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10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 CA2 CAPITAL, an Arizona limited
13 liability company; ALAN B. ABRAMS, an
14 individual; BROKEN ARROW HERBAL
15 CENTER, INC., an Arizona nonprofit
16 corporation; CJK, INC., an Arizona
17 nonprofit corporation;
18 plaintiffs,

19 V.

20 DUKE RODRIGUEZ, a/k/a RUEBEN
21 DUKE MONTENEGRO RODRIGUEZ, an
22 individual; STORMWIND GROUP, LLC,
23 an Arizona limited liability company;
24 CUMBRE INVESTMENT, LLC, an
25 Arizona limited liability company; CVUH,
26 LLC, an Arizona limited liability company;
SOLD BY GROUP, LLC, an Arizona
limited liability company; JOHN and JANE
DOES I-X; BLACK AND WHITE
ENTITIES I-X,

defendants.

Case No. CV2015-003778

VERIFIED COMPLAINT

(Accelerated Declaratory Judgment;
Temporary and Preliminary Injunctive
Relief; Uniform Fraudulent Transfer Act
Injunction; Arizona Consumer Fraud Act
Violations; Breach of Contract; Breach of
Fiduciary Duty; Restitution; Judicial
Removal of Board Member of Non-profit
Corporation; Punitive Damages)

**PERMANENT ASSIGNMENT
TO JUDGE FRENCH**

ECB 7/2

1 For their Verified Complaint against these defendants, plaintiffs allege as follows:

2 **I. Parties, Jurisdiction and Venue.**

3 1. Plaintiff CA2 Capital, LLC in an Arizona, member managed, limited liability
4 company with offices in Maricopa County, Arizona ("CA2") which has provided and
5 arranged nearly \$12,000,000.00 (TWELVE MILLION DOLLARS) in financing for an
6 entity known as Ultra Health, LLC, an Arizona manager-managed limited liability
7 company ("Ultra Health").

8 2. Plaintiff Alan B. Abrams ("Abrams") is an Arizona resident, member of CA2,
9 and the current Manager of Ultra Health.

10 3. Plaintiff Broken Arrow Herbal Center, Inc. ("Broken Arrow") is an Arizona
11 nonprofit corporation of which Abrams is an officer and one of three directors. Broken
12 Arrow's domestic address is in Maricopa County, Arizona, where it is known to do
13 business and its statutory agent is located.

14 4. Plaintiff CJK, Inc. ("CJK") is an Arizona nonprofit corporation of which
15 Abrams is an officer and one of two directors. CJK's domestic address and is in Maricopa
16 County, Arizona, where it is known to do business and its statutory agent is located.

17 5. Defendant Duke Rodriguez, a/k/a Rueben Duke Montenegro Rodriguez
18 ("Rodriguez"), is a resident of Maricopa County, Arizona and the former Manager of Ultra
19 Health, who has been removed as Manager of Ultra Health and is succeeded in that role by
20 the current Manager of Ultra Health, plaintiff Alan B. Abrams.

21 6. Defendant Stormwind Group, LLC ("Stormwind") is an Arizona member-
22 managed limited liability company formed on or about November 7, 2013, the sole member
23 of which is Rodriguez.

1 7. Cumbre Investment, LLC ("Cumbre") is an Arizona manager-managed
2 limited liability company formed on or about March 27, 2013, of which Rodriguez is a
3 member and manager.

4 8. CVUH, LLC ("CVUH") is an Arizona manager-managed limited liability
5 company formed on or about May 3, 2014, of which Rodriguez is a member and manager.

6 9. Sold By Group, LLC ("Sold by") is an Arizona manager-managed limited
7 liability company formed on or about April 11, 2013, of which Rodriguez is a member and
8 manager.

9 10. Defendants John and Jane Does I-X are individuals that are associated with
10 defendants and, upon information and belief, have engaged in conduct which relates to the
11 basis of plaintiff's Verified Complaint. Plaintiff shall amend this Verified Complaint to
12 reflect the true name and identity of such defendant(s) after names become known and a
13 good faith basis in law in fact is determined to support claims against such defendant(s).

14 11. Defendants Black and White Entities I-X are partnerships, corporations,
15 limited liability companies and or other entities that are associated with defendants and,
16 upon information and belief, have engaged in conduct which relates to the basis of
17 plaintiff's verified Complaint. Plaintiff shall amend this Verified Complaint to reflect the
18 true name and identity of such defendant(s) after names become known and a good faith
19 basis in law in fact is determined to support claims against such defendant(s).

20 12. This Court has jurisdiction by virtue of the allegations herein, and specifically
21 those to the effect that the parties reside and/or do business in this County, are citizens of the
22 State of Arizona, and that the transactions at issue in this civil action occurred in Maricopa
23 County, and pursuant to A.R.S. § 12-123, and Article 6, Section 14 of the Arizona
24 Constitution.

25 13. Venue is proper in Maricopa County, Arizona, pursuant to A.R.S. § 12-401.

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II. General Allegations.

A. Capitalization of Ultra Health: Plaintiffs Have Capitalized Ultra Health With Nearly Twelve Million Dollars.

14. Plaintiffs have invested nearly \$12,000,000.00 (TWELVE MILLION DOLLARS) in Ultra Health or on its behalf, by directly financing and arranging for financing which has occurred in that amount to date, essentially all of the funding by, for and behalf of that entity.

B. Governance of Ultra Health: Rodriguez Has Been Replaced as Manager of Ultra Health Effective as of March 26, 2015.

15. Ultra Health is governed by the "Amended and Restated Operating Agreement of Ultra Health, LLC, an Arizona Limited Liability Company, Effective July 1, 2014" (the "OA"), a true and correct copy of which is attached hereto as Exhibit 1.

16. CA2 is a Member of Ultra Health, and a signatory to the Ultra Health OA, page. 56.

17. Pursuant to the OA, the term "Percentage Interest" refers to "the percentage interests in the profits and losses of this Company set forth in this Operating Agreement". OA, p. 9, para. 1.9(w).

18. Pursuant to the OA, CA2 is entitled to "60% of all distributions of Company profits, losses and distributions of all types". OA, p. 31, para 6.1.

19. CA2's Percentage Interest in Ultra Health is thus 60% according to the OA.

20. Pursuant to the OA, the terms "Majority" and "Majority-In-Interest" refer to "Members owning a simple majority of the Percentage Interests". OA, p. 8, para 1.9(r).

21. 60% is equal to or greater than a simple majority.

22. CA2 thus comprises the Majority and Majority-In-Interest as those terms are used in the Ultra Health OA.

1 23. Pursuant to the OA, a Manager of Ultra Health may be removed “at any time”
2 and “with or without cause” by the “Majority-In-Interest of the Members”. OA, p. 24, para.
3 3.8.

4 24. As the Majority-In-Interest, CA2 thus was permitted by the OA to remove
5 Rodriguez as a Manager of Ultra Health “at any time” and “with or without cause”.

6 25. CA2 acted as the Majority-In-Interest on March 26, 2015 to remove
7 Rodriguez as the Manager of Ultra Health pursuant to OA paragraph 3.8.

8 26. A true and correct copy of the memorialization of the March 26, 2015 action
9 by CA2, acting in its capacity as the Majority-In-Interest of Ultra Health to remove
10 Rodriguez as Manager of Ultra Health, is attached hereto as Exhibit 2.

11 27. The March 26, 2015 removal of Rodriguez made Rodriguez “unable” to serve
12 as Manager of Ultra Health within the meaning of OA paragraph 3.2.

13 28. Pursuant to OA paragraph 3.2, in the event that Rodriguez is unable to serve
14 as Manager, then “Alan Abrams shall serve as Manager”. OA p. 20

15 29. Since March 26, 2015 when Rodriguez was removed as Manager of Ultra
16 Health as specified herein above, plaintiff Abrams has been and is today the Manager of
17 Ultra Health.

18 30. On information and belief, Rodriguez disputes that Abrams is the Manager of
19 Ultra Health.

