IN THE HIGH COURT OF JUSTICE **CLAIM NO.**

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF VITABEAM LIMITED (Co No. 08871663)

CR-2021-001086

AND IN THE MATTER OF THE COMPANIES ACT 2006

Hearing Date: 17 Dec 2021 14:00
t/e 90mins

BETWEEN

Petitioner

Pantheon International Advisors Limited

-AND-

Respondents

(1) VitaBeam Limited
(2) James Millichap Merrick

The petition of Pantheon International Advisors Limited of 6 Porter Street, London, W1U 6DD.

<u>Introduction</u>

1. VitaBeam Limited, registered number 08871663, ("the Company") was incorporated on 31 January 2014 under the Companies Act 2006.

2. The registered office of the Company is c/o Leaman Mattei, 5th Floor 64 North Row, Mayfair, London, W1K 7DA.

3. The principal business of the Company is that of manufacture of electric lighting equipment, non-specialised wholesale trade and other professional, scientific and technical activities not elsewhere classified.

4. On 4 September 2014, Allied Standard International Limited ("Allied"), the Second Respondent, Vladimir Vasilenko ("Vladimir") (the inventor of the technology) and Purifying Illuminations Inc entered into a Shareholders Agreement ("the Agreement") in respect of the First Respondent. It was agreed that Allied would hold 24 of the 100 shares in the Company (24%), the Respondent would hold 25 shares (25%) and Vladimir would hold 51 shares (51%).

5. The nominal capital of the Company is £1.488889 in shares of 0.000001p each of which have been issued and credited as fully paid. As at the date of this Petition, the allocation of such shares between the shareholders in the Agreement as believed to be shown in the Register of Members is as follows:
    - The Petitioner, Pantheon International Advisors Limited -180,000 shares
    - The Second Respondent, James Millichap Merrick - 350,000 shares
    - The third party to the Shareholders Agreement, Vladimir Vasilenko - 405,000 shares

6. Allied duly transferred its shares in the First Respondent to Pantheon International Advisors Limited ("the Petitioner/Pantheon") by the way of Deed of Assignment and Stock Transfer Form and assigned its claims to Pantheon on 26 February 2021 as attached to this petition as **Exhibit 1**.

7. Allied is a related party to Pantheon for the purposes of clause 4.1 of the Agreement which sets out:

   "*No Shareholder shall sell, transfer, assign, pledge, charge or otherwise dispose of any share or interest in any share in the capital of the Company, except as permitted by this Agreement or with the prior written consent of all other Shareholders, such consent not to be unreasonably withheld or delayed and <u>to the extent that a transferee is part of a group with the transferring Shareholder or otherwise related to or controlled by, no such consent shall be required</u>".*

8. Mr Andrew Greystoke is the sole shareholder and Ultimate Beneficial Owner of Allied (**Exhibit 2).** He is the sole director of both Allied and Pantheon. Mrs Andrea Greystoke, Mr Greystoke's wife, is the Ultimate Beneficial Owner of Pantheon and is a related party.

9. For the purposes of this petition, Pantheon and Allied are related and controlled by related parties. Allied has properly transferred all of its shares in the Company to Pantheon and duly assigned its claims to Pantheon. Pantheon is the Petitioner in these proceedings ("the Petitioner"). All references to Allied in this petition or any related documentation are interchangeable and/or replaced by references to the Assignee, Pantheon.

<u>Background</u>

10. The Petitioner entered into discussions with the Second Respondent in 2014 to set up a company to exploit Vladimir's patented technology as described in paragraph 11. The Petitioner and the Second Respondent sought to eventually achieve a public listing for the Company. Following the

incorporation of the Company and commencement of trading, the Petitioner was not included in the management or running of the Company.

11. The Company has an exclusive worldwide perpetual licence to a patented technology invented by Vladimir that delivers a unique "cocktail" of light wavelengths which provide positive energy for plants and animals, and negative energy for pathogens, at the same time creating an elongated shelf life for plant and animal products.

12. The Second Respondent made numerous representations to the Petitioner that he will buy the Petitioner's shares but never did so and eventually totally excluded the Petitioner from any involvement in the Company. The Petitioner continued to rely on the Second Respondent's representations and did not involve itself in the Company based on these representations.

