



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

AMERICAN APPAREL, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. _____ - ____
)	
DOV CHARNEY,)	
)	
Defendant.)	

VERIFIED COMPLAINT

Plaintiff American Apparel, Inc. (“American Apparel” or the “Company”), by its undersigned attorneys, alleges upon personal knowledge as to its actions, and upon information and belief as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. Dov Charney, American Apparel’s founder and former President, Chief Executive Officer and Chairman of the Board, refuses to abide by the obligations to which he agreed in a July 9, 2014 Nomination, Standstill and Support Agreement (the “Standstill Agreement”) entered into by him, the Company, and hedge fund Standard General L.P. (“Standard General”).¹ The

¹ The Standstill Agreement is attached hereto as Exhibit A. Section 11 provides that “[t]his agreement shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of Delaware applicable to contracts executed and to be performed wholly within such state without giving effect to the choice of law principles of such state.”

Company is bringing this lawsuit to remedy and prevent further breaches of the Standstill Agreement by Mr. Charney, and to prevent further harm to the Company by such breaches.

2. Mr. Charney's outlandish behavior has been well documented in the press. (*See, e.g.*, <http://www.claudineko.com/storiesamericanapparel.html>) His conduct as CEO has led to countless allegations of sexual harassment brought by former employees. (*See, e.g.*, <http://jezebel.com/dov-charney-was-fired-for-making-employee-his-sex-slave-1594191826> (noting that "[i]t's tough to imagine which of his equally disturbing sex crimes finally motivated the American Apparel board to fire CEO Dov Charney")) He also repeatedly made distasteful comments about employees while acting as CEO. (*See* <http://nypost.com/2015/05/07/dov-charney-called-his-workers-sluts-and-pigs-documents/>) ("As CEO, [Mr. Charney] described certain employees as 'sluts' and 'pigs' and threatened others while 'punching holes in tables and throwing things'"))

3. In addition, there are numerous other instances involving Mr. Charney's misuse of Company property and funds, and mistreatment of female employees, that formed the basis for his suspension in June 2014, and ultimately his termination and removal from the Company as an officer and employee in December 2014. In response to these events, Mr. Charney has become obsessed

with retribution against the Company and has made it his mission to “take back the Company.”

4. Mr. Charney publicized his intentions in a recent 20/20 interview, in which he stated that he was “re-strategizing how [he] want[s] to take back the Company again,” and believes that he is “gonna get it back.” One news report recently referred to Mr. Charney as “an ousted founder refusing to let go, stirring up all kinds of trouble in the process,” and another stated that he is “doggedly fighting to get back his company.”

5. Indeed, in an unprecedented effort to disrupt and harm the Company, Mr. Charney has launched a scorched earth campaign that exceeds all bounds of propriety. Among other things, since the execution of the Standstill Agreement and his subsequent termination, Mr. Charney has trespassed on Company property; interfered with Company conference calls and criticized Company employees for the manner in which they handled these calls; demanded employees handle the day-to-day operations of the Company in accordance with his instructions; called employees on the telephone demanding Company information such as sales reports; and threatened employees who refuse to support his return by taking their photographs and promising to fire them when he returns to power. Upon information and belief, Mr. Charney has also sabotaged American

Apparel's relationships with its suppliers, and has informed potential financing sources that any deal with the Company must come through him.

6. Mr. Charney has also flagrantly and repeatedly made a number of disparaging comments about the Company to the press that violate the Standstill Agreement. Yet, at the same time, he is attempting in many respects to act as the "man behind the curtain," manipulating friends and Company employees behind the scenes in a lame effort to obfuscate the fact that he is violating the Standstill Agreement in order to regain control of the Company.

7. For example, Mr. Charney has recently launched a legal campaign against the Company, using a friend and former employee, his college roommate, and a woman with whom he has had a relationship to do his bidding and seek the removal of certain American Apparel directors in the California and Delaware courts. His attorney, Keith Fink, has also filed *no less than a dozen* separate National Labor Relations Board unfair labor practice charges against the Company purportedly brought on behalf of American Apparel employees.

8. In addition, Mr. Charney is attempting to manipulate the Company's labor force as part of his effort to take back control of the Company. Mr. Charney has recently joined employee meetings where he has participated in rallying them to circulate flyers touting the fact that "Dov is fighting in the courts to regain control of the company," send emails, and even circulate photographs of

children holding picket signs seeking the removal of current Board members. Mr. Charney has even gone so far as to cause a Company employee to send mass emails *from Mr. Charney's home* to other employees promoting litigation seeking to oust members of the Company's current board of directors (the "Board").

9. Mr. Charney has gone too far, and the curtain has now been pulled back, revealing that he has clearly breached the unambiguous terms of the Standstill Agreement. That agreement provides:

(a) "Charney will not serve as a Board member . . .";

(b) Until after the 2015 annual meeting, Mr. Charney may not "seek the removal of any member of the Board or propose any nominee for election to the Board or seek representation on the Board . . .";

(c) Until after the 2015 annual meeting, Mr. Charney may not "instigate, encourage, join, act in concert with or assist any third party to," among other things, seek the removal of any member of the Board;

(d) Until after the 2015 annual meeting, Mr. Charney may not "publicly propose or participate in . . . any extraordinary corporate transaction," or "purchase or cause to be purchased or otherwise acquire or agree to acquire beneficial ownership of any shares of Common Stock . . .";

(e) "Charney shall not serve as CEO of the Company or serve as an officer or employee of the Company . . . unless . . . the Suitability Committee makes a Clearance Determination in favor of such service," which did not occur; and

(f) Mr. Charney "shall refrain from making or causing to be made . . . any statement . . . that disparages or otherwise negatively reflects upon the Company . . ."