20 31. On information and belief, when Rodriguez’s employment was terminated in a
21 previous corporate setting, security had to be called to escort him from the premises (Hear
22 USA).

23 32. Plaintiffs seek a declaratory judgment as more fully alleged herein below in
24 the first claim for relief, declaring that Abrams is and has been since March 26, 2015 the
25 Manager of Ultra Health.

1 41. The Ultra Health Prospectus contained numerous false and misleading
2 statements.

3 42. The Ultra-Health Prospectus began with the following two paragraphs:

4 Arizona voters passed the Arizona Medical Marijuana Act
5 (AMMA) in November 201. The AMMA decriminalized the
6 possession, use, cultivation, and sale of marijuana for medical
7 purposes under Arizona law. Arizona is divided into 126
8 Community Health Assessment Areas (CHAA(s)) and each
CHAA may only have one dispensary located within it. A
dispensary is the only place patients are legally allowed to
purchase medical marijuana (MMJ) in Arizona.

9 Ultra Health, LLC (UH) was awarded three dispensary
10 certificates: Duncan/Morenci (No. 83), Graham County (no. 84),
11 and Gilbert E (No. 77). With these certificates, UH has the right
12 to acquire, possess, cultivate, manufacture, deliver, transfer,
supply, sell, and dispense medical marijuana to qualifying
patients and designated caregivers.

13 Ultra Health Prospectus, p. 3.

14 43. The second of the two foregoing quoted paragraphs was false in all respects.

15 44. Ultra Health was, in fact, "awarded" zero dispensary registration certificates.

16 45. Dispensary registration certificates were allocated by the Arizona Department
17 of Health Services ("ADHS") to non-profit entities which submitted complete applications
18 in a selection process in 2012.

19 46. Under the Arizona Medical Marijuana Act ("AMMA") and regulations
20 promulgated thereunder by ADHS, when issued, a dispensary registration certificate allows
21 a non-profit entity to legally cultivate, possess, make preparations of, and sell marijuana to
22 other medical marijuana dispensaries and to authorized medical marijuana cardholders in
23 the State of Arizona.

47. The Ultra Health Prospectus also represented, among other things, that Ultra Health “has made a capital call of \$300,000 to its partners to be used as start-up capital...” Ultra Health Prospectus, p. 23.

48. There were no “partners” or even other owners of Ultra Health at the time that statement was made by Rodriguez in the Ultra Health Prospectus, nor had there been before that time, on information and belief.

49. The statement which Rodriguez caused to be made in the Ultra Health Prospectus that a \$300,000 capital call has been “made” on Ultra Health’s “partners” was false, on information and belief.

50. In addition, Rodriquez himself did not have \$300,000 in liquid capital to response to any such “capital call” made on Ultra Health’s “partners”, on information and belief.

3. Rodriguez Convinced Abrams to Make a Multi-Million Dollar Investment in Ultra Health Based on False Representations.

51. Rodriguez provided the Ultra Health Prospectus to Abrams and Christopher Carra as part of an investment presentation he made to them, and which he referenced in numerous related discussions in which he repeatedly but falsely represented to Abrams and Carra that Ultra Health “was awarded three dispensary certificates”.

52. As a result of the false representations Rodriguez made in the Ultra Health Prospectus, and his identical, false oral representations, Rodriguez successfully convinced Abrams and Carra became investors in Ultra Health through an entity named MACCAM, LLC, an Arizona a limited liability company (“MACCAM”).

53. MACCAM later transferred its investment in Ultra Health to CA2 with the knowledge and consent of Ultra Health.

1 54. Abrams made substantial payments and incurred substantial out of pocket
2 costs in making the initial investments encouraged by Rodriguez, which roughly total
3 around one-half of Abrams' total investment of nearly \$12,000,000.00 (TWELVE
4 MILLION DOLLARS).

5 **4. Rodriguez Entered Into The Ultra Health Operating Agreement For With**
6 **CA2 in August 2014 After Providing Abrams With Substantial Reassuring**
7 **Representations About Ultra Health.**

8 55. In May 2014, CA2 was formed as a result of the departure of a former
9 participant in MACCAM to take the place of MACCAM.

10 56. By that time, Abrams had invested millions of dollars in and for Ultra Health,
11 and incurred substantial, related out of pocket costs.

12 57. He later learned that Ultra Health in fact had not been awarded three
13 dispensary registration certificates, but instead had been awarded zero dispensary
14 registration certificates.

15 58. Concerned, Abrams discussed this issue with Rodriguez.

16 59. Abrams believed at that time that he was in a confidential relationship with
17 Rodriguez.

18 60. Rodriguez made reassuring but false representations to Abrams at that time
19 that Ultra Health could still obtain those three dispensary registration certificates through
20 litigation with the non-profit companies which had actually been awarded the three
21 certificates.

22 61. Rodriguez's reassuring representations to Abrams also included
23 representations that Ultra Health could additionally secure binding, long term management
24 rights agreements with two other non-profit companies which had been awarded dispensary
25 registration certificates, and could secure ownership of a cultivation facility which could

1 also make products infused with medical marijuana and other related assets (real estate,
2 water rights, *et cetera*), if Abrams would commit more investment capital.

3 62. Rodriguez also represented to Abrams that he would enter into a written
4 agreement which would name him as the Manager of Ultra Health, but would allow for him
5 to be replaced by Abrams under certain circumstances.

6 63. Abrams found Rodriguez to be a very convincing personality in connection
7 with both the original representations that led to the original investments, and also again in
8 connection with the reassuring representations alleged above.

9 64. Believing Rodriguez's reassuring representations, Abrams agreed to continue
10 to directly invest and arrange for additional financing for Ultra Health and the business plan
11 explained by Rodriguez in his reassuring representations, pay for Ultra Health's bills, and
12 enter into an operating agreement regarding Ultra Health with Rodriguez.

13 65. Abrams also incurred substantial out of pocket costs in connection with the
14 investing encouraged by Rodriguez.

15 66. After negotiations over its terms, CA2 entered into the OA with Rodriguez on
16 August 18, 2014.

17 67. Abrams' funds were indeed used to pay for litigation with the control persons
18 of the non-profits which held the three dispensary registration certificates which Rodriguez
19 had represented had been "awarded" to Ultra Health, funded the acquisition of control and
20 management rights for two additional non-profit companies awarded dispensary registration
21 certificates, and funded the acquisition of a large medical marijuana cultivation facility in
22 Chino Valley, Arizona and related real estate and water rights.

23 68. The aggregate investment of CA2 in Ultra Health today is nearly
24 \$12,000,000.00 (TWELVE MILLION DOLLARS), substantially all of which consists of
25 funds invested by Abrams in or for Ultra Health through MACCAM and CA2. A true and
26

1 correct compilation of documents summarizing much of the plaintiffs' monies invested as
2 alleged herein is attached hereto as Exhibit 4.

3 69. Before the OA was entered into, Rodriguez represented to Abrams that he
4 (Rodriguez) had invested \$1,000,000.00 of his own money in Ultra Health which, on
5 information and belief, was untrue.

6 **5. Rodriguez Has Engaged in a Series of Ongoing, Unabated Acts of Self-**
7 **Dealing, Breaches of Fiduciary Duty, and Defalcations In Wanton Violation**
8 **of the Operating Agreement.**

9 70. Under the OA, Rodriguez was "initially" designed as the manager of Ultra
10 Health. OA, para. 3.2.

