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Louis Berger International, Inc. and  
Berger Group Holdings, Inc.*

LOUIS BERGER INTERNATIONAL, INC.  
and BERGER GROUP HOLDINGS, INC.,

Plaintiffs,

v.

JAMES ANDREW McCLUNG,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MORRIS COUNTY  
Docket No. \_\_\_\_\_

CIVIL ACTION

**COMPLAINT**

Plaintiffs Louis Berger International, Inc. ("LBI") and Berger Group Holdings, Inc. ("BGH") (collectively "Berger"), by and through their attorneys, Greenberg Traurig, LLP, as and for their Complaint against Defendant James McClung ("McClung"), state:

**INTRODUCTION**

1. This is an action brought by Berger against an admittedly corrupt and self-dealing former senior officer to recover the damages caused by his illegal conduct. Defendant is awaiting sentencing after pleading guilty to criminal violations of the Foreign Corrupt Practices Act (the "FCPA"), 15 U.S.C. §§ 78dd-1, *et seq.*, predicated on conduct which is materially the same as the conduct alleged herein. LBI is an

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internationally recognized consulting firm that provides engineering, architectural and construction management, environmental planning and science, and economic development services. LBI is successor-in-interest to the international operations of non-U.S. clients of The Louis Berger Group, Inc. ("LBG"). (LBI and LBG are hereinafter referred to, collectively, unless otherwise indicated, as the "Company"). At all relevant times, Defendant was the Company's senior in-country official in India and, for a portion of the relevant period, the Company's senior official with responsibility for Vietnam. During the course of his employment with the Company, and while he was a shareholder of BGH and the senior Company employee responsible for company operations in Vietnam and India, McClung knowingly directed, facilitated and approved payments from the Company to foreign government officials in India and Vietnam in connection with the Company government contracting activity in those countries, in violation of both the FCPA, and of the Company's known company policies and/or procedures, thereby violating his fiduciary duties to Berger.

2. As a result, following a voluntary disclosure by the Company, the U.S. Department of Justice ("DOJ") launched an investigation into potential violations of the FCPA by LBI and its employees. McClung has acknowledged under oath that certain of the payments at issue herein violated the FCPA. LBI entered into a deferred prosecution agreement with the Government, which was filed in the U.S. District Court for the District of New Jersey in July 2015, in which it accepted responsibility for the acts of its officers, directors, employees, agents and predecessors in interest as charged in the Complaint against LBI and as set forth in the Statement of Facts attached as Exhibit A to the Deferred Prosecution Agreement, which includes the acts and conduct of Defendant

McClung, among others. Berger's damages include, but are not limited to, the millions of dollars spent in professional fees to investigate the improper payments relating to McClung's conduct and that of others. In addition, Berger has suffered damage to its reputation and its business with its ongoing and prospective government customers, as well as vendors and suppliers.

3. During the course of his employment, McClung also engaged in a pattern of self-dealing and theft of money from the Company. As more fully detailed below, McClung created and/or utilized various third-party corporate entities in which he or others working with him had a sole or controlling interest and, without notice to or authorization of the Company's management, used those entities to wrongfully and unlawfully siphon monies from the Company. . Berger's damages include the lost profits and/or monies stolen and or unlawfully diverted by McClung to his own use.

4. The Company employed McClung from 1981 until his termination in 2012. After learning of McClung's self-dealing and misconduct related to questionable payments in Vietnam and India, the Company terminated his employment for cause.

5. Berger now brings this action to recover damages for McClung's admittedly criminal misconduct related to his management and oversight of the Company's projects in Vietnam and India as well as his self-dealing. Each of McClung's criminal acts and acts of self-dealing were taken in direct violation of Company policies and procedures, and of his fiduciary duty to Berger.

#### **THE PARTIES**

6. LBI is a corporation organized in 2012 and existing under the laws of the State of New Jersey with its principal place of business at 412 Mount Kemble Avenue,

Morristown, New Jersey 07960. At relevant times, LBI was responsible for all international operations of the Company, including Vietnam and India. As part of a corporate restructuring, LBI has assumed responsibility for all international operations and liabilities of BGH previously conducted by other BGH subsidiaries or affiliates.

7. BGH is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 412 Mount Kemble Avenue, Morristown, New Jersey 07960.

8. McClung is a U.S. citizen and, on information and belief, a current resident of Dubai, United Arab Emirates, who at one time maintained a United States address at 4722 Albemarle Street, N.W., Washington, D.C. 20016.

#### **JURISDICTION AND VENUE**

9. This Court may exercise in personam jurisdiction over Defendant because the claims in this lawsuit arise out of Defendant's purposeful, continuous and systematic contacts with New Jersey, including contacts specifically relating to the transactions at issue in this lawsuit.

10. At all relevant times, McClung was a Company employee and an officer of the Company and used his Company email account (and US server) to facilitate much of his wrongdoing.

11. McClung submitted improper invoices for payment to the Company, which were paid from the Company's New Jersey offices. Additionally, all improper payments were made in connection with the Company's contracts. Further, McClung appeared last year in the U.S. District Court for the District of Jersey, in Newark, for his guilty plea.