10. These express provisions lay plain the purpose of the Standstill Agreement: Mr. Charney is not ever to return to the Company as either an

employee or a member of American Apparel's Board, will not seek to take control of the Company until at least after the 2015 annual meeting, and will refrain from disparaging the Company and its employees. Through his actions, however, Mr. Charney continues to violate both the express terms and the spirit of the Standstill Agreement. He refuses to acknowledge that he simply cannot return to the Company and cannot participate in or instigate efforts to return him to the Company.

11. Since entering into the Standstill Agreement, Mr. Charney has interfered with the Company's ongoing operations, has assisted in seeking the removal of Board members, has participated in employee meetings advocating his return, has disparaged the Company and its management, has hired corporate advisors and, according to the press, has participated in one indication of interest concerning a potential acquisition of the Company. The press has described Mr. Charney as "stirring up trouble" because he is "determined to return to the company." (<http://www.buzzfeed.com/sapna/internal-american-apparel-data-shows-sales-slumping>)

12. Indeed, the mosaic painted by Mr. Charney's actions is clear: He is doing anything but "standing still," and instead is engaged in an ongoing subversion of the Company's rebuilding efforts.

13. The Company and its Board is, and must be, in the business of operating for the benefit of its stockholders. The Company must focus on its core operations to complete its turnaround from the poor financial performance the Company suffered during the last years of Mr. Charney's reign as CEO and Chairman of the Board. Indeed, the Company's current turnaround plan is necessitated by the harm that occurred under Mr. Charney's tenure.

14. The Company cannot and should *not* be in the business of constantly responding to Mr. Charney's disruption, disparagement and lawsuits, much less any takeover attempt. Blocking and preempting Mr. Charney's efforts to disrupt the governance of the Company and its corporate operations in an effort to regain control is *precisely* the benefit for which the Company bargained when it entered into the Standstill Agreement with Mr. Charney back in July 2014. This benefit is precisely what the Company has *not* received and will not receive absent judicial intervention.

15. Consequently, American Apparel has no choice but to seek judicial intervention to hold Mr. Charney to the very promises he made (with the advice of his own counsel) so that the Company and its stockholders receive the benefit of their bargain under the Standstill Agreement.

16. Through this action, therefore, the Company now seeks specific performance of the terms of the Standstill Agreement. The Company also seeks

injunctive relief prohibiting Mr. Charney from breaching the terms of the Standstill Agreement, as well as a judgment on its claims that Mr. Charney's initiation of or assistance in various lawsuits and statements made in the press and at employee meetings breached the standstill and non-disparagement provisions of the Standstill Agreement. Moreover, the Company seeks redress for Mr. Charney's breach of the implied covenant of good faith and fair dealing by attempting to continue to manage the Company in violation of the spirit of the Standstill Agreement.

THE PARTIES

17. Plaintiff American Apparel is a Delaware corporation with its headquarters in Los Angeles, California. American Apparel is a vertically integrated manufacturer, distributor, and seller of clothing and related items, operating 239 retail outlets and employing approximately 10,000 employees in 20 countries worldwide (with approximately 6,000 of those employees working at one of American Apparel's five manufacturing facilities in and around downtown Los Angeles, California).

18. Defendant Dov Charney served as American Apparel's President and CEO until he was suspended from that position on June 18, 2014. Mr. Charney also served as a director on American Apparel's Board until he resigned on July 19, 2014, pursuant to the Standstill Agreement (agreeing never again to serve on the Board). Thereafter, as contemplated by the Standstill

Agreement, a Suitability Committee of the Board, comprised of independent directors, oversaw an extensive investigation conducted by FTI Consulting, Inc. into his misconduct. As a result of that investigation, Mr. Charney's employment at American Apparel was terminated for cause in December 2014. Mr. Charney's only connection to the Company at this point is as a stockholder.

JURISDICTION

19. This Court has subject matter jurisdiction over this matter pursuant to 10 *Del. C.* § 341 and 10 *Del. C.* § 6501.

20. This Court has jurisdiction over Mr. Charney pursuant to Section 11 of the Standstill Agreement, which provides that “each of the parties hereto (a) consents to submit itself to the exclusive personal jurisdiction of the Court of Chancery or other federal or state courts of the State of Delaware in the event any dispute arises out of this Agreement or the transactions contemplated by this Agreement, (b) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (c) agrees that it shall not bring any action relating to this Agreement or the transactions contemplated by this Agreement in any court other than the Court of Chancery or other federal or state courts of the State of Delaware, (d) irrevocably waives the right to trial by jury and (e) irrevocably consents to service of process by a reputable overnight mail delivery service”

FACTUAL BACKGROUND

A. Mr. Charney Is Suspended As CEO Pending Board Investigation Into His Misconduct.

21. During his tenure as CEO, Mr. Charney became known for his inappropriate behavior. (<http://gawker.com/tag/dov-charney>) Mr. Charney's actions – some of which led to the filing of numerous sexual harassment lawsuits by former American Apparel employees – have caused financial and reputational harm to the Company, with the Company bearing the financial impact of these lawsuits or settlements arising out of Mr. Charney's actions.