11 71. As the Manager, Rodriguez was required under the OA to, among other
12 things:

- 13 a. "direct, manage and control the business of the Company to the best of his or
14 her ability...to accomplish the business and objectives of the Company", OA,
15 para. 3.1;
- 16 b. "be responsible for conducting the daily business affairs of the Company and
17 for making day-to-day operating decisions in carrying out the Company's
18 objectives and policies", OA, para. 3.1;
- 19 c. exercise "powers" granted the Manager "on behalf of the Company", OA,
20 para. 3.3;
- 21 d. "hold and own any Company real and/or personal property in the name of the
22 Company", OA, para. 3.3(d);
- 23 e. "execute on behalf of the Company... documents....necessary...to the
24 business of the Company", OA, para. 3.3(g);
- 25
- 26

- 1 f. "act as 'tax matters partner' pursuant to Section 6221 of the [Internal
2 Revenue] Code", OA, para. 3.3(i);
- 3 g. "perform all other acts as may be necessary or appropriate to the conduct of
4 the Company's business", OA, para. 3.3(j);
- 5 h. "to pay normal expenses of operating the Company", OA, para. 3.3(l);
- 6 i. "adequately manage the Company's business", OA, para. 3.4;
- 7 j. "cause the Company to keep proper and complete books of account adequate
8 for Company's purposes", OA para. 4.4;
- 9 k. "maintain and preserve at the Company's registered office, during the term of
10 the Company...all accounts, books, and other relevant Company documents",
11 OA para. 4.4;
- 12 l. "maintain records and account of all Company operations and expenditures",
13 including the following "records": "the Company's federal, state, and local
14 income tax returns and reports, if any, for the three most recent years";
15 "Copies of ...any writings permitted or required with respect to a Member's
16 obligation to contribute cash, property or services, and copies of any financial
17 statements of the company for the three most recent years", OA para. 6.12,
18 6.12(c);
- 19 m. "cause the preparation and timely filing of all tax returns required to be filed
20 by the Company pursuant to the Code and all other tax returns deemed
21 necessary and required in each jurisdiction in which the Company transacts
22 business", OA para. 6.13;
- 23 n. furnish copies of all returns or pertinent financial information therefrom "to
24 the Members within a reasonable time after the end of the Company's fiscal
25 year", OA para. 6.13; and,
- 26

1 o. keep "[p]roper and complete records and books of account of the Company's
2 activities" with "information contained therein" to be "entered fully and
3 accurately with regard to all transactions and matters relating to the
4 Company's business and with such detail and completeness as is customary
5 and usual for businesses of the type engaged in by the Company", OA para
6 11.2.

7 72. As set forth more fully herein below, Rodriguez has acted in derogation of the
8 aforementioned obligations he had under the OA, as follows:

- 9 a. Rodriguez has not managed and controlled Ultra Health to accomplish its
10 "business and objectives", but instead has done so to accomplish his own, by
11 keeping Ultra Health property in the name of one or more entities which he
12 owns or controls and by not transferring that property to Ultra Health;
- 13 b. Rodriguez has not carried out the daily business of Ultra Health to carry out
14 "the Company's objective and policies", but instead has done so to accomplish
15 his own, by keeping Ultra Health property in companies which he owns or
16 controls rather than causing it to be conveyed to Ultra Health;
- 17 c. Rodriguez did not exercise powers as Manager on "behalf of the Company"
18 but on his own behalf, by putting property belonging to Ultra Health in the
19 name of another company or companies which he owns or controls;
- 20 d. Rodriguez did not cause Ultra Health to own property in its name, but instead
21 has put it in his own name, or under his own control, in other entities;
- 22 e. Rodriguez did not execute documents on behalf of Ultra Health but, instead,
23 for his own benefit; Rodriguez continues to control Ultra Health's property in
24 one or more entities which he controls rather than conveying said property to
25 Ultra Health;

- f. Rodriguez has not fulfilled the requirements of acting as Tax Matters Partner for Ultra Health; no tax reporting has occurred;
- g. Rodriguez has not performed all acts appropriate to the conduct of the Company's business, but instead has acted for his own benefit; Rodriguez has placed himself in a position of substantial ownership of Ultra Health's cultivation facility in Chino Valley and has not transferred ownership of that property and facility to Ultra Health;
- h. Rodriguez has not paid the normal expenses of Ultra Health and has instead paid extraordinary expenses for his own benefit, and refused to pay other expenses of Ultra Health which are valid and due; Ultra Health currently owes monies which Rodriguez has not caused it to pay, but has utilized funds intended for the purchase of Ultra Health assets for other purposes and other entities without conveying or arranging for or causing the conveyance of those assets to Ultra Health;
- i. Rodriguez has not adequately managed Ultra Health's business;
- j. Rodriguez has not caused Ultra Health to keep proper and complete books of account; there is no current record of the Members "Capital Accounts", or "Interests" as defined in the OA at paragraphs 1.9(g) and (p);
- k. Rodriguez has not maintained in the Ultra Health offices all accounts, books and relevant company documents; indeed, he has not reconciled transfers between Ultra Health and the non-profit dispensary companies which it is supposed to manage;
- l. Rodriguez has not maintained records and account of all of Ultra Health's tax returns, records of obligations to the company, or other required financial records; indeed, he has not shared any financial reports of Ultra Health with

1 CA2, and has not caused the preparation of audits for either of the two non-
2 profit dispensary companies managed by Ultra Health, nor has he properly
3 accounted for financial transactions between Ultra Health and those entities;

4 m. Rodriguez has not filed all required tax returns, indeed, he has not filed any,
5 on information and belief;

6 n. Rodriguez has not provided the Members of Ultra Health with all required tax
7 returns, indeed, he has not provided any; and,

8 o. Rodriguez has not kept or maintained adequate books and records with
9 "accurately" reflected transactions and matters relating to Ultra Health's
10 business; specifically, Rodriguez has not maintained a "Capital Account" for
11 each Member of Ultra Health (including CA2) as that term is defined in the
12 OA at paragraph 1.9(g).

13 73. Rodriguez's conduct alleged herein constitutes acts or omissions in breach of
14 the OA and or which constitute fraud, gross negligence, willful misconduct and or breach of
15 fiduciary duty to Ultra Health and or plaintiffs, within the meaning of OA paragraph 3.5,
16 barring any right to indemnity for such conduct.

17 74. In addition to persuading CA2 and Abrams to invest in Ultra Health,
18 Rodriguez convinced Abrams and CA2 to make substantial payments for and on behalf of
19 Ultra Health to entities controlled by Rodriguez, which entities were supposed to convey
20 their assets into Ultra Health and or for the benefit of CA2 and Abrams, but Rodriguez has
21 failed or refused to cause those transfers to occur.

22 75. Specifically the following entities have received transfers from Abrams and/or
23 CA2 directly of monies intended to be used to acquire assets for Ultra Health, which were
24 supposed to have been ultimately conveyed to and for the benefit of Ultra Health, but with
25 respect to which, today, substantial monies, and assets purchased with those monies, remain
26

1 in the possession, custody and control of the entities and not Ultra Health: Cumbre;
2 Stormwind; CVUH; Sold By Group.

3 76. In particular, Rodriguez has failed or refused to transfer the rights to the note
4 secured by property owned of record by CVUH in Chino Valley, Arizona, notwithstanding
5 that CA2 and Abrams provided the funds for the acquisition of that asset as part of the Ultra
6 Health investment.

7 77. To date, Rodriguez purports to own 80% of CVUH as its control person, the
8 remainder of which is owned by Ultra Health.

9 78. Despite multiple promises by Rodriguez to get all of the assets purchased with
10 CA2 and Abrams monies titled properly, and additional promises to put those transfers in
11 writing, Rodriguez had failed and refused to do so and, to this day retains control of
12 Cumbre, Stormwind, Sold By Group and CVUH, including the monies and other assets in
13 their names, to the exclusion of Ultra Health, CA2 and or Abrams.

14 79. Plaintiff demands a jury trial on all issues and claims so triable.

15 **III. Claims for Relief.**

16 **First Claim for Relief**

17 **By CA2 and Abrams against Rodriguez**
18 **Accelerated Declaratory Judgments**

19 80. Plaintiffs incorporate, by reference, each and every allegation contained
20 herein.

21 81. These plaintiffs seek two declaratory judgments.