12. Venue is proper in this Court because Plaintiffs have places of business within Morris County, New Jersey.

### **FACTUAL BACKGROUND**

#### **A. McClung's Employment with the Company**

13. The Company hired McClung as an employee on October 5, 1981. During his employment with the Company, McClung served as Senior Vice President, Asia, in charge of the India (BQ) and Asia (BY) Divisions at the Company.

14. In that capacity, McClung was the senior in-country official for the Company in India and for a portion of the relevant period (2007-2010) in Vietnam.

15. McClung last worked for the Company as a Senior Vice President. He held that position from about 2003 until his termination in 2012.

16. McClung's job duties at the Company as Senior Vice President, Asia included, among other things, managing engineering, infrastructure and construction projects in Vietnam and India in a manner consistent with the Company's policies and practices.

17. McClung traveled to New Jersey for business meetings and had frequent communications with other Company employees, officers and directors in New Jersey. McClung's paychecks were issued by the Company's payroll out of New Jersey. He has admitted under oath that his criminal activities occurred in New Jersey and elsewhere.

18. LBI is 100% owned by BGH, a closely-held corporation.

#### **B. McClung's Ownership of Shares of BGH**

19. On March 15, 2005, McClung purchased 500 shares of BGH. McClung thereby became a shareholder of BGH and remained a shareholder until June 2012.

20. During the course of McClung's tenure in India and Vietnam, the Company advanced to McClung \$60,501.98 in expenses in accordance with its Advance Policy. The Advance Policy provides: "All repayments must be in accordance with the terms that were listed on the Request for Advance Form. All Advances for employee expenses are repaid from payroll unless there are no other options . . . ."

21. McClung agreed to repay these advances but has not done so. As of the filing of this Complaint, McClung has an unpaid balance of \$60,501.98.

**C. The Company's Code Of Business Conduct**

22. As an employee of the Company, McClung received training from the Company's management personnel during the 2000 to 2010 period, including training on the Company's Code of Business Conduct, and signed documents acknowledging his responsibilities in this area.

23. At all relevant times, McClung was subject to the Company's Code of Business Conduct.

24. Section 4.0 of the Company's Code of Business Conduct governs Conflicts of Interest and provides, in pertinent part:

A conflict of interest occurs when there is (or appears to be) a conflict between the interests of our Company and your personal interests, or the interests of a close relative. Situations and circumstances on both the personal and corporate level may result in a conflict of interest. Actual conflicts must be avoided, but even the appearance of a conflict of interest can be harmful. Therefore, we must keep our actions transparent, whether personal or on behalf of the Company. The result is openness, accountability, accessibility and incorruptibility.

To remain objective, you should avoid conflicts of interest when making decisions for our Company.

We will not knowingly enter into a relationship with a client while having an interest for another client that could materially interfere with the proper exercise of our judgment on the first client's behalf, without fully discussing the circumstances creating the conflict with each client and taking appropriate action. Contact your Supervisor, the Legal Department, or the Company's Compliance and Ethics Officer if you are uncertain whether a situation is a conflict of interest, or have any reason to believe that it is.

25. Section 4.1 of the Company's Code of Business Conduct provides, in pertinent part:

Personal considerations or relationships should never influence your business decisions or your actions on behalf of our Company. You must never use your position or knowledge of Company information to create a personal or family benefit or to promote self-interest. You must not individually take, or advise others to take, any potential business opportunity that might otherwise be available to the Company.

26. Section 3.5 of the Company's Code of Business Conduct governs Ethical Business Activities and provides, in pertinent part:

Conducting all our business activities with honesty and integrity is paramount to everything we do at [the Company]. All employees must conduct themselves in all business affairs with honesty, integrity and within the bounds of all applicable laws . . . . You should never ask or allow another party, such as an outside agent, representative, or supplier, to perform an action that a Berger employee is not permitted to do.

27. Section 3.7 of the Company's Code of Business Conduct governs Bribes and Kickbacks and provides, in pertinent part:

All bribes or kickbacks of any kind are strictly prohibited. Payments shall not be offered or given to any officer or employee of a customer or supplier or

to any governmental official or employee . . . . All procurement laws and this Code specifically prohibit giving anything of value inconsistent with local laws and regulations to (a) ANY governmental officials or employees, domestic or foreign, who have discretion to make or influence official decisions affecting the Company's business, if the purpose of the payment is to influence those decisions or (b) other government officials, whether or not they have any such discretionary powers, where prohibited under the law of any place, including the United States.

28. Section 3.8 of the Company's Code of Business Conduct governs Gifts and Courtesies and provides, in pertinent part:

When you negotiate with vendors, providers, contractors, government entities, and third-party payers, you must do so with honesty and integrity . . . . you should never use gifts or courtesies in an attempt to influence the business decisions of our partners or gain an improper advantage. If there is any reason to believe that your actions could be interpreted as an attempt to improperly influence a business decision or gain an improper advantage, then the activity should not occur. You should always ensure that any gift or entertainment . . . cannot be perceived as a bribe or improper payment . . .

