



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

MICHAEL JACOBSON and  
JON HENRY,

Plaintiff,

v.

PHIXIOS HOLDINGS, INC.,  
a Delaware corporation, and  
CONDOR MONITORING INC.,  
a Delaware corporation.

Defendants.

C.A. No.: 12504-VCMR

**AMENDED VERIFIED COMPLAINT PURSUANT TO 8 DEL. C. § 220**

Plaintiffs Michael Jacobson ("Jacobson") and Jon Henry ("Henry") (collectively, "Plaintiffs"), by and through their undersigned counsel, for their complaint against defendants Phixios Holdings, Inc. ("Phixios" or the "Company") and Condor Monitoring, Inc, upon knowledge as to their own actions and otherwise upon information and belief, allege the following:

**NATURE OF THE ACTION**

1. This action is commenced pursuant to Section 220 of the General Corporation Law of the State of Delaware ("Section 220") to compel Phixios to provide certain books and records properly demanded on June 8, 2016 by Jacobson in his capacity as a director of the Company. The Company did not respond to the demand, and instead retaliated against Jacobson by purporting to validly remove

him from office after he commenced this action to enforce his right to obtain the basic Company information he had requested. Plaintiffs Henry and Jacobson together also bring this action in their capacities as stockholders of Phixios pursuant to Section 220 to compel the Company to provide the same certain books and records demanded by letter on June 23, 2016. That demand was likewise ignored by the Company.

2. On June 8, 2016, Jacobson, in his capacity as a director of Phixios, delivered by FedEx and email a written demand (the “June 8 Director Demand”) to the Company’s principal place of business. Jacobson’s demand asserted the right, pursuant to Section 220(d), to inspect and make copies of certain books and records. Jacobson sought access to the Company’s books and records to properly inform himself in order to meet his fiduciary duties as a director of the Company.

3. A true and correct copy of the June 8 Director Demand is attached hereto as **Exhibit A**.

4. On June 23, 2016, Jacobson and Henry, in their capacities as Phixios stockholders, served a written demand (the “June 23 Stockholder Demand”) upon the Company’s Delaware registered agent. The demand asserted the right, pursuant to Section 220, to inspect and make copies of certain books and records.

5. A true and correct copy of the June 23 Stockholder Demand is attached hereto as **Exhibit B**.

6. The Company did not respond to either of the demands.

7. Accordingly, Plaintiffs seek a court order summarily ordering the Company to fulfill its obligations under Section 220.

### **PARTIES**

8. At all times relevant to this action, Jacobson was a director and stockholder of Phixios.

9. At all relevant times, Henry has been a stockholder of Phixios.

10. Phixios is a Delaware corporation with a registered agent in Delaware, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware.

11. Condor Monitoring, Inc. is a Delaware corporation with a registered agent in Delaware, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware. It is a wholly owned subsidiary of Phixios.

### **FACTUAL BACKGROUND**

12. On June 8, 2016, Jacobson, in his capacity as a director of Phixios, delivered the June 8 Director Demand pursuant to Section 220(d) to his fellow directors, James Walker, Chief Executive Officer and Chairman of the Board of Phixios, and Delbert Walker, a fellow member of the Board.

13. The June 8 Director Demand identified Jacobson as a director of Phixios and complied in all respects with Section 220(d) as to the form and manner of making a demand for inspection of books and records.

14. The Demand identified the following proper purpose for the requested inspection of the books and records: “[T]o ascertain the Company’s current financial position and confirm the absence of any waste or mismanagement of the Company’s financial resources.” Ex. A at 2.

15. Consistent with Section 220, the Demand sought production of the following books and records of the Company, each category of which is directly related to Plaintiff’s proper purpose and his ability to discharge his directorial duties to the Company and its stockholders:

- Annual, quarterly and monthly financial statements, including both audited and internally-prepared income statements, balance sheets, cash flows and stockholders’ equity statements, from the Company’s 2013 inception through the present;
- Federal, state and local income tax returns and reports together with supporting documentation;
- General ledger, check registry and related journal entries for the years 2013 to the present;
- Schedule of current Company debt;
- Schedule of compensation paid to the officers, managers and board of directors;
- Payroll records from July 2013 through the present;

- Bank statements from July 2013 through the present for all Company bank accounts;
- Documents constituting budgets, projections, or business plans; and
- Documents relating to any actual, potential or contemplated transaction resulting in a merger or other business combination, or the sale of the Company's assets.

Ex. A at 1-2; *See also* Ex. B at 2-3.

16. On June 17, 2016, after not receiving any response from the Company or his fellow directors, Jacobson again contacted the Company by email to request a response.

