

CORNERSTONE LAW FIRM, LLC

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<p>ROXANNE STONE and JACQUELINE HILL, Plaintiff,</p> <p>v.</p> <p>LYSTN, LLC, FOOD FOR LIFE TRUCKING AND LOGISTICS COMPANY, INTEGRATIVE GREEN SOLUTIONS, INCORPORATED, BIODYNAMIC FARMS, LLC, Defendants.</p>	<p>COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA</p> <p>CIVIL-ACTION</p> <p>Docket No.:</p> <p>JURY TRIAL OF 12 DEMANDED</p>
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NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyers' Referral Service of the
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544 Court Street Reading, Pennsylvania 19601
Telephone (610) 375-4591
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NOTIFICACIÓN PARA DEFENDERSE

Le han demandado a usted en el tribunal. Si usted quiere defenderse de las demandas expuestas en las páginas siguientes, usted debe tomar acción en el plazo de veinte (20) días a partir de la fecha en que se le hizo entrega de la demanda y la notificación, al interponer una comparecencia escrita, en persona o por un abogado y registrando por escrito en el tribunal sus defensas o sus objeciones a las demandas en contra de su persona. Se le advierte que si usted no lo hace, el caso puede proceder sin usted y podría dictarse un fallo por el juez en contra suya sin notificación adicional y podría ser por cualquier dinero reclamado en la demanda o por cualquier otro reclamo o desagravio en la demanda solicitado por el demandante. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

USTED DEBE LLEVARLE ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O NO PUEDE CORRER CON LOS GASTOS DE UNO, VAYA O LLAME POR TELEFONO A LA OFICINA EXPUESTA ABAJO. ESTA OFICINA PUEDE POVEERLE INFORMACION RESPECTO A COMO CONTRATAR A UN ABOGADO.

SI NO PUEDE CORRER CON LOS GASTOS PARA CONTRATAR A UN ABOGADO, ESTA OFICINA PUDIERA PROVEERLE INFORMACION RESPECTO A INSTITUCIONES QUE PUEBAN OFRECER SERVICIOS LEGALES A PERSONAS QUE CALIFICAN PARA LA REDUCCION DE HONORARIOS O QUE NO TENGAN QUE PAGAR HONORARIOS.

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COMPLAINT

NOW COMES, Plaintiffs, ROXANNE STONE and JACQUELINE HILL, by and through counsel, who hereby submits this Complaint and states the following:

PARTIES

1. Plaintiff, Roxanne Stone, is an adult individual, a resident of the State of Oregon, and a Member of Lystn, LLC.
2. Plaintiff, Jacqueline Hill, is an adult individual, a resident of the Commonwealth of Pennsylvania, and a Member of Lystn, LLC.
3. Defendant, Lystn, LLC, (“Lystn”) is a Delaware limited liability company and headquartered at 356 Maiden creek Road, Fleetwood, PA 19522.
4. Defendant, Food for Life Trucking and Logistics Company (“Food for Life” or “F4L”), is a Pennsylvania corporation and headquartered at 356 Maiden creek Road, Fleetwood, PA 19522.

5. Defendant, Integrative Green Solutions, Incorporated (“IGSI”), is a Pennsylvania corporation and headquartered at 356 Maiden Creek Road, Fleetwood, PA 19522.

6. Defendant, Biodynamic Farms, LLC (“Biodynamic Farms”), is a Pennsylvania limited liability company and headquartered at 356 Maiden Creek Road, Fleetwood, PA 19522.

GROUND FOR RELIEF

7. In 2009, Jacqueline Hill, was a co-founder of Lystn with rights to participate in the management of Lystn.

8. In August 2009, Roxanne Stone, became hired by Lystn as an independent consultant and subsequently became a Member of Lystn.

9. Defendants, Food for Life, IGSI and Biodynamic Farms (the “Lystn-Related Companies”), are controlled by Lystn or under common control as Lystn.

10. As of September 30, 2020, Lystn and the Lystn-Related Companies had an equity valuation of approximately \$6,800,000.

11. On April 12, 2010, Plaintiffs and other Members executed an LLC Operating Agreement for Lystn (“the Operating Agreement”). A true and correct copy is attached as Exhibit A.