29. Section 7.0 of the Company's Code of Business Conduct governs Procurement Integrity and provides, in pertinent part:

All [Company] employees are prohibited from . . . . compensating a former government employee who served as a procurement official during the preceding one year period.

30. Section 13.0 of the Company's Code of Business Conduct governs the Avoidance of Corrupt Practices and Subsection 13.1 thereof provides:

**13.1. Payments.** The U.S. Foreign Corrupt Practices Act (FCPA) and the laws of most other countries and the European Union prohibits making or offering payments of any kinds, including the giving or



offering of anything of value to foreign government officials . . . to influence business in any way. The FCPA also applies to the activities of Joint Ventures and consortiums between Berger and foreign governments or their agencies. Here, as in all other areas, true and complete entries in Berger records are vital. You must provide adequate documentation for all Berger payments with which you are concerned, and should neither make nor accept payments intended to be used in any part for reasons other than those described in supporting documents.

**D. McClung's Self-Dealing Activities**

**1. McClung Forms Sanzoi as a Vehicle for Self Dealing**

31. McClung was specifically responsible for staffing and obtaining skilled and unskilled labor for LBI's projects in India.

32. In 2006, Louis Berger Consulting ("Berger Consulting"), an Indian corporation owned by the Company, was formed to provide staff and labor for the Company's projects throughout India, and McClung served as a director of Berger Consulting.

33. Upon information and belief, without notice to or authorization of the Company or BGH, beginning in or around 2003, while employed by the Company, McClung formed and managed several corporations wholly unrelated to the Company in which McClung held an ownership interest. McClung never disclosed to the Company or BGH his ownership in these companies.

34. McClung's undisclosed ownership in entities to which he steered money from the Company constituted a personal conflict of interest, self-dealing and breach of McClung's fiduciary duties to LBI and BGH.

35. Upon information and belief, McClung instructed LBI to pay these entities money for services that were not documented, were not needed, or were in excess of market value. As a result, Defendant was unjustly enriched.

36. Specifically, on or around August 24, 2004, McClung and his then-wife Christin Lorentzen formed and managed Sanzoi Consulting Private Limited (“Sanzoi”) and Sanzoi Trading and Consulting, Ltd. (“Sanzoi-Cyprus”). McClung never disclosed to LBI or BGH his ownership in the Sanzoi companies.

37. Neither the Company nor BGH authorized or approved of McClung’s ownership in the Sanzoi (or any other) companies.

38. On or around November 6, 2004, McClung submitted, through Sanzoi, an invoice to the Company for services in the amount of \$48,000. The November 6, 2004 invoice contained only the vague description “housing and other support services.” On or around November 12, 2004, McClung signed and authorized the Sanzoi invoice dated November 6, 2004 on behalf of the Company..

39. On or around November 17, 2004, the Company made payment from its East Orange, New Jersey headquarters (the predecessor to the current Morristown, New Jersey location) to Sanzoi for the November 6, 2004 invoice in the amount of Forty-Eight Thousand Dollars (\$48,000).

40. On or around May 26, 2005, McClung submitted, through Sanzoi, two invoices for services to the Company in the amounts of Forty-One Thousand Four Hundred Ninety Two Dollars and Ninety-Nine Cents (\$41,492.99) and Fifty-Two Thousand Five Hundred Thirty-Two Dollars and Forty Cents (\$52,532.40).

41. On or around June 30, 2006, at McClung's instruction, the Company sent those payments from its Morristown, New Jersey headquarters to Sanzoi for both of the May 26, 2005 invoices.

42. On or around February 7, 2007, McClung submitted, through Sanzoi, an invoice for services to the Company in the amount of Fifty-One Thousand Two Hundred and Fifty Dollars (\$51,250).

43. On or around February 12, 2007, McClung, on behalf of the Company, signed and authorized payment of the February 7, 2007 Sanzoi invoice.

44. On or around February 20, 2007, at McClung's instruction, the Company made payment from its Morristown, New Jersey headquarters to Sanzoi for the February 7, 2007 invoice.

45. On or around June 12, 2007, McClung submitted, through Sanzoi, an invoice for services to LBI. On the same day, McClung, on behalf of the Company, signed and authorized his own June 12, 2007 invoice.

46. On or around June 18, 2007, at McClung's instruction, the Company made payment from its Morristown, New Jersey headquarters to Sanzoi for the June 12, 2007 invoice amount of Fourteen Thousand Eight Hundred Fourteen Dollars and Eighty One Cents (\$14,814.81).

47. On or around July 7, 2007, McClung submitted, through Sanzoi, an invoice for services to the Company in the amount of Fourteen Thousand One Hundred Ninety-Seven Dollars and Fifty Four Cents (\$14,197.54).

48. On or around July 10, 2007, McClung, on behalf of the Company, signed and authorized his own July 7, 2007 invoice. On or around July 17, 2007, at McClung's

instruction, the Company made payment from its Morristown, New Jersey headquarters to Sanzoi for the July 7, 2007, invoice.