22 82. These plaintiffs seek to have these declarations advanced on the Court's
23 calendar pursuant to Rule 57, Ariz. R. Civ. P., and to have the force of a final judgment
24 when issued pursuant to ARS Section 1831 and Rule 54(b), Ariz. R. Civ. P.

1 83. First, these plaintiffs seek a declaratory judgment that Rodriguez has been
2 removed, effective as of March 26, 2015, as the Manager of Ultra Health pursuant to the
3 OA, a declaration of the parties' rights, status and other legal relations.

4 84. Second, these plaintiffs seek a declaratory judgment that Rodriguez is not
5 entitled to any indemnity under the OA on grounds that his wrongful conduct as alleged
6 herein constitutes acts or omissions in breach of the OA, constituted fraud, gross negligence
7 willful misconduct and or breach of fiduciary duty to Ultra Health and or plaintiffs.

8 85. The first declaration requested is in the affirmative: Rodriguez was removed
9 as the Manager of Ultra Health on March 26, 2015.

10 86. The second declaration requested is in the negative: Rodriguez is not entitled
11 to any indemnity under the OA.

12 87. The OA is a written contract or other writing within the meaning of ARS
13 Section 12-1832.

14 88. These plaintiffs are interested under the OA, and seek to have a declaration of
15 a question of rights, status and or legal relations under the OA within the meaning of ARS
16 Section 12-1832.

17 89. The declaratory judgments requested, if granted, would terminate any
18 uncertainty as to the subjects addressed with respect to each request.

19 **Second Claim for Relief**
20 **By CA2 and Abrams against Rodriguez**
21 **Injunctive Relief**
22 **(Temporary Restraining Order and Preliminary Injunction Re: Ultra Health)**

23 90. These plaintiffs incorporate, by reference, each and every allegation contained
24 herein.

25 91. These plaintiffs seek temporary and preliminary injunctive relief from the
26 filing of this verified complaint through the date of the Court's decision on the declaratory

1 judgment claim that Rodriguez has been removed as the Manager of Ultra Health, providing
2 that he is not the Manager of Ultra Health and instead that Abrams is.

3 92. CA2 and Abrams are interested parties in the removal of Rodriguez as the
4 Manager of Ultra Health.

5 a. CA2 is a Member of Ultra Health and a party to the OA.

6 b. Nearly \$12,000,000.00 (TWELVE MILLION DOLLARS) of Abrams' monies
7 were the monies used to almost entirely capitalize the business of Ultra Health
8 and pay for its assets and rights, and that which is supposed to constitute its
9 assets and rights.

10 93. Rodriguez has been removed as the Manager of Ultra Health, as alleged herein
11 above, in accord with the OA, effective March 26, 2015, and plaintiffs are seeking to move
12 forward with lawful, peaceful, judicial confirmation of that removal expeditiously.

13 a. Plaintiffs CA2 and Abrams are seeking herein, among other things, an
14 accelerated declaratory judgment of the Court legally confirming that
15 Rodriguez has been removed as the Manager of Ultra Health pursuant to the
16 OA.

17 b. Plaintiffs will file with the Court contemporaneously with the filing of this
18 verified complaint a motion seeking expedited consideration of their request
19 for declaratory judgment that Rodriguez has been removed as the Manager of
20 Ultra Health, pursuant to Rule 57, Ariz. R. Civ. P., and for said declaratory
21 judgment to be a final judgment when issued pursuant to ARS Section 1831
22 and Rule 54(b), Ariz. R. Civ. P.

23 94. The risk of harm to Rodriguez associated with granting the requested
24 temporary and preliminary relief is small.

- a. The OA already expressly provides for a built-in back up business plan for when Rodriguez is removed as Manager.
- b. Specifically, the OA expressly provides that, in the event that Rodriguez is unable to serve (for example, because he has been removed and or enjoined) "Alan Abrams shall serve as Manager". OA, para. 3.2.
- c. Abrams is ready, willing and able to serve as Manager of Ultra Health.
- d. Abrams business background demonstrates that he is qualified to serve as Manager of Ultra Health: for over thirty years, Abrams was employed as an executive of Reliable Carriers, Inc., the largest enclosed auto transport company in the United States, a family enterprise which has been in business for over fifty (50) years, which transports cars and trucks to and from any location specified by the client, typically for specialty, rare, collector and unique vehicles. Mr. Abrams was responsible for Reliable's West Coast operations and, today, owns a substantial portion of Reliable's real estate.
- e. Abrams experience in the business of Ultra Health also demonstrates that he is qualified to serve as Manager of Ultra Health.
- f. Abrams has been working directly in the business Ultra Health since he began investing in it and has existing relationships with all of Ultra Health's key employees, its attorneys and all third parties with which Ultra Health has been dealing.

95. By comparison, the risk if the Court does not enjoin Rodriguez from acting as Manager of Ultra Health between now and its decision following the declaratory judgment hearing, is substantial.

- a. Specifically, there is a risk that, between the filing of this verified complaint and the date of the Court's decision following the declaratory judgment

1 hearing, irreparable harm could result if Rodriguez is not enjoined from acting
2 in the capacity of Manager of Ultra Health.

3 b. For example, absent a clear injunction order from the Court, Rodriguez may
4 refute the validity of his removal and attempt to continue to act as the
5 Manager of Ultra Health in advance of the Court's ruling following the
6 declaratory judgment hearing in this matter.

7 c. Should Rodriguez attempt to refute the validity of his removal as Manager of
8 Ultra Health in advance of the Court's ruling following the declaratory
9 judgment hearing in this matter, serious instability is a foreseeable result.

10 d. That instability could come in the form of confusion suffered by parties in
11 business relationships with Ultra Health who have become accustomed to
12 dealing with Rodriguez as Manager.

13 e. For example, Ultra Health has a large number of employees whose work could
14 be disrupted by conflicting instructions from Rodriguez.

15 f. Similarly, Ultra Health is a party in pending litigation and the attorneys
16 representing Ultra Health in that litigation will want to have clear direction as
17 to the person from whom they should take direction.

18 96. There is a substantial likelihood that plaintiffs will succeed on the merits of
19 their claim for declaratory judgment that Rodriguez be removed as the Manager of Ultra
20 Health on March 26, 2015.

21 a. Plaintiffs have cited the operative provisions of the OA in support of their
22 declaratory judgment application.

23 b. This complaint is verified.

24 c. A true and correct copy of the OA is attached to this complaint.
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1 d. The language of the OA is clear and unambiguous regarding removal of a
2 Manager.

3 e. The Court can construe the provision of the OA as a matter of law.

4 97. The public interest in peaceful commerce without undue disruption is served
5 by the requested relief.

6 a. It is clear that plaintiffs believe they have removed Rodriguez as Manager of
7 Ultra Health and are seeking peaceful, lawful, judicial confirmation of that
8 removal.

9 b. Given the allegations of Rodriguez's history of substantial, ongoing, and
10 multiple acts of defalcations and breaches concerning his obligations as
11 Manager under the OA, temporary injunctive relief confirming the removal of
12 Rodriguez as the Manager of Ultra Health is warranted and prudent in that the
13 public's interest in peaceful business transitions will be furthered. .

14 98. A zero bond, or small bond, if any, should be all that is required to be posted
15 in connection with plaintiffs' request for temporary and preliminary injunctive relief.

16 a. Abrams has substantial incentive to competently and completely fulfill all of
17 the duties of Manager of Ultra Health.

18 b. Specifically, he desires to serve in that capacity in order to protect the value of
19 his nearly \$12,000,000.00 (TWELVE MILLION DOLLAR) investment.

20 c. The OA designates Abrams as the Manager of Ultra Health in the event that
21 Rodriguez is unable to serve, subjecting him to the same obligations that any
22 Manager would have under the OA.