22. In Spring 2014, the Company began investigating Mr. Charney for alleged misconduct. On June 18, 2014, American Apparel's Board met and, based on the ongoing investigation being conducted by the Company's Audit Committee, the independent directors presented Mr. Charney with two options regarding his employment.

23. One option would have allowed Mr. Charney to continue to work as a paid consultant for the Company. The Board offered such consulting option as a compromise, pursuant to which Mr. Charney would not have supervisory authority over employees or any financial authority, while the Company would avoid an all-out war against the Company's founder.

24. The other option would have suspended Mr. Charney pending completion of a formal investigation.

25. When negotiations failed after several hours, the Board voted to suspend Mr. Charney, effective July 19, 2014, pending an investigation into whether he should ultimately be terminated for cause. Mr. Charney's suspension was formalized in a letter (the "Suspension Letter"), which noted that, *inter alia*, Mr. Charney:

- Permitted a Company employee to create and maintain false and defamatory blog posts about former Company employees;
- Presented significant severance packages (paid for by the Company itself and not Mr. Charney) to numerous former employees in order to ensure that Mr. Charney's misconduct with regard to those employees would not subject him to personal liability;
- Repeatedly engaged in conduct that violated the Company's sexual harassment and anti-discrimination policies, and created significant risks of liability on the part of the Company;
- Interrupted sexual harassment training mandated by California law, in violation of the Company's Code of Ethics;
- Made derogatory and disparaging comments directed at persons of certain ethnicities or related to certain persons' gender, sexual orientation and/or religious persuasion; and
- Misused corporate assets for personal reasons without approval of the Board.

B. After His Suspension, Mr. Charney Attempts To Use His Knowledge To Take Control Of The Company And Return Himself To Power.

26. Following his suspension, Mr. Charney defiantly made it clear to anyone who would listen that he was going to take the Company back no matter what. Among other things, he sought to "creep" up to numerical control of the

Company by increasing his American Apparel stock holdings through accumulation of shares in the marketplace.

27. On June 23, 2014, Mr. Charney filed a Schedule 13D (the “June 23 Filing”) with the United States Securities & Exchange Commission. In the June 23 Filing, Mr. Charney noted that, “[e]ffective immediately, *the Board suspended Mr. Charney*. . . . The Board also removed Mr. Charney as Chairman of the Board effective immediately.”

28. The June 23 Filing further noted:

Following the announcement on June 18, 2014, made by the Issuer of its intent to terminate Mr. Charney’s employment, Mr. Charney was approached by certain persons (the “Supporters”), including stockholders of the Issuer, who expressed support for his continued leadership of the Issuer. On June 19, 2014, Mr. Charney began to discuss with the Supporters potential changes to the composition of the Board and management of the Issuer.

. . .

Mr. Charney intends to engage in discussions with the Issuer and Issuer’s management and the Board, other stockholders of the Issuer and other persons that may relate to the afore mentioned matters and/or other matters related to governance and board composition, management, operations, business, assets, capitalization, financial condition, strategic plans and the future of the Issuer.

29. Also on June 23, 2014, Mr. Charney sent an 8 *Del. C.* § 220 demand (the “Demand Letter”) to the Company seeking, *inter alia*, a list of the Company’s stockholders. The Demand Letter specified that its purpose was to

enable Mr. Charney to communicate with the Company's stockholders regarding matters specified in the June 23 Filing.

30. Mr. Charney's efforts to take control of the Company continued after the filing of the Demand Letter. On June 26, 2014, the Company learned from its proxy solicitor that 23 million shares of the Company's stock (a highly unusual number) were traded after the stock market's close. The Board also became aware of a rumored agreement between hedge fund Standard General and Mr. Charney that would allow Mr. Charney to gain control of a higher percentage of the Company's voting stock.

31. A later SEC filing confirmed Mr. Charney's arrangement with Standard General. On June 25, 2014, Mr. Charney signed a letter agreement (the "Letter Agreement"), pursuant to which Standard General agreed to enter into a cooperation agreement with Mr. Charney once Standard General acquired 10% or more of the Company's outstanding equity. The cooperation agreement provided that Standard General's and Mr. Charney's shares would be voted only as agreed between those two parties. Mr. Charney stated in the filing that he understood that Standard General had acquired at least 10% of the Company's outstanding equity.

32. In addition, notwithstanding his suspension, Mr. Charney – purporting to act in his former capacity as CEO – attempted on June 27, 2014 to set a meeting of the Company's stockholders for September 25, 2014. The meeting's

purpose was to elect a slate of his compatriots to the Board and, in doing so, take control of the Company himself – thereby circumventing the Board’s process, and corporate governance, entirely.

C. The Company Takes Steps To Prevent Mr. Charney’s Takeover Attempt.

33. Mr. Charney’s maneuvering against the Company did not go unnoticed. At a special meeting of the Board held on June 27, 2014, Mr. Charney told the Board that his plan to take control of the Company was a *fait accompli*, and suggested that the Company prepare for his return to power. At the same meeting, the Board delegated powers to an Executive Succession Committee (the “Committee”) to the fullest extent possible under the Company’s bylaws and Delaware law. The Committee met later that evening to consider certain protective corporate governance measures and adopted the Rights Plan described below. As the Board worked to protect the Company, Mr. Charney attempted to derail the Board’s efforts and used his position on the Board to vote against formation of the Committee.

