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KEVIN O'ROURKE, Plaintiff, v. HOLTEC INTERNATIONAL CORPORATION, HOLTEC INTERNATIONAL POWER DIVISION, KRISHNA SINGH, and JOHN DOES 1-10. Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: CAMDEN COUNTY Docket No.: CAM-L- 1585-23 Civil Action **CERTIFICATION OF COUNSEL IN SUPPORT OF DEFENDANTS' MOTION FOR LEAVE TO FILE AN AMENDED COUNTERCLAIM**

I, James P. Anelli, of full age do hereby certify as follows:

1. I am an attorney of the State of New Jersey, and I am a Partner at the law firm of White and Williams LLP, attorneys for Defendant/Counter-Plaintiff Holtec International ("Holtec"), Defendant Holtec International Power Division ("Holtec Power Division"), and Defendant Krishna Singh ("Singh") (collectively "Defendants"). As such, I am fully familiar with the facts and circumstances contained here.

2. I submit this Certification in support of Holtec's Motion pursuant to R. 4:9-1 for leave to file an Amended Counterclaim.

3. Plaintiff/Counter-Defendant, Kevin O'Rourke, filed the Complaint on June 1, 2023, alleging violations of the New Jersey Conscientious Employee Protection Act.

4. Defendants timely filed their Answer with Separate Defenses. Holtec filed a two-count Counterclaim alleging breach of contract and tortious interference with contractual relations.

A true and correct copy of the Answer with Separate Defenses and Counterclaim is attached as Exhibit A.

5. On July 7, 2023, the Asbury Park Press published an article titled "Ex-Holtec CFO accuses company of 'make believe' financial statements in whistleblower suit." A true and correct copy of this online article is attached as Exhibit B.

6. On July 10 and 13, 2023, the Asbury Park Press printed articles titled "Holtec accused of false financial statements in whistleblower suit." True and correct copies of the printed articles are attached as Exhibit C.

7. In or around July 2023, Yahoo! News republished the Asbury Park Press's misleading article title "Ex-Holtec CFO accuses company of 'make believe' financial statements in whistleblower suit." A true and correct copy of this republication is attached as Exhibit D.

8. On or around July 24, 2023, Counter-Defendant's law firm published defamatory statements pertaining to Holtec on its website and social media falsely asserting on behalf of Counter-Defendant that "Mr. O'Rourke claims that Holtec terminated his employment after he resisted submitting false *financial statements* to a major investor…" and "[r]ecently, the case was highlighted in an article entitled, 'Ex-Holtec CFO accuses the company of "make believe" financial statements in whistleblower suit,' published on Yahoo.com." (Emphasis added). A link was also attached in conjunction with this release to the defamatory article. A true and correct copy of the firm's statements are attached as Exhibit E.

9. These statements were false and known to be false at the time they were published.

10. On or around August 8, 2023, the Asbury Park Press retracted and corrected its online article recognizing that its article was wrong. A true and correct copy of this article is attached as Exhibit F.

11. Subsequently, Yahoo! News republished the Asbury Park Press's retracted and corrected online article. A true and correct copy of this article is attached as Exhibit G.

12. But the Counter-Defendant's defamatory statements are still published on Counter-Defendant's law firm's website as of the date of this filing, even after advising Counter-Defendant, through his law firm, that his allegations were defamatory. In fact, there is no dispute that Counter-Defendant certified that Holtec's financial statements were accurate and not fraudulent or misleading in any way on August 31, 2022. Counter-Defendant's certification was relied upon by third parties.

13. The statute of limitations for a claim of defamation is one (1) year. N.J.S.A. 2A:14-3.

14. The statute of limitations period has not expired.

15. At this juncture, Defendants now seek leave to file an Amended Counterclaim to include a count for defamation *per se* pursuant to R. 4:9-1.

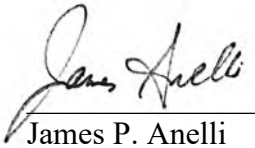
16. The discovery end date in this matter is November 6, 2024.

17. Presently, there is no trial date.

18. A true and correct copy of the proposed Amended Counterclaim is attached as Exhibit H.

Dated: December 20, 2023

WHITE AND WILLIAMS LLP

By: 

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EXHIBIT A

WHITE AND WILLIAMS LLP
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KEVIN O'ROURKE,

Plaintiff,

v.

HOLTEC INTERNATIONAL CORPORATION, HOLTEC INTERNATIONAL POWER DIVISION, INC., KRISHNA SINGH, and JOHN DOES 1-10.

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

Docket No.: CAM-L- 1585-23

Civil Action

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT WITH SEPARATE DEFENSES, COUNTERCLAIMS, DESIGNATION OF TRIAL COUNSEL, DEMAND FOR JURY TRIAL, DEMAND FOR STATEMENT OF DAMAGES, DEMAND FOR STATEMENTS, DEMAND FOR DOCUMENTS, AND CERTIFICATION PURUSANT TO RULE 4:5-1

Defendants, Holtec International ("Holtec"),[1] Holtec International Power Division, Inc. ("Holtec Power Division"), and Krishna Singh ("Singh") (collectively "Defendants"), by and through their attorneys, White and Williams LLP, hereby answer Plaintiff's Complaint and assert the following Separate Defenses as follows:

Introduction

The allegations in Plaintiff's "Introduction" are not accurate and denied. For almost a year, Plaintiff oversaw the creation of investor materials and projections, and presented same to

[1] Improperly pleaded as "Holtec International Corporation."

potential investors. Twice, Plaintiff certified the accuracy of Holtec's financial statements to Holtec's Board of Directors during the relevant timeframe in the Complaint and certified to Holtec's auditors in writing that he was unaware of any concerns of fraud or inaccurate information that could impact Holtec's business.

Parties

1. The allegations contained within paragraph 1 of the Complaint are admitted in part and denied in part. It is only admitted that Plaintiff is a former employee of Holtec. After reasonable inquiry, Defendants lack sufficient knowledge or information to form a belief as to the truth of Plaintiff's residence and therefore that allegation is denied.

2. After reasonable inquiry, Defendants lack sufficient understanding of what is meant by the assertion relating to Holtec's "main business address," as Holtec has many business addresses, and therefore the allegations in this paragraph are denied. By way of further answer, Holtec's headquarters are located in Jupiter, Florida.

3. Defendants admit that Holtec Power Division is a Delaware corporation operating in Camden, New Jersey.

4. Defendants deny the allegations contained within paragraph 4 of the Complaint. By way of further answer, Defendants aver that Singh is a resident of the State of Florida.

5. The allegations contained within paragraph 5 of the Complaint are not directed to Defendants and therefore no response is required. To the extent this paragraph contains allegations directed to Defendants, they are denied.

Factual Allegations

6. Defendants deny the allegations contained within paragraph 6 of the Complaint as stated. By way of further answer, Plaintiff was hired by Holtec on or around May 21, 2021 as the

Chief Financial Officer ("CFO"). Shortly after starting as CFO, Plaintiff routinely refused assignments, complained about his pay, threatened to quit twice, and displayed erratic and hostile behavior to co-workers and third-parties.

7. Defendants deny the allegations contained within paragraph 7 of the Complaint as stated. By way of further answer, Plaintiff was terminated by Holtec on or around August 30, 2022, approximately one year and three months after he was hired.

8. Defendants deny the allegations contained within paragraph 8 of the Complaint as stated. By way of further answer, Kelly Trice ("Trice") is the President of Holtec Decommissioning International and the President of SMR, Inc., as well as having several other titles. At all relevant times, Trice was the Executive Supervisor for the Accounting & Finance Department at Holtec and, in that role, had direct supervision over Plaintiff.

9. Defendants admit the allegations contained within paragraph 9 of the Complaint. By way of further answer, Singh is the Chief Executive Officer of Holtec, which includes the Holtec Power Division.

10. The document characterized by Plaintiff as a "draft Prospectus" is a draft confidential writing that speaks for itself, and no response is required. To the extent paragraph 10 of the Complaint contains factual allegations, they are denied as alleged. By way of further answer, Defendants aver that CD-38 was not a "draft Prospectus."[2] Instead, CD-38 was an internal draft document that contained a general explanation of Holtec's business operations and

[2] The Corporate Finance Institute defines a "prospectus" as "a legal disclosure document that provides information about an investment offering to the public, and that is required to be filed with the Securities and Exchange Commission (SEC) or local regulator. [A] prospectus contains information about the company, its management team, recent financial performance, and other related information that investors would like to know." CFI Team, *Prospectus*, CORPORATE FINANCE INSTITUTE (Aug. 20, 2019 updated May 3, 2023), https://corporatefinanceinstitute.com/resources/valuation/prospectus/.

did not contain the necessary information to even be considered a "prospectus." The version of CD-38 Plaintiff received contained a large "DRAFT" watermark across the first page. Plaintiff was aware that before CD-38 would be provided to any potential investor, it would be reviewed in its entirety by a national investment banking firm.

11. CD-38 is a draft writing that speaks for itself, and no response is required. To the extent paragraph 11 of the Complaint contains factual allegations, they are denied. By way of further answer, Defendants aver that CD-38 was drafted by multiple individuals over multiple months; however, it was primarily based off an earlier version drafted by Plaintiff that Plaintiff provided to an investment firm.

12. Defendants deny that CD-38 was a "prospectus" and therefore the entire premise of the allegations contained in paragraph 12 of the Complaint is denied as stated.

13. Defendants admit the allegation contained within paragraph 13 of the Complaint.

14. Defendants deny the allegations contained within paragraph 14 of the Complaint as stated and by way of further answer state that Trice sent this email to executive team members with a copy to Plaintiff. Plaintiff was not responsible for financial projections and indicated that he was too busy to work on this assignment.

15. Defendants deny the allegations contained within paragraph 15 of the Complaint and state by way of further answer that Trice stated to Plaintiff that Plaintiff already had these projections because they were the same projections that Plaintiff provided to a previous investment firm just months before.

16. Defendants deny the allegations contained within paragraph 16 of the Complaint as stated and state by way of further answer that CD-38 did not contain "materially false or fraudulent data or information" and deny that the projections were rushed. Defendants further

aver that at this meeting between Trice and Plaintiff, Plaintiff agreed that CD-38 did not contain false information and the meeting ended with Plaintiff's concerns seemingly resolved.

17. Defendants deny the allegations contained within paragraph 17 of the Complaint as stated, and aver that Plaintiff only highlighted certain sections of CD-38 to which he had some unspecified concerns.

18. Defendants deny the allegations contained within paragraph 18 of the Complaint as stated.

19. Defendants deny the allegations contained within paragraph 19 of the Complaint as stated.

20. Defendants deny the allegations contained in paragraph 20 of the Complaint as stated as CD-38 was not a "prospectus."