12. The Operating Agreement draws distinctions between “Class I Members” and “Class II Members.” Class I Members are entitled to “make capital contributions both in cash and in the form of an assignment of intellectual property, business and industry contacts, and goodwill” and “participate actively in the operation of the Company’s business and receive Compensation and Benefits in consideration thereof,” whereas Class II Members are not entitled to “make capital contributions other than in cash” or “participate actively in the operation of the Company’s business or receive Compensation or Benefits.” [Ex. A § 3.1.1].

13. Under Section 10.2 of the Operating Agreement, “all Members may, notwithstanding this

agreement, engage in whatever activities they choose, provided the same are not competitive with the Company” (the “Non-Compete Provision”). [Ex. A § 10.2].

14. Based on the foregoing, the Non-Compete Provision has no geographical or temporal limitations on its face, and restricts all Members for the duration of their natural lives and whether or not employed by Lystn or participating in the management of Lystn, unless and until the LLC is dissolved and wound-up.

15. Under Section 7.2 of the Operating Agreement, a Member may serve a “Transfer Notice” if desiring to resign and transfer the Membership Interest to another person.

16. On February 12, 2021, Plaintiffs provided a Transfer Notice to other Members of Lystn, namely, Keith A. Hill, Gary L. Hill, John Shultz, and Derrick Hill, and to corporate counsel for Lystn and the Lystn-Related Companies (the “February 12th Transfer Notice”). A true and correct copy of the February 12th Transfer Notice is attached as Exhibit B.

17. In the February 12th Transfer Notice, Plaintiffs stated their desire “to Transfer her or his Member Interest in the Company and, upon completion of the process set forth in Article VII of the LLC Agreement, to resign as a Managing Member and employee of the Company.”

18. Under the Operating Agreement, “Promptly after the receipt of a Transfer Notice . . . the Company (by and through its officers or other representatives) and the Affected Member . . . shall negotiate in good faith to determine the purchase price for the Affected Member’s Membership Interest.” [Ex. A § 7.7.1]. Also, “If the parties have not agreed upon the purchase price as of the expiration of such thirty (30) day period (or at such earlier date agreed upon by the parties), they shall proceed to establish the purchase price by appraisal as specified in Section 7.7.2.” [Id.].

19. On March 1, 2021, Plaintiffs (by and through their counsel) provided a request to Food for Life, IGSI, and Biodynamic Farms, and to corporate counsel for the foregoing Defendants, for

copies of each of the foregoing Defendants' articles of incorporation, bylaws, operating agreements, shareholders' agreements, employment agreements, and documents evidencing capitalization and ownership (the "Request for Governing Documents"). A true and correct copy of the foregoing letter is attached as Exhibit C.

20. Plaintiffs received no response to the Request for Governing Documents, and Defendants, rather than Plaintiffs, are in possession of those documents.

21. As shown in Exhibit C, the purpose of Plaintiffs' Request for Governing Documents from Defendants was to further Plaintiffs "intent to divest all their member and shareholder interest in all companies affiliated with Lystn, LLC."

22. On March 5, 2021, the Members of Lystn voted for Lystn to exercise a purchase option of Roxanne Stone and Jacqueline Hill's respective Membership Interest as provided under Article VII of the Operating Agreement (the "Buyout Provisions").

23. By letter dated March 10, 2021, Biodynamic Farms' Chief Legal Counsel informed Plaintiffs, "Accordingly, pursuant to that Transfer Notice, this will confirm that Biodynamic, at a duly noticed meeting of members conducted on March 5, 2021, by majority vote of its members pursuant to Operating Agreement Section 7.4(a), has exercised its option to purchase all of your clients' respective member interests in Biodynamic, consisting of Jacqueline's twenty-six percent (26%) member interest in Biodynamic and Roxanne's eleven percent (11%) member interest in Biodynamic." A true and correct copy of the foregoing letter is attached as Exhibit D.

24. As shown in Exhibit D, Biodynamic Farms' Chief Legal Counsel stated that Biodynamic Farms "has adopted the Lystn, LLC Operating Agreement by reference."