34. At meetings held on June 27 and 28, 2014, the Board (at the Committee’s recommendation) adopted the Rights Plan and adopted certain amendments to the Company’s bylaws.

D. Mr. Charney, Standard General, And American Apparel Enter Into The Standstill Agreement To Prohibit Mr. Charney From Taking Control Of The Company.

35. Shortly thereafter, discussions commenced between the Company, Standard General and Mr. Charney on a path forward. On July 9, 2014, Mr. Charney, Standard General, and American Apparel entered into the Standstill Agreement to end Mr. Charney's attempts to take over the Company. In the Standstill Agreement, Mr. Charney specifically agreed never to serve again as a director of the Company; never to serve again as CEO or an employee unless cleared by the Suitability Committee investigating his conduct (which did not happen, as discussed herein); not to disparage the Company; and to abide by significant standstill restrictions through the end of the Company's 2015 annual meeting (which has not yet been held).

36. The Standstill Agreement also resulted in a change to the Board's composition. Prior to the Standstill Agreement, the Company had a staggered Board comprised of David Danziger, Robert Greene, and Allen Mayer as "Class A" directors; Alberto Chehebar and William Mauer as "Class B" directors; and Mr. Charney and Marv Igelman as "Class C" directors. Pursuant to the Standstill Agreement, the Board was reconstituted with Mr. Danziger, Mr. Mayer, and David Glazek serving as "Class A" directors; Laura Lee and Thomas Sullivan

serving as “Class B” directors; and Colleen Brown and Joseph Magnacca serving as “Class C” directors.²

37. The Standstill Agreement also contains several express contractual protections against any renewed attempt by Mr. Charney to take over the Company. For example, Section 1 of the Standstill Agreement, which covers “Board Matters,” explicitly provides that “Charney will not serve as a Board member or be nominated by the Company or Standard General as a Board member.” There is no time limit on this restriction.

38. Section 3 of the Standstill Agreement contains “Standstill” provisions.

39. Specifically, Section 3(c) of the Standstill Agreement provides that, “[u]ntil completion of the 2015 Annual Meeting,” Mr. Charney may not “present at any Special Meeting of Stockholders or through action by written consent any proposal for consideration for action by stockholders *or seek the removal of any member of the Board* or propose any nominee for election to the Board or seek representation on the Board” (emphasis added)

40. Further, Section 3(h) of the Standstill Agreement prohibits Mr. Charney from “instigat[ing], encourag[ing], join[ing], act[ing] in concert with or

² In addition, two designees were placed on the Board by Lion Capital (Guernsey) II Limited.

assist[ing] any third party to do any of the foregoing.” Thus, Sections 3(c) and 3(h) combine to prohibit, among other things, Mr. Charney from “instigat[ing], encourage[ing], join[ing], act[ing] in concert with or assist[ing] any third party” in seeking to remove a director of the Company.

41. In addition, Section 3(a)(ii) prohibits Mr. Charney from “encourag[ing] any other person to solicit or withhold any proxy, consent or other authority with respect to any shares of Common Stock or otherwise advise, encourage or influence any other person with respect to voting any shares of Common Stock”

42. Section 3(e) of the Standstill Agreement prohibits Mr. Charney from “publicly propos[ing] or participat[ing] in . . . any extraordinary corporate transaction,” and Section 3(f) of the Standstill Agreement prohibits Mr. Charney from “purchas[ing] or caus[ing] to be purchased or otherwise acquir[ing] or agree[ing] to acquire beneficial ownership of any shares of Common Stock”

43. In addition, Section 6 of the Standstill Agreement contains a broad non-disparagement clause. Specific to Mr. Charney, Section 6(b) of the Standstill Agreement provides that he:

shall refrain from making or causing to be made to any third party, including but not limited to by press release or similar public statement to the press or media or to any analyst, any statement or announcement, whether orally or in writing, that disparages or otherwise negatively reflects upon the Company, its employees, officers or directors or any person who has served as an employee, officer or director of the Company in the past, or who

serves on or following the date of this Agreement as an employee, officer or director of the Company.

44. Finally, Section 5 of the Standstill Agreement contains provisions addressing the investigation of Dov Charney, which was to be conducted by a Suitability Committee of the Board. Among other things, Mr. Charney agreed that he “shall not, in any way, interfere with or attempt to influence the outcome of the investigation” (Section 5(c)), and also that he “shall not serve as CEO of the Company or serve as an officer or employee of the Company or any of its subsidiaries unless and until the Investigation is completed and the Suitability Committee makes a Clearance Determination in favor of such service.” (Section 5(d)) As discussed below, because the Suitability Committee could not and did not, consistent with its fiduciary duties, make any Clearance Determination in Mr. Charney’s favor, he “shall not serve as CEO of the Company or serve as an officer or employee of the Company.” There is no time restriction on this contractual term.

E. Mr. Charney Again Attempts To Take Back Control Of The Company, And In Doing So Breaches Various Sections Of The Standstill Agreement.