21. Defendants deny the allegations contained within paragraph 21 of the Complaint in that Plaintiff merely expressed concerns about the draft information in CD-38, which Plaintiff had already presented to other investors in a similar format just months before and in a PowerPoint presentation in November of 2021. Plaintiff's concerns were unwarranted, and largely derived from Plaintiff's lack of knowledge and experience in the areas in which he expressed concerns. Moreover, most of Plaintiff's concerns were based on his erroneous opinions without factual support. Notwithstanding all of this, Plaintiff agreed with Trice on the day before that CD-38 did not contain false information. Defendants further state that CD-38 was not a "prospectus" and therefore the entire premise of paragraph 21 of the Complaint is denied.

a. The allegations contained within paragraph 21(a) of the Complaint are specifically denied.

b. The allegations contained within paragraph 21(b) of the Complaint are specifically denied. Defendants further aver that these allegations are inconsistent with a financial memorandum Plaintiff "sponsored" as an author and presented to Holtec's management on August 29, 2022 – after his purported "objections."

c. After reasonable inquiry, Defendants lack sufficient knowledge or information to form a belief as to what Plaintiff "knew" and therefore the allegations contained within paragraph 21(c) of the Complaint are denied.

d. After reasonable inquiry, Defendants lack sufficient knowledge or information to form a belief as to what Plaintiff "believed" or what his belief may have been based upon, and therefore Defendants deny the allegations contained within paragraph 21(d).

e. The allegations contained within paragraph 21(e) of the Complaint are specifically denied.

f. The allegations contained within paragraph 21(f) of the Complaint are specifically denied.

g. The allegations contained within paragraph 21(g) of the Complaint are specifically denied.

h. Defendants deny the allegations in paragraph 21(h) of the Complaint and aver that no financial projections were contained in CD-38. Defendants further aver that on August 29, 2022, less than one week after Plaintiff's purported "objections" to CD-38 alleged in the Complaint, Plaintiff certified to the Holtec Board of Directors that he had "no knowledge of any fraud or suspected fraud that affects [Holtec]" and "no knowledge of any allegations of fraud or suspected fraud

affecting [Holtec's] financial statements." Plaintiff also certified these findings to Holtec's auditors.

22. Defendants deny the allegations contained in paragraph 22 of the Complaint and aver that Plaintiff would not even have been in a position to express an opinion on this point.

23. Defendants deny the allegations contained in paragraph 23 of the Complaint, and further aver that Plaintiff's assertions are unsupported by any evidence and simply represent his uniformed opinions.

24. Defendants deny the allegations contained within paragraph 24 of the Complaint as stated.

25. Defendants deny the allegations contained within paragraph 25 of the Complaint.

26. Defendants deny the allegations contained with paragraph 26 of the Complaint as stated.

27. Defendants deny the allegations contained within paragraph 27 of the Complaint.

28. Defendants deny the allegations contained in paragraph 28 of the Complaint as stated as CD-38 was not a "prospectus."

29. Defendants deny the allegations contained in paragraph 29 of the Complaint as stated as CD-38 was not a "prospectus."

30. Defendants deny the allegations contained in paragraph 30 of the Complaint as stated as CD-38 was not a "prospectus."

31. Defendants deny the allegations contained within paragraph 31 of the Complaint as stated.

32. Defendants deny the allegations contained within paragraph 32 of the Complaint as stated and aver that Singh did not leave a voicemail for Plaintiff on August 23, 2022.

33. Defendants deny the allegations contained within paragraph 33 of the Complaint as stated and aver that Singh did not leave a voicemail for Plaintiff on August 23, 2022.

34. Defendants deny the allegations contained within paragraph 34 of the Complaint as stated.

35. Defendants deny the allegations contained within paragraph 35 of the Complaint, as stated, and aver that Vice President of Finance, Martin Babos ("Babos"), asked Plaintiff who on the team could provide ShareVault[3] access because a potential investor requested a new member be given ShareVault account access permission.

36. Defendants deny the allegations contained within paragraph 36 of the Complaint, as CD-38 is not a "prospectus."

37. Defendants deny the allegations contained within paragraph 37 of the Complaint, as stated, and aver that Babos also asked if the same person who could provide ShareVault access could assist with uploading documents to ShareVault.

38. Defendants admit and deny the allegations contained in paragraph 38. Defendants admit only that Plaintiff responded to Babos with a copy to Trice. Defendants deny that Plaintiff believed submitting CD-38 as drafted could violate the law and further aver that in response to Plaintiff's email, Trice stated to Plaintiff that the potential investor was aware that CD-38 was in draft form, and that the potential investor had made it clear they were a sophisticated investor and would perform their own assessment regarding CD-38, and the other documents contained in the ShareVault.

[3] ShareVault provides simple, secure virtual data rooms for sharing sensitive documents with third parties during due diligence and other business processes. See generally SHAREVAULT, https://www.sharevault.com/ (last visited July 25, 2023).

39. Defendants deny the allegations contained within paragraph 39 of the Complaint. There was no false information in CD-38.

40. Defendants deny the allegations contained within paragraph 40 of the Complaint, and further aver that Plaintiff's Holtec email was not included on the August 28, 2022 group email regarding CD-38.

41. Defendants deny the allegations contained within paragraph 41 of the Complaint insofar as the allegations do not address what specific email is addressed.

42. Defendants deny the allegations contained in paragraph 42 of the Complaint as CD-38 is not a "prospectus" and therefore the entire premise of paragraph 42 of the Complaint is denied as stated. To the extent this paragraph contains assertions pertaining to Plaintiff's beliefs, Defendants lack sufficient knowledge or information as to Plaintiff's "beliefs" and therefore those allegations are denied. Further, nowhere in the e-mail does Plaintiff state that there are "numerous" statements that he believed were false and misleading, as alleged in paragraph 42 of the Complaint.

43. Defendants deny the allegations contained in paragraph 43 as CD-38 is not a "prospectus." Defendants further aver that on August 29, 2022, Plaintiff requested a Holtec employee to provide the potential investor with ShareVault access, including CD-38.

44. Defendants deny the allegations contained in paragraph 44 in that CD-38 is not a "prospectus."

45. Defendants deny the allegations contained in paragraph 45 in that CD-38 is not a "prospectus."

46. Defendants deny the allegations contained in paragraph 46 in that CD-38 is not a "prospectus."

47. Defendants deny the allegations contained in paragraph 47 in that CD-38 is not a "prospectus" and aver by further answer that Defendants were not obligated to inform Plaintiff of any review.

48. After reasonable inquiry, Defendants lack sufficient knowledge or information to form a belief as to what Plaintiff "noticed" and therefore paragraph 48 of the Complaint is denied.

49. Defendants admit the allegations contained within paragraph 49 of the Complaint.

50. Upon information and belief, Defendants admit the allegations contained within paragraph 50 of the Complaint.

51. Defendants lack sufficient knowledge or information to form a belief as to the truth of what Plaintiff "noticed" and therefore paragraph 51 of the Complaint is denied.

52. Defendants admit the allegations contained within paragraph 52 of the Complaint and aver by way of further answer that Jack Johnson ("Johnson") informed Plaintiff that Holtec lost confidence in him as CFO.

53. Defendants deny the allegations contained within paragraph 53 of the Complaint as stated and state by way of further answer that Johnson requested Plaintiff return all Holtec material by meeting him at the Holtec security gate.

54. Upon information and belief, Defendants admit the allegations contained within paragraph 54 of the Complaint. Defendants state by way of further answer that Johnson repeated the reason for Plaintiff's termination, i.e., that Holtec lost confidence in him as CFO.

55. Defendants deny the allegations contained within paragraph 55 of the Complaint and aver by further answer that Johnson informed Plaintiff that Holtec lost confidence in him as CFO.

56. Defendants deny the allegations contained within paragraph 56 of the Complaint as stated and aver that Plaintiff stated unspecified concerns to Johnson.

57. Defendants deny the allegations contained within paragraph 57 of the Complaint as stated.

Legal Claims

58. The allegations in paragraph 58 of the Complaint assert only legal conclusions to which no response is required. To the extent an answer is deemed necessary, Defendants deny each and every allegation contained in paragraph 58 of the Complaint.

59. The allegations in paragraph 59 of the Complaint assert legal conclusions to which no response is required. To the extent an answer is deemed necessary, Defendants deny each and every allegation contained in paragraph 59 of the Complaint.

60. The allegations in paragraph 60 of the Complaint assert legal conclusions to which no response is required. To the extent an answer is deemed necessary, Defendants deny each and every allegation contained in paragraph 60 of the Complaint.

61. The allegations in paragraph 61 of the Complaint assert legal conclusions to which no response is required. To the extent an answer is deemed necessary, Defendants deny each and every allegation contained in paragraph 61 of the Complaint.

62. The allegations in paragraph 62 of the Complaint assert legal conclusions to which no response is required. To the extent an answer is deemed necessary, Defendants deny each and every allegation contained in paragraph 62 of the Complaint.

63. The allegations in paragraph 63 of the Complaint assert legal conclusions to which no response is required. To the extent an answer is deemed necessary, Defendants deny each and every allegation contained in paragraph 63 of the Complaint.

64. The allegations in paragraph 64 of the Complaint assert legal conclusions to which no response is required. To the extent an answer is deemed necessary, Defendants deny each and every allegation contained in paragraph 64 of the Complaint.

65. The allegations in paragraph 65 of the Complaint assert legal conclusions to which no response is required. To the extent an answer is deemed necessary, Defendants deny each and every allegation contained in paragraph 65 of the Complaint.

66. The allegations in paragraph 66 of the Complaint assert legal conclusions to which no response is required. To the extent an answer is deemed necessary, Defendants deny each and every allegation contained in paragraph 66 of the Complaint.

67. The allegations in paragraph 67 of the Complaint assert legal conclusions to which no response is required. To the extent an answer is deemed necessary, Defendants deny each and every allegation contained in paragraph 67 of the Complaint.

COUNT I

CEPA Retaliation

68. Defendants incorporate herein by reference their responses to all of the foregoing paragraphs as if set forth in full.

69. The allegations in paragraph 69 of the Complaint assert legal conclusions to which no response is required. To the extent an answer is deemed necessary, Defendants deny each and every allegation contained in paragraph 69 of the Complaint.

70. The allegations in paragraph 70 of the Complaint assert legal conclusions to which no response is required. To the extent an answer is deemed necessary, Defendants deny each and every allegation contained in paragraph 70 of the Complaint.

WHEREFORE, Defendants demand judgment be entered in their favor and against Plaintiff, dismissing Plaintiff's Complaint, awarding Defendants their costs, including reasonable attorneys' fees, and such other and further relief as this Court in its discretion deems appropriate.

COUNT II

CEPA Retaliation as to Singh

71. Defendants incorporate herein by reference their responses to all of the foregoing paragraphs as if set forth in full.

72. The allegations in paragraph 72 of the Complaint assert legal conclusions to which no response is required. To the extent an answer is deemed necessary, Singh denies each and every allegation contained in paragraph 72 of the Complaint.

73. The allegations in paragraph 73 of the Complaint assert legal conclusions to which no response is required. To the extent an answer is deemed necessary, Singh denies each and every allegation contained in paragraph 73 of the Complaint.

74. The allegations in paragraph 74 of the Complaint assert legal conclusions to which no response is required. To the extent an answer is deemed necessary, Singh denies each and every allegation contained in paragraph 74 of the Complaint.

75. The allegations in paragraph 75 and its subsections of the Complaint assert legal conclusions to which no response is required. To the extent an answer is deemed necessary, Defendants deny each and every allegation contained in paragraph 75 and its subsections the Complaint.

WHEREFORE, Defendants demand judgment be entered in their favor and against Plaintiff, dismissing Plaintiff's Complaint, awarding Defendants their costs, including reasonable attorneys' fees, and such other and further relief as this Court in its discretion deems appropriate.

SEPARATE DEFENSES

Defendants, by and through their attorneys, assert the following Separate Defenses without assuming the burden of proof on such defenses that would otherwise rest with Plaintiff.

FIRST SEPARATE DEFENSE

Plaintiff's Complaint and each Count thereof fails to state a claim upon which relief can be granted.

SECOND SEPARATE DEFENSE

If Plaintiff suffered any damages or losses, such damage or losses were caused in whole or in part by Plaintiff's own acts, omissions, or conduct.

