

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Scott Fischer, Plaintiff, vs. Todd Burke, individually and globalTowers, inc. Defendants.	Case Number: 02 CV 1404 Div.: 9 Ctrm.:
Attorneys for Plaintiff: Jeffrey S. Wittebort WALBERG, DAGNER & TUCKER, P.C. Quebec Centre II, Suite 300 7400 East Caley Avenue Englewood, CO 80111-6714 Phone Number: (303) 694-9300 Atty. Reg.#: 13849	
AMENDED COMPLAINT	

The Plaintiff, Scott Fischer, by and through his attorney, Jeffrey S. Wittebort of the law firm of WALBERG, DAGNER & TUCKER, P.C., and for an amended complaint against the Defendants state as follows:

I. GENERAL ALLEGATIONS

1. That Plaintiff, Scott Fischer, is an individual and resident of the County of Clear Creek, State of Colorado, and that at all relevant times hereto was employed by globalTowers, inc., as the national finance director.
2. That globalTowers, inc. is a Colorado corporation with its principal place of business located in the County of Jefferson, State of Colorado.
3. That Todd Burke is an individual, the president of globalTowers, inc., and the principal shareholder of such corporation.
4. That while employed at globalTowers, inc, in his capacity as national finance director, Plaintiff's job duties and responsibilities included acting as the controller for such company which includes performing accounting and reconciliation functions for the company.

5. That pursuant to the company's policy, all employees of globalTowers, Inc, were required to provide receipts to the comptroller when using company credit cards to match up with statements on a weekly basis, to be accompanied by a report so the expense could be properly accounted for in the corporation's ledger.
6. That at all relevant times hereto, Defendant, Todd Burke, was the president and chairman of the board of directors of globalTowers, inc, and Plaintiff's superior.
7. That during the course of Plaintiff's normal duties in performing accounting services for globalTowers, Inc, he noticed numerous improper financial transactions on behalf of Defendant, Todd Burke. These transactions included but are not limited to, the following:
 - a. On or about September 26, 2000, Defendant Burke deposited \$5,000.00 into his personal account at Vectra Bank without providing any warning of a cash transfer to Plaintiff or any of the accounting staff. Such withdrawal was not discovered until Plaintiff performed a reconciliation of the checking account balance for the month of September, 2000. When questioned how such transaction was to be coded into the accounting system, Defendant Burke told Plaintiff that it was an advance for Mr. Burke for expenses for a trip to a conference in Florida. That Defendant Burke attempted to offset such receipts by using old receipts for unrelated matters. Plaintiff explained to Defendant Burke that he needed to turn in an expense report and then be reimbursed per globalTowers, inc., policy and procedures.
 - b. That on or about October 27, 2000, Defendant Burke hand wrote a check for \$5,000.00 cash disbursed from Vectra Bank. Mr. Burke provided no forewarning of the cash transfer to Mr. Fischer or the accounting staff. Such withdrawal was discovered during Plaintiff's routine reconciliation of the checking account during the month of October 2000.
 - c. On or about October 30, 2000, an additional \$5,000.00 was wired to Defendant Burke's personal account pursuant to Burke's request to Vectra Bank. Defendant Burke provided no forewarning of the cash transfer to Plaintiff or any of the accounting staff, such withdrawal was not discovered until Plaintiff's monthly reconciliation. When Plaintiff questioned Defendant Burke about the transaction, Burke advised him that it was a cash advance to him. When Plaintiff asked Defendant Burke whether he obtained approval from the Board of Directors or the Shareholders for such advance, Defendant Burke told Fischer that he should not question Burke and his dealings, that

Fischer was to do what he was told to do by Burke as Burke would be making these type of transactions from time to time.

- d. On or about November 21, 2000, Plaintiff received a phone call from Stevenson Golden Ford requesting a check for the approximate amount of \$10,000.00 for the purchase deposit for a Ford Excursion that was being purchased by Defendant Burke personally. When Plaintiff questioned Defendant Burke regarding the purchase, Defendant advised him the vehicle was for his personal use but was to remain in the company name. When Plaintiff questioned this transaction and asked Defendant Burke if he obtained approval by the Board of Directors regarding such transaction he was advised that if he didn't like it he could quit. Subsequently, the parties had a meeting with an additional Board member present, at which time Plaintiff Fischer advised Defendant Burke that such transaction was considered income and required the approval of the Board of Directors and/or Shareholders. Fischer explained that such actions were at a minimum improper, and could be considered embezzlement. At that the Defendant advised the Plaintiff that he needed to take his directions without question or Mr. Fischer would not remain an employee of globalTowers, inc.
- e. On or about March 16, 2001, Defendant Burke had an additional \$5,000.00 from globalTowers, inc., checking account wired to his personal bank account without any forewarning to Fischer or any accounting staff. When Fischer questioned Burke regarding such transaction, he advised him that it was a loan. Subsequent efforts on behalf of Plaintiff to obtain repayment of the loan were ignored. Plaintiff asked the Defendant for documents evidencing approval by the Board or Shareholders for such advance however never received any such documentation.
- f. On or about October 29, 2001, Defendant Burke took an additional \$5,000.00 cash advance without forewarning to Fischer or the accounting staff. When Fischer discussed this matter with Burke, he was advised that it was cash for the Tower Trade Show in Las Vegas, Nevada. When asked for receipts and where the remaining cash was, Burke said he disbursed the cash to himself and persons who were attending the trade show for entertainment and no receipts were available. Fischer explained to Burke that the cash disbursements were taxable to each individual if he could not produce receipts. At that time, Burke instructed Fischer to code the cash to entertainment expenses and to drop the matter.
- g. On or about November 7, 2001, Defendant Burke called the payroll department to advise them that he received a \$50,000.00 raise in his salary. Defendant Burke did not inform Fischer of the change which was not