45. In December 2014, after a nearly six month, in-depth investigation, a unanimous Suitability Committee determined that Mr. Charney was not suitable to return to the Company in any corporate capacity. American

Apparel also announced that Mr. Charney had been terminated for cause in accordance with his employment agreement.

46. The reasons included:

(a) Mr. Charney's conduct with respect to the "Impersonation Blogs" involving posting naked photographs of former American Apparel employees and models in retaliation for claims against him;³

(b) Mr. Charney's overlapping sexual liaisons with numerous current and former American Apparel employees and models;

(c) Mr. Charney's verbal and physical assaults on American Apparel employees;

(d) Mr. Charney's efforts to delete, remove, hide or destroy evidence relating to his actions and misconduct;

(e) Mr. Charney's use of electronic storage media belonging to the Company for personal purposes to graphically document his liaisons with current and former American Apparel employees and models;

(f) Mr. Charney's repeated practice of causing the Company to make unauthorized loans and advances to him;

(g) Mr. Charney's unauthorized use of Company funds to pay personal expenses, including, without limitation, his personal attorneys' fees, and to make personal investments; and

(h) Mr. Charney's practice of removing cash from Company retail stores (either personally or at his direction).

47. However, just as he did after his initial suspension as CEO, Mr. Charney defiantly refused to accept the outcome of the Suitability Committee's

³ See, e.g., <http://jezebel.com/5796480/dov-charney-sued-again-by-alleged-victims>; <http://gawker.com/all-the-reasons-american-apparel-booted-dov-charney-1594568282>; http://en.wikipedia.org/wiki/Dov_Charney.

investigation and termination decision, notwithstanding that he agreed to that very process when he entered into the Standstill Agreement.

48. Since his termination, and despite voluntarily entering into the Standstill Agreement with the advice of counsel, Mr. Charney has again undertaken to take over American Apparel by inundating the Company with litigation seeking, among other things, to remove the Company's current directors; making disparaging comments about the current Board and management in the press; inciting labor unrest within the Company (which fundamentally just serves as a vehicle for his initiative to return to the Company); and interfering with the Company's day-to-day operations.

49. The motive for this conduct is clear: Mr. Charney himself remarked in a recent 20/20 interview that he has been "re-strategizing how [he] want[s] to take back the Company again," and believes he is "gonna get it back" through these concerted efforts. (<http://abc.go.com/shows/2020/listing/2015-03/27-2020-032715-occupational-hazards>) Mr. Charney has undertaken each of these actions in breach of the provisions of the Standstill Agreement. These efforts appear to be part of Mr. Charney's plan to distract management and interfere with the Company's operations.

1. Mr. Charney's Participation In The Filing Of Various Lawsuits Violates The Terms Of The Standstill Agreement.

50. Mr. Charney's participation in various lawsuits brought against the Company constitutes a breach of multiple provisions of the Standstill Agreement.

51. For example, Sections 3(c) and 3(h) of the Standstill Agreement prohibit Mr. Charney from instigating, encouraging, joining, acting in concert with or assisting any third party in seeking to remove directors of the Company. Since his termination, Mr. Charney has launched a legal campaign in which he and his confidants have inappropriately requested various courts to do that which Mr. Charney himself may not do because of the Standstill Agreement – wrest control of the Company away from the Board and management and reinstate himself as CEO and a director.

52. Specifically, since entering into the Standstill Agreement, Mr. Charney has “instigate[d], encourage[d], joine[d], act[ed] in concert with or assist[ed]” a stockholder complaint seeking the invalidation of the Company's 2014 annual meeting that preceded Mr. Charney's suspension. *See Hubner, et al. v. Mayer, et al.*, Case No. 15-2965 (C.D. Cal.) (the “Hubner California Action”). In addition, another of Mr. Charney's friends filed a remarkably similar lawsuit seeking the same relief in the Court of Chancery. *See Rodriguez v. Mayer, et al.*,

C.A. No. 10944-CB (Del. Ch.). Mr. Charney has also sued Standard General⁴ and American Apparel⁵ for defamation, and his lawyer, Keith Fink,⁶ has filed a labor class action complaint in the Central District of California⁷ and a lawsuit alleging discrimination and wrongful termination in California Superior Court.⁸ Indeed, Mr. Fink in quick succession has filed no fewer than *twelve* National Labor Relations Board unfair labor practice charges against the Company. In addition, Mr. Fink relentlessly continues to solicit current and former employees to file additional charges against the Company.

53. On April 21, 2015, plaintiffs Jan Willem Hubner, a former American Apparel employee and long-time supporter of Mr. Charney, and Eric Ribner, Mr. Charney's college roommate, filed suit in the Central District of

⁴ *Charney v. Standard General, L.P., et al.*, Case No. BC 581130 (Cal. Super.).

⁵ *Charney v. American Apparel, Inc. et al.*, Case No. BC 581602 (Cal. Super.).

⁶ Although he now works for Mr. Charney, Mr. Fink has actually sued Mr. Charney for sexual harassment in previous litigation. Unsurprisingly, one article describing that litigation noted that “Fink’s modus operandi is to embarrass his targets through scandal.” (<http://www.finksteinberg.com/index.php/press-center/41-media/107-american-apparel-los-angeles-business-journal>) Since joining ranks with Mr. Charney, Mr. Fink continues to implement this strategy against American Apparel. It should also be noted that Mr. Charney hired Mr. Fink to represent the Company previously in connection with an EEOC matter, giving rise to conflict issues as well.