THIRD SEPARATE DEFENSE

Plaintiff is not entitled to equitable relief since Plaintiff has an adequate remedy at law.

FOURTH SEPARATE DEFENSE

Defendants are not liable for any damages, including punitive damages.

FIFTH SEPARATE DEFENSE

Plaintiff failed to mitigate his damages, if any.

SIXTH SEPARATE DEFENSE

Defendants at all times had legitimate, lawful reasons for its decisions regarding Plaintiff's employment and/or termination.

SEVENTH SEPARATE DEFENSE

Defendants acted reasonably and in good faith at all times.

EIGHTH SEPARATE DEFENSE

Plaintiff's cause of action may be barred by the doctrine of waiver, estoppel, laches, or unclean hands.

NINTH SEPARATE DEFENSE

Plaintiff's damages are limited or barred in their entirety by the doctrine of after-acquired evidence.

TENTH SEPARATE DEFENSE

Plaintiff cannot establish a *prima facie* case under the New Jersey Conscientious Employee Protection Act (CEPA) or any other federal, state, or local law or regulation.

ELEVENTH SEPARATE DEFENSE

None of Defendants' actions were malicious or were committed with reckless indifference to the protected rights of any employees.

TWELFTH SEPARATE DEFENSE

The claims in the Complaint are barred, in whole or in part, by the applicable statute of limitations.

THIRTEENTH SEPARATE DEFENSE

Even if Plaintiff could establish that retaliation was a motivating factor for any adverse employment action—which he cannot—his remedies are barred or diminished because Defendants would have taken the same action(s) in the absence of any impermissible motivating factor.

FOURTEENTH SEPARATE DEFENSE

Defendants assert all defenses available to them under the New Jersey Punitive Damages Act, N.J.S.A. § 2A:15-5.9.

FIFTEENTH SEPARATE DEFENSE

This Court lacks jurisdiction over Defendants because of improper and insufficient service.

SIXTEENTH SEPARATE DEFENSE

This Court lacks *in personam* jurisdiction over Defendants, and Defendants reserve the right to quash service of the Summons and Complaint.

SEVENTEENTH SEPARATE DEFENSE

Defendants reserves the right to assert additional defenses as they may become known through the course of discovery.

COUNTERCLAIMS

COUNT I

Breach of Contract

1. Counter-Plaintiff Holtec International ("Holtec" or "Counter-Plaintiff") has its headquarters in Jupiter, Florida and its principal place of business in Camden, New Jersey.

2. Upon information and belief, Counter-Defendant Kevin O'Rourke ("Counter-Defendant") is a resident of the State of Florida.

3. On or about May 19, 2021, Holtec offered, and Counter-Defendant accepted an offer of employment.

4. Counter-Defendant's employment with Holtec was contingent on, *inter alia*, executing and returning to Holtec any and all documentation and policies required to be signed by Holtec, including the Holtec International Confidentiality, Non-Compete, and Non-Solicitation Agreement ("Agreement"), a copy of which is attached hereto and marked as Exhibit A.

5. Counter-Defendant's position was Chief Financial Officer ("CFO") of Holtec.

6. On or around May 19, 2021, Holtec and Counter-Defendant executed the Agreement.

7. Section 1 of the Agreement, At-Will Employment, Counter-Defendant acknowledged that his employment at Holtec was at-will.

8. In Section 2 of the Agreement, Non-Disclosure of Holtec's Confidential Information, Counter-Defendant acknowledged that:

> Holtec is in the business of supplying mechanical, nuclear, and other engineering products and services. In the course of performing such activities, Holtec acquires and develops trade secrets and confidential and proprietary information which is not generally known in the industry.

> You recognize that the knowledge and information acquired by you concerning Holtec's engineering designs, technological analyses, mechanical and nuclear industry reports, licensing, manufacturing, site construction services, hardware components, product and other designs, general research, business plans, software, formatting, programs, customer prospects, customer lists, other customer information, supplier and vendor lists and information, marketing plans, data processing systems and information contained therein, proposals to customers and potential customers, reports, plans, studies, price lists, financial statements, catalogs, and other trade secrets, inventions, designs, know-how, or other private, confidential or proprietary information of or about Holtec which is not already available to the public (collectively, "Holtec Confidential Information") are valuable, special and unique aspects of Holtec's business. You recognize that such Holtec Confidential Information would not be provided to you by Holtec in the absence of this signed Agreement because of the risks that valuable Holtec Confidential Information might otherwise be divulged and thereby damage Holtec's competitive position in the marketplace.
>
> **You agree that you will not, during or after your employment with Holtec, (i) disclose or allow the publication of, in whole or in part, any Holtec Confidential Information to any person, firm, corporation, association or other entity for any reason or purpose whatsoever unless authorized in writing to do so by Holtec**, (ii) use any Holtec Confidential Information for your own purpose or for the benefit of any person, firm, corporation, association or other entity other than Holtec; except in the proper performance of your duties as instructed by Holtec, or (iii) disclose Holtec Confidential Information as it relates to the status of employment including, but not limited to, employee private information for others at Holtec. It is a violation of policy to obtain, possess, and/or distribute confidential personnel information. After the term of your employment, the restrictions set forth in this paragraph will not apply to confidential information which is then in the public domain (unless you are responsible, directly or indirectly, for such Holtec Confidential Information entering the public domain without Holtec's consent). (emphasis added).

9. In Section 6 of the Agreement, Return of Holtec Documents and Obligation to Advise Holtec of New Employment, Counter-Defendant agreed that:

> Upon the cessation of your employment with Holtec or at any other time upon request of Holtec, you shall immediately deliver to Holtec all software, programs, correspondence, memoranda, notes, records, reports, plans, product and other designs, studies, price lists, customer lists and information, customer contracts, financial statements, catalogs, programs, disks, tapes, other papers, as well as any medium on or by which information is stored, received or made by you in connection with your employment by Holtec, regardless of whether or not such information is Holtec confidential information. You further agree to immediately return to Holtec all Holtec equipment, computers, electronic and communications

> devices, files, USB and/or other data storage devices, and any other Holtec property in your possession, custody or control.
>
> In the event of a cessation of your employment with Holtec, and during the Restricted Period described in Paragraph 4 above, you agree to disclose to Holtec, the name and address of any new employer or business affiliation within ten (10) days of your accepting such position. In the event that you fail to notify Holtec of such new employment or business affiliation as required above, the Restricted Period shall be extended by a period equal to the period of nondisclosure.

10. In Section 7 of the Agreement, Enforcement and Remedies in Event of Breach, Counter-Defendant agreed that:

> … If you violate the covenants and agreements set forth above (including paragraphs 2, 3, 4 and/or 5), Holtec would suffer irreparable harm, and that such harm to Holtec may be impossible to measure in monetary damages. Accordingly, in addition to any other remedies which Holtec may have at law or in equity, Holtec shall have the right to have all obligations, undertakings, agreements, covenants and other provisions of this Agreement specifically performed by you, and Holtec shall have the right to obtain temporary, preliminary and/or permanent injunctive relief to secure specific performance, and to prevent a breach or contemplated breach, of this Agreement. In such event, Holtec shall be entitled to monetary damages including, but not limited to, an accounting and repayment of all profits, compensation, remunerations or benefits which you, directly or indirectly, have realized or may realize as a result of, growing out of, or in conjunction with any violation of any partial or justified liquidated damages, such remedies shall be an addition to and not in limitation of any injunctive relief or other rights or remedies to which Holtec is or may be entitled at law or in equity under this Agreement and that, in the event Holtec is required to enforce the terms of this Agreement through court proceedings, Holtec shall be entitled to reimbursement for all legal fees, costs and expenses incident to enforcement.

11. Holtec relied on the terms of the Agreement and provided Holtec's Confidential Information to Counter-Defendant.

12. Throughout his employment, Counter-Defendant received and was privy to Holtec's highest levels of Confidential Information.

13. For example, in his role as CFO, Counter-Defendant was privy to financial data of Holtec that was not publicly available.

14. Also, in his role as CFO, Counter-Defendant was privy to Holtec's sales and financial projections that were not publicly available.

15. In his role as CFO, Counter-Defendant was privy to information about Holtec's potential collaborations with other companies that was not publicly available.

16. In his role as CFO, Counter-Defendant was privy to information about Holtec's research and development that was not publicly available.

17. In his role as CFO, Counter-Defendant was privy to information about Holtec's future plans, which was not publicly available.

18. In his role as CFO, Counter-Defendant was privy to certain legal strategies, which were not publicly available.

19. Counter-Defendant's employment ended on or around August 30, 2022.

20. Upon information and belief, Counter-Defendant did not return all Holtec Confidential Information in his possession.

21. On or around June 1, 2023, Counter-Defendant filed a Complaint (the "Complaint") in the Superior Court of New Jersey – Law Division, Camden County at docket number CAM-L-1585-23 alleging violations of the New Jersey Conscientious Employee Protection Act ("CEPA").

22. Despite still being bound by the Agreement to keep Holtec Confidential Information secret, Counter-Defendant failed to file the Complaint under seal.

23. Filing documents under seal is permitted in New Jersey courts to allow litigants to utilize the courts and maintain the secrecy of confidential information.

24. Counter-Defendant's Complaint was filed on the public docket and included several categories of Holtec's confidential information, including: financial data, information on

potential collaboration with another company, sales projections, research and development costs, and Holtec's future plans.

25. The information included in Counter-Defendant's Complaint was not in the public domain at the time of the filing.

26. Counter-Defendant did not seek, nor did Holtec provide, authorization in writing for the disclosure of such Holtec Confidential Information, as required by terms of the Agreement.

27. Counter-Defendant was not privileged to disclose Holtec's Confidential Information.

28. By filing his Complaint on the public docket, Counter-Defendant has violated the Agreement and caused Holtec's Confidential Information to become public.

29. Due to Counter-Defendant's breach of the Agreement, Holtec has suffered significant actual damages.

WHEREFORE, Holtec demands judgment against Counter-Defendant together with actual and compensatory damages, plus interest, costs, and attorneys' fees.

COUNT II

Tortious Interference with Contractual Relations

30. Holtec incorporates herein by reference the above paragraphs and allegations as if set forth in full.

31. Holtec had a contract with a potential investor.

32. Under the terms of a non-disclosure agreement ("NDA") between Holtec and the potential investor, Holtec agreed to keep certain information confidential with respect to the possible transaction with the potential investor.

33. Counter-Defendant knew about the NDA between Holtec and the potential investor.

34. By filing the Complaint publicly, Counter-Defendant intentionally and improperly interfered with the performance of the NDA between Holtec and the potential investor.

35. Counter-Defendant's conduct was with malice and done without justification or excuse.

36. Following the filing of the Complaint, numerous media outlets across the country published articles repeating the false allegations that make up Counter-Defendant's Complaint and specifically named the potential investor and were assisted in the disclosure through Plaintiff's actions.

37. Due to Counter-Defendant's intentional and improper interference, Holtec has suffered significant actual damages.

WHEREFORE, Holtec demands judgment against Counter-Defendant together with actual compensatory damages, plus interest, costs, attorneys' fees, and other relief as the Court may deem just and proper.

DESIGNATION OF TRIAL COUNSEL

Pursuant to New Jersey Civil Court Rule 4:5-1(c), Defendants designate James P. Anelli, Esquire and Ryan T. Warden, Esquire of White and Williams LLP as trial counsel.