23 99. Because a temporary restraining order is good for ten (10) days, and can be
24 extended to twenty (20) days for good cause shown, but it is unclear at the moment when
25 the Court will decide the declaratory judgment issue raised, plaintiffs in an abundance of

1 caution also seek preliminary injunctive relief in the event that the date upon which the
2 Court decides the first declaratory judgment issue regarding confirmation of Rodriguez's
3 removal as Manager of Ultra Health takes more than twenty (20) days from the date of the
4 filing of this verified complaint.

5 100. In the event that it takes more than twenty (20) days from the filing of this
6 verified complaint to the date when the Court decides the first declaratory judgment issue
7 regarding confirmation of Rodriguez's removal as Manager of Ultra Health, then plaintiffs'
8 seek to have the same relief as requested in the form of the temporary injunctive relief
9 granted in the form of a preliminary injunction.

10 101. Plaintiffs request that any temporary or preliminary injunctive relief be made
11 permanent at the conclusion of the case.

12 **Third Claim for Relief**
13 **By CA2 and Abrams against Rodriguez, Stormwind, Cumbre and CVUH**
14 **Uniform Fraudulent Transfer Act Injunction**

15 102. These plaintiffs incorporate, by reference, each and every allegation contained
16 herein.

17 103. In conjunction with these plaintiffs' request for Uniform Fraudulent Transfer
18 Act ("UFTA") injunctive relief, these plaintiffs will contemporaneously move for
19 appointment of a Special Master pursuant to Rule 53(a), Ariz. R. Civ. P.

20 104. These plaintiffs' request will be that the Special Master administer day to day
21 matters as they arise concerning the UFTA injunction requested herein.

22 105. For example, if a particular enjoined defendant seeks permission to engage in
23 a transaction which is facially prohibited by the injunctive relief requested herein, the
24 Special Master would be vested with the authority to make an expedited report to the Court
25 for any special exceptions to the injunction order(s).
26

1 106. Plaintiffs agree to bear the entire expense of the Special Master *pendent lite*, if
2 appointed by the Court, subject to said expense being later allocated in connection with any
3 final judgment in this matter as part of the resolution of plaintiffs' claims pursuant to Rule
4 53(i), Ariz. R. Civ. P.

5 107. Plaintiffs seek an injunction under Arizona's version of the UFTA, ARS
6 Section 44-1001, *et seq.*, consisting of temporary injunctive relief, preliminary injunctive
7 relief and permanent injunctive relief as described herein.

8 108. Plaintiffs each have a "claim" against Rodriguez with the meaning of that term
9 under ARS Section 44-1001(2).

10 109. As they each have a claim against Rodriguez, each plaintiff is a "creditor" of
11 Rodriguez within the meaning of that term under ARS Section 44-1001(3).

12 110. As each plaintiff is a "creditor" of Rodriguez, they are entitled to seek
13 remedies against Rodriguez under the UFTA, including an "injunction against further
14 disposition by the debtor or a transferee, or both, of the asset transferred or of other
15 property", within the meaning of ARS Section 44-1007(A)(4)(a).

16 111. Rodriguez is the control person of Stormwind, Cumbre, Sold by Group and
17 CVUH, which are also each a "transferee" within the meaning of ARS Section 44-
18 1007(A)(4)(a).

19 112. "Property" is "anything that may be the subject of ownership" within the
20 meaning of ARS Section 44-1001(8).

21 113. The foregoing form of injunctive relief under UFTA is "subject to applicable
22 principles of equity and in accordance with the applicable rules of civil procedure", within
23 the meaning of ARS Section 44-1007(4).

24 114. Specifically, plaintiffs seek a UFTA injunction on a temporary and
25 preliminary basis against Rodriguez, Stormwind, Cumbre, Sold By Group and CVUH, and
26

1 against any person or entity acting in concert or participation with them, and having notice
2 of the injunction order, and any entity which Rodriguez owns in part or controls, as follows:

3 a. Rodriguez and any person or entity acting in concert or participation with him
4 and having notice of the injunction order(s) shall be restrained as follows:

5 i. Stormwind shall make no transfers of any assets or monies of any type
6 or nature without prior approval using the procedures set forth below;

7 ii. Cumbre shall make no transfer of any assets or monies of any type or
8 nature without prior approval using the procedures set forth below;

9 iii. Sold By Group shall make no transfer of any assets or monies of any
10 type or nature without prior approval using the procedures set forth
11 below;

12 iv. CVUH shall make no transfers of any assets or monies of any type or
13 nature without prior approval using the procedures set forth below; and,

14 v. Procedures: neither defendants nor any person acting in concert or
15 participation with them and having notice of the injunction order(s)
16 shall make any transfers of any assets or monies of any type or nature
17 unless they first make a *prima facie* to the Special Master showing that
18 any such funds or assets cannot be traced to any funds originating with
19 Abrams and or CA2 or MACCAM, and obtaining Court approval
20 following a Special Master's report.

21 b. Any request for relief by any defendant shall be made in the first instance to
22 the Special Master who shall make a report to the Court recommending a
23 course of action, but in a proper case where any defendant can show good
24 cause for needing more immediate relief, may apply to the Court on prior
25

1 notice of a request for dissolution of any injunction order in accord with the
2 Arizona Rules of Civil Procedure.

3 115. No bond, or a small bond, if any, should be required for the UFTA injunctive
4 relief requested herein as the source of the monies in each instance was CA2 and or Abrams
5 and not Rodriguez, as demonstrated by Exhibit 4 hereto and the allegations of this Verified
6 Complaint.

7 116. These plaintiffs seek permanent injunctive relief in their favor and against
8 defendants confirming any and all rulings, orders, findings, verdicts, awards and
9 assessments in their favor.

10 **Fourth Claim for Relief**

11 **By CA2**

12 **Breaches of Contract**

13 117. Plaintiff incorporates, by reference, each and every allegation contained
14 herein.

15 118. As alleged herein, Rodriguez's conduct constitutes a breach of the OA,
16 entitling CA2 to damages, specific performance or other remedies for said breaches, as
17 determined by the trier of fact or the Court in this matter.

18 **Fifth Claim for Relief**

19 **By CA2**

20 **Breaches of Fiduciary Duty**

21 119. Plaintiff incorporates, by reference, each and every allegation contained
22 herein.

23 120. As alleged herein, Rodriguez's conduct constitutes breaches of fiduciary duty
24 on grounds that said conduct violated his obligations under the OA, entitling him to
25 damages and other relief as determined by the trier of fact or the Court in this matter.
26

Sixth Claim for Relief
By CA2 and Abrams
Arizona Consumer Fraud Act Violations

121. Plaintiffs incorporate, by reference, each and every allegation contained herein.

122. As alleged herein, defendants used deception, deceptive acts or practices, fraud, false pretenses, false promises, misrepresentations and concealed, suppressed and omitted material facts in connection with the sale and marketing of the aforementioned investments in the aforementioned companies, and otherwise concealed and/or suppressed information needed to fully evaluate the investment transactions in which plaintiffs engaged, directly and/or indirectly, each in substantial part. Specifically, although not exclusively, defendants misled plaintiffs through false representations and omissions of material information as alleged herein above.

123. Defendants intended that plaintiffs rely upon such deception, deceptive acts and practices, fraud, false pretense, false promise, misrepresentations and concealment and suppression of those material facts described herein.

124. Plaintiffs have been damaged in an amount to be determined at the trial in this matter as a result of the wrongful conduct in violation of the Arizona Consumer Fraud Act as alleged in this count of the verified complaint.

Seventh Claim for Relief
By CA2 and Abrams
Restitution

125. Plaintiffs incorporate, by reference, each and every allegation contained herein.

1 126. Plaintiffs seek any and all applicable restitutionary remedies from Rodriguez,
2 Stormwind, Cumbre, Sold By Group and CVUH with respect to any monies or assets, if
3 any, not otherwise covered by the investment contract, the OA, including without limitation
4 disgorgement.

5 **Eighth Claim for Relief**
6 **By Broken Arrow Herbal Center, Inc.**
7 **Removal of Rodriguez from Board of Broken Arrow Herbal Center, Inc.**
8 **and Denial of Indemnification**
9 **Accelerated Declaratory Judgments**

10 127. Plaintiff Broken Arrow incorporates, by reference, each and every allegation
11 contained herein.