⁷ *Hirschberg, et al. v. American Apparel, Inc.*, Case No. 2:15-cv-02827-BRO-JPR (C.D. Cal.).

⁸ *Nisembaum v. American Apparel, Inc., et al.*, Case No. BC 579342 (Cal. Super.).

California, seeking, among other things, to remove current American Apparel directors from the Board, to invalidate the results of American Apparel's 2014 election of directors, to hold a revote of the 2014 annual meeting, and to provide an opportunity for opposing slates of directors to seek election at the revote.

54. In connection with plaintiffs' motion for a preliminary injunction in the Hubner California Action, Mr. Charney himself submitted a declaration in support of plaintiffs' motion seeking removal of two current directors. This action was designed to "instigate, encourage, join, act in concert with or assist" his compatriots in removing directors of American Apparel in violation of the Standstill Agreement.

55. Three days later, on April 24, 2015, Eliana Gil Rodriguez, a woman with whom Mr. Charney has had a relationship, filed suit in the Court of Chancery, seeking substantially similar relief (the "Delaware Action").

56. Based on his longstanding relationships with the plaintiffs in both the Hubner California Action and Delaware Action, it is reasonable to infer that Mr. Charney is orchestrating these lawsuits behind the scenes in breach of Sections 3(c) and 3(h) of the Standstill Agreement, which prevent Mr. Charney from seeking or instigating, encouraging, joining, acting in concert with or assisting a third party in seeking to remove directors of the Company. Indeed, Mr. Charney's submission of a declaration in support of plaintiffs' motion for

preliminary injunction in the Hubner California Action itself demonstrates his encouragement and assistance in connection with that litigation, and is a clear violation of Sections 3(c) and 3(h) of the Standstill Agreement.

57. In addition, on April 29, 2014, American Apparel employee Stephanie Santos sent an email from her Company email account “on behalf of shareholders Jan Willem Hubner and Eric Riber” to other American Apparel employees describing the Hubner California Action, indicating that the litigation’s “outcome could dramatically alter the composition of the board of directors” American Apparel’s Chief Information Officer *traced the origin of this email to Mr. Charney’s home address*. Thus, it is reasonable to infer that Mr. Charney, either himself or acting through an employee visiting his home, breached Sections 3(c) and 3(h) of the Standstill Agreement by sending an email promoting the Hubner California Action, the purpose of which is to remove American Apparel directors elected at the 2014 annual meeting.

2. Mr. Charney’s Participation In And Statements At Employee Meetings Breached The Terms Of The Standstill Agreement.

58. Mr. Charney’s participation in, and statements at, recent employee meetings held by American Apparel workers also violated the terms of the Standstill Agreement.

59. The Standstill Agreement, as discussed above, makes clear that Mr. Charney may never return to the Company as a director or officer.

60. In addition, Section 3(a)(ii) prohibits Mr. Charney from “encourag[ing] any other person to solicit or withhold any proxy, consent or other authority with respect to any shares of Common Stock or otherwise advise, encourage or influence any other person with respect to voting any shares of Common Stock”

61. Mr. Charney has recently garnered media attention by participating in employee meetings where he has expressed anti-Board sentiments and where he appears to be advocating for his return to the Company, which the Standstill Agreement prohibits. Thus, by participating at these meetings, Mr. Charney is either seeking support for a return to the Company as an officer or encouraging American Apparel workers to support the removal of current Board members. Either way, Mr. Charney, through such actions, violates the Standstill Agreement.

62. Indeed, Mr. Charney’s participation in the meeting caused American Apparel employee Esmeralda Morales to state in a May 11, 2015 email to American Apparel employees that “[w]e want Dov back,” an indication that Mr. Charney has used the employee meetings to advocate for his return to the Company, notwithstanding the Standstill Agreement’s prohibitions.

63. In addition, shortly before another employee meeting, a labor group circulated a letter to American Apparel employees informing them that “**Dov**

is fighting in the courts to regain control of the company that was taken from him illegally. . . .” Accordingly, it is again reasonable to infer from this letter that Mr. Charney has used these employee meetings to advocate for his return to the Company, whether as an officer or Board member, and to rally employee stockholders to replace current members of the Board. The Standstill Agreement, however, expressly prohibits this behavior.

64. Moreover, the same group has recently circulated a flyer claiming that “Dov Charney will soon return to head the Company,” and encouraging American Apparel employees to sign a card to support his return.

That flyer also states:

On June 1st there will be a hearing in the California State Court in Los Angeles to request an injunction by a judge against the American Apparel Board of Directors to prevent them from conducting the next board meeting in June due to their alleged corruption and fraud committed against the shareholders, including the largest shareholder, Dov. We, employees of the company who received shares due to the generosity of Dov, are minority shareholders who are victims of fraud and corruptions by the Directors. . . . You may attend the court hearing and hear for yourself the accusations and evidence against these Directors and the current management.

This flyer makes clear that Mr. Charney’s participation in employee meetings and his encouragement and assistance in the Hubner California Action seeking to remove directors is part of a larger scheme to remove directors from the Board, influence the results of the 2015 annual meeting, and attempt to reclaim his prior positions at the Company. This constitutes a violation of the Standstill Agreement.