DEMAND FOR STATEMENT OF DAMAGES

Pursuant to New Jersey Civil Court Rule 4:5-2, Defendants hereby demand a written statement of all of Plaintiff's alleged damages within five (5) days of service hereof.

DEMAND FOR STATEMENTS

Pursuant to New Jersey Civil Court Rule 4:10-2(c), demand is hereby made for any statement made by any servant, agent, employee, or representative of any party to this action concerning this action or the subject matter of this action.

DEMAND FOR DOCUMENTS

Pursuant to New Jersey Civil Court Rule 4:18-2, Defendants hereby demand that Plaintiff produce any and all documents or papers referred to in Plaintiff's Complaint to be served upon Defendants within five (5) days of the date of this demand.

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify that I am not aware that the within action is the subject to any other action pending in any court or of a pending arbitration proceeding and am unaware as to whether any other action or arbitration proceeding is contemplated. I further certify that I am not aware of any additional parties that should be joined in this matter at this time. I certify that the foregoing statements made by me are true. I am aware that any of the foregoing standards made by me is willingly false, I may be subject to punishment.

Respectfully submitted,

By: _____

James P. Anelli, Esq.
White and Williams LLP
One Gateway Center, Suite 910
Newark, NJ 07102
(201) 368-7200
anellij@whiteandwilliams.com
Attorneys for Defendants Holtec International, Holtec International Power Division, Inc., and Krishna Singh

Date: August 14, 2023

EXHIBIT A

HOLTEC INTERNATIONAL
CONFIDENTIALITY, NON-COMPETE, AND NON-SOLICITATION AGREEMENT

The articles set forth in this Confidentiality, Non-Competition, and Non-Solicitation Agreement (the "Agreement") constitute a binding and enforceable Agreement entered into, by and between Holtec International ("Holtec" or the "Company") and Kevin O'Rourke (hereinafter, "you" or "your").

In consideration of (a) your employment and/or continued employment in such capacity as may be determined by Holtec, (b) the expense, time and effort involved in providing you with specialized and unique training, (c) the access Holtec is providing you to certain trade secrets, and confidential and proprietary information related to the business of Holtec, and (d) other consideration, and intending to be legally bound, Holtec and you agree as set forth below.

1. At-Will Employment.

You acknowledge that your employment as a Holtec Associate is conditioned upon your execution of this Agreement. During the entire period that you are employed by Holtec, you agree to devote your best efforts to advance the interests of Holtec.

Your status is as an at-will Holtec Associate, which means that either Holtec or you may terminate the employment relationship at any time, for any reason, with or without cause. Holtec is not obligated by this Agreement or by separate arrangements to continue your employment for any particular time period or under any specific terms or conditions. You acknowledge and agree that although this Agreement is ancillary to your employment with Holtec, the terms and conditions of your employment (except as it relates to the subject matter of this Agreement) are separate from and form no part of this Agreement.

You represent and warrant to Holtec that you have furnished Holtec with copies of any and all agreements, documents or instruments, if any, to which you are a party or by which you are bound that may restrict you in the performance of your duties for Holtec. You agree not to divulge to Holtec any information which would violate any such agreements, documents or instruments, nor to divulge to Holtec any trade secrets, or confidential or proprietary information of your prior employers or any third-party to which you have obligations of confidentiality.

2. Non-Disclosure of Holtec's Confidential Information.

Holtec is in the business of supplying mechanical, nuclear, and other engineering products and services. In the course of performing such activities, Holtec acquires and develops trade secrets and confidential and proprietary information which is not generally known in the industry.

You recognize that the knowledge and information acquired by you concerning Holtec's engineering designs, technological analyses, mechanical and nuclear industry reports, licensing, manufacturing, site construction services, hardware components, product and other designs, general research, business plans, software, formatting, programs, customer

prospects, customer lists, other customer information, supplier and vendor lists and information, marketing plans, data processing systems and information contained therein, proposals to customers and potential customers, reports, plans, studies, price lists, financial statements, catalogs, and other trade secrets, inventions, designs, know-how, or other private, confidential or proprietary information of or about Holtec which is not already available to the public (collectively, "Holtec Confidential Information") are valuable, special and unique aspects of Holtec's business. You recognize that such Holtec Confidential Information would not be provided to you by Holtec in the absence of this signed Agreement because of the risks that valuable Holtec Confidential Information might otherwise be divulged and thereby damage Holtec's competitive position in the marketplace.

You agree that you will not, during or after your employment with Holtec, (i) disclose or allow the publication of, in whole or in part, any Holtec Confidential Information to any person, firm, corporation, association or other entity for any reason or purpose whatsoever unless authorized in writing to do so by Holtec, (ii) use any Holtec Confidential Information for your own purpose or for the benefit of any person, firm, corporation, association or other entity other than Holtec; except in the proper performance of your duties as instructed by Holtec, or (iii) disclose Holtec Confidential Information as it relates to the status of employment including, but not limited to, employee private information for others at Holtec. It is a violation of policy to obtain, possess, and/or distribute confidential personnel information. After the term of your employment, the restrictions set forth in this paragraph will not apply to confidential information which is then in the public domain (unless you are responsible, directly or indirectly, for such Holtec Confidential Information entering the public domain without Holtec's consent).

3. **Intellectual Property.**

All patent, trademark, copyright, trade secret and other intellectual property rights (the "Intellectual Property") which you (either alone or in conjunction with others) conceive, make, obtain or develop during the term of your employment with Holtec (whether during or outside of working hours) and which are related in any way to Holtec's business, will be the sole property of Holtec. Intellectual Property will belong to Holtec whether or not patent, trademark, copyright and/or other intellectual property right applications are or can be filed thereon. You will make full and prompt disclosure to Holtec of all Intellectual Property and, at Holtec's request and expense (but without additional compensation to you), will at any time and from time to time during and after your employment with Holtec execute and deliver to Holtec such applications, assignments and other papers and take such other actions (including, but not limited to, testifying in any legal proceedings) as Holtec, in its sole discretion, considers necessary to vest, perfect, defend or maintain Holtec's rights in and to such Intellectual Property.

You have attached to this Agreement a complete list of Intellectual Property, if any, conceived, made, obtained or developed by you prior to your employment by Holtec and such Intellectual Property is excluded from the undertakings in this Agreement.

HOLTEC INTERNATIONAL
CONFIDENTIALITY, NON-COMPETE, AND NON-SOLICITATION AGREEMENT

4. **Restrictive Covenants and Non-Competition with Holtec.**

You understand that Holtec International is a technology innovator in the field of nuclear spent fuel technologies, in nuclear power plant component design/analysis/licensing, and in fossil power plant (including resource recovery and cogeneration) equipment design. You also understand that the aforementioned product lines constitute the core business activities of Holtec International. If your employment by the Company requires you to work in the Company's core business areas, then you will, by virtue of your work, acquire knowledge, skills, and business information whose availability to any of the Company's worldwide competitors will cause significant business harm to Holtec International. Holtec strictly enforces its intellectual property rights. Misappropriation of Holtec's Intellectual Property, including, without limitation, patents, copyrights, trade secrets and know how will result in the infringer being liable for punitive damages. To protect its vital business interests, the Company requires that you fully understand and accept the activity restriction covenants set forth in this section.

Because of the sensitivity of business and technical information that becomes available to any Holtec associate, you agree that during the term of your employment and for a period of) twenty-four (24) months immediately following the termination of your employment (the "Restricted Period"), you will not either directly or indirectly, accept employment or perform services in any of the areas mentioned in the Company's brochures, advertising literature and website in which you participated directly or indirectly during the course of your employment without the written consent of Holtec's CEO or CFO. By accepting employment with any of the Company's divisions or affiliated business units, you accept and represent that you have voluntarily waived the right to work in the aforementioned areas for the Restricted Period. Failure to abide by this commitment shall be grounds for seeking direct and punitive damages from the associate.

During the Restricted Period, you shall not, directly or indirectly own any interest in (excluding mutual funds for investment purposes), manage, control, participate in, consult with, render services for (except as an employee of Holtec), or in any manner interact with any business entity considered a Competitor of Holtec. This applies only to business entities which compete in the same or substantially the same business area(s) that are or were within the scope of your professional activities at Holtec. For purposes of this agreement, a "Business Entity" can be a single, small company (under 1,500 employees) or a division of a large company (over 1,500 employees) whose products and services compete with Holtec's. In a large company consisting of multiple divisions, this employment restriction applies only to the division (business entity is defined as an autonomous profit center with a stand-alone business structure) which competes with Holtec.

5. **Non-Solicitation of Holtec Customers and Prospective Customers.**

During the Restricted Period, you shall not contact, solicit, sell, or market to any Customer, or Prospective Customer of Holtec on behalf of any Business Entity as defined in the foregoing Paragraph (4), divert or attempt to divert any such Customer's or Prospective Customer's business whatsoever from Holtec, or influence any such Customer or Prospective

customer of Holtec to effect a reduction in its dealings with Holtec.

"Customer" shall mean any person or entity (including but not limited to affiliates or subsidiaries) that was a customer of Holtec at any time during the twenty-four (24) months prior to the termination of your employment.

"Prospective Customer" shall mean any person or entity (including but not limited to affiliates or subsidiaries) who was actively solicited by Holtec during the twelve (12) months prior to the termination of your employment.

You further acknowledge and agree that you shall not offer induce, assist, encourage or suggest (1) that another business or enterprise offer employment to or enter into a business affiliation with any Holtec employee, agent or representative, or (2) that any Holtec employee, agent, or representative terminate his or her employment or business affiliation with Holtec.

You covenant and agree that for a period of twenty-four (24) months after employment with Holtec has been terminated for any reason whatsoever, whether voluntary or involuntary, you will not directly or indirectly, for your own benefit or for the benefit of any other person or entity solicit, aid in solicitation of, induce, encourage, hire, employ, or in any way cause any employee to leave the employ of Holtec. You acknowledge that Holtec has invested significant time, effort, resources and expense in training its employees and agree that the restriction contained in this paragraph is reasonable and necessary to protect Holtec's investment and legitimate business interests.

By way of example, the above restriction does not apply to your employment with a power generation station or a company which renders purely consulting services to the power industry at large.

6. **Return of Holtec Documents and Obligation to Advise Holtec of New Employment.**

Upon the cessation of your employment with Holtec or at any other time upon request of Holtec, you shall immediately deliver to Holtec all software, programs, correspondence, memoranda, notes, records, reports, plans, product and other designs, studies, price lists, customer lists and information, customer contracts, financial statements, catalogs, programs, disks, tapes, other papers, as well as any medium on or by which information is stored, received or made by you in connection with your employment by Holtec, regardless of whether or not such information is Holtec confidential information. You further agree to immediately return to Holtec all Holtec equipment, computers, electronic and communications devices, files, USB and/or other data storage devices, and any other Holtec property in your possession, custody or control.

In the event of a cessation of your employment with Holtec, and during the Restricted Period described in Paragraph 4 above, you agree to disclose to Holtec, the name and address of any new employer or business affiliation within ten (10) days of your accepting such position. In the event that you fail to notify Holtec of such new employment or business

affiliation as required above, the Restricted Period shall be extended by a period equal to the period of nondisclosure.