12 128. Plaintiff Broken Arrow seeks two declaratory judgments against Rodriguez,
13 first for his removal from the board of directors and second for a determination that he is not
14 entitled to indemnification from the corporation.

15 129. Plaintiff Broken Arrow seeks to have these declarations advanced on the
16 Court's calendar pursuant to Rule 57, Ariz. R. Civ. P., and to have the force of a final
17 judgment when issued pursuant to ARS Section 1831 and Rule 54(b), Ariz. R. Civ. P.

18 130. First, regarding removal of Rodriguez from the board of Broken Arrow, it is a
19 non-profit corporation which does not have "members".

20 131. Abrams is a member of the board of directors of Broken Arrow.

21 132. The board of Broken Arrow consists of three members, one of whom is
22 Abrams and another of whom is Rodriguez.

23 133. Abrams has "standing" to cause Broken Arrow to bring this suit within the
24 meaning of ARS Section 10-3631(A)(2).

25 134. Abrams was a director of Broken Arrow at the time of the acts and omissions
26 complained of.

1 135. Abrams fairly and adequately represents the interest of the corporation in
2 enforcing the right of the corporation.

3 136. Abrams made a written demand on Broken Arrow to take action against
4 Rodriguez.

5 137. Irreparable injury will result to Broken Arrow by waiting for ninety days from
6 the issuance of the written demand.

7 138. Among other things, Broken Arrow's renewal application for its Dispensary
8 Registration Certificate reissued annually by ADHS is due within less than ninety days from
9 the date of the filing of this verified complaint.

10 139. Broken Arrow has not, on information and belief, had its financial statements
11 audited according to Generally Accepted Accounting Principles ("GAAP") by a certified
12 public accountant at this time, for any of its operating history.

13 140. Completion of a GAAP audit by a CPA for all prior applicable periods will
14 take a substantial period of time and cost a substantial amount of money, potentially longer
15 than the time remaining for submission of a completed audit with the mandatory June 7,
16 2015 renewal application.

17 141. Absent timely completion of the audit and its submission to ADHS with the
18 renewal application due on or before June 7, 2015, Broken Arrow will be subject to having
19 its Dispensary Registration Certificate revoked by ADHS for non-compliance under the
20 regulations promulgated by ADHS pursuant to the AMMA.

21 142. Rodriguez is a member and Chairperson of the Broken Arrow board of
22 directors, as well as its President and Treasurer.

23 143. In these capacities, and pursuant to Broken Arrow's First Amended and
24 Restated Bylaws, Rodriguez was supposed to "have active management of the business of
25 the Corporation", be its "Chief Executive Officer" and have "custody" of all "corporate
26

1 funds” and was required to “keep full and accurate accounts of receipts and disbursements
2 in books belonging to the Corporation”.

3 144. Despite this language, and even though Rodriguez was aware months ago of
4 the fact that Broken Arrow does not have an audit completed or even started, and was
5 informed in writing of a notice of deficiency by ADHS months ago, he has taken no steps to
6 engage an audit firm to complete the required task, to call a board meeting to discuss the
7 matter, or initiate any solution, on information and belief.

8 145. In addition, Rodriguez has engaged in money transfers and other financial
9 transactions involving Broken Arrow funds which have no legitimate basis and will not pass
10 a GAAP audit, on information and belief.

11 146. On information and belief, Rodriguez’s activities in connection with Broken
12 Arrow’s financial transactions violate ARS Section 13-2317(B)(7).

13 147. Plaintiff Broken Arrow Herbal Center, Inc. proceeds in this derivative action
14 brought against Rodriguez for his removal from the board of directors pursuant to Article
15 IV, Section 10 of the First Amended and Restated Bylaws of Broken Arrow, which state as
16 follows regarding “Removal” of a director:

17 Unless otherwise provided for by the Articles of Incorporation,
18 one or more or all the Directors of the Corporation may be
19 removed if his or her behavior is deem[ed] illegal, fraudulent, or
20 not in good faith to the successful operation of the business or if
21 by unanimous vote of the Board of Directors.

22 148. A true and correct copy of the aforementioned bylaws is attached hereto as
23 Exhibit 5.

24 149. The Articles of Incorporation of Broken Arrow do not provide for another
25 method of removal.

26 150. Broken Arrow thus seeks a declaratory judgment against Rodriguez finding
that his acts and omissions concerning the lack of a GAAP audit for Broken Arrow and the

1 financial transactions alleged herein above are “deemed illegal, fraudulent, or not in good
2 faith to the successful operation of the business...”

3 151. Second, Broken Arrow seeks a declaratory judgment that Rodriguez is not
4 entitled to indemnification due to limits on indemnification in the Arizona Nonprofit
5 Corporation Act (“ANCA”).

6 152. Rodriguez may only be indemnified under ANCA if his conduct was in good
7 faith, he reasonably believed that the conduct was in the best interests of the corporation and
8 not opposed to its best interests pursuant to ARS Section 10-3851(A), or the articles of the
9 company provide an obligatory indemnification for the director, except for, among other
10 things, an intentional violation of criminal law pursuant to ARS Section 10-3202(B).

11 153. Rodriguez’s conduct alleged herein above was not in good faith, he did not
12 reasonably believe that it was in the best interests of the corporation or not opposed to its
13 interests, on information and belief.

14 154. Rodriguez’s conduct regarding the financial transfers and the setting up and
15 maintenance of banking relations intentionally violated ARS Section 13-2317(B)(7)
16 (“[i]ntentionally or knowingly falsifies, conceals, covers up or misrepresents or attempts to
17 falsify, conceal or cover up or misrepresent the identity of any person in connection with
18 any transaction with a financial institution...”), within the meaning of the definition of
19 “Transaction” as defined by ARS Section 13-2317(G)(3).

20 155. Broken Arrow thus seeks a declaratory judgment against Rodriguez finding
21 that he is not entitled to indemnification for the foregoing reasons.

1 a. Abrams is the Vice-President and Secretary and a member of the board of
2 Broken Arrow and can conduct any and all business needed between the filing
3 of this verified complaint and the date of the Court's decision on the removal
4 of Rodriguez.

5 b. Abrams is ready, willing and able to serve as the Vice-President, Secretary
6 and board member of Broken Arrow and has been doing so.

7 c. Abrams business background demonstrates that he is qualified to serve in
8 those roles: for over thirty years, Abrams was employed as an executive of
9 Reliable Carriers, Inc., the largest enclosed auto transport company in the
10 United States, a family enterprise which has been in business for over fifty
11 (50) years, which transports cars and trucks to and from any location specified
12 by the client, typically for specialty, rare, collector and unique vehicles. Mr.
13 Abrams was responsible for Reliable's West Coast operations and, today,
14 owns all of Reliable's real estate.

15 d. Abrams experience in the business of Broken Arrow also demonstrates that he
16 is qualified to serve in his existing roles of Vice-President, Secretary and
17 board member so as to conduct any and all necessary corporate business.

18 160. By comparison, the risk if the Court does not enjoin Rodriguez from acting as
19 a director and officer of Broken Arrow between now and its decision following the
20 declaratory judgment hearing, is substantial.

21 a. Specifically, there is a risk that, between the filing of this verified complaint
22 and the date of the Court's decision following the declaratory judgment
23 hearing, irreparable harm could result if Rodriguez is not enjoined from acting
24 in the capacity of an officer and or director of Broken Arrow.

- b. For example, absent a clear injunction order from the Court, Rodriguez may refute the validity of his removal and attempt to continue to act as a director of Broken Arrow in advance of the Court's ruling following the declaratory judgment hearing in this matter.
- c. Should Rodriguez attempt to refute the validity of his removal as Director of Broken Arrow in advance of the Court's ruling following the declaratory judgment hearing in this matter, serious instability is a foreseeable result.
- d. That instability could come in the form of confusion suffered by parties in business relationships with Broken Arrow who have become accustomed to dealing with Rodriguez.
- e. For example, Broken Arrow has employees whose work could be disrupted by conflicting instructions from Rodriguez.