17. Later on June 17, 2016, Ms. Penni Blake, purporting to speak on behalf of the Company, responded by instructing Jacobson to “cease and desist from contacting any and all associates, affiliates, stockholders or employees of the Company.”

18. That same day, the Company sent to Jacobson a Notice of A Telephonic Meeting of Shareholders of Phixios Holdings, Inc. (the “Notice”), purporting to notice “a special meeting of the shareholders of Phixios Holdings, Inc....[to] be held via teleconference on June 29, 2015 [sic]....” The Notice identified one agenda item: “to present to the shareholders for their consideration, discussion, and vote is [sic] the removal of Michael Jacobson from the Board of

Directors of the Company.” The Notice purported to set the record date for this meeting as June 16, 2016.

19. On June 19, 2016, the Company sent to Plaintiff a revised version of the Notice, which was substantively identical except that the date of the special meeting was revised to be June 30, 2016.

20. On June 21, 2016, Plaintiff Jon Henry directed a request to the Company pursuant to 8 *Del. C.* § 219 (“Section 219”) to examine the list of the Company’s stockholders entitled to vote at the special meeting.

21. On June 23, 2016 Plaintiffs Michael Jacobson and Jon Henry, in their capacities as stockholders, made a demand on the Company to inspect the same books and records identified in the June 8 Director Demand in the event that the Company purported to remove Jacobson in an effort to defeat his standing to obtain the requested books and records.

22. The June 23 Stockholder Demand identified Jacobson and Henry as stockholders of Phixios and complied in all respects with Section 220’s form and manner requirements for making a demand to inspect the Company’s books and records.

23. The June 23 Stockholder Demand also included a second request under Section 219 to inspect the Company’s stock ledger in advance of the special meeting noticed for June 30.

24. The Company did not respond to the June 23 Stockholder Demand's requests made under Section 220 or Section 219.

25. On June 24, 2016 Jacobson filed a Verified Complaint seeking to compel the Company to provide him the books and records he requested in his capacity as a director of the Company pursuant to the June 8 Director Demand.

26. On June 27, 2016 courtesy copies of the Verified Complaint were provided to the Company's Virginia-based counsel.

27. That same day, June 27, 2016, the Company through the same Virginia-based counsel, took steps to formally incorporate and capitalize one of the Company's wholly-owned operating subsidiaries, Condor Monitoring, Inc.

28. Despite being a director of the Company on June 27, Jacobson was not informed of any changes to the Company's corporate structure or any actions taken with respect to the Company's operating subsidiary, Condor Monitoring, Inc.

29. As of June 27, 2016 the Company had not adopted bylaws and was operating pursuant to a document purporting to be a "Stockholder Agreement" but entered into by and between only three original directors/stockholders of the Company in July 2013. A true and correct copy is attached hereto as **Exhibit C**.

30. The Company purports to have held a special meeting of the stockholders and revoked both Jacobson's and Henry's stock under authority granted in the document attached as Exhibit C.

31. Notice of the purported stock revocation was first provided to Jacobson and Henry today, July 20, 2016.

**CLAIM FOR RELIEF**

32. Plaintiffs repeat and reallege the allegations of the foregoing paragraphs as if fully set forth herein.

33. Plaintiffs have complied with the requirements of Section 220 with respect to the form and manner of making a demand for examination of the books and records of Phixios.

34. Phixios has failed to provide Plaintiffs with the books and records requested in the Demands.

35. Plaintiffs are entitled to receive copies and/or to inspect with his counsel and make copies of the books and requests requested in the Demands.

36. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. enter judgment in favor of Plaintiffs and against Phixios;
- B. summarily order Phixios to provide to Plaintiffs all of the books and records sought in the Demands, including those relating to Condor Monitoring, Inc.;
- C. award Plaintiffs the costs and expenses incurred in bringing and prosecuting this action, including attorneys' fees; and



D. award Plaintiffs such other and further relief as the Court deems just and proper in the circumstances.

**BERGER HARRIS LLP**

/s/ Michael W. McDermott

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DATED: July 20, 2016

*Attorneys for Plaintiffs*  
*Michael Jacobson and Jon Henry*

**CERTIFICATE OF SERVICE**

I, Michael W. McDermott, hereby certify that the foregoing Amended Verified Complaint Pursuant to 8 Del. C. § 220 was served upon the following on the date and in the manner set forth below:

**VIA FILE AND SERVEXPRESS**

Carl D. Neff  
E. Chaney Hall  
Fox Rothschild LLP  
Citizens Bank Center  
919 North Market Street, Ste 300  
Wilmington, Delaware 19801

**BERGER HARRIS LLP**

By: /s/ Michael W. McDermott  
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*Attorneys for Plaintiff*

Dated: July 22, 2016