7. **Enforcement and Remedies in Event of Breach.**

You agree that if you violate the covenants and agreements set forth above (including paragraphs 2, 3, 4 and/or 5), Holtec would suffer irreparable harm, and that such harm to Holtec may be impossible to measure in monetary damages. Accordingly, in addition to any other remedies which Holtec may have at law or in equity, Holtec shall have the right to have all obligations, undertakings, agreements, covenants and other provisions of this Agreement specifically performed by you, and Holtec shall have the right to obtain temporary, preliminary and/or permanent injunctive relief to secure specific performance, and to prevent a breach or contemplated breach, of this Agreement. In such event, Holtec shall be entitled to monetary damages including, but not limited to, an accounting and repayment of all profits, compensation, remunerations or benefits which you, directly or indirectly, have realized or may realize as a result of, growing out of, or in conjunction with any violation of any partial or justified liquidated damages, such remedies shall be an addition to and not in limitation of any injunctive relief or other rights or remedies to which Holtec is or may be entitled at law or in equity under this Agreement and that, in the event Holtec is required to enforce the terms of this Agreement through court proceedings, Holtec shall be entitled to reimbursement for all legal fees, costs and expenses incident to enforcement.

8. **Miscellaneous.**

(a) **Assignment.** This Agreement shall not be assignable by either party hereto without the prior written consent of the other party hereto, except that Holtec may, without securing your consent, assign its rights and obligations hereunder to any successor entity to Holtec by operation of law or otherwise.

(b) **Headings.** The headings contained in this Agreement are inserted for convenience of reference only, and shall not be deemed to be a part of this Agreement for any purposes, and shall not in any way define or affect the meaning, construction or scope of any of the provisions of this Agreement.

(c) **Governing Law.** This Agreement shall be construed under the laws of the State of New Jersey, and the parties consent and agree that the federal and state courts of the State of New Jersey shall have exclusive jurisdiction over any dispute relating to this Agreement.

(d) **Entire Agreement.** This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements, discussions and proposal, both oral and written, between you and Holtec. This Agreement may not be amended or modified, and no waiver hereunder shall be valid or binding, unless set forth in writing, duly executed by

the party against whom enforcement of the amendment, modification or waiver is sought.

(e) **Construction and Severability.** If any section, paragraph, term or provision of this Agreement, or the application thereof, is determined by a competent court or tribunal to be invalid or unenforceable, then the other parts of such section, paragraph, term or provision shall not be affected thereby and shall be given full force and effect without regard to the invalid or unenforceable portions, and the section, paragraph, term or provision of this Agreement will be deemed modified to the extent necessary to render it valid and enforceable.

(f) **Employee Manual and Administrative Memos.** You are informed that, as a Company Associate, the rules, regulations, responsibilities and privileges applicable to you are documented in the Employee Manual maintained in: G:\Generic\Corporate Manuals, and the Administrative Memos periodically published by the Company in: G:\Generic\Admin\Administrative Memos .

(g) **Acknowledgement.** You acknowledge that you have carefully read and considered the provisions of this Agreement, have had the opportunity to consult with an independent legal counsel of your choosing, and accept employment on the terms set forth in this Agreement.

[SIGNATURE PAGE FOLLOWS]

HOLTEC INTERNATIONAL
CONFIDENTIALITY, NON-COMPETE, AND NON-SOLICITATION AGREEMENT

IN WITNESS WHEREOF, the parties, intending to be legally bound, state that they understand this Agreement, enter into it freely, and have duly executed it below.

HOLTEC INTERNATIONAL

Date_____ By:_____

Name:_____

Title: _____

Please print your name.: Kevin P. O'Rourke

Date 5/19/21 Your Signature: Kevin P. O'Rourke

EXHIBIT B

≡ app.



FOR SUBSCRIBERS

Ex-Holtec CFO accuses company of 'make believe' financial statements in whistleblower suit

Four-minute read

AMANDA OGLESBY Asbury Park Press

CAMDEN — Holtec International, owner of the defunct Oyster Creek nuclear power plant, is being sued by the company's former chief financial officer in a whistleblower lawsuit.

In it, former CFO Kevin O'Rourke accuses the Camden-based nuclear parts manufacturer of attempting to coerce him to submit inaccurate and false financial statements to a major investor, which allegedly involved hundreds of

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Attorneys for O'Rourke allege in the court filings that Holtec fired him after he refused to participate in presenting misleading financial reports to Hyundai Engineering and Construction.

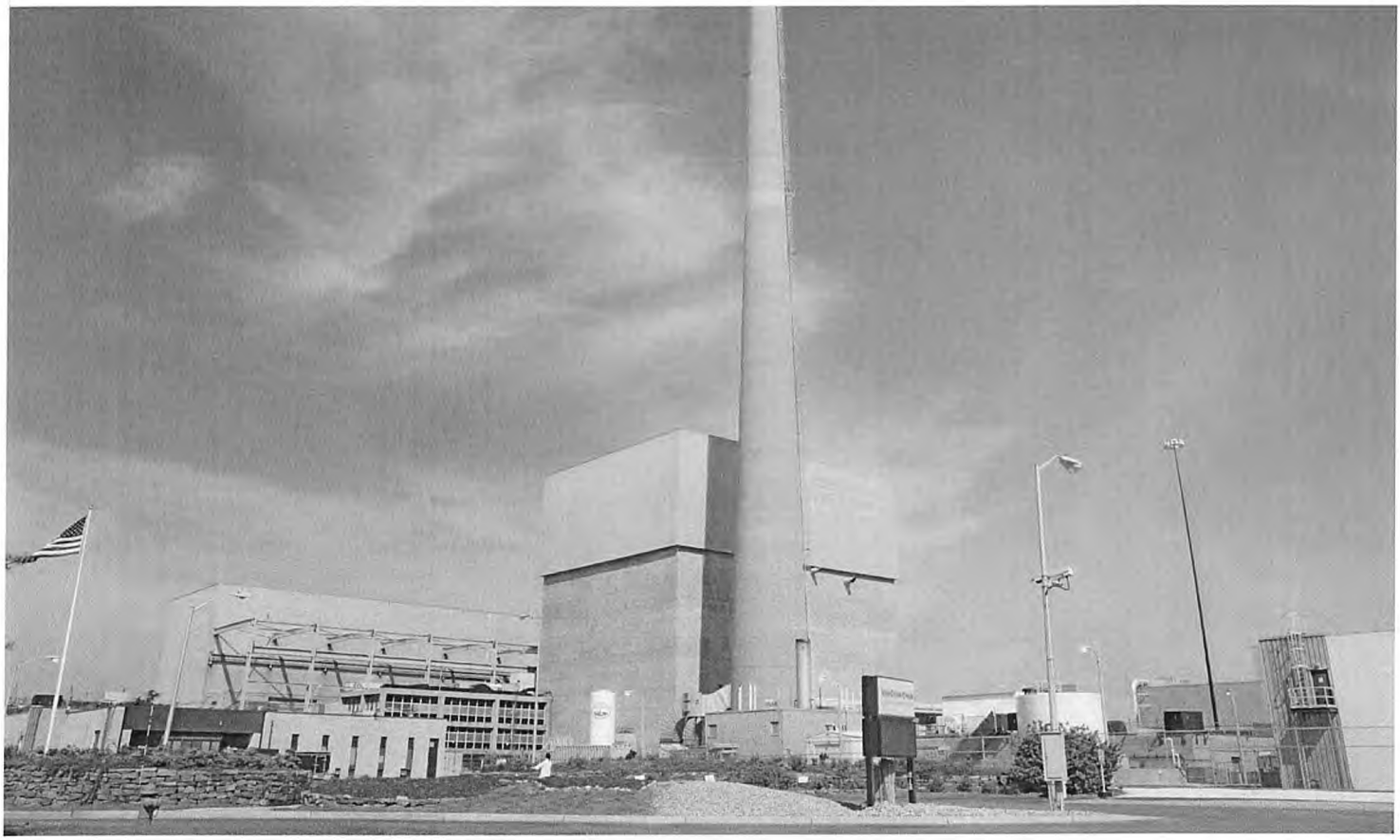
Holtec and Hyundai partnered last year to begin design on Holtec's SMR-160 advanced small modular reactor, a standard design nuclear energy plant that the company sees as the future of nuclear energy.

Holtec also owns a number of non-operational nuclear plants, including the Oyster Creek facility in Lacey, the Indian Point Energy Center in Buchanan, New York; and the Pilgrim Nuclear Power Station in Plymouth, Massachusetts. The company plans to profit from each plant's decommissioning trust fund by taking apart the plants for less money that the balance of the trust funds.

O'Rourke's lawsuit alleges Holtec officials — including company founder, president and CEO Krishna Singh — prepared to present Hyundai with an investment prospectus that included "numerous false and misleading statements... (and) 'make believe' and unsupported financial projections" in August, 2022.

Holtec gave the chief financial officer five days to prepare the prospectus, then fired him when he claimed the "financial projections could not possibly be completed accurately in the timeframe demanded" and noted errors as well as "materially false or fraudulent data" within the document, according to the lawsuit.

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2010 Oyster Creek Nuclear Power Plant reactor building and stack in Lacey.
PETER ACKERMAN / APP

Holtec spokesman Patrick O'Brien said: "We have thoroughly investigated these allegations and they are entirely without merit. We look forward to our day in court."

O'Rourke alleged that the prospectus stated that Holtec had never violated a covenant, but at the time, the company was in violation of a debt covenant. The document also stated Holtec had no long-term debt, but O'Rourke believed that to be untrue, according to the lawsuit. The prospectus included untrue information about the company's revenue sources and value of its software, according to the allegations.

"The Prospectus grossly overvalued Defendants' (Holtec's) manufacturing facilities... (and) grossly overstated the amount of money spent annually on research and development costs," according to the lawsuit. "The Prospectus misrepresented a statement about self-financing a $300 million manufacturing

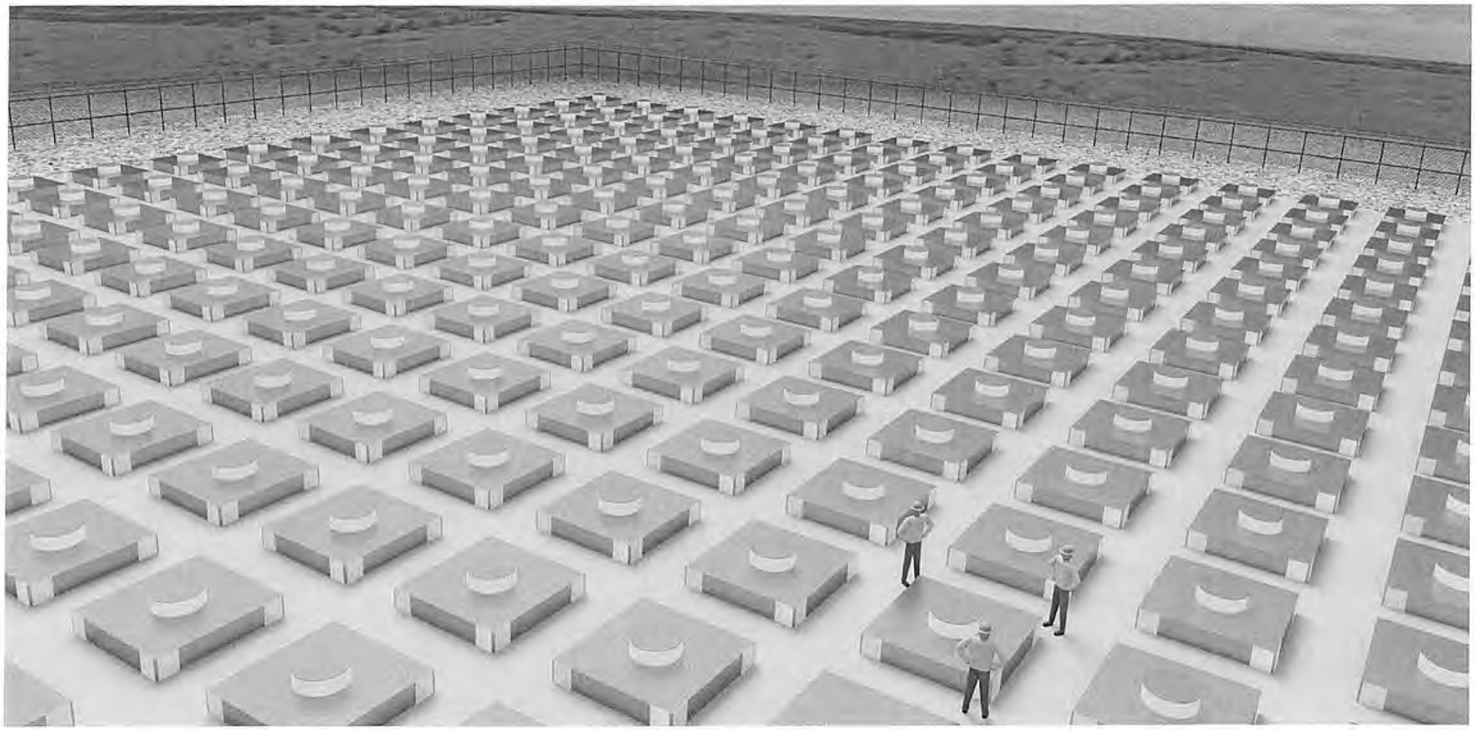
The financial projections within the prospectus were either materially false or "completely unattainable and unrealistic," according to the lawsuit.