25. By letter dated March 10, 2021, IGSI's Chief Legal Counsel informed Plaintiffs, "Accordingly, pursuant to that Transfer Notice, this will confirm that IGSI, at a duly noticed

meeting of shareholders conducted on March 5, 2021, by majority vote of its shareholders pursuant to Shareholders' Agreement Section 3.1.2(a), has exercised its option to purchase all of your clients' respective shareholdings in IGSI, consisting of Jacqueline's twenty-four and 75/100 percent (24.75%) shareholdings in IGSI and Roxanne's ten and 50/100 percent (10.50%) shareholdings in IGSI." A true and correct copy of the foregoing letter is attached as Exhibit E.

26. By letter dated March 10, 2021, Food for Life's Chief Legal Counsel informed Plaintiffs, "Accordingly, pursuant to the Transfer Notice, this will confirm that F4L, at a duly noticed meeting of shareholders conducted on March 5, 2021, by majority vote of its shareholders pursuant to Shareholders' Agreement Section 3.1.2(a), has exercised its option to purchase all of your clients' respective shareholdings in F4L, consisting of Jacqueline's twenty-six percent (26%) shareholdings in F4L and Roxanne's eleven percent (11%) shareholdings in F4L." A true and correct copy of the foregoing letter is attached as Exhibit F.

27. As shown in Exhibit F, Food for Life's Chief Legal Counsel stated that Food for Life "had adopted the Integrative Green Solutions, Inc. Shareholders' Agreement by reference."

28. On information and belief, the operating agreements and shareholders' agreements have substantially the same terms as Lystn's Operating Agreement.

29. The Chief Legal Counsel for Biodynamic Farms, IGSI, and Food for Life is the same person, Allan Sodomsky, Esq.

30. Under Section 7.7.2 of the Operating Agreement, Lystn must "select an experienced valuation professional competent to determine the fair market value of the Membership Interest of the Affected Member (the "Appraised Fair Market Value") and shall give written notice thereof to the Selling Party." [Ex. A § 7.7.2]. Also, if the Selling Party objects to Lystn's appraiser within 10 days of such notice, then the Selling Party may designate another experienced valuation

professional competent to determine the Appraised Fair Market Value. [Id.]. In such event, “The Company’s chosen appraiser and the Selling Party’s chosen appraiser shall thereafter designate a third experienced valuation professional competent to determine the Appraised Fair Market Value, who shall make such determination and submit a written report thereof to the Company as promptly as possible.” [Id.].

31. Lystn never hired an appraiser for an equity valuation in accordance with Section 7.7.2 of the Operating Agreement.

32. Under the Operating Agreement, the Appraised Fair Market Value is the purchase price of the Membership Interest if there is no Agreed Price. [Ex. A § 7.7.3].

33. To date, Lystn neither hired an appraiser nor complied with Sections 7.7.1 or 7.7.2 of the Operating Agreement and the balance of the Buyout Provisions.

34. On April 26, 2021, Plaintiffs resigned their employment from Lystn, and from all Lystn-Related Companies, and Plaintiffs have fully separated themselves from such companies.

35. On April 26, 2021, Plaintiffs extended an offer to Lystn called a Transition Services Agreement, which proposed a consultation period where Plaintiff would assist Lystn until replacements became hired.

36. Lystn declined the Plaintiffs’ offer under the Transition Services Agreement.

37. On May 4, 2021, Plaintiffs publicly announced their resignation from Lystn.

38. Plaintiffs complied with all terms and conditions of the Buyout Provisions, and any similar buyout provisions for the Lystn-Related Companies.

39. In order to find gainful employment, Plaintiffs intend to work in the pet food industry.

40. Plaintiffs are no longer employed by Lystn, or by the Lystn-Related Companies, and should be free to compete in the open market within the pet food industry.

41. Lystn has breached the Operating Agreement and the implied covenant of good faith and fair dealing, by willfully not complying with Sections 7.7.1 or 7.7.2 of the Operating Agreement, and by failing to hire an appraiser for an equity valuation, in order to interfere with, or prevent, Plaintiffs from seeking employment in the same industry.

42. The Lystn-Related Companies have respectively breached their operating agreements, or shareholder agreements, by willfully not complying with the buyout provisions therein, in order to interfere with, or prevent, Plaintiffs from seeking employment in the same industry.

43. Under the Operating Agreement of Lystn and under any operating agreement or shareholders' agreement for the Lystn-Related Companies, the effective date of an equity appraisal is March 5, 2021.