3. Mr. Charney's Actions In Connection With A Potential Indication Of Interest Breached The Terms Of The Standstill Agreement.

65. Upon information and belief, Mr. Charney has also breached the terms of the Standstill Agreement in connection with an indication of interest presented to the Company.

66. Section 3(e) of the Standstill Agreement prohibits Mr. Charney from “publicly propos[ing] or participat[ing] in . . . any extraordinary corporate transaction,” and Section 3(f) of the Standstill Agreement prohibits Mr. Charney from “purchas[ing] or caus[ing] to be purchased . . . any shares of Common Stock” of American Apparel.

67. Bloomberg reported in a December 18, 2014 article published shortly after Mr. Charney's termination that:

American Apparel Inc. founder Dov Charney, who was fired by the company this week, is working with private-equity firm Irving Place Capital on a bid to acquire the retailer, according to a person familiar with the situation.

(<http://www.bloomberg.com/news/articles/2014-12-19/american-apparel-said-to-draw-bid-from-firm-working-with-ex-ceo>)

68. Bloomberg further reported that “[i]f Irving Place can reach a deal, it would lead to the 45-year-old Charney returning to the company in some capacity”

69. In addition, fashion publication Fashionista stated in a December 19, 2014 article that:

Just days after Dov Charney was finally, officially, fired from the company he founded, reports have emerged that he's angling to take American Apparel back. According to *Bloomberg*, Charney is now working with the private equity firm Irving Place Capital on a bid to acquire the hipster-wear retailer.

(<http://fashionista.com/2014/12/dov-charney-trying-to-acquire-american-apparel>)

70. Fashionista further indicated that "it would be surprising if [Mr. Charney] let go of the company without a fight."

71. Upon information and belief, Mr. Charney also apparently retained legal and financial advisors during the standstill period to assist him with potential corporate transactions.

72. Mr. Charney's actions, described above, constitute a violation of Sections 3(e) and 3(f) of the Standstill Agreement.

4. Mr. Charney's Statements To The Press And To Employees Breached The Terms Of The Standstill Agreement.

73. Section 6(b) of the Standstill Agreement prohibits Mr. Charney from making any statement "that disparages or otherwise negatively reflects upon the Company, its employees, officers or directors or any person who has served as an employee, officer or director of the Company in the past, or who serves on or following the date of this Agreement as an employee, officer or director of the Company"

74. Mr. Charney has recently made multiple statements to the press designed to disparage the Company and encourage or influence voters in breach of the terms of the Standstill Agreement.

75. For example, Mr. Charney has stated to news reporters that “[t]he company is not managing a turnaround,” but that “[i]t is managing a severe decline in sales that has taken place under the stewardship of a hedge fund.” (<http://www.buzzfeed.com/sapna/internal-american-apparel-data-shows-sales-slumping>)

76. Mr. Charney has also indicated to the LA Times that “[w]hat we have seen thus far is indicative of leadership that lacks respect for its workforce,” and that “[a] company that treated its manufacturing workforce with dignity is now one where workers are viewed as expendable and not as highly skilled workers that constitute the financial and spiritual backbone of the company.” (<http://www.latimes.com/business/la-fi-american-apparel-layoffs-20150402-story.html>)

77. Further, in a transcribed telephone interview with LA Weekly, Mr. Charney stated:

The company is not managing a turnaround. It is managing a severe decline in sales that has taken place under the stewardship of a hedge fund. . . . The bottom line is the company is facing a sales crisis that began after my ousting and the ousting or departure of dozens of my colleagues.

(<http://www.laweekly.com/news/american-apparel-workers-defect-as-layoffs-hit-the-hipster-clothing-firm-5471501>)

78. This false characterization and derogatory comparison of the Company with Mr. Charney's old regime violates the non-disparagement provisions of the Standstill Agreement. These statements are designed to undermine the Company's new management and mislead the public into believing that only Mr. Charney is capable of properly running the Company, when in fact current management is working tirelessly to execute on its current turnaround plan necessitated by the harm that occurred under Mr. Charney's tenure.

79. In addition, the LA Times quoted Mr. Charney as telling more than 200 employees at a meeting that current American Apparel leadership has "created an environment of fear, intimidation and desperation among employees;" that "I won't give up until the company is safe;" and that "I'm committed to you for life." (<http://www.latimes.com/business/la-fi-american-apparel-layoffs-20150402-story.html>)

80. These statements are disparaging of the Company and are in clear violation of Section 6(b) of the Standstill Agreement. In fact, each of the statements to or reported by media sources referenced above constitutes a breach of the non-disparagement clause in Section 6(b) of the Standstill Agreement.

F. Mr. Charney's Attempts To Manage And Control The Company Are A Breach Of The Implied Covenant Of Good Faith And Fair Dealing.

81. In addition to Mr. Charney's obvious breaches of the Standstill Agreement, it is clear that Mr. Charney is also trampling on the spirit of the standstill and other provisions he agreed to in the Standstill Agreement. Mr. Charney's attempts to manage, influence or control the Company unfairly deprive American Apparel of the fruits of its bargain in the Standstill Agreement, and are a breach of the implied covenant of good faith and fair dealing inherent in every contract.