Last year, a state judge ordered New Jersey's Economic Development Authority to pay $26 million in disputed tax credits to Holtec for the 2018 tax year. The EDA attempted to revoke the tax credits, saying Holtec provided incorrect information in its debarment history and discussion of expansion in South Carolina. The judge ruled against the EDA, citing the company's benefit to Camden, and ordered the tax credits returned.

O'Rourke's lawsuit also alleges Holtec prepared financially misleading statements about its consolidated interim storage facility, or CISF, under review in southeastern New Mexico. The facility, if approved, would collect and indefinitely store radioactive waste and spent nuclear fuel from decommissioned power plants from across the nation.

"According to Defendants' (Holtec's) own internal projection, the CISF would lose $150 million per year for the next five years," the lawsuit alleged. "However, (CEO Krishna) Singh stated he wanted to represent in the Prospectus that the CISF would 'break even' during that period of time and asked that Plaintiff (O'Rourke) do so."

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Holtec International has proposed an underground storage facility in New Mexico that would hold radioactive waste from nuclear power plants across the country.
PHOTO PROVIDED

In May, the U.S. Nuclear Regulatory Commission issued Holtec a license to build the underground CISF in New Mexico. However, New Mexico lawmakers passed a bill earlier this year that would require the U.S. Department of Energy to establish a permanent storage area for nuclear waste first and require state lawmakers' consent for CISF construction.

The lawsuit also alleged that Singh directed O'Rourke to make misleading statements to Hyundai about projected sales from Applied Photonix, a Holtec subsidiary. Applied Photonix focuses on eliminating viruses, spores, molds and other pathogens from air.

"Singh stated the Prospectus should represent that Applied Photonix would have projected annual sales of $100 million within five years, a projection not based on any factual information," according to the lawsuit.

O'Rourke objected on numerous occasions to inaccurate or misleading statements in the prospectus, and told colleagues that "submitting the Prospectus as currently drafted... for Hyundai to view could violate the law, and

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O'Rourke alleged his supervisor offered to refer the matter to the company chief governance officer, but O'Rourke was never contacted. In addition, he was not included in meetings with Hyundai or about the prospectus, and shortly thereafter was fired, according to the lawsuit.

He is seeking compensation for damages, including emotional pain, suffering and lost wages as well as reinstatement, or other relief the court finds fair. O'Rourke is also asking the court to declare that the financial practices described in the lawsuit violate New Jersey law.

O'Rourke's attorney did not immediately respond to a request for comment on Friday.

Amanda Oglesby is an Ocean County native who covers Brick, Barnegat and Lacey townships as well as the environment. She has worked for the Press for more than a decade. Reach her at @OglesbyAPP, aoglesby@gannettnj.com or 732-557-5701.

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EXHIBIT C

Holtec accused of false financial statements in whistleblower suit

Asbury Park Press (New Jersey)

July 10, 2023 Monday

1 Edition

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Section: NEWS; Pg. A3

Length: 1025 words

Byline: By, Amanda Oglesby, Asbury Park Press

Body

CAMDEN - Holtec International, owner of the defunct Oyster Creek nuclear power plant, is being sued by the company's former chief financial officer in a whistleblower lawsuit.

In it, former CFO Kevin O'Rourke accuses the Camden-based nuclear parts manufacturer of attempting to coerce him to submit inaccurate and false financial statements to a major investor, which allegedly involved hundreds of millions of dollars. The company then fired him when he refused, according to a lawsuit filed in June in state Superior Court, Camden.

Attorneys for O'Rourke allege in the court filings that Holtec fired him after he refused to participate in presenting misleading financial reports to Hyundai Engineering and Construction.

Holtec and Hyundai partnered last year to begin design on Holtec's SMR-160 advanced small modular reactor, a standard design nuclear energy plant that the company sees as the future of nuclear energy.

Holtec also owns a number of non-operational nuclear plants, including the Oyster Creek facility in Lacey, the Indian Point Energy Center in Buchanan, New York; and the Pilgrim Nuclear Power Station in Plymouth, Massachusetts. The company plans to profit from each plant's decommissioning trust fund by taking apart the plants for less money that the balance of the trust funds.

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"The Prospectus grossly overvalued Defendants' (Holtec's) manufacturing facilities ... (and) grossly overstated the amount of money spent annually on research and development costs," according to the lawsuit. "The Prospectus

misrepresented a statement about self-financing a $300 million manufacturing facility build, when in fact Defendants (Holtec) raised the money by selling state tax credits."

The financial projections within the prospectus were either materially false or "completely unattainable and unrealistic," according to the lawsuit.

Last year, a state judge ordered New Jersey's Economic Development Authority to pay $26 million in disputed tax credits to Holtec for the 2018 tax year. The EDA attempted to revoke the tax credits, saying Holtec provided incorrect information in its debarment history and discussion of expansion in South Carolina. The judge ruled against the EDA, citing the company's benefit to Camden, and ordered the tax credits returned.

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Graphic

Holtec accused of false financial statements in whistleblower suit

Holtec International is seen on July 25, 2019 in Camden.

Tariq Zehawi and Thomas P. Costello/USA Today Network

Classification

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Company: HYUNDAI ENGINEERING & CONSTRUCTION CO LTD (56%)

Ticker: 000720 (KSE) (56%)

Industry: SIC1623 WATER, SEWER, PIPELINE, & COMMUNICATIONS & POWER LINE CONSTRUCTION (56%); NUCLEAR ENERGY (99%); NUCLEAR POWER PLANTS (92%); ELECTRIC POWER PLANTS (90%); ENERGY & UTILITIES (90%); MANUFACTURING (89%); MANUFACTURING FACILITIES (89%); ENERGY & UTILITY CONSTRUCTION (78%); INDUSTRIAL PROPERTY (78%); FUNDS & INVESTMENT TRUSTS (76%); ENGINEERING (74%); LAWYERS (74%); DEBT COVENANT VIOLATIONS (65%)

Geographic: NEW JERSEY, USA (93%); MASSACHUSETTS, USA (79%)

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Holtec accused of false financial statements in whistleblower suit

Asbury Park Press (New Jersey)

July 13, 2023 Thursday

1 Edition

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Length: 1025 words

Byline: By, Amanda Oglesby, Asbury Park Press

Body

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In it, former CFO Kevin O'Rourke accuses the Camden-based nuclear parts manufacturer of attempting to coerce him to submit inaccurate and false financial statements to a major investor, which allegedly involved hundreds of millions of dollars. The company then fired him when he refused, according to a lawsuit filed in June in state Superior Court, Camden.

Attorneys for O'Rourke allege in the court filings that Holtec fired him after he refused to participate in presenting misleading financial reports to Hyundai Engineering and Construction.

Holtec and Hyundai partnered last year to begin design on Holtec's SMR-160 advanced small modular reactor, a standard design nuclear energy plant that the company sees as the future of nuclear energy.

Holtec also owns a number of non-operational nuclear plants, including the Oyster Creek facility in Lacey, the Indian Point Energy Center in Buchanan, New York; and the Pilgrim Nuclear Power Station in Plymouth, Massachusetts. The company plans to profit from each plant's decommissioning trust fund by taking apart the plants for less money that the balance of the trust funds.

O'Rourke's lawsuit alleges Holtec officials - including company founder, president and CEO Krishna Singh - prepared to present Hyundai with an investment prospectus that included "numerous false and misleading statements ... (and) 'make believe' and unsupported financial projections" in August, 2022.

Holtec gave the chief financial officer five days to prepare the prospectus, then fired him when he claimed the "financial projections could not possibly be completed accurately in the timeframe demanded" and noted errors as well as "materially false or fraudulent data" within the document, according to the lawsuit.

Holtec spokesman Patrick O'Brien said: "We have thoroughly investigated these allegations and they are entirely without merit. We look forward to our day in court."

O'Rourke alleged that the prospectus stated that Holtec had never violated a covenant, but at the time, the company was in violation of a debt covenant. The document also stated Holtec had no long-term debt, but O'Rourke believed that to be untrue, according to the lawsuit. The prospectus included untrue information about the company's revenue sources and value of its software, according to the allegations.

"The Prospectus grossly overvalued Defendants' (Holtec's) manufacturing facilities ... (and) grossly overstated the amount of money spent annually on research and development costs," according to the lawsuit. "The Prospectus

misrepresented a statement about self-financing a $300 million manufacturing facility build, when in fact Defendants (Holtec) raised the money by selling state tax credits."

The financial projections within the prospectus were either materially false or "completely unattainable and unrealistic," according to the lawsuit.

Last year, a state judge ordered New Jersey's Economic Development Authority to pay $26 million in disputed tax credits to Holtec for the 2018 tax year. The EDA attempted to revoke the tax credits, saying Holtec provided incorrect information in its debarment history and discussion of expansion in South Carolina. The judge ruled against the EDA, citing the company's benefit to Camden, and ordered the tax credits returned.

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"According to Defendants' (Holtec's) own internal projection, the CISF would lose $150 million per year for the next five years," the lawsuit alleged. "However, (CEO Krishna) Singh stated he wanted to represent in the Prospectus that the CISF would 'break even' during that period of time and asked that Plaintiff (O'Rourke) do so."

In May, the U.S. Nuclear Regulatory Commission issued Holtec a license to build the underground CISF in New Mexico. However, New Mexico lawmakers passed a bill earlier this year that would require the U.S. Department of Energy to establish a permanent storage area for nuclear waste first and require state lawmakers' consent for CISF construction.

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O'Rourke's attorney did not immediately respond to a request for comment on Friday.

Amanda Oglesby is an Ocean County native who covers Brick, Barnegat and Lacey townships as well as the environment. She has worked for the Press for more than a decade. Reach her at @OglesbyAPP, *aoglesby@gannettnj.com* or 732-557-5701.

Graphic

Holtec accused of false financial statements in whistleblower suit

Holtec International is seen on July 25, 2019 in Camden.

