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June 8, 1983

LAURENCE E. DRIVON, ESQ.
Drivon & Bakerink
215 N. San Joaquin Street
Stockton, California 95202

Re: Richard Berberian

Dear Larry:

Several months ago, we discussed the potential lawsuit by Richard Berberian against his uncle, Haig Berberian. At that time, you were involved in several trials and therefore unable to assume any additional commitments. I know that at least the "Nuestra Familia" trial has now been concluded and I therefore hope that you will have the time to take this matter on behalf of Richard Berberian. In all events, I believe that there are only about three (3) months left before the statute of limitations will run on Richard's claims. For that reason, we must make a determination now. Hopefully, you will find the time and inclination to undertake this suit for Richard. May I request that in any case after you have read this letter, you let me know within a couple of days if you are interested in pursuing this suit or not. Please understand that Richard Berberian has the means and is willing to pay for the investigation of his claim. Any agreement will, of course, have to be negotiated directly between him and you.

As a matter of background, you should know that in October 1980 I was contacted by Mr. Vasken G. Berberian. Vasken is the younger brother of Haig Berberian and both are Armenians who came to this country in 1923. In 1949, Vasken and Haig Berberian started a walnut shelling and processing business in Modesto. They landed the account of Sees Candies and began to prosper. In 1957, they formed a limited partnership in which Haig was the general partner having an 80% ownership interest and Vasken was the limited partner with a 20% ownership interest. In 1963, Vasken gave a 5% limited partnership interest into trust for his daughter

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and another 5% limited partnership interest for his son, Richard Berberian. In 1972, the business of the limited partnership was sold to Pet, Inc.

It is alleged that during the period from 1968 to 1972, Haig Berberian, as the general partner, took millions of dollars out of the partnership business and used the funds for his personal advantage. It is also alleged that Haig created separate entities which he owned totally. These separate entities then secured funds from the limited partnership in order to purchase assets which were then leased to the limited partnership. These assets were sold to Pet, Inc. in 1972 in separate transactions. It is also alleged that Haig borrowed large sums of money from the partnership at 6% and had the partnership borrow the money from the bank at prime plus 2. It is further alleged that the limited partnership made advances to growers which were evidenced by promissory notes and secured by deeds of trust. Because of the identity between Haig's name as an individual and the name of the limited partnership, the repayments were made and collected by Haig in his individual capacity. It is also alleged that whenever growers were unable to repay their debts to the limited partnership, the notes were written off as bad debts, but that, in addition, Haig foreclosed on the security property and acquired it in his own name.

I have looked at a lot of information and documentation on behalf of Vasken Berberian, and there is little doubt in my mind that he was cheated by his older brother in connection with the sell-out to Pet, Inc. However, I have been informed by Vasken that he does not want to sue his brother at this time.

Richard Berberian is Vasken's only son. He has implored me to help him obtain justice against his uncle. As you know, I am not a trial attorney and I have so informed Richard. The most compelling argument in Richard's favor and that of his trust is the following economic argument. The walnut shelling business is not a service business, but is a capital intensive business which requires hundreds of thousands of dollars to make a go and millions of dollars in order to be profitable. As a result, the income produced by the business is not just compensation for services rendered in managing the business, but to a large measure, is a return on capital invested in the plant, equipment, machines, inventory, and receivables. During the years 1968-1972,

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Haig not only paid himself a very handsome salary for his services as general manager, but he also took millions of dollars out of the business even though he had no capital account and therefore should not have been entitled to share in any return on capital. Instead, these monies should have gone to the other partners in proportion to their respective capital accounts. I have been told that Haig invested these funds in real estate in and around Modesto, which now has a market value of \$50-\$75 million dollars. Obviously, this is something that an investigator should have a look at.

Let me give you some of the information which I have strained out of the wealth of material that was presented to me by Vasken and Richard.

1. It appears that in July and August of 1972, Haig negotiated the sale of the limited partnership to Pet, Inc. Upon solidifying his negotiations, Haig proceeded to amend the limited partnership agreement by unilaterally providing that the general partner could at any time request the retirement from the business of a limited partner upon payment of the capital account. Immediately thereafter, Haig requested the retirement of Vasken and, immediately following that, Haig sold the business to Pet, Inc. This is called an illegal "freeze out".

2. By a settlement agreement dated May 13, 1976, Vasken received an additional payment of \$470,000 in return for a release of all claims. From this amount, a part was withheld as representing accounts receivable of \$69,000 to be paid out if and when collected. A supplemental and final settlement agreement was made dated May 3, 1978 whereby Vasken received \$20,000 as payment in full of his share of the accounts receivable and, in addition, was required to indemnify and hold Haig and his family harmless from any and all liability. At the time of the freeze out and subsequent settlements, Vasken was not represented by counsel. Moreover, the extent of the release is uncertain and in any event he was ultimately cheated out of \$50,000 of accounts receivable plus interest for several years. There also was no consideration given for the indemnity agreement.