161. There is a substantial likelihood that plaintiffs will succeed on the merits of their claim for declaratory judgment that Rodriguez be removed as the Director of Broken Arrow.

- a. Plaintiffs have cited the operative provisions of the ANCA and Broken Arrow's applicable bylaws in support of their declaratory judgment application.
- b. This complaint is verified.
- c. A true and correct copy of the applicable bylaws is attached to this complaint.
- d. The language of the bylaws and applicable statutes are clear and unambiguous regarding removal of a director.
- e. The Court can construe the provision of the bylaws and applicable statutes as a matter of law.

162. The public interest in peaceful commerce without undue disruption is served by the requested relief.

a. It is clear that plaintiff is seeking peaceful, lawful, judicial confirmation of that removal.

b. Given the allegations of Rodriguez's history of substantial, ongoing, and multiple acts of defalcations and breaches of law, temporary injunctive relief confirming the removal of Rodriguez as a director of Broken Arrow is warranted and prudent in that the public's interest in peaceful business transitions will be furthered.

163. A zero bond, or small bond, if any, should be all that is required to be posted in connection with plaintiffs' request for temporary and preliminary injunctive relief.

a. Abrams has substantial incentive to competently and completely fulfill all of the duties of the offices he holds with Broken Arrow.

b. Specifically, he desires to serve in that capacity in order to protect the value of his nearly \$12,000,000.00 (TWELVE MILLION DOLLAR) investment he has made in Ultra Health, a substantial portion of which has been expended in connection with the operations of Broken Arrow.

c. The Broken Arrow bylaws designate Abrams as an officer and director of Broken Arrow already, and he is ready and able to serve in those capacities.

164. Because a temporary restraining order is good for ten (10) days, and can be extended to twenty (20) days for good cause shown, but it is unclear at the moment when the Court will decide the declaratory judgment issue raised, plaintiffs in an abundance of caution also seek preliminary injunctive relief in the event that the date upon which the Court decides the first declaratory judgment issue regarding confirmation of Rodriguez's

1 removal as a director of Broken Arrow takes more than twenty (20) days from the date of
2 the filing of this verified complaint.

3 165. In the event that it takes more than twenty (20) days from the filing of this
4 verified complaint to the date when the Court decides the first declaratory judgment issue
5 regarding confirmation of Rodriguez's removal as a director of Broken Arrow, then
6 plaintiffs' seek to have the same relief as requested in the form of the temporary injunctive
7 relief granted in the form of a preliminary injunction.

8 166. Plaintiff requests that any temporary or preliminary injunctive relief be made
9 permanent at the conclusion of the case.

10 **Tenth Claim for Relief**

11 **By CJK, Inc.**

12 **Removal of Rodriguez from Board of CJK, Inc.**

13 **and Denial of Indemnification**

14 **Accelerated Declaratory Judgments**

15 167. Plaintiff CJK incorporates, by reference, each and every allegation contained
16 herein.

17 168. Plaintiff CJK seeks two declaratory judgments against Rodriguez, first for his
18 removal from the board of directors and second for a determination that he is not entitled to
19 indemnification from the corporation.

20 169. Plaintiff CJK seeks to have these declarations advanced on the Court's
21 calendar pursuant to Rule 57, Ariz. R. Civ. P., and to have the force of a final judgment
22 when issued pursuant to ARS Section 1831 and Rule 54(b), Ariz. R. Civ. P.

23 170. First, regarding removal of Rodriguez from the board of CJK, it is a non-profit
24 corporation which does not have "members".

25 171. Abrams is a member of the board of directors of CJK.

26 172. The board of CJK consists of two members, one of whom is Abrams and
another of whom is Rodriguez.

1 183. In these capacities, Rodriguez was supposed to have active management of the
2 business of the Corporation, be its Chief Executive Officer and have custody of all corporate
3 funds and was required to keep full and accurate accounts of receipts and disbursements in
4 books belonging to the Corporation.

5 184. Despite this, and even though Rodriguez was aware months ago of the fact
6 that CJK does not have an audit completed or even started, and was informed in writing of a
7 notice of deficiency by ADHS months ago, he has taken no steps to engage an audit firm to
8 complete the required task, to call a board meeting to discuss the matter, or initiate any
9 solution, on information and belief.

10 185. In addition, Rodriguez has engaged in money transfers and other financial
11 transactions involving CJK funds which have no legitimate basis and will not pass a GAAP
12 audit, on information and belief.

13 186. On information and belief, Rodriguez's activities in connection with CJK
14 financial transactions violate ARS Section 13-2317(B)(7).

15 187. Plaintiff CJK proceeds in this derivative action brought against Rodriguez for
16 his removal from the board of directors of CJK.

17 188. The Articles of Incorporation of CJK do not provide for another method of
18 removal.

19 189. CJK thus seeks a declaratory judgment against Rodriguez finding that his acts
20 and omissions concerning the lack of a GAAP audit for CJK and the financial transactions
21 alleged herein above call for a finding that Rodriguez engaged in fraudulent conduct or
22 intentional criminal conduct with respect to the corporation and removal is in the best
23 interests of the corporation, within the meaning of ARS Section 10-3810(A).

1 190. Second, CJK seeks a declaratory judgment that Rodriguez is not entitled to
2 indemnification due to limits on indemnification in the Arizona Nonprofit Corporation Act
3 (“ANCA”).

4 191. Rodriguez may only be indemnified under ANCA if his conduct was in good
5 faith, he reasonably believed that the conduct was in the best interests of the corporation and
6 not opposed to its best interests pursuant to ARS Section 10-3851(A), or the articles of the
7 company provide an obligatory indemnification for the director, except for, among other
8 things, an intentional violation of criminal law pursuant to ARS Section 10-3202(B).

9 192. Rodriguez’s conduct alleged herein above was not in good faith, he did not
10 reasonably believe that it was in the best interests of the corporation or not opposed to its
11 interests, on information and belief.

12 193. Rodriguez’s conduct regarding the financial transfers and the setting up and
13 maintenance of banking relations intentionally violated ARS Section 13-2317(B)(7)
14 (“[i]ntentionally or knowingly falsifies, conceals, covers up or misrepresents or attempts to
15 falsify, conceal or cover up or misrepresent the identity of any person in connection with
16 any transaction with a financial institution...”), within the meaning of the definition of
17 “Transaction” as defined by ARS Section 13-2317(G)(3).

18 194. CJK thus seeks a declaratory judgment against Rodriguez finding that he is
19 not entitled to indemnification for the foregoing reasons.

20 **Eleventh Claim For Relief**

21 **By CJK, Inc.**

22 **Injunctive Relief**

23 **(Temporary Restraining Order and Preliminary Injunction Re: CJK)**

24 195. Plaintiff CJK incorporates, by reference, each and every allegation contained
25 herein.
26

1 196. Plaintiff seeks temporary and preliminary injunctive relief from the filing of
2 this verified complaint through the date of the Court's decision on the declaratory judgment
3 claim that Rodriguez has been removed as a director of CJK, providing that Rodriguez may
4 not act in the capacity of an officer or director of CJK until the Court's decision on the
5 declaratory judgment claim to remove Rodriguez as a director of CJK.

6 197. Plaintiff CJK is seeking to move forward with lawful, peaceful, judicial
7 confirmation of that removal expeditiously.

8 c. Plaintiff CJK is seeking herein, among other things, an accelerated declaratory
9 judgment of the Court legally confirming that Rodriguez has been removed as
10 a director of CJK pursuant to the ANCA.