13. As set out in paragraph 4 above, on 4 September 2014, the Petitioner entered into a Shareholders Agreement pursuant to which the Petitioner had a 24% shareholding.

14. Clause 4 of the Agreement sets out various restrictions upon the transfer of shares, including a right of pre-emption. Other than the provisions under clause 4, any other transfer of shares required the prior written consent of all the shareholders in the Agreement.

15. Clause 8 of the Agreement sets out various restrictions in relation to the issue of further shares. One such restriction was that save in respect of the 'Preliminary Funding' or 'Main Funding' as defined therein;

> *"if the Company determined to issue further shares, each shareholder shall use its reasonable endeavours to procure that the Company offers by notice that proportion of the shares proposed to be issued which the number of ordinary shares held by that shareholder bears to the total number of ordinary shares in issue at the time the Company gives notice."*

16. Following unlawful dilution(s) and improper transfer of shares by the Respondent since the signing of the Agreement, the Petitioner now currently holds 12.4% of shares in the Company.

Unfair Prejudice by dilution of shareholding in breach of the Agreement

17. No document has been provided to the Petitioner to reflect the original shareholding as set out in the Agreement, and it is unclear whether the Petitioner was ever properly registered in respect of its 24% of shares in the Company.

18. The Petitioner made repeated requests in letters on 26 November 2020 (**Exhibit 3)** and in a Letter Before Action on 25 March 2021 **(Exhibit 4)** for inspection of the Shareholder Register pursuant to section 116 Companies Act 2006. The Respondent, in breach of the Companies Act 2006, has repeatedly failed to respond to these requests and continues to exclude the Petitioner from the Company as shall be detailed further below.

19. A Notice of Sub-Division of Shares dated 17 December 2014 changed the share structure from 1 share of £1 to 1,000,000 shares of £0.000001. The Petitioner was made aware of this allocation and consented to the same.

20. On 25 March 2015, a Return of Allotment of Shares was filed at Companies House allotting 176,800 shares and 50,000 ordinary shares with differing amounts paid on each, making the total number of shares 1,225,800. It is not known whether this was typographical error or whether 1,000 shares had been removed from circulation and if so how. It was agreed with the Petitioner that this allocation would be consented to on the basis that the Petitioner would hold 240,000 shares, the Second Respondent would hold 250,000 shares and Vladimir would hold 510,000 shares.

21. The Annual Return dated 1 August 2015 shows a list of 15 shareholders holding the total shares of 1,225,800, including:

- Vladimir Vasilenko – 405,000 shares;
- The Respondent – 350,000 shares;
- The Petitioner – 180,000 shares.

22. Allied had by agreement transferred 60,000 shares to 4 other entities with the Second Respondent's approval. It is not known how the Second Respondent's shareholding had been increased to 350,000 shares while Vladimir's shares had been reduced to 405,000 shares. Allied / The Petitioner have asked for confirmation of the circumstances in which the Second Respondent acquired a further 100,000 shares but has received no acknowledgement or response. The Petitioner seeks an explanation as to how the Second Respondent acquired these further 100,000 shares without the knowledge of the Petitioner.

23. Each of the Annual Returns from 2016 to date have shown multiple instances of the allocation of new shares and further dilution of the Petitioner's shareholding without the prior knowledge or consent of the Petitioner. The Petitioner did not receive any notice from the Company offering the Petitioner the proportion of shares in breach of clause 8 of the Agreement. The improper allocation of new shares is set out in the table below:

Annual Return Date	**Total Shares**	**The Petitioner's shareholding (%)**
August 2016	1,247,010	14.43
August 2017	1,338,434	13.45
August 2018	1,408,178	12.78
August 2019	1,453,840	12.38
August 2020	1,488,889	12.09

24. All such allocations or transfers as shown in the Annual Returns from 2016 to date amount to breaches of clauses 4 and/or 8 of the Agreement. The allocation of further shares also amounts to

unfair prejudice against the Petitioner as a minority shareholder, as their shareholding was diluted as a result.

25. No notice was provided in respect of these allocations and transfer of shares. No board minutes have been produced or shown to the Petitioner agreeing to these dilutions and to the Petitioner's knowledge, no such meetings ever took place.