Tariq Zehawi and Thomas P. Costello/USA Today Network

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EXHIBIT D

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Ex-Holtec CFO accuses company of 'make believe' financial statements in whistleblower suit

Amanda Oglesby, Asbury Park Press
Fri, July 7, 2023 at 10:19 AM PDT · 5 min read

CAMDEN — Holtec International, owner of the defunct Oyster Creek nuclear power plant, is being sued by the company's former chief financial officer in a whistleblower lawsuit.

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O'Rourke's lawsuit alleges Holtec officials — including company founder, president and CEO Krishna Singh — prepared to present Hyundai with an investment prospectus that included "numerous false and misleading statements... (and) 'make believe' and unsupported financial projections" in August, 2022.

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2010 Oyster Creek Nuclear Power Plant reactor building and stack in Lacey.

Holtec spokesman Patrick O'Brien said: "We have thoroughly investigated these allegations and they are entirely without merit. We look forward to our day in court."

O'Rourke alleged that the prospectus stated that Holtec had never violated a covenant, but at the time, the company was in violation of a debt covenant. The document also stated Holtec had no long-term debt, but O'Rourke believed that to be untrue, according to the lawsuit. The prospectus included untrue information about the company's revenue sources and value of its software, according to the allegations.

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This article originally appeared on Asbury Park Press: Holtec accused of "misleading" statements in whistleblower lawsuit

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EXHIBIT E

Javerbaum Wurgaft Files Whistleblower Lawsuit Against Holtec International on Behalf of Former CFO

7.24.23

Javerbaum Wurgaft Partner Drake P. Bearden, Jr. has filed a lawsuit against Holtec International Corporation (HIC) and Holtec International Power Division (HIPD) on behalf of Kevin O'Rouke, former Chief Financial Officer (CFO) of HIC. Mr. O'Rouke claims that Holtec terminated his employment after he resisted submitting false financial statements to a major investor, an issue involving hundreds of millions of dollars.

Recently, the case was highlighted in an article entitled, "Ex-Holtec CFO accuses the company of 'make believe' financial statements in whistleblower suit," published on Yahoo.com.

The lawsuit claims that Holtec terminated Mr. O'Rourke when he objected to including false information in a prospectus intended for Hyundai Engineering and Construction.

"As a whistleblower, Mr. O'Rourke bravely spoke out against the misconduct at Holtec. Whistleblowers should be protected for their commitment to integrity," said Bearden. "The upcoming court proceedings will provide a platform to examine the facts and determine Holtec International Corp.'s level of responsibility and accountability."

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Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins P.C.'s Post

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#WhistleblowerLawsuit #HoltecInternational #FinancialMisconduct #Hyundai



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Jul 24 ·

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#WhistleblowerLawsuit #HoltecInternational #FinancialMisconduct #FalseFinancialStatements #HyundaiEngineeringandConstruction #JaverbaumWurgaft #DrakePBeardenJr #KevinORourke #CorporateAccountability #Integrity #LegalProceedings

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DRAKE P. BEARDEN, JR.

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ENVIRONMENT

Ex-Holtec CFO accuses company of 'misleading projections' in whistleblower suit

Four-minute read



Amanda Oglesby

Published 1:19 p.m. ET July 7, 2023 | **Updated 7:08 p.m. ET Aug. 8, 2023**

Editor's Note: A term used in the headline and in this story's lead has been replaced with terms that make it clear to readers that the documents Kevin O'Rourke claims were false and misleading were not Holtec's "financial statements" as defined by United States Generally Accepted Accounting Principles. The Complaint does not reference those statements, which are subject to audit, and the CFO would have already agreed to them. The Asbury Park Press did not intend any reader to conclude that the referenced documents were financial statements and regrets any misunderstanding that may have occurred before the Asbury Park Press updated this story. A statement provided by Holtec this week has been included at the bottom of the story.

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O'Rourke's attorney did not immediately respond to a request for comment on Friday.

As a follow-up to publication last month, Holtec sent the following statement:

“Holtec thoroughly reviewed the issues raised in the complaint when Mr. O’Rourke was an employee. At that time, Holtec explained to him that his concerns were not only unfounded, but were directly contrary to positions and representations he regularly made while at Holtec. Accordingly, Holtec is profoundly disappointed that he nevertheless filed this meritless lawsuit and looks forward to vindication in court. Any indication, in any report in the press, that Holtec’s financial statements are misleading is 100% inaccurate and patently false. Holtec’s financial statements are comprehensively audited and approved by one of the top 5 U.S.-based accounting firms. Moreover, Holtec has a multi-decades long record of excellent financial strength. Contrary to Mr. O’Rourke’s claims otherwise, the company has no long-term debt, a robust and self-financed research and development program, over $4 billion dollars worth of equipment delivered, and orders for future deliveries of over $7 billion dollars.”

Amanda Oglesby is an Ocean County native who covers Brick, Barnegat and Lacey townships as well as the environment. She has worked for the Press for more than a decade. Reach her at @OglesbyAPP, aoglesby@gannettnj.com or 732-557-5701.

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Amanda Oglesby, Asbury Park Press
Updated August 8, 2023 · 5 min read

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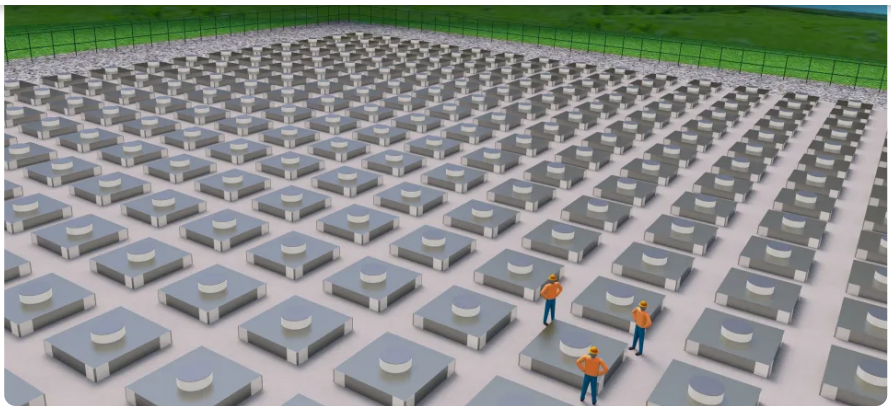
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Last year, a state judge ordered New Jersey's Economic Development Authority to pay $26 million in disputed tax credits to Holtec for the 2018 tax year. The EDA attempted to revoke the tax credits, saying Holtec provided incorrect information in its debarment history and discussion of expansion in South Carolina. The judge ruled against the EDA, citing the company's benefit to Camden, and ordered the tax credits returned.

O'Rourke's lawsuit also alleges Holtec prepared financially misleading statements about its consolidated interim storage facility, or CISF, under review in southeastern New Mexico. The facility, if approved, would collect and indefinitely store radioactive waste and spent nuclear fuel from decommissioned power plants from across the nation.

"According to Defendants' (Holtec's) own internal projection, the CISF would lose $150 million per year for the next five years," the lawsuit alleged. "However, (CEO Krishna) Singh stated he wanted to represent in the Prospectus that the CISF would 'break even' during that period of time and asked that Plaintiff (O'Rourke) do so."



Holtec International has proposed an underground storage facility in New Mexico that would hold radioactive waste from nuclear power plants across the country.

In May, the U.S. Nuclear Regulatory Commission issued Holtec a license to build the underground CISF in New Mexico. However, New Mexico lawmakers passed a bill earlier this year that would require the U.S. Department of Energy to establish a permanent storage area for nuclear waste first and require state lawmakers' consent for CISF construction.

The lawsuit also alleged that Singh directed O'Rourke to make misleading statements to Hyundai about projected sales from Applied Photonix, a Holtec subsidiary. Applied Photonix focuses on eliminating viruses, spores, molds and other pathogens from air.

"Singh stated the Prospectus should represent that Applied Photonix would have projected annual sales of $100 million within five years, a projection not based on any factual information," according to the lawsuit.

O'Rourke objected on numerous occasions to inaccurate or misleading statements in the prospectus, and told colleagues that "submitting the Prospectus as currently drafted... for Hyundai to view could violate the law, and he would not direct any employee of Defendants (Holtec) to submit the Prospectus," according to court documents.

O'Rourke alleged his supervisor offered to refer the matter to the company chief governance officer, but O'Rourke was never contacted. In addition, he was not included in meetings with Hyundai or about the prospectus, and shortly thereafter was fired, according to the lawsuit.

He is seeking compensation for damages, including emotional pain, suffering and lost wages as well as reinstatement, or other relief the court finds fair. O'Rourke is also asking the court to declare that the financial practices described in the lawsuit violate New Jersey law.

As a follow-up to publication last month, Holtec sent the following statement:

“Holtec thoroughly reviewed the issues raised in the complaint when Mr. O’Rourke was an employee. At that time, Holtec explained to him that his concerns were not only unfounded, but were directly contrary to positions and representations he regularly made while at Holtec. Accordingly, Holtec is profoundly disappointed that he nevertheless filed this meritless lawsuit and looks forward to vindication in court. Any indication, in any report in the press, that Holtec’s financial statements are misleading is 100% inaccurate and patently false. Holtec’s financial statements are comprehensively audited and approved by one of the top 5 U.S.-based accounting firms. Moreover, Holtec has a multi-decades long record of excellent financial strength. Contrary to Mr. O’Rourke’s claims otherwise, the company has no long-term debt, a robust and self-financed research and development program, over $4 billion dollars worth of equipment delivered, and orders for future deliveries of over $7 billion dollars.”

Amanda Oglesby is an Ocean County native who covers Brick, Barnegat and Lacey townships as well as the environment. She has worked for the Press for more than a decade. Reach her at @OglesbyAPP, aoglesby@gannettnj.com or 732-557-5701.

This article originally appeared on Asbury Park Press: Ex-Holtec CFO accuses company of 'misleading projections' in whistleblower suit

View comments

EXHIBIT H

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KEVIN O'ROURKE, Plaintiff, v. HOLTEC INTERNATIONAL CORPORATION, HOLTEC INTERNATIONAL POWER DIVISION, INC., KRISHNA SINGH, and JOHN DOES 1-10. Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: CAMDEN COUNTY Docket No.: CAM-L- 1585-23 Civil Action **DEFENDANTS' AMENDED COUNTERCLAIMS**

Defendants, Holtec International ("Holtec"),[1] Holtec International Power Division, Inc. ("Holtec Power Division"), and Krishna Singh ("Singh") (collectively "Defendants"), by and through their attorneys, White and Williams LLP, hereby amend their Counterclaims to add this additional Counterclaim, Count 3 and aver as follows:

AMENDED COUNTERCLAIMS

COUNT I

Breach of Contract

1. Counter-Plaintiff Holtec International ("Holtec" or "Counter-Plaintiff") has its headquarters in Jupiter, Florida and its principal place of business in Camden, New Jersey.

2. Upon information and belief, Counter-Defendant Kevin O'Rourke ("Counter-Defendant") is a resident of the State of Florida.

[1] Improperly pleaded as "Holtec International Corporation."

3. On or about May 19, 2021, Holtec offered, and Counter-Defendant accepted an offer of employment.

4. Counter-Defendant's employment with Holtec was contingent on, *inter alia*, executing and returning to Holtec any and all documentation and policies required to be signed by Holtec, including the Holtec International Confidentiality, Non-Compete, and Non-Solicitation Agreement ("Agreement"), a copy of which is attached hereto and marked as Exhibit A.