82. The parties entered into the Standstill Agreement to prohibit Mr. Charney from attempting to take over and control the Company. For example, Section 1(c) of the Standstill Agreement prohibits Mr. Charney from serving as a member of the American Apparel Board. In addition, Section 5(d) of the Standstill Agreement provides that "Charney shall not serve as CEO of the Company or serve as an officer or employee of the Company or any of its subsidiaries *unless and until the Investigation is completed and the Suitability Committee makes a Clearance Determination in favor of such service.*" (emphasis added) Pursuant to the Standstill Agreement, the Suitability Committee oversaw an extensive investigation conducted by FTI Consulting, Inc., and determined that Mr. Charney was not suitable to serve as CEO of American Apparel. Therefore, Mr. Charney is, by virtue of the Standstill Agreement, barred from this position. Nonetheless, Mr.

Charney continues to attempt to conduct Company business as if he were still its CEO or otherwise affiliated with the Company. To the extent his actions are not an express violation of the Standstill Agreement, he is clearly defying the spirit of the agreement.

83. For example, Mr. Charney has insisted on trespassing on Company property, disrupting its business operations, contacting current employees with instructions on how to handle day-to-day business matters as if he still runs the Company, and threatening employees with termination “when he returns” if they defy his orders.

84. By virtue of the Standstill Agreement and the Suitability Committee’s determination, Mr. Charney no longer has any title or role at the Company other than as a stockholder. Mr. Charney refuses to accept that result or to take responsibility for his misconduct, and his insistence on attempting to manage Company employees is a breach of the implied covenant of good faith and fair dealing, which is inherent in every contract, including the Standstill Agreement.

85. By limiting Mr. Charney’s ability to acquire more shares, or encourage others to buy shares, and removing him as a director, the Company sought through the Standstill Agreement to prohibit Mr. Charney from interfering with the Company’s ongoing operations. Mr. Charney’s attempt to manage the

Company deprives the Company of the benefit of its bargain and is therefore a breach of the implied covenant of good faith and fair dealing.

G. The Company Has Been Harmed By These Breaches.

86. Mr. Charney has harmed the Company by attempting to interfere with its relationships with investors and vendors, and also by interfering with the Board's obligation to manage the business and affairs of the Company. The Standstill Agreement was designed to prevent exactly that type of interference, whether with investors and vendors or the Board's ability to manage the affairs of the Company.

87. Mr. Charney agreed in the Standstill Agreement that such harm is irreparable, for which money damages would not provide an adequate remedy. Specifically, Section 11 provides:

The parties acknowledge and agree that if for any reason any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached, *immediate and irreparable harm or injury would be caused for which money damages would not be an adequate remedy*. Accordingly, each party agrees that in addition to other remedies the other party shall be entitled to at law or equity, *the other party shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in the Court of Chancery* or other federal or state courts of the State of Delaware.

(emphasis added)

COUNT I: BREACH OF CONTRACT

88. The Company repeats, realleges and incorporates by reference the allegations in the preceding paragraphs of this Complaint as if fully set forth herein.

89. The Standstill Agreement is a valid and binding agreement.

90. Mr. Charney has breached numerous provisions of the Standstill Agreement as described above, including by, among other things, seeking the removal of members of the Board elected at the Company's 2014 annual meeting or by instigating, encouraging, joining, acting in concert with and assisting third parties seeking such removal, and by disparaging the Company by making negative comments about the Company at employee meetings and to the media.

91. The Company has been and continues to be irreparably harmed by Mr. Charney's breaches of the Standstill Agreement.

92. Accordingly, the Company is entitled to specific performance of the Standstill Agreement and an injunction prohibiting Mr. Charney from continuing to violate the terms of the Standstill Agreement.

93. The Company has no adequate remedy at law.

**COUNT II: BREACH OF THE IMPLIED COVENANT OF GOOD FAITH
AND FAIR DEALING**

94. The Company repeats, realleges and incorporates by reference the allegations in the preceding paragraphs of this Complaint as if fully set forth herein.

95. The implied covenant of good faith and fair dealing is inherent in every contract and prohibits acts by one party that deprive another of the fruits of the bargain.

96. American Apparel bargained for a “standstill” agreement, which would prevent Mr. Charney from taking over the Company by acquiring additional shares in the Company, participating in management of the Company, disrupting the Company, and disparaging the Company.

97. Mr. Charney has breached the implied covenant of good faith and fair dealing by his attempts to manage, influence or control the Company, even though he is no longer a Board member, officer or employee, and by his other acts to disrupt and disparage the Company.

98. These actions unfairly deprive the Company of the benefit of its bargain and therefore breach the implied covenant of good faith and fair dealing.

99. The Company has been harmed by these actions.

100. The Company has no adequate remedy at law.

REQUEST FOR RELIEF

WHEREFORE, American Apparel respectfully requests that this Court:

- (a) enter a judgment in its favor on Counts I and II of this Complaint;
- (b) enter an order of specific performance requiring Mr. Charney to comply with the provisions of the Standstill Agreement, and injunctive relief prohibiting Mr. Charney from continuing to breach or further breaching the terms of the Standstill Agreement; and
- (c) grant American Apparel such other and further relief as the Court deems just and proper, including the costs and reimbursements of this action and reasonable attorneys' fees.

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