26. As a result of the above breaches, the Petitioner's shareholding has been reduced from 14.68%, of which the Petitioner was aware of, to 12.09%. The Respondent's actions resulting in the breach of the Agreement and the improper dilution of the Petitioner's shares have unfairly prejudiced the Petitioner.

27. The Company's affairs are being and have been conducted in a manner which is unfairly prejudicial to the interests of the Petitioner under section 994 of the Companies Act 2006. New shares have been issued which have deliberately not been offered to the Petitioner as required in the Agreement and clause 22.2 of the Company's Articles of Association. The Petitioner has never waived any of its rights under the Agreement or the Articles of Association.

28. The Petitioner seeks a purchase of its proper shareholding of its 14.68% share in the Company. The Company has been previously valued at £9,000,000 as agreed by the Respondent (**Exhibit 5)**. The Petitioner seeks a buyout price of £1,321,200 plus costs.

29. In the alternative, the Petitioner seeks an undertaking from the Respondents to rectify the register to address the improper dilution of the Petitioner's shares and any other improper transfer(s) of shares in order to achieve the agreed proportion of shares of 14.68% and that the shareholding shall not be further diluted in the future. The Petitioner sets out details of each undertaking it seeks in **Schedule 1.**

Unfair Prejudice by Unauthorised Service Contracts, Improper remuneration in breach of the Agreement

30. Clause 3.1 of the Agreement provides that:

"*Each shareholder shall for as long as he holds any shares in the capital of the Company use his reasonable endeavours to procure… that the Company shall not without the prior written consent of all shareholders:"*

"(h) enter into any other contract, transaction or arrangement of a value exceeding $50,000" and

"(m) appoint any employee with a remuneration in excess of $50,000".

31. The Company Accounts from 2017 until the date of this petition, at paragraph 9 'related party transactions' show the following transactions:

	J Capital Limited	**SSC Marketing Inc controlled by S Cady**	**Purifying Inc and Purifying Illuminations Inc**
2017	£112,00	£76,952	£87,443
2018	£91,000	£51,846	£84,124
2019	£100,526	£72,355	£85,344

32. The Second Respondent owns 99% of J Capital Limited and is the sole Director and Secretary of J Capital Limited, the other 1% is held by Kerrie Jane Millichap Merrick.

33. None of the above transactions and contracts were notified to the Petitioner prior to entering into the same nor authorised by the Petitioner. All of the above payments and contracts are and were known to be in breach of the Agreement.

34. Further to the breaches in clause 3, clause 11 sets out that the directors were only to be remunerated via service contracts upon 'Preliminary Funding' or 'Main Funding' taking place. This was the understanding between the parties. No such event ever took place. The service contracts set out in

clause 11.3 were improperly entered into. These service contracts appear to be a method of remunerating the directors/shareholders to the exclusion of the Petitioner, thereby amounting to unfair prejudice. In the alternative, these payments amount to a disguised dividend to the exclusion of the Petitioner which amounts to unfair prejudice.

35. The Petitioner has been excluded from the Company while the Respondent continues to receive excessive, unauthorised, and improper remuneration. The Respondent has never disclosed any board minutes and it is unclear whether any board meetings ever took place to agree the Directors' salaries. The Petitioner has been denied access to any information and not been given notice of any meeting or quorum of shareholders or directors to discuss salaries or distribution of dividends. This clearly amounts to prejudicial conduct against the Petitioner.

Unfair Prejudice by Non-Payment of Dividends

36. It is clear that the Second Respondent failed to consider the Petitioner upon entering into the unauthorised service contracts and the consequent payment of substantial remuneration, to the exclusion of the Petitioner. It is also apparent that there was no consideration of any distribution of the accumulated profits by way of dividend when reaching his decisions or otherwise. The Company accounts for 2018 show shareholder funds of £953,272 and for 2019 £1,102,384. The Petitioner has never received any dividends while the Respondent and related parties continue to receive excessive remuneration.

37. The Petitioner has not received any Board Minutes in respect of the non-payment of dividends despite requests made to the Second Respondent nor have there been any shareholder meetings.