5. Counter-Defendant's position was Chief Financial Officer ("CFO") of Holtec.

6. On or around May 19, 2021, Holtec and Counter-Defendant executed the Agreement.

7. Section 1 of the Agreement, At-Will Employment, Counter-Defendant acknowledged that his employment at Holtec was at-will.

8. In Section 2 of the Agreement, Non-Disclosure of Holtec's Confidential Information, Counter-Defendant acknowledged that:

> Holtec is in the business of supplying mechanical, nuclear, and other engineering products and services. In the course of performing such activities, Holtec acquires and develops trade secrets and confidential and proprietary information which is not generally known in the industry.
>
> You recognize that the knowledge and information acquired by you concerning Holtec's engineering designs, technological analyses, mechanical and nuclear industry reports, licensing, manufacturing, site construction services, hardware components, product and other designs, general research, business plans, software, formatting, programs, customer prospects, customer lists, other customer information, supplier and vendor lists and information, marketing plans, data processing systems and information contained therein, proposals to customers and potential customers, reports, plans, studies, price lists, financial statements, catalogs, and other trade secrets, inventions, designs, know-how, or other private, confidential or proprietary information of or about Holtec which is not already available to the public (collectively, "Holtec Confidential Information") are valuable, special and unique aspects of Holtec's business. You recognize that such Holtec Confidential Information would not be provided to you by Holtec in the absence of this signed Agreement because of the risks that valuable Holtec Confidential Information might otherwise be divulged and thereby damage Holtec's competitive position in the marketplace.

> **You agree that you will not, during or after your employment with Holtec, (i) disclose or allow the publication of, in whole or in part, any Holtec Confidential Information to any person, firm, corporation, association or other entity for any reason or purpose whatsoever unless authorized in writing to do so by Holtec**, (ii) use any Holtec Confidential Information for your own purpose or for the benefit of any person, firm, corporation, association or other entity other than Holtec; except in the proper performance of your duties as instructed by Holtec, or (iii) disclose Holtec Confidential Information as it relates to the status of employment including, but not limited to, employee private information for others at Holtec. It is a violation of policy to obtain, possess, and/or distribute confidential personnel information. After the term of your employment, the restrictions set forth in this paragraph will not apply to confidential information which is then in the public domain (unless you are responsible, directly or indirectly, for such Holtec Confidential Information entering the public domain without Holtec's consent). (emphasis added).

9. In Section 6 of the Agreement, Return of Holtec Documents and Obligation to Advise Holtec of New Employment, Counter-Defendant agreed that:

> Upon the cessation of your employment with Holtec or at any other time upon request of Holtec, you shall immediately deliver to Holtec all software, programs, correspondence, memoranda, notes, records, reports, plans, product and other designs, studies, price lists, customer lists and information, customer contracts, financial statements, catalogs, programs, disks, tapes, other papers, as well as any medium on or by which information is stored, received or made by you in connection with your employment by Holtec, regardless of whether or not such information is Holtec confidential information. You further agree to immediately return to Holtec all Holtec equipment, computers, electronic and communications devices, files, USB and/or other data storage devices, and any other Holtec property in your possession, custody or control.
>
> In the event of a cessation of your employment with Holtec, and during the Restricted Period described in Paragraph 4 above, you agree to disclose to Holtec, the name and address of any new employer or business affiliation within ten (10) days of your accepting such position. In the event that you fail to notify Holtec of such new employment or business affiliation as required above, the Restricted Period shall be extended by a period equal to the period of nondisclosure.

10. In Section 7 of the Agreement, Enforcement and Remedies in Event of Breach, Counter-Defendant agreed that:

> … If you violate the covenants and agreements set forth above (including paragraphs 2, 3, 4 and/or 5), Holtec would suffer irreparable harm, and that such harm to Holtec may be impossible to measure in monetary damages. Accordingly, in addition to any other remedies which Holtec may have at law or in equity, Holtec

> shall have the right to have all obligations, undertakings, agreements, covenants and other provisions of this Agreement specifically performed by you, and Holtec shall have the right to obtain temporary, preliminary and/or permanent injunctive relief to secure specific performance, and to prevent a breach or contemplated breach, of this Agreement. In such event, Holtec shall be entitled to monetary damages including, but not limited to, an accounting and repayment of all profits, compensation, remunerations or benefits which you, directly or indirectly, have realized or may realize as a result of, growing out of, or in conjunction with any violation of any partial or justified liquidated damages, such remedies shall be an addition to and not in limitation of any injunctive relief or other rights or remedies to which Holtec is or may be entitled at law or in equity under this Agreement and that, in the event Holtec is required to enforce the terms of this Agreement through court proceedings, Holtec shall be entitled to reimbursement for all legal fees, costs and expenses incident to enforcement.

11. Holtec relied on the terms of the Agreement and provided Holtec's Confidential Information to Counter-Defendant.

12. Throughout his employment, Counter-Defendant received and was privy to Holtec's highest levels of Confidential Information.

13. For example, in his role as CFO, Counter-Defendant was privy to financial data of Holtec that was not publicly available.

14. Also, in his role as CFO, Counter-Defendant was privy to Holtec's sales and financial projections that were not publicly available.

15. In his role as CFO, Counter-Defendant was privy to information about Holtec's potential collaborations with other companies that was not publicly available.

16. In his role as CFO, Counter-Defendant was privy to information about Holtec's research and development that was not publicly available.

17. In his role as CFO, Counter-Defendant was privy to information about Holtec's future plans, which was not publicly available.

18. In his role as CFO, Counter-Defendant was privy to certain legal strategies, which were not publicly available.

19. Counter-Defendant's employment ended on or around August 30, 2022.

20. Upon information and belief, Counter-Defendant did not return all Holtec Confidential Information in his possession.

21. On or around June 1, 2023, Counter-Defendant filed a Complaint (the "Complaint") in the Superior Court of New Jersey – Law Division, Camden County at docket number CAM-L-1585-23 alleging violations of the New Jersey Conscientious Employee Protection Act ("CEPA").

22. Despite still being bound by the Agreement to keep Holtec Confidential Information secret, Counter-Defendant failed to file the Complaint under seal.

23. Filing documents under seal is permitted in New Jersey courts to allow litigants to utilize the courts and maintain the secrecy of confidential information.

24. Counter-Defendant's Complaint was filed on the public docket and included several categories of Holtec's confidential information, including: financial data, information on potential collaboration with another company, sales projections, research and development costs, and Holtec's future plans.

25. The information included in Counter-Defendant's Complaint was not in the public domain at the time of the filing.

26. Counter-Defendant did not seek, nor did Holtec provide, authorization in writing for the disclosure of such Holtec Confidential Information, as required by terms of the Agreement.

27. Counter-Defendant was not privileged to disclose Holtec's Confidential Information.

28. By filing his Complaint on the public docket, Counter-Defendant has violated the Agreement and caused Holtec's Confidential Information to become public.

29. Due to Counter-Defendant's breach of the Agreement, Holtec has suffered significant actual damages.

WHEREFORE, Holtec demands judgment against Counter-Defendant together with actual and compensatory damages, plus interest, costs, and attorneys' fees.

COUNT II

Tortious Interference with Contractual Relations

30. Holtec incorporates herein by reference the above paragraphs and allegations as if set forth in full.

31. Holtec had a contract with a potential investor.

32. Under the terms of a non-disclosure agreement ("NDA") between Holtec and the potential investor, Holtec agreed to keep certain information confidential with respect to the possible transaction with the potential investor.

33. Counter-Defendant knew about the NDA between Holtec and the potential investor.

34. By filing the Complaint publicly, Counter-Defendant intentionally and improperly interfered with the performance of the NDA between Holtec and the potential investor.

35. Counter-Defendant's conduct was with malice and done without justification or excuse.

36. Following the filing of the Complaint, numerous media outlets across the country published articles repeating the false allegations that make up Counter-Defendant's Complaint and specifically named the potential investor and were assisted in the disclosure through Plaintiff's actions .

37. Due to Counter-Defendant's intentional and improper interference, Holtec has suffered significant actual damages.

WHEREFORE, Holtec demands judgment against Counter-Defendant together with actual compensatory damages, plus interest, costs, attorneys' fees, and other relief as the Court may deem just and proper.

COUNT III

Defamation

38. Holtec incorporates herein by reference the above paragraphs and allegations as if set forth in full.

39. Counter-Defendant's Complaint contains statements that are defamatory to Holtec. Such defamatory statements specifically include, but were not limited to, the statements contained in Paragraph 15, 21(a), 21(d), 21(e), 21(g), and 21(h) of the Complaint.

40. Upon information and belief, in furtherance of his scheme to harm Holtec, Counter-Defendant took steps, either individually or through his attorneys or others acting on his behalf, to have the defamatory statements from the Complaint repeated and published outside of this proceeding. They also went well beyond the allegations in the Complaint and made defamatory statements regarding Holtec's financial statements.

41. For example, Counter-Defendant's attorneys, on behalf of Counter-Defendant, repeated the defamatory statements on their firm's website. Specifically, they have stated that "Mr. O'Rourke claims that Holtec terminated his employment after he resisted submitting false *financial statements* to a major investor …" Attorneys on behalf of Counter-Defendant then linked this statement to an article alleging Holtec's financial statements were "make believe." Counter-Defendant's actions were knowingly false and made to harm Holtec with respect to lenders, governmental regulators and clients.

42. Counter-Defendant's attorneys, on behalf of Counter-Defendant, have also published on their website, in addition to their own defamatory news article, a link to a Yahoo.com

article, the headline of which states, "Ex-Holtec CFO accuses company of 'make believe' financial statements in whistleblower suit".

43. The truth is that Counter-Defendant stated in a representation letter dated August 30, 2022, that Holtec's financial statements were true and accurate and that he was unaware of any fraud or misstatement pertaining to its financial statements. Notably, the Complaint in this matter does not even mention the term, "financial statements."

44. Both Counter-Defendant and his counsel were advised in writing on or about July 31, 2023, that the Complaint contained such defamatory assertions, but took no action to correct those statements. Instead, Counter-Defendant continues to publish false and misleading statements concerning Holtec's financial statements in order to harm Holtec.

45. Even when one media outlet, the Asbury Park Press, corrected and retracted its article through an Editor's correction stating that its prior statements were in error, the Counter-Defendant left the statements in place on Counter-Defendant's attorneys' website up to the current date.

46. Counter-Defendant's actions and statements, and the publication of these defamatory statements, were false statements made with absolute malice about the integrity of Holtec's business dealings and, therefore, constitute defamation *per se*.

47. The defamatory statements clearly concerned Holtec and its business and constitute defamation *per se*.

48. The defamatory statements were widely communicated to third parties by and through the actions of Counter-Defendant and/or those acting on his behalf.

49. The defamatory statements were communicated intentionally by Counter-Defendant and/or those acting on his behalf.

50. The defamatory statements were made without privilege.

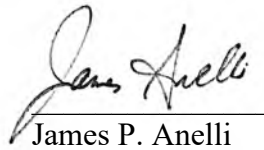
51. The defamatory statements at issue were made outside the judicial process and thus not subject to the litigation privilege.

52. Holtec has suffered significant economic damages as a result of Counter-Defendant's conduct and the conduct of those acting on behalf of Counter-Defendant.

WHEREFORE, Holtec demands judgment against Counter-Defendant together with actual and compensatory damages, plus interest, costs and attorney's fees.

Dated: December 20, 2023

WHITE AND WILLIAMS LLP

By: 

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