COUNT I: DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs v. Lystn, LLC

44. The foregoing allegations are incorporated by reference.

45. The Non-Compete Provision is unenforceable as a matter of law as applied to Members, such as Plaintiffs, who are not employed by the LLC and do not participate in the management of the LLC.

46. A controversy exists between Plaintiffs and Defendant Lystn, LLC, namely, whether Plaintiffs remain subject to the Non-Compete Provision, and a declaratory judgment will terminate such controversy; in the alternative, there is an urgent necessity to avoid injury which cannot be compensated for by damages, greater injury will be done by refusing rather than granting an injunction, and Plaintiffs have no other adequate remedy at law than injunction.

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor and against Defendant Lystn, LLC, declaring that Section 10.2 of the Operating Agreement of Lystn, LLC is

unenforceable as applied to persons who discontinued any form of employment and as applied to Members that do not participate in management or, alternatively, enjoining Lystn, LLC from enforcement of such provision as to Plaintiffs; and such other relief as the Court deems necessary, just, or appropriate, including declaratory relief as supplementary to injunction.

COUNT II: SPECIFIC PERFORMANCE

Plaintiffs v. Lystn, LLC

47. The foregoing allegations are incorporated by reference.
48. The Operating Agreement is a valid agreement between Plaintiffs and Lystn.
49. Lystn has breached the Operating Agreement.
50. Plaintiffs do not have an adequate remedy at law.

WHEREFORE, Plaintiffs request judgment in their favor and against Defendant Lystn, LLC, by ordering Defendant to specifically perform under Article VII of the Operating Agreement, including Sections 7.7.1 and 7.7.2 thereof and that the equity valuation is effective as of March 5, 2021, and exercise good faith and fair dealing in the purchase of the respective Membership Interests of Plaintiffs; and such other relief as the Court deems necessary, just, and appropriate.

COUNT III: DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs v. Food for Life Trucking and Logistics Company, Integrative Green Solutions, Incorporated, and Biodynamic Farms, LLC

51. The foregoing allegations are incorporated by reference.
52. If any of the governing documents for the Lystn-Related Companies contain a non-compete provision, then the same is unenforceable as a matter of law as applied to Members, such as Plaintiffs, who are not employed by the Lystn-Related Companies and do not participate in the management of the same.
53. A controversy exists between Plaintiffs and the Lystn-Related Companies, namely,

whether Plaintiffs remain subject to any such non-compete provision, and a declaratory judgment will terminate such controversy; in the alternative, there is an urgent necessity to avoid injury which cannot be compensated for by damages, greater injury will be done by refusing rather than granting an injunction, and Plaintiffs have no other adequate remedy at law than injunction.

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor and against Defendants, Food for Life Trucking and Logistics Company, Integrative Green Solutions, Incorporated, and Biodynamic Farms, LLC, declaring that any governing document containing a non-compete provision is unenforceable as applied to persons who discontinued any form of employment and as applied to Members or shareholders that do not participate in management or, alternatively, enjoining Defendants from enforcement of such provision as to Plaintiffs; and such other relief as the Court deems necessary, just, or appropriate, including declaratory relief as supplementary to injunction.

COUNT IV: SPECIFIC PERFORMANCE

Plaintiffs v. Food for Life Trucking and Logistics Company, Integrative Green Solutions, Incorporated, and Biodynamic Farms, LLC

54. The foregoing allegations are incorporated by reference.
55. There is a valid agreement between Plaintiffs and Food for Life, IGSI, and Biodynamic Farms, either as an operating agreement or shareholders' agreement, and the foregoing Defendants have breached the same.
56. Plaintiffs do not have an adequate remedy at law.

WHEREFORE, Plaintiffs request judgment in their favor and against Defendants, Food for Life Trucking and Logistics Company, Integrative Green Solutions, Incorporated, and Biodynamic Farms, LLC, by ordering each of those Defendants to specifically perform under the applicable buyout provisions of that Defendant's operating agreement or shareholders' agreement

and that the equity valuation is effective as of March 5, 2021, and exercise good faith and fair dealing in the purchase of the respective equity interests of Plaintiffs; and such other relief as the Court deems necessary, just, and appropriate.

Respectfully submitted,

CORNERSTONE LAW FIRM, LLC



By: _____

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Dated: July 21, 2021