discovered until Fischer signed the payroll checks the following month. When Fischer explained that Burke needed to provide minutes from the Board of Directors meeting for approval for such raise, Burke advised him that he would obtain such approval and provide Fischer with the minutes. When Burke failed to provide the Board of Director's Minutes that he agreed to, Fischer sent an electronic mail to Burke who advised him that he approved the raise himself and that he would take it up with the Board of Directors. Burke also stated that he was approving the company to pay his personal income taxes due with an advance in pay that was recorded to Burke's taxable wage in 2001. When questioned regarding this transaction, Burke said that he would discuss the matter with the Board of Directors and obtain the appropriate documents. Burke also advised Plaintiff that he was to address any accounting concerns that he had with him directly. No documents were ever produced to Fischer prior to Burke terminating him.

- h. On or about December 4, 2001, during a meeting with the acting Corporate Office Treasurer and Board Member, Mr. Gleason, Defendant Burke stated his salary was \$100,000.00 annually, when in fact Burke had changed it to \$150,000.00 per year. Burke removed Gleason from the Board of Directors on December 4, 2001, without any announcement to the shareholders.
 - i. On or about December 6, 2001, Burke again wired the amount of \$5,000.00 into his personal bank account from company funds. He provided no forewarning of this cash transfer to Fischer or any other accounting staff. Such transaction was discovered upon review of the cash balance via Internet access. Defendant Burke refused to schedule a meeting with Fischer to discuss what the wire transfer to his personal account was for.
 - j. That during the course of his employment with globalTower, inc., Plaintiff sent numerous memorandums to Defendant Burke requesting that he turn in his expense reports and receipts so that such transaction could be coded correctly. Burke consistently ignored such memorandums.
8. That on or about December 7, 2001, Plaintiff was ordered to attend a meeting with Defendant Burke at which time he was terminated allegedly for his poor job performance.

II. WRONGFUL TERMINATION

9. Plaintiff hereby incorporates paragraphs 1 through 9 in his First Claim for Relief.

10. That during the course of his employment, Defendant Burke repeatedly advised Plaintiff that he was to ignore the provisions of Colorado's Corporation Code, company policy, Internal Revenue Service Guidelines, and the Colorado State Board of Accounting Rules and Regulations, when he was instructed to either improperly code Defendant's theft and conversion of company assets, to ignore such illegal and unethical transactions, and to not report such transactions to other board members or shareholders.
11. That for the Plaintiff to obey Defendant's instructions, he would have violated statutes relating to the public health, safety and welfare, undermine the clearly expressed public policy relating to Plaintiff's accounting responsibilities and prevented Plaintiff from exercising an important work obligation.
12. That Plaintiff refused to comply with the Defendant's directive as Plaintiff realized that to do so would have been illegal and contrary to Plaintiff's job duties as the controller. The Defendant was aware, or reasonably should have been aware that Plaintiff's refusal to comply with his directives was based on Plaintiff's reasonable belief that to do so would have been illegal and contrary to the Colorado Corporations Code, Internal Revenue Service Guidelines, Colorado State Board of Accounting Rules and Regulations, company policy and recognized accounting codes and standards
13. That Defendant Burke wrongfully discharged Plaintiff because Plaintiff refused to comply with Defendant's illegal, improper and unethical directive.
14. That as a result of Defendant discharging Plaintiff, he has suffered past and future lost wages, and emotional pain and suffering in an amount to be proven at trial.
15. That Defendant Todd Burke is individually liable to Plaintiff as he is the principal shareholder of globalTowers, inc. who commingled corporate and personal funds, failed to maintain adequate corporate records and minutes, failed to maintain separate entities, used the corporation for his own personal benefit and was in complete control of such corporation, used such corporation as a mere shell for his personal benefit, disregarded legal formalities required by the Colorado Corporations Law, diverted corporate assets for his own personal use, that Burke's conduct was fraudulent and that it would be unfair, unjust and inequitable to allow Defendant Burke to escape personal liability for his conduct. That plaintiff was actually employed by defendant Burke individually as the corporation was his alter ego.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant him an judgment against both named Defendants in an amount to be proven at trial for the above-referenced damages, and interest pursuant to statute, costs, and such other items as this Court deems appropriate.

Respectfully submitted,

WALBERG, DAGNER & TUCKER, P.C.

By: _____

Jeffrey S. Wittebort, #13849

Attorneys for Plaintiff

Plaintiff's Address:
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