49. On or around September 2, 2008, upon information and belief, Christin Lorentzen resigned from her position as a director with Sanzoi Consulting. In or around September 2008, McClung owned one-hundred percent of Sanzoi Consulting and was its sole controlling director.

50. From 2004 to 2008, McClung personally submitted and the Company made numerous payments totaling more than \$360,000 to the McClung-owned Sanzoi companies for a variety of different purposes. Of that amount, payments totaling \$222,000 were unsupported by any documentation for services provided. According to both McClung and Lorentzen, Sanzoi was established to facilitate their ownership of real estate in India and it appears that Sanzoi-Cypress was established for the purpose of managing certain McClung-owned real estate ventures in Cypress, including a hotel.

## **2. McClung Uses Sanzoi To Obtain A Controlling Interest In Segmental**

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51. Upon information and belief, in or around February 2009, through Sanzoi, McClung obtained a controlling ownership interest in Segmental Consulting and Support Services Pvt. Ltd. ("Segmental"), an Indian services consulting firm that provides labor and staffing for infrastructure development projects. Segmental is in the same business as Berger Consulting.

52. McClung did not disclose his ownership interest in Sanzoi or Segmental to the Company's management.

53. Upon information and belief, Segmental contracted with the Company on many projects in India that could have been performed by Berger Consulting.

Segmental's fees exceeded market value and exceeded the rates that were charged by Berger Consulting for the same services. For instance, upon information and belief, the Company paid Segmental \$4,000 per month to provide an employee/worker for a project while the Company paid Berger Consulting \$1,800 per month for an employee/worker for the same position.

54. The Company's hiring of Segmental employees/workers and procurement of the invoiced services from Segmental was done at McClung's direction. Upon information and belief, from May 2009 through September 2011, the Company paid Segmental over \$3 million, including unsubstantiated payments for rent or building services.

55. On one project in India known as IQQ728 (Six Laning of Panipat Jalandhar NH-1), all of the profits associated with Segmental employees – approximately \$350,000 – which otherwise would have been earned by the Company, were transferred to Segmental.

56. Upon information and belief, the Company also paid more than \$200,000 in invoices submitted by Sanzoi for various vague and/or unsubstantiated services submitted personally by McClung. There was no business purpose supporting the Company's payments.

57. In total, from May 2009 to September 2011, the Company paid more than \$3 million to Segmental for services wholly unrelated to the Company's projects.

### **3. McClung Directs Self-Dealing Payments To Constantinos Pilavachi**

58. Upon information and belief, during a six-month period between August 2006 and January 2007, the Company made six payments totaling \$134,000 to an

individual named Constantinos Pilavachi. All payments were made through the Company's Morristown, New Jersey accounts payable group and payment was made to a bank account in Cyprus.

59. All of the invoices were approved by McClung and charged to the Company overhead account (BQ 100). McClung also instructed that the payments be coded to the "other purchased services" account within the Company's general ledger. The invoices suggest that these payments were for "proposal services" in a variety of countries.

60. Upon information and belief, the payments made to Mr. Pilavachi were unrelated to the Company's work or projects, but connected to investment transactions made between Mr. Pilavachi, on the one hand, and McClung and/or Ms. Lorentzen, on the other hand, to purchase real estate in Cyprus. These payments appear to coincide with the time period during which Ms. Lorentzen and McClung were personally considering the purchase of a hotel in Cyprus.

**E. McClung Directs And Approves Improper Payments by the Company to Entities and Individuals in Vietnam**

61. From 2007 to 2010, McClung authorized and approved certain improper payments by the Company to entities or individuals in connection with the Company's projects in Vietnam, and, at McClung's instruction, the Company made said such payments from its New Jersey offices.

62. McClung authorized and approved improper payment advances totaling more than \$35,000 from the Company to Mr. Bui Chien Phong ("Phong"), the Company's Vietnam consultant, as well as improper payments to third party entities and individuals, including the entity SVN, who in turn, used the money in whole or in part to

make improper payments to foreign government officials in connection with the Company's contracts in Vietnam, including the RTP3 Project (BY755), the PIIP Project (BY757), and the Da Nang Airport Project (BY739). The RTP3 and PIIP Projects were financed by The World Bank, while the Da Nang Airport Project was a direct local government-financed project.

63. The RTP3 Project had a start date of February 19, 2008 and an end date of February 15, 2012, with a total contract amount of \$3,705,646. The PIIP Project had a start date of January 1, 2010 and an end date of December 31, 2015, with a total contract amount of \$5,013,830. The Da Nang Airport Project had a start date of April 25, 2006 and an end date February 28, 2010, with a total contract amount of \$2,655,705.

64. An April 20, 2010 email from the Company's Vietnam Country Manager Javed Sultan to McClung reflects some of the improper payments that McClung approved in connection with the RTP3, PIIP and Da Nang Airport Projects. Specifically, the April 20, 2010 email to McClung discusses an improper payment of \$20,000 to Phong, an improper payment of \$33,000 to a certain foreign government official in connection with the PTP3 Project, several improper payments totaling more than \$200,000 to various foreign government officials in connection with the PIIP Project, and an improper payment of \$97,000 to SVN, an entity tasked with making improper payments to foreign government officials in connection with the Da Nang Airport Project.