11 d. Plaintiffs will file with the Court contemporaneously with the filing of this
12 verified complaint a motion seeking expedited consideration of their request
13 for declaratory judgment that Rodriguez has been removed as a directors of
14 CJK, pursuant to Rule 57, Ariz. R. Civ. P., and for said declaratory judgment
15 to be a final judgment when issued pursuant to ARS Section 1831 and Rule
16 54(b), Ariz. R. Civ. P.

17 198. The risk of harm to Rodriguez associated with granting the requested
18 temporary and preliminary relief is small.

19 a. Abrams is the Vice-President and Secretary and a member of the board of
20 CJK and can conduct any and all business needed between the filing of this
21 verified complaint and the date of the Court's decision on the removal of
22 Rodriguez.

23 b. Abrams is ready, willing and able to serve as the Vice-President, Secretary
24 and board member of CJK and has been doing so.

25
26

1 c. Abrams business background demonstrates that he is qualified to serve in
2 those roles: for over thirty years, Abrams was employed as an executive of
3 Reliable Carriers, Inc., the largest enclosed auto transport company in the
4 United States, a family enterprise which has been in business for over fifty
5 (50) years, which transports cars and trucks to and from any location specified
6 by the client, typically for specialty, rare, collector and unique vehicles. Mr.
7 Abrams was responsible for Reliable's West Coast operations and, today,
8 owns a substantial portion of Reliable's real estate.

9 d. Abrams experience in the business of CJK also demonstrates that he is
10 qualified to serve in his existing roles of Vice-President, Secretary and board
11 member so as to conduct any and all necessary corporate business.

12 199. By comparison, the risk if the Court does not enjoin Rodriguez from acting as
13 a director and officer of CJK between now and its decision following the declaratory
14 judgment hearing, is substantial.

15 a. Specifically, there is a risk that, between the filing of this verified complaint
16 and the date of the Court's decision following the declaratory judgment
17 hearing, irreparable harm could result if Rodriguez is not enjoined from acting
18 in the capacity of an officer and or director of CJK.

19 b. For example, absent a clear injunction order from the Court, Rodriguez may
20 refute the validity of his removal and attempt to continue to act as a director of
21 CJK in advance of the Court's ruling following the declaratory judgment
22 hearing in this matter.

23 c. Should Rodriguez attempt to refute the validity of his removal as Director of
24 CJK in advance of the Court's ruling following the declaratory judgment
25 hearing in this matter, serious instability is a foreseeable result.

1 d. That instability could come in the form of confusion suffered by parties in
2 business relationships with CJK who have become accustomed to dealing with
3 Rodriguez.

4 e. For example, CJK has employees whose work could be disrupted by
5 conflicting instructions from Rodriguez.

6 200. There is a substantial likelihood that plaintiffs will succeed on the merits of
7 their claim for declaratory judgment that Rodriguez be removed as the Director of CJK.

8 a. Plaintiffs have cited the operative provisions of the ANCA in support of their
9 declaratory judgment application.

10 b. This complaint is verified.

11 c. The language of the applicable statutes is clear and unambiguous regarding
12 removal of a director.

13 d. The Court can construe the provisions of the applicable statutes as a matter of
14 law.

15 201. The public interest in peaceful commerce without undue disruption is served
16 by the requested relief.

17 a. It is clear that plaintiff is seeking peaceful, lawful, judicial confirmation of
18 that removal.

19 b. Given the allegations of Rodriguez's history of substantial, ongoing, and
20 multiple acts of defalcations and breaches of law, temporary injunctive relief
21 confirming the removal of Rodriguez as a director of CJK is warranted and
22 prudent in that the public's interest in peaceful business transitions will be
23 furthered.

24 202. A zero bond, or small bond, if any, should be all that is required to be posted
25 in connection with plaintiffs' request for temporary and preliminary injunctive relief.

- 1 a. Abrams has substantial incentive to competently and completely fulfill all of
2 the duties of the offices he holds with CJK.
- 3 b. Specifically, he desires to serve in that capacity in order to protect the value of
4 his nearly \$12,000,000.00 (TWELVE MILLION DOLLAR) investment he
5 has made in Ultra Health, a substantial portion of which has been expended in
6 connection with the operations of CJK.
- 7 c. The CJK bylaws designate Abrams as an officer and director of CJK already,
8 and he is ready and able to serve in those capacities.

9 203. Because a temporary restraining order is good for ten (10) days, and can be
10 extended to twenty (20) days for good cause shown, but it is unclear at the moment when
11 the Court will decide the declaratory judgment issue raised, plaintiffs in an abundance of
12 caution also seek preliminary injunctive relief in the event that the date upon which the
13 Court decides the first declaratory judgment issue regarding confirmation of Rodriguez's
14 removal as a director of CJK takes more than twenty (20) days from the date of the filing of
15 this verified complaint.

16 204. In the event that it takes more than twenty (20) days from the filing of this
17 verified complaint to the date when the Court decides the first declaratory judgment issue
18 regarding confirmation of Rodriguez's removal as a director of CJK, then plaintiffs' seek to
19 have the same relief as requested in the form of the temporary injunctive relief granted in
20 the form of a preliminary injunction.

21 205. Plaintiff requests that any temporary or preliminary injunctive relief be made
22 permanent at the conclusion of the case.

Tenth Claim for Relief
By CA2 and Abrams
Punitive Damages

206. Plaintiffs incorporate, by reference, each and every allegation contained herein.

207. Defendants are liable to plaintiffs and each of them for punitive damages as a result of the factual allegations set forth herein.

208. Defendants' conduct as alleged herein which operated as a continuing fraud and concealment on plaintiffs, demonstrates conscious disregard for the rights of plaintiffs and an evil mind moving an evil hand to obtain personal monetary gain and is punishable by an award of punitive damages as against defendants and in favor of plaintiffs subject only to proof at trial and applicable constitutional limitations on the award of such damages.

209. Plaintiffs seek the maximum legally allowable award of punitive damages as against these defendants.

IV. Requests for Relief.

WHEREFORE, having fully pled its claims as against defendants, plaintiffs seek judgments and orders in their favor and against defendants, as follows:

- A. For a declaratory judgment as alleged herein above;
- B. For a temporary restraining order as requested herein above;
- C. For a preliminary injunction order as requested herein above;
- D. For a permanent injunction order and judgment as requested herein above;
- E. For damages in an amount to be proven at trial;
- F. For specific performance as may be elected;
- G. For restitutionary relief pursuant to the Restatement of Restitution (Third), including disgorgement and other forms of restitutionary relief as may be warranted in the premises;

- 1 H. For punitive and/or exemplary damages;
- 2 I. For prejudgment interest as permitted by law and as applicable on any liquidated
- 3 sums or sums which become liquidated during the pendency of this action;
- 4 J. For attorneys' fees and costs as permitted by law, including Arizona Revised Statutes
- 5 Sections 12-341 and 12-341.01;
- 6 K. For such other relief as may be elected and/or permitted at as matter of Arizona law;
- 7 and,
- 8 L. For such other and further relief as the Court deems just and proper.
- 9

10 RESPECTFULLY SUBMITTED this 26th day of March, 2015.

11 CONANT LAW FIRM, PLC

12 By: 

13 Paul A. Conant

14 Melissa A. Emmel

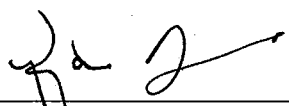
15 2398 East Camelback Road, Suite 925

16 Phoenix, Arizona 85016

17 Attorneys for plaintiffs

18

19 Original filed with Maricopa County
20 Superior Court this 26th day of March, 2015.

21 
22 Karen Stecker

23

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VERIFICATION

After first being duly sworn, Alan B. Abrams, upon his oath declares and states under penalty of perjury that the foregoing allegations of fact in the Verified Complaint of CA2 Capital, LLC and the other plaintiffs against Duke Rodriguez and the other defendants are true and correct to the best of his knowledge, information and belief.

Executed under penalty of perjury this 26th day of March, 2015

A handwritten signature in cursive script, reading "Alan B. Abrams", written over a horizontal line.

Alan B. Abrams