38. The Second Respondent has prejudiced the Petitioner by refusing to distribute any dividends despite handsomely remunerating himself and others.

Unfair Prejudice by refusal to provide inspection of the Company's Register of Members in breach of section 116 of the Companies Act 2006

39. The Petitioner has made repeated requests pursuant to section 116 of the Companies Act 2006 to inspect the Company's Register of Members. These have been valid requests made pursuant to the Companies Act 2006 made for good reason and are attached as **Exhibit 6**.

40. Section 117(1) of the Companies Act 2006 sets out that where a company receives a request pursuant to section 116 it must within 5 working days either (a) comply with the request, or (b) apply to the Court and notify the person making the request.

41. The Respondent has repeatedly failed to comply with request or make the relevant Court application. This amounts to a breach of the Companies Act 2006.

42. Section 118 of the Companies Act 2006 sets out that it is a criminal offence for both the company and every officer of the company who is in default to refuse or default on such request. As a defaulting officer, the Second Respondent is personally liable for such an offence.

43. This breach against the Petitioner as a shareholder in the Company is a standalone basis for an unfair prejudice petition in accordance with section 994 Companies Act 2006. Single acts such as this entitle the innocent party to proceed with such a petition.

44. The Respondent's failure to respond amounts to unfairly prejudicial conduct against the interests of the Petitioner and is a criminal offence.

45. The Petitioner seeks an undertaking to inspect the Register of Members. The Petitioner sets out details of each undertaking it seeks in **Schedule 1.**

Unfair Prejudice by refusal to Appoint a Director in breach of the Agreement

46. Clause 11.2 of the Agreement grants a right to each shareholder to appoint a director to the Company's board of directors so long as they hold 10% of shares in the Company. The Petitioner wrote to the Company by letter dated 27 November 2020 exercising this right to appoint Mr Andrew Greystoke as a Director of the Company and in a subsequent Letter Before Action dated 25 March 2021.

47. The Respondent has repeatedly failed to respond to these formal requests and is consequently in breach of the Agreement.

48. These repeated breaches amount to unfairly prejudicial conduct against the interests of the Petitioner.

49. The Petitioner seeks an undertaking to appoint Mr Andrew Greystoke as director, entitling him to inspect the Company's documents, including board minutes, resolutions and such other documents in the interests of the Petitioner. The Petitioner sets out details of each undertaking it seeks in **Schedule 1.**

<u>Unfair Prejudice through failure to comply with his Duties</u>

48. As a director of the Company, the Second Respondent owed to the Company at the relevant times all of the following duties (among others) pursuant to the Companies Act 2006:

a. to exercise their powers only for the purposes for which they were conferred (pursuant to section 171);

b. to act in a way that was considered by them (in good faith) to be most likely to promote the success of the Company for the benefit of its members as a whole (pursuant to section 172);

c. to avoid a situation in which they had, or could have a direct or indirect interest that conflicted, or possibly might conflict, with the interests of the Company (pursuant to section 175); and

d. to declare any interest in any proposed transaction or arrangement with the Company (pursuant to section 177).

The First Respondent egregiously has failed to comply with his fiduciary duties and his duties of skill and care pursuant to the Companies Act 2006.

Unfair Prejudice by exclusion from access to the Books and Records

49. The Petitioner has since the signing of the Agreement been excluded from any financial information relating to the Company. The Petitioner is entitled to such information as a shareholder pursuant to the Companies Act 2006.

50. The Petitioner as set out above is entitled to appoint a director and entitled to access the books and records and be involved in the management of the Company equally with the other directors.

51. The prejudicial exclusion of access to the Books and Records by the Respondent, as a director of the Company, is a breach of his fiduciary duty and obligations due to the Petitioner. The Petitioner has been denied access to the following information:
    a. Board Minutes discussing the remuneration of the Directors;
    b. Board Minutes discussing refusal to pay dividends to shareholders;
    c. Board Minutes discussing the service contracts and payment(s) to related parties including S. Cady and J. Hamlen;
    d. Board Minutes discussing the allocation of further shares between the years 2016-2020;
    e. Failure to hold proper or any shareholder meetings, and not providing any notice of any shareholder meetings.