65. McClung authorized and approved other improper payments made by LBI to Vietnamese entities controlled by Phong, including payments totaling more than \$81,902 to an entity known as F-Group and improper payments totaling more than

\$125,575 to an entity known as Haviet Architecture and Construction Co., also known as “Focus 6”.

66. McClung authorized and approved improper payments of more than \$75,100 made by the Company to an individual named Nguyen Anh Tuan, the Managing Director of SVN, in connection with the Company’s contracts.

67. McClung authorized and approved improper payments of at least \$30,150 by the Company to an entity known as Technology Development and Consulting, in connection with the Company’s contracts.

68. The foregoing payment advances and payments were in violation of the Company’s policies and procedures, were made without notice to or authorization of the Company’s management, and were in violation of the FCPA.

**F. McClung Directs And Approves Improper Payments by the Company to Entities and Individuals in India**

69. From 2009 to 2010, McClung authorized and approved payments totaling more than \$976,000 made by the Company to an LBI subcontractor, Holistics Urban Development, Inc. (“Holistics”), in connection with the Company’s Goa Water Project in Goa, India, with the knowledge that such payments improperly benefitted McClung and/or that said contractor would be used as an intermediary for purposes of facilitating the making of improper payments to certain individuals in violation of the Company’s policies and procedures, without notice to or authorization of the Company’s management, and in violation of the FCPA. These payments constituted self-dealing and/or improper payments in violation of the FCPA, or a combination thereof.

70. From 2010 to 2011, McClung authorized and approved payments totaling more than \$873,149 made by the Company to Company subcontractors Segmental,



Holistics, and KJ Techno in connection with the Company's Guwahati Water Project in Guwahati, India, with the knowledge that such payments improperly benefitted McClung and/or that the three subcontractors would be used as intermediaries for purposes of facilitating the making of improper payments to certain individuals in violation of the Company's policies and procedures, without notice to or authorization of the Company's management, and in violation of the FCPA. These payments constituted self-dealing and/or improper payments in violation of the FCPA, or a combination thereof.

71. Upon information and belief, McClung also authorized and approved payments totaling \$853,732 intended in whole or in part for government officials and agents associated with the Guwahati Water Project. An August 17, 2010 email to McClung indicates that as of that date, approximately \$685,000 out of the promised \$853,732 had been paid, with unpaid balances existing for certain individuals.

72. From 2001 to 2010, McClung authorized and approved 290 other improper payments totaling \$1.178 million made from the Company directly to certain individuals and/or entities in violation of the Company's policies and procedures and without notice to or authorization of the Company's management. These payments constituted self-dealing and/or improper payments in violation of the FCPA, or a combination thereof.

73. McClung concealed the true nature of the 290 payments from the Company by causing said payments to be coded to the "Other General Expenses" accounts within the Company's general ledger in an effort to disguise these payments as normal Company business expenses, and by instructing that said expenses should be

described in the Company's transaction reports as "field operations," "field ops," "FO," or some related derivative of "field operations."

74. Later, during Berger's internal investigation, Berger was unable to locate documentation to support the 290 "field operations" payments, and accounting personnel could not explain these expenses, or why they were coded to the "Other General Expenses" accounts.

75. Upon information and belief, the 290 payments constituted improper payments to certain individuals and/or entities, in violation of the Company's policies and procedures, without notice to or authorization of the Company's management, and/or payments in violation of the FCPA.

76. McClung also directed questionable payments to Aurora Private Ltd., a Pakistani company that is a subsidiary of a Pakistani public company called The Premier Group, which at all relevant times was owned and operated by at least one former Pakistani government official, Abbas Khan. Hameed Khan, an Aurora employee, served as the Company's in-country representative in Pakistan. On information and belief, McClung directed two different types of improper payments by the Company to Aurora totaling at least approximately \$205,000:

- a) First, McClung directed payments of approximately \$111,558 for invoices to Aurora, although there was no commercial substantiation or supporting documentation for many of the charges therein. McClung instructed accounting personnel managing those payments to keep them confidential. Rasendra Pandey, a Berger employee, made an unsuccessful attempt to wire transfer an additional \$77,000 related

to Aurora invoices to a Swiss bank account, as the wire transfer was rejected by the Company's accounts payables department due to problems with the payment instructions. In an effort to make the invoices appear legitimate, Pandey also provided Hameed Khan with invoices from another subcontractor as a template to use for Aurora invoices, and instructed him that a subcontract was required in order for invoices to be paid. On information and belief, given the timing of the Aurora payments and other circumstances, the Aurora payments constituted self-dealing and/or improper payments in violation of the FCPA, or a combination thereof.

- b) Second, from 1999 through 2010, under McClung's direction, more than \$118,000 was paid to Aurora through the the Company's Field Cash Reporting system, of which payments of at least \$94,000 are unsubstantiated and suspect. On information and belief, McClung started using this process after Berger's accounts payable group began to increase the scrutiny of its review of the invoices submitted for payment. On information and belief, given the timing of the Aurora payments and other circumstances, the Aurora payments constituted self-dealing and/or improper payments in violation of the FCPA, or a combination thereof.