3. The statute of limitations for partnership matters such as dissolution and accounting is generally 4 years and therefore most of the causes of action which Vasken would have are now stale, unless there is fraud and deceit for which the statute of limitations does not commence

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to run until the discovery thereof. It appears that as to all fraud and deceit there was no discovery until Vasken obtained a confidential memorandum of Pet, Inc. on September 2, 1980 at which time the 3-year statute of limitations commenced to run.

4. There was a purchase of assets by Pet, Inc. from Haig Berberian Corporation, Isabel Berberian Corporation, and Sexton Nut Processors, Inc., which was handled separately from the main transaction. It appears that at least some of these assets were misappropriated by the corporations from the limited partnership. For one thing, Sexton Nut Processors, Inc. was wholly owned by the limited partnership. Moreover, Isabel Berberian Corporation seems to have acquired real estate from the limited partnership over a number of years with the limited partnership's own money; for example, the 3 warehouses outside Modesto on the 12 acre parcel were built with the limited partnership's money. Haig concealed from his co-partners the purchase and acquisition of the property which was then leased to the partnership. Thus, Haig not only misappropriated a business advantage belonging to the partnership, but he used fraud and deceit to obtain secret profits and an undue benefit and he converted partnership assets by fraud. This must be contrasted with the obligation of utmost good faith and fair dealing between partners and their fiduciary duties to each other.

5. The sale by the limited partnership to Pet, Inc. was a sale of certain enumerated assets. Upon completion of that sale, the limited partnership continued to retain and own all the assets which Pet, Inc. did not want. These may have been as much as 2.5 million dollars. After the sale, Haig renamed the partnership into "Berberian Orchards" and kept all of it for himself.

6. Over the years, Haig Berberian and his wholly owned related entities borrowed vast amounts of money from the limited partnership. The limited partnership, however, had to borrow these funds from Wells Fargo Bank at prime plus 2 while Haig borrowed the same money from the limited partnership at 6%. Put another way, Haig caused the limited partnership to borrow more money from the bank than was needed for the partnership business. This increased business expense and thereby subsidized Haig. To me, this represents a misappropriation of partnership funds and, in addition, also was a misappropriation of business opportunities which the partnership should have engaged in, but which Haig

appropriated for himself. It therefore is arguable that the properties which Haig acquired with these partnership funds should have been partnership properties and that he should account for them to his partners. There is no question that some of these funds were used by Haig to purchase walnut and almond orchards as well as warehouses and other assets which normally would have been assets of the limited partnership.

7. It appears that the limited partnership made a number of loans to a number of walnut and almond growers. Some of these loans were secured by deeds of trust on real property. While these loans were made by "Haig Berberian, A Limited Partnership," it seems that they were at times repaid to "Haig Berberian," the individual. In addition, when a loan went into default it seems that at least where the loan was secured by a deed of trust, the account receivable or grower advance was written off as a bad debt by the limited partnership and Haig wound up with the land covered by that deed of trust in his own name. There appears to have been a partnership relationship between K. Darpinian and Sons, Inc. and Haig which was not disclosed. Yet, that partnership borrowed large amounts of money from the limited partnership, e.g., as of June 30, 1969, it was \$248,413.67. When that partnership was dissolved on June 29, 1971, Haig came away with the Hottel Ranch at 6142 Dale Road, Modesto, and the Salsi Ranch on Sisk Road in Salida. Additionally, in 1971, Haig and his wife, Isabel, granted two (2) options to purchase undivided interests in real property to Suren and Ara Darpinian. The exact extent of these conversions will have to be determined by an investigator.

It is my impression that Haig was the general partner and had fiduciary duties which he owed to the limited partners. Haig breached his fiduciary duties and the trust obligations by doing the following:

- a. Selling partnership property for substantially less than the fair market value on the date of sale;
- b. Transferring partnership property to himself without any consideration or inadequate consideration;
- c. Transferring business opportunities to himself without consideration;

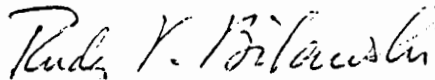
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- d. Failure to pay income to the other partners who were entitled thereto;
- e. Misappropriating partnership money for his own benefit; and
- f. Other acts and omissions.

As a result, the limited partners suffered monetary damages, anxiety, worry, mental and emotional distress, and from fraud caused by concealment and failure to disclose. It appears that Haig acted toward the limited partners with a conscious disregard of their rights or with the intent to vex, injure or annoy them such as to constitute oppression, fraud or malice under Civil Code Section 3294, thereby entitling the limited partners to punitive damages.

The foregoing is a summary and fixation of the situation as it now stands. Haig is in his mid-70's and apparently not in the best physical condition. I believe that Richard and his father have been wronged and hope that you will be able to assist them in their quest to right the imbalance. Please call me within the next couple of days. Thank you for your kind consideration of this matter.

Sincerely yours,



RUDY V. BILAWSKI

for

NEUMILLER & BEARDSLEE
A PROFESSIONAL CORPORATION

RVB/jg