granted to the General Partner in Paragraph 14 of the Subscription Agreement, pursuant to which the Partnership Agreement was executed on behalf of Figlus (Answer, First Affirmative Defense), which is inconsistent with the agreement in Section 7(g) of the Subscription Agreement that the Subscription Agreement

¹⁰⁵ Ex. Ex. A, Tab 1 at Figlus 006217 (Subscription Agreement).

¹⁰⁶ Figlus Dep. at 319-20.

constitutes a valid and binding agreement, enforceable against Figlus in accordance with its terms;

Third, as noted above, Figlus breached the Confidentiality Provision in the Partnership Agreement. As noted above, the Partnership Agreement was executed and delivered to the Partnership by Figlus, through a proxy (the General Partner). As such, the Partnership Agreement is "a document furnished to the ... Partnership by the Subscriber in connection with the offering" – meaning that a breach of the Partnership Agreement triggers the indemnification and advancement obligations contained in Paragraph 8 of the Subscription Agreement.

Fourth, Paragraph 8 obligates Figlus to reimburse Plaintiffs for their "legal and other expenses ... *as they are incurred* in connection with" this action. The foregoing is, in essence, an advancement right. By refusing to pay Plaintiffs' legal costs "as they are incurred" Figlus is depriving Plaintiffs of the benefit of their contractual bargain (*e.g.*, ignoring the advancement component and converting his obligation into a pure indemnification provision). An after-the-fact remedy, will not make Plaintiffs whole.¹⁰⁷

¹⁰⁷ See, *e.g.*, *Tafeen v. Homestore Inc.*, 2005 WL 1314782, *2 (Del. Ch. May 26, 2008) ("Cutting off fees and costs to business litigants is 'a harm that could never be undone...").

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for a preliminary injunction against defendant Figlus and enter an order awarding attorneys' fees pursuant to Paragraph 8 of the Subscription Agreement.

/s/ Richard P. Rollo

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