77. In addition, from in or about 2006 until in or about 2008, McClung directed questionable payments totaling \$263,500, as reflected in the Company's accounts payable data, to Ellicker Resources ("Ellicker"), a company registered in the

British Virgin Islands with a European liaison office in Limassol, Cyprus. All of Ellicker's company filings and invoice signatures were performed by an agent, Trident Fiduciaries (Middle East) Limited, a company also headquartered in the British Virgin Islands and which appears to specialize in setting up offshore companies. As all business is conducted behind the agent, Ellicker's owner is not known. McClung approved all of the payments by the Company to Ellicker, and they were charged to overhead accounts and to the Other Purchased Services indirect expense accounts. Payments were wired to a Swiss bank account. The nine invoices which have been located include the same general description of services: "Part payment for providing power & energy study consultancy services . . . ." in countries such as Vietnam and Mongolia. None of the Company's business developers who were interviewed had any knowledge of Ellicker and all indicated that the Company did not outsource the types of services referenced in the billings. On information and belief, these payments to Ellicker constituted self-dealing.

**G. The Company Terminates McClung**

78. Beginning in or about 2011, Berger, through outside counsel, began a formal substantive and specific investigation into, among other things, McClung's self-dealing and breaches of fiduciary duties.

79. Berger did not know or have reason to know of the facts that formed the basis for its potential claims against McClung which are set forth in this Complaint until after April 30, 2011.

80. As a result of the information developed regarding McClung's self-dealing, the Company terminated McClung's employment for cause. McClung's

termination was based on the Company's discovery of his concealment of a personal conflict of interest and a clear pattern of self-dealing at the Company's expense.

**H. McClung Pleads Guilty to FCPA Violations**

81. On July 17, 2015, McClung entered guilty pleas to one count of conspiracy to violate the FCPA and one count of a substantive FCPA violation, as alleged in the Criminal Information, Plea Agreement, and Statement of Facts filed with the Court. In the plea hearing held in U.S. District Court in Trenton, New Jersey, McClung admitted under oath that he engaged in the following acts, each of which was concealed from the Company, taken in violation of the Company's policies as described above, and establish his breach of his fiduciary duties to the Company:

- a. From about 2000 to August, 2010, McClung made improper payments of money to foreign officials;
- b. McClung knew (or consciously avoided knowing) that at least some of these payments were made to influence the acts and decisions of those foreign officials in their official capacities;
- c. Throughout this period, McClung acted to conceal the true nature of the bribe payments by lumping them into otherwise legitimate expense categories such as "field operations expenses";
- d. Throughout this period, McClung either made directly or allowed others to make payments directly or indirectly to government officials in India and Vietnam while knowing (or consciously avoiding knowing) that the payments were, in fact, bribe payments; and
- e. On or before February 10, 2010, McClung authorized a contract pursuant to which a third-party was paid \$24,420. McClung knew or consciously avoided knowing that the purpose of the contract was, in part, to make money available to pass to an Indian government official in exchange for help to secure a project for the Company.

82. As a result of the aforementioned acts, each taken in violation of the Company's policies and his fiduciary duties as an officer of the Company, on June 9, 2015, McClung signed a plea agreement with the United States Department of Justice, and agreed to plead guilty to violating the FCPA, and conspiring to violate the FCPA.

**I. The Reimbursement Undertaking**

83. As an officer of the Company, in or about November 2010, McClung requested that the Company advance to him his "reasonable expenses (including fees and expenses of counsel) incurred or to be incurred" in defending against the government's investigation into his criminal activities and potential violations of the FCPA.

84. At the time of McClung's request, the Company was not yet aware of McClung's criminal conduct.

85. As a result of McClung's request, the Company's Board of Directors determined that it was appropriate to advance the requested expenses to McClung, provided that McClung execute a reimbursement undertaking.

86. On November 4, 2010, McClung signed a Reimbursement Undertaking with the Company (the "Reimbursement Undertaking").

87. The Reimbursement Undertaking expressly provides:

In the event that it ultimately shall be determined in accordance with the applicable Governing Provisions that [McClung] is not entitled to be indemnified for the Expenses by [the Company] or BGH, as the case may be, as authorized by the applicable Governing Provisions, [McClung] shall repay to the Companies the full amount of the Expenses previously advanced to him or her on his or her behalf within five days of demand therefore by [the Company] or BGH, as the case may be.

88. In the Reimbursement Undertaking, McClung authorized the Company to deduct from and set off against any amounts owed to McClung upon the Company's redemption of his shares of common stock of BGH any amounts required to be repaid by McClung to the Company in accordance with the Reimbursement Undertaking.

89. Pursuant to the Reimbursement Undertaking, the Company advanced \$154,674.15 for McClung's legal fees and expenses in defending against the Government investigation.