52. The Respondent's refusal to provide the above information is a breach of his fiduciary duties and obligations to the Petitioner. The Respondent has excluded the Petitioner from the Company and clearly amounts to deliberate prejudicial conduct.

53. As per Paragraph 45, the Petitioner seeks an undertaking to access the Company's documents, including the books and records, board minutes, resolutions and such other documents in the interests of the Petitioner. The Petitioner sets out details of each undertaking it seeks in **Schedule 1.**

Failure to hold Annual General Meetings

54. The Petitioner has not been invited to any annual general meetings in breach of the Companies Act 2006 and does not believe the same have taken place. A failure to hold annual general meetings, to provide accounts and to disclose accounts amounts to unfair prejudice and is a breach of the Companies Act 2006 and the Articles of Association.

55. These failures amount to further unfair prejudice against the interests of the Petitioner.

56. The remedy for this unfairly prejudicial conduct by the Respondent would be a buyout of the Petitioner's proper shareholding at a value of £1,321,200.

57. In these circumstances your petitioner submits that the affairs of the company are being conducted in a manner which is unfairly prejudicial to the interests of your petitioner.

Valuation

58. The Petitioner considers that the valuation of the Company would be £9,000,000. This has been previously agreed in correspondence between Mr Andrew Greystoke and James Millichap Merrick (**Exhibit 5**).

THE PETITIONER therefore prays as follows:

1. That the Second Respondent be ordered to buyout the Petitioner's remaining shareholding taking into account the value of the proper shareholding of 14.68% in the Company valued at £1,321,200 based on the agreed £9,000,000 valuation of the Company or such other value the Court wishes to determine;
2. That the Undertakings defined in **Schedule 1** apply to the Respondent in the interim until the Petitioner's shares are purchased pursuant to Section 996 of the Companies Act 2006;
3. Such other order may be made as the Court deems fit.
4. That the Respondent be ordered to pay the costs of the Petitioner

NOTE: It is intended to serve this Petition on:

1. James Millichap Merrick of The Stables, High Street, Marshfield, South Gloucestershire, England, SN14 8LS
2. Vitabeam Limited of 47-57 Marylebone Lane, Marylebone, London, England, W1U 2NT.

This Petitioner having been presented to the Court on [ ] all parties should attend before the Registrar on

Date:

Time:

Place:

The solicitors for the Petitioner are:

Ronald Fletcher Baker LLP

77 Baker Street

London

W1U 6RF

Tel: 01392 715 310

Ref: P1710/0002

Schedule 1

Undertakings ("the Undertakings") to be given by

(1) Vitabeam Limited ("the Company")

(2) James Millichap Merrick

Together ("the Respondents")

and

ANY OTHER PRESENT DIRECTORS OR DIRECTORS APPOINTED HEREAFTER

The Undertakings will continue to apply pending trial, the Petitioner seeks the Undertakings up until the purchase of the Petitioner's shares under Section 996 of the Companies Act 2006 or a further order of the Court in respect thereof.

<u>The Undertakings</u>

These Undertakings will apply to the Respondents and any other directors or future directors.

The Respondents agree:

(1) To rectify the register to address the improper dilution of the Petitioner's shares and any other improper transfer(s) of shares in order to achieve the agreed proportion of shares owned by the Petitioner at 14.68%;

(2) To take all necessary actions to appoint Mr Andrew Greystoke as director on behalf of the Petitioner, entitling him to inspect the Company's documents, including board minutes, resolutions and such other documents in the interests of the Petitioner;

(3) To grant the Petitioner access the Company's documents, including the books and records including bank accounts whenever he shall reasonably require and no later than 3 days after receiving a notice from the Petitioner to this effect;

(4) To grant the Petitioner access to any board minutes, resolutions and such other documents in the interests of the Petitioner;

(5) To grant the Petitioner direct access to the Company's auditors and solicitors;

(6) Not to enter into any service contracts in excess of $50,000;

(7) Not to authorise, issue or allot any shares, or any securities or instruments capable of conversion into shares.

(8) Not to further dilute the Petitioner's shareholding in the future without either the express consent of the Petitioner or following the requirements of the Articles of Association and the Agreement.

The Second Respondent agrees:

(1) Not to use Company funds to pay for legal advice in respect of this Petition.