90. On or about October 14, 2015, the Board of Directors determined in accordance with the applicable Governing Provisions that McClung was not entitled to be indemnified by the Company in light of his guilty plea, and directed Berger's undersigned legal counsel to take action to enforce Berger's right to obtain reimbursement from McClung of the fees and expenses which the Company had advanced to him pursuant to the Reimbursement Undertaking.

**COUNT ONE**  
**(Breach of Fiduciary Duty – Duty of Good Faith)**

91. Berger hereby incorporates by reference and realleges each and every allegation set forth in Paragraphs 1-90 of the Complaint as if set forth completely herein.

92. McClung, while employed by and as Sr. Vice President, Asia, of the Company, in charge of its BQ and BY Divisions, had a relationship of trust and confidence with the Company and BGH, through which the Company relayed confidential information to McClung, and the Company and BGH relied upon him as a fiduciary to exercise good judgment, discretion and expertise on the Company's and BGH's behalf.

93. Based upon the confidences reposed in McClung by the Company and BGH and the confidential information shared with him based on his position, McClung was bound to act in good faith and with due regard to the interests of the Company and BGH.

94. As a shareholder of BGH, and as a result of BGH's ownership of 100% of the shares of the Company, McClung owed a fiduciary duty to BGH as well as the Company.

95. McClung, while employed by and as Sr. Vice President, Asia, of the Company, in charge of its BQ and BY Divisions, owned and participated in developing business and profits for Segmental through his company Sanzoi, without the knowledge or authorization of the Company or BGH.

96. Segmental became a subcontractor of the Company in India at McClung's direction.

97. Segmental submitted numerous invoices to the Company through Sanzoi. Neither the Company nor BGH was aware of McClung's ownership of Segmental or Sanzoi.

98. McClung failed to reveal to, and/or intentionally concealed from, the Company and BGH his personal financial stake in Segmental and Sanzoi, and the personal conflict of interest in these entities' dealings with the Company.

99. McClung's self-dealing transactions by and through Segmental and Sanzoi, constitute a breach of his fiduciary duty to the Company and BGH.

100. In addition, on information and belief, the payments directed by McClung to Pilavachi, as well as the payments directed by McClung to certain entities and



individuals in India, to the extent constituting self-dealing, as described above, also constitute a breach of his fiduciary duty to the Company and BGH.

101. McClung unjustly profited by said breach of fiduciary duty and confidentiality.

102. As a result of the injury caused to the Company, BGH, which owned 100% of the shares of the Company, also indirectly suffered an injury.

103. As a result of McClung's breach of fiduciary duty, the Company and BGH have suffered substantial damages.

**COUNT TWO**  
**(Breach of Fiduciary Duty -- Duty of Loyalty)**

104. Berger hereby incorporates by reference and realleges each and every allegation set forth in Paragraphs 1-103 of the Complaint as if set forth completely herein.

105. As an employee and Sr. Vice President, Asia, of LBI, in charge of its BQ and BY Divisions, McClung had a duty of loyalty to the Company and BGH that prohibited him from acting in any manner inconsistent with the agency of trust and was at all times bound to exercise the utmost loyalty in the performance of his duties in all manners for which he was employed.

106. McClung's duty of loyalty included not engaging in activities that would harm or result in any detriment to the Company or BGH.

107. McClung breached his duty of the Company, engaging in secret self-dealing transactions that personally benefitted McClung, as well as his companies, Sanzoi and Segmental, all to the detriment of the Company and BGH.

108. In addition, on information and belief, McClung breached his duty of loyalty to the Company and BGH by, among other things, while still employed by the Company, directing the payments to Pilavachi, as well as the payments to certain entities and individuals in India, to the extent such payments constituted self-dealing, as described above, to the detriment of the Company and BGH.

109. McClung also breached his duty of loyalty to the Company and BGH by misusing the Company's confidential information.

110. As a result of the injury caused to the Company, BGH, which owned 100% of the shares of the Company, also indirectly suffered an injury.

111. As a result of McClung's breach of fiduciary duty, the Company and BGH have suffered substantial damages.

**COUNT THREE**  
**(Unjust Enrichment)**

112. Berger hereby incorporates by reference and realleges each and every allegation set forth in Paragraph 1-111 of the Complaint as if set forth completely herein.

113. Defendant benefitted from and has been unjustly enriched at the expense and to the detriment of LBI and BGH by wrongfully engaging in, and profiting from, transactions between Sanzoi and the Company, and Segmental and the Company.

114. Defendant further benefitted from and has been unjustly enriched at the expense and to the detriment of the Company and BGH, on information and belief, by wrongfully directing the payments to Pilavachi, as well as the payments directed to certain entities and individuals in India, to the extent such payments constituted self-dealing, as described above.

115. McClung further benefitted from and has been unjustly enriched at the expense and to the detriment of the Company and BGH by failing to repay the monies advanced to him in accordance with the Company's Advance Policy.

116. Defendant's actions caused the Company and BGH to suffer economic losses, injury and damage. Defendant illegally and improperly profited from these transactions. Defendant is not entitled to possession of these monies.

117. As a result of the injury caused to the Company, BGH, which owned 100% of the shares of the Company, also indirectly suffered an injury.

118. By reason of the acts of Defendant, LBI and BGH have suffered substantial damages.

**COUNT FOUR**  
**(Breach of Fiduciary Duty – Duty of Good Faith)**  
**(Improper Payments in Vietnam and India)**

119. Berger hereby incorporates by reference and realleges each and every allegation set forth in Paragraphs 1-118 of the Complaint as if set forth completely herein.

120. McClung, while employed by and as an executive of the Company, had a relationship of trust and confidence with the Company through which the Company relayed confidential information to McClung and relied upon him as a fiduciary to exercise good judgment, discretion and expertise on the Company's behalf.

121. Based upon the confidences reposed in McClung by the Company and the confidential information shared with him based on his position, McClung was bound to act in good faith and with due regard to the interests of the Company.

122. By engaging in the corrupt and illegal activities involving improper payments to foreign government officials in Vietnam and India, as set forth above, McClung exposed Berger to substantial reputational and business damages, including but not limited to significant legal and other professional fees, and potential adverse consequences as a government contractor, both internationally and domestically. By engaging in such activities, McClung breached his duty of good faith owed to Berger.

123. As a result, the Company has suffered substantial damages.

**COUNT FIVE**  
**(Breach of Fiduciary Duty – Duty of Loyalty)**  
**(Improper Payments in Vietnam and India)**

124. Berger hereby incorporates by reference and realleges each and every allegation set forth in Paragraphs 1-123 of the Complaint as if set forth completely herein.

125. As an employee and executive of the Company, McClung had a duty of loyalty to the Company that prohibited him from acting in any manner inconsistent with the agency of trust and was at all times bound to exercise the utmost loyalty in the performance of his duties in all manners for which he was employed.

126. McClung's duty of loyalty included not engaging in activities that would harm or result in any detriment to the Company. By engaging in the corrupt and illegal activities involving improper payments to foreign government officials in Vietnam and India, as set forth above, McClung exposed Berger to substantial reputational and business damages, including but not limited to significant legal and professional fees, and potential adverse consequences as a government contractor, both internationally and

domestically. By engaging in such activities, McClung breached his duty of loyalty owed to Berger.

127. As a result, the Company has suffered substantial damages.

**COUNT SIX**  
**(Reimbursement)**

128. Berger hereby incorporates by reference and realleges each and every allegation set forth in Paragraphs 1-127 of the Complaint as if set forth completely herein.

129. In the Reimbursement Undertaking, McClung acknowledged that he had requested Berger to advance reasonable fees and expenses for his defense in connection with the investigation by the United States Government, and agreed that in the event it was ultimately determined that he was not entitled to be indemnified for his defense costs by the Company or BGH, he would repay to Berger the full amount previously advanced on his behalf.

130. McClung's guilty plea and his admissions under oath in connection therewith demonstrate that McClung committed the crimes to which he pled guilty; that he was not successful on the merits or otherwise in defense of the Government's criminal investigation and prosecution of him; and that he had reasonable cause to believe that his conduct was unlawful.

131. The scheme to which McClung pled guilty seriously damaged Berger's reputation and its business with its ongoing and prospective government customers and has cost Berger significant legal and other professional fees.

132. McClung's guilty plea was not before Berger's Board of Directors when it made its initial determination to advance McClung's fees and expenses for his defense in

connection with the Government's investigation and prosecution of him, nor were the facts underlying McClung's guilty plea before Berger's Board of Directors when it made its initial decision to advance McClung's fees and expenses.

133. As a result of McClung's guilty plea and his admissions under oath in connection therewith and in light of Berger's Board of Directors' determination that McClung therefore is not entitled to indemnification, Berger is entitled to reimbursement in the amount of \$154,674.15.

134. To date, McClung has not repaid the amount previously advanced to him.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Berger respectfully request that this Court enter judgment against Defendant as follows:

- a. Awarding compensatory damages;
- b. Awarding punitive damages;
- c. Awarding reimbursement for the amount previously advanced for his legal fees and expenses;
- d. Awarding costs of suit; and
- e. Granting Berger such other and further relief as the Court deems equitable, just and proper.

DATED: July 1, 2016

**GREENBERG TRAURIG, LLP**



By: \_\_\_\_\_

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Berger Group Holdings, Inc.*

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**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Philip R. Sellinger, Esq. is hereby designated trial counsel with respect to the within matter.

DATED: July 1, 2016

**GREENBERG TRAURIG, LLP**

By: \_\_\_\_\_



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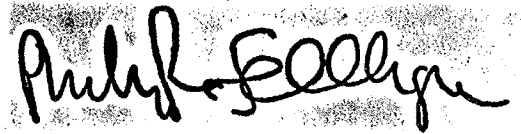
**CERTIFICATION OF NO OTHER ACTIONS**

Pursuant to R. 4:5-1, it is certified that the matter in controversy is not the subject of any other action or arbitration proceeding, and no other action or arbitration proceeding is contemplated.

DATED: July 1, 2016

**GREENBERG TRAURIG, LLP**

By: \_\_